SUBSIDIARY LEGISLATION 545.14

WATER SUPPLY AND SEWERAGE SERVICES REGULATIONS

1st January, 2005;
1st September, 2009

LEGAL NOTICE 525 of 2004, as amended by Legal Notices 426 of 2007, 337 of 2009, 31 and 38 of 2010, and 184 of 2012; and Act XXV of 2015.

Citation.
Amended by: L.N. 38 of 2010.

1. (1) The title of these regulations is the Water Supply and Sewerage Services Regulations.

(2) The scope of these regulations is to regulate the licensing of water supply and sewerage services in Malta. These regulations are being made for the safeguarding of the public interest and public safety. Any requirements and, or conditions contained therein, including those relating to authorisations and licences, are being made for overriding reasons relating to public interest.

Interpretation.
Amended by: L.N. 31 of 2010; L.N. 38 of 2010; XXV. 2015.41.
Cap. 545.

2. In these regulations, unless the context otherwise requires:

"the Act" means the Regulator for Energy and Water Services Act;

"authorisation" means any authorisation or licence granted under these regulations and in relation to services and service providers it means a permit, licence, appointment, concession or any formal decision concerning access to a service activity or the exercise thereof;

"the Regulator"' means the Regulator for Energy and Water Services as defined in the Act;

"customer" means and includes any natural or legal person who is supplied with water from a water supplier and, or who receives sewerage services from a sewerage service operator, and wherever it occurs in these regulations, it shall also include "final customer";

"domestic sewage" means sewage and, or wastewater from residential settlements and services which originates predominantly from the human metabolism and from household activities;

"establishment" means the actual pursuit of an economic activity by a service provider for an indefinite period and through stable infrastructure from where the business of providing services is actually carried out;

"final customer" means any natural or legal person who is supplied with water from a water supplier for his own use and, or who receives sewerage services from a sewerage services operator for his own use;

"industrial sewage" means any sewage and, or wastewater which is discharged from premises used for the carrying out of any trade, practice, activity or industry, other than domestic sewage and run-off rain water;

"internal sewage collection system of any premises" means the pipework, fittings and appliances which are installed within any premises and up to the sewage collection system but only if they are not the responsibility of the sewerage services operator in its capacity as a sewerage services operator;

"internal water distribution system of any premises" means the pipework, fittings and appliances which are installed within any premises and up to the distribution network but only if they are not the responsibility of the water supplier in its capacity as a water supplier;

"licensee" means the holder of the licence issued by the Regulator under these regulations, or an authorised provider who is authorised by the Regulator in terms of these regulations to carry out the activity regarding the collection, purification and distribution of water, and also regarding the disposal and treatment of waste water, or a service provider who is authorised to operate under any law in force in a Member State of the European Union or a state which is a participant to the European Economic Area;

"Member State" means a member state of the European Union;

"the Minister" means the Minister responsible for Resources;

"non-potable water supplier" means a water supplier whose scope of operations is limited to water that is not potable water;

"overriding reasons relating to public interest" means reasons recognised as such in case law of the European Courts of Justice and which reasons present a justification for the issue of an authorisation and, or the issue of a condition thereto and, or any other policy decision taken in terms of such authorisation, when such authorisation, and, or condition and, or policy decision thereto could not have been issued or taken under normal circumstances but for such overriding reasons relating to public interest which include any of the following grounds:

(a) public policy, public security, public safety and public health; provided that these grounds shall be interpreted within the meaning of Article 46 and Article 55 of the Treaty;

(*b*) the maintenance of order in society;

(*c*) social policy objectives;

(*d*) the protection of the recipients of services;

(*e*) consumer protection;

(*f*) the prevention of fraud;

(*g*) the prevention of unfair competition; and

(*h*) the protection of the environment;

"potable water" means all water:

(*a*) either in its original state or after treatment is intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a distribution network, pipeline or a tanker;

(*b*) used in food-production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption;

"private sewage collection system" means a sewage collection system which is not a public sewage collection system;

"private water distribution network" means a water distribution network which is not a public water distribution network;

"production of water" means the process of abstraction of water and, or its treatment at a water treatment plant;

"public sewage collection system" means a sewage collection system which is vested in or belongs to the Government or any Government owned company or parastatal corporation by whatever title and is operated by the Government, a Government owned company or a parastatal corporation;

"public water distribution network" means a water distribution network which is vested in or belongs to the Government or any Government owned company or parastatal corporation by whatever title and is operated by the Government, a Government owned company or a parastatal corporation;

"recipient" means any natural person who is a national of a Member State, who benefits from rights conferred upon him by community acts or any legal person established in a Member State, who for professional or non-professional purposes, uses or wishes to use a service against non-economic considerations;

"seawater" means water which has an electrical conductivity of more than 50,000 μS/cm;

"service" means any self-employed activity performed for an economic consideration;

"service provider" means any natural person who is a national of a Member State, or any legal person established in a Member State, who offers or provides a service;

"sewage" means domestic sewage and, or wastewater or the mixture of domestic sewage and, or wastewater with industrial sewage and, or wastewater and, or run-off rain water;

"sewage collection system" means a system of sewers, conduits, pipes, manholes, pumps and any other facility used for the collection, transfer, treatment and disposal of sewage from any premises or establishment, but excludes the internal sewage collection system of any premises;

"sewage collection tanker" means any vehicle, trailer or semi-trailer which has a capacity of transporting a volume of sewage of not less than three cubic meters;

"sewage treatment plant" means any structure, facility, device, process or combination thereof used for the purpose of treating or stabilizing sewage and, or wastewater or industrial sewage and, or wastewater and disposing and, or reuse of the effluent;

"sewerage services operator" means any person licensed or

authorised by these Regulations to provide sewerage services to any customer;

"sewerage services" means the carrying out of all or any of the activities regarding collection of sewage, treatment, transfer and, or disposal of waste water and the transfer and, or disposal and, or supply and, or retail of effluent, whether or not such activities are carried out against a fee, charge or any other form of remuneration, howsoever it may be described;

"supply of water" means and includes the carrying out of all or any of the activities regarding treatment, transfer, distribution, supply and, or retail of water other than bottled water, whether or not such activities are carried against a fee, charge, or any other form of remuneration, howsoever it may be described, but does not include water abstraction;

"the Treaty" means the Treaty establishing the European Community;

"water distribution network" means a system or network of conduits, pipes, pumps, wells, storage tanks, reservoirs, or other facilities used for the collection, storage, transfer and distribution of water but excludes the internal water distribution system of any premises;

"water tanker" means any vehicle, trailer or semi-trailer which has a capacity of transporting a volume of water of not less than three cubic meters;

"water treatment plant" means a facility or that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and that is used to render the water potable;

"water supplier" means any person licensed or authorised by these regulations to supply water other than bottled water.

Application of these regulations. *Amended by: L.N. 31 of 2010.*

3. (1) There shall be the following categories with regards to water suppliers and sewerage services operators:

(*a*) water suppliers who:

(i) supply water through the public water distribution network;

(ii)* supply water to a customer through a single pipeline or a private water distribution network;

(iii) supply water to a customer by water tankers;

(iv)* supply water to a customer by any other means;

(v) supply of water for own use by water tankers;

(*b*) sewerage services operators who:

(i) provide sewerage services using the public sewage collection system;

(ii)* provide sewerage services to a customer through a single pipeline or a private sewage collection system;

*Not yet in force.

(iii)* provide sewerage services to a customer by tankers;

(iv)* provide sewerage services to a customer by any other means;

(v) carrying out sewerage services for own use by a sewage collection tanker;

(2) This regulation shall apply to any person providing or offering a service, or operating a system, or carrying out a service activity or the exercise thereof in terms of these regulations whether or not such service, system or service activity or the exercise thereof are carried out against a fee, charge or any other form of remuneration, howsoever it may be described.

Functions of the water suppliers and sewerage services operators. *Amended by: XXV. 2015.41.*

4. (1) With respect to water suppliers, the Regulator may identify any one or more of the following functions as necessary requirements for the supplier to support him in executing the regulated activities:

(*a*) conservation, augmentation and operation of water resources and sources of water supply;

(*b*) development, maintenance and promotion of safe and efficient production and distribution systems in order to satisfy, as economically as possible, all reasonable demands for potable water;

(*c*) management and operation of undertakings, installations and property for the sole purposes of potable water production, supply and, or distribution;

(*d*) promotion of reasonable use of potable water and encouragement of conservation and appropriate re-use of water resources:

Provided that such support functions shall be carried out only with the prior approval of the Regulator and in accordance with the directions specified by the Regulator.

(2) With respect to sewerage services operators, the Regulator may identify any of the following functions as a necessary requirement for the operator to support him in executing the regulated activities:

(*a*) improvement, extension, cleansing and maintenance of sewage collection systems;

(*b*) operation of sewage collection systems and such further provisions as are necessary from time to time for effectively dealing with the contents of these systems by means of sewage treatment and disposal works or otherwise;

(*c*) management and operation of undertakings, installations and property for the sole purposes of sewage collection, treatment, storage, disposal and reuse;

*Not yet in force.

(*d*) promotion of reasonable appropriate reuse of water resources and any other by-products including sludge;

(*e*) administering and issuing consents to connect to the sewage collection system:

Provided that such support functions shall be carried out only with the prior approval of the Regulator and in accordance with the directions specified by the Regulator.

(3) Nothing contained in this regulation or in a licence issued under these regulations shall be interpreted as exempting a water supplier or a sewerage services operator from requiring any other licence as required in any other regulations or legislation.

Application for a licence by service providers. *Amended by: XXV. 2015.41.*

5. Any water supplier or sewerage services operator who is providing or offering any service or operating any system mentioned in these regulations, and requiring a licence under these regulations, shall apply in writing to the Regulator within three months of the coming into force of these regulations.

Licensing of regulated services and application for granting of licences. *Amended by: L.N. 38 of 2010; XXV. 2015.41.*

6. (1) The provision of the services referred to in regulation 3 shall require a general authorisation or an individual licence issued in terms of these regulations or as provided by the Act.

(2) Any person who wishes to provide any service requiring a licence under these regulations shall submit an application in writing to the Regulator in such form and manner as the Regulator may prescribe or as provided by the Act.

(3) The Regulator shall establish its procedure for determining an application for a water supply or sewerage service licence:

Provided that such procedures shall be in accordance with the provisions of the Act.

(4) Licences shall be issued by the Regulator in respect of the provision of the services referred to in these regulations and shall include the terms and conditions for the provision of such services:

Provided that such licenses shall only be required, unless otherwise provided for, in terms of the Act:

Provided further that the conditions for the granting of an authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable, as regards the purpose to which the service provider is already subject in another Member State or in Malta.

(5) A licence issued by the Regulator shall be in writing and, unless revoked, cancelled or suspended in accordance with any condition therein contained, it shall continue to be in force for such period as may be specified in or determined by or under the licence.

(6) Nothing in these regulations shall prohibit the Regulator from issuing a single licence incorporating more than one of the licences.

(7) The validity period of the licence shall be determined by the Regulator:

Provided that such duration shall not be inconsistent with

or contrary to the provisions of the Act.

(8) The Minister may, if he deems it to be so necessary, direct the Regulator to limit the number of licences that may be issued for services regulated by these regulations:

Provided that such limitation shall be justified by means of overriding reasons relating to public interest and in accordance with the provisions of the Act and of the Services (Internal Market) Act. Cap. 500.

Application for the issuing of a licence. *Amended by: L.N. 426 of 2007; L.N. 337 of 2009; L.N. 38 of 2010; XXV. 2015.41.*

7. (1) A non-refundable application fee of fifty-eight euro and twenty-three cents (€58.23) shall be paid to the Regulator with the licence application:

Provided that the non-refundable application fee shall be two hundred and thirty-two euro and ninety-four cents (€232.94) for the following services:

(*a*) water suppliers intending to supply a volume of water greater than $10m^3$/day and supplying water through a distribution network;

(*b*) sewerage services operators who intend to collect a volume of sewage greater than $10m^3$/day and either collect sewage through a collection system or operate a sewage treatment plant.

(2) The licence fees and the charges and fees for e-tracking of water tankers shall be as established in terms of the Schedule.

(3) The criteria established for the issue of any authorisation under these regulations shall be non-discriminatory, proportionate, clear and unambiguous, objective, made public in advance, transparent and accessible.

Powers to impose conditions of licence. Amended by: *L.N. 38 of 2010; XXV. 2015.41.*

8. (1) The Regulator has the power, through the licence, to establish such conditions as the Regulator considers requisite or expedient having regard to the functions established by the Act.

(2) Water suppliers or sewerage services operators falling under any one category specified in regulation 3(1) shall be subject to similar conditions, while different conditions may be established for different categories specified in regulation 3(1).

(3) The Regulator may, however, distinguish in its licence conditions between:

(*a*) water suppliers and non-potable water suppliers;

(*b*) water suppliers based on the volume of water supplied;

(*c*) sewerage services operators based on the volume of sewage collected and, or treated and, or disposed of.

(4) The Regulator may include conditions in the licence, consistent with any direction of a policy nature that the Minister may give, and regarding, but not necessarily be limited to:

(*a*) the grant and term of the licence including the identification of support functions to be provided by the water supplier or sewerage services operator, in

accordance with regulation 4;

(*b*) suspension, variation and transfer conditions of the licence;

(*c*) licence fees to be paid by the water supplier or sewerage services operator, to the Regulator;

(*d*) compliance requirements to conditions, directions, management letters, standards, guidelines, codes or rules given by the Regulator and other laws;

(*e*) charges and tariffs for the provision of the regulated services;

(*f*) the water suppliers' or sewerage services operators' service obligations including but not limited to obligations to customers, development of emergency response plans, asset management plans and security plans;

(*g*) the monitoring, recording, submission, reporting and auditing of information to the Regulator;

(*h*) the inspection, making copies and taking extracts from books and records held by a water supplier or sewerage services operator and the carrying out of measurements and tests in relation to any premises, assets or plant;

(*i*) the assessment and auditing of operations and compliance with licence conditions;

(*j*) the regulation of subsidiary companies and, or companies and, or co-operatives providing part of the regulated services.

(5) Any person granted a licence under these regulations shall:

(*a*) comply with any direction given by the Regulator as to such matters as are specified in the licence or are of a description so specified;

(*b*) provide the services in accordance with such licence conditions:

Provided that the authorised provider shall inform the Regulator of any changes relating to his service activity which result in the conditions for his authorisation no longer being met and the creation of subsidiaries whose activities fall within the scope of the authorisation and, or the authorisation scheme;

(*c*) do or not do such things as are specified in the licence or are of a description so specified;

(*d*) comply with the decisions or directions issued by the Regulator for the purposes of complying with any of Malta's international obligations.

Suspension, revocation or cancellation of licences.
Amended by: L.N. 184 of 2012; XXV. 2015.41.

9. (1) The Regulator may, at any time in the course of the period for which the licence is valid, order its suspension, revocation or cancellation where the Regulator is satisfied that:

(*a*) the licensee has failed or is failing to abide by any conditions of the licence, or by these regulations, or

(*b*) the licensee does not possess all other relevant permits or licences that are issued by any other authority or regulatory body, or

(*c*) the licensee is contravening any statutory or other requirement imposed by any law, or

(*d*) the licensee fails to comply with any direction given by the Regulator as to such matters as are specified in the licence or are of a description so specified, or

(*e*) any information submitted in the application for a licence or the application for renewal of a licence and on which the licence has been issued or renewed, as the case may be, is determined to be false, or

(*f*) the licensee fails to pay the licence fee as established in regulation 13:

Provided that in exercising the powers for suspension, revocation or cancellation of licences the Regulator may take account of the nature of the failure, or the fact that the licensee is taking the appropriate steps, as it appears to the Regulator, to comply with the conditions of the licence or any other fact that the Regulator may deem relevant:

Provided further that, any decision taken by the Regulator, including refusal or withdrawal of an authorisation, shall be fully reasoned and shall be open to challenge before the the Administrative Review Tribunal established by article 5 of the Administrative Justice Act:

Cap. 490.

Provided also that, in case of failure by the Regulator to inform the applicant regarding any decision taken concerning access to a service activity or the exercise thereof, including refusal or withdrawal of an authorisation, shall not mean in any manner whatsoever, that the Regulator has tacitly granted such authorisation and that the applicant has automatically been granted access to a service activity, or the exercise thereof.

(2) No person may provide any of the services referred to in regulation 3 where the Regulator has suspended the licence and until such time that the suspension of the licence is lifted by the Regulator.

(3) No person may provide any of the services referred to in regulation 3 where the Regulator has revoked or cancelled the licence and until such time that a new licence is issued by the Regulator.

(4) Any person whose licence has been cancelled or revoked may re-apply for a licence and such a new application shall be subject to all the provisions established by these regulations.

Modifications to licences. *Amended by: XXV. 2015.41.*

10. (1) Subject to the following provisions of this regulation, the Regulator may modify, amend, replace, add or delete any licence condition as it considers requisite or expedient having regard to the functions established by the Act.

(2) Before making modifications, the Regulator shall give notice to the licensees:

(*a*) stating that it proposes to make modifications to the licence and setting out their effect;

(*b*) stating the reasons why the modifications are being proposed;

(*c*) specifying the period (not being less than three months from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and the Regulator shall be bound to consider any representations and objections which are duly made and not withdrawn.

(3) The notice referred to in subregulation (2) shall be:

(*a*) brought to the attention of the Minister and the water supplier or sewerage services operator;

(*b*) brought to public attention by the publication of a notice in the Government Gazette.

Enforcement orders. *Amended by: XXV. 2015.41.*

11. (1) Where the Regulator is satisfied that -

(*a*) a water supplier or sewerage services operator is contravening any condition of the licence, or,

(*b*) a water supplier or sewerage services operator is contravening any requirement imposed by law, or,

(*c*) there is persistent failure by a water supplier or sewerage services operator to meet the targets set by the Regulator, or,

(*d*) any person is carrying out any activities or providing any of the services referred to in these regulations without being authorised or licensed to do so by the Regulator,

the Regulator may take such measures in respect of such water supplier, or sewerage services operator, or person, in accordance with the manner the Regulator may deem most fit.

(2) The Regulator may issue enforcement orders making such provisions as are requisite for the purpose of securing compliance with conditions or requirements referred to in subregulation (1).

(3) An enforcement order mentioned in subregulation (2) -

(*a*) shall require the water supplier, or sewerage services operator, or the person to which the order relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

(*b*) shall take effect at such time, being the earliest

practicable time, as is determined by or under the order;

(*c*) shall be published in such manner as the Regulator considers appropriate for the purpose of bringing the matters to which it refers to the attention of persons likely to be affected by the order;

(*d*) may be revoked at any time by the Regulator:

Provided that in exercising the powers for the issue of an enforcement order, the Regulator may take account the nature of the failure, or the fact that the licensee is taking the appropriate steps, as it appears to the Regulator, to comply with the licence conditions or any other fact that the Regulator may deem relevant.

Public service obligations. *Amended by: XXV. 2015.41.*

12. (1) The Minister may direct the Regulator, in the general interest, to impose as a licence condition on any water supplier or any sewerage services operator granted a licence to provide any services under these regulations, a public service obligation to supply any service, in any specified form, to any final customer or specific groups of final customers, at specified prices.

(2) Any additional costs incurred as a result of these obligations may be identified by the water supplier, or by the sewerage services operator, and shall be verified by the Regulator.

(3) Additional costs referred to in subregulation (2) may be recovered as specified by the Regulator, including through an additional charge imposed on other water suppliers or other sewerage services operators, as the case may be.

Licence fees. *Amended by: XXV. 2015.41.*

13. (1) The water supplier or sewerage services operator shall pay licence fees to the Regulator, including fees to be paid on the grant of the licence and licence renewal fees on an annual basis.

(2) The amount of the licence fee shall be in accordance with mechanisms established by the Regulator and approved by the Minister.

(3) The Regulator shall publish the mechanisms for determining licence fees in the Gazette prior to their introduction.

Notwithstanding the above and for the first year from the coming into force of these regulations, the Regulator may establish such licence fees and such licences fees shall be subject to the approval of the Minister.

Tariffs. *Amended by: XXV. 2015.41.*

14. (1) In the case of water supplied through a public water distribution network or in the case of provision of sewerage services using the public sewage collection system, any water supplier or sewerage services operator shall provide the services in accordance with tariffs and subsidies as approved by the Regulator, or if not so established or approved, the water supplier or sewerage services operator shall provide the services in accordance with the tariffs and subsidies in force prior to the Act and saved under article 36 of the Act:

Provided that the water supplier or sewerage services operator shall keep accounts for services where, in the opinion of

the Regulator, no effective market competition exists separately from accounts for other activities, in any form or consolidation as directed by the Regulator, with the objective of avoiding cross-subsidisation or distortion of competition:

Provided further that the water supplier or sewerage services operator shall identify all activities carried out by him and his subsidiaries and propose a classification of activities for approval by the Regulator within three months of these regulations coming into force.

(2) The Regulator may impose tariff structures or mechanisms if necessary to reach objectives of national interest such as consumer protection, fair competition and securing public service obligations taking into account any directions that the Minister may give.

Offences. *Amended by: L.N. 426 of 2007.*

15. Save the provisions of article 26 of the Act, any water supplier or sewerage services operator or any person providing any services or operating any systems mentioned in these regulations, who contravenes or fails to comply with any of these Regulations shall be guilty of an offence against the provisions of these regulations, and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Commencement of proceedings. *Added by: L.N. 38 of 2010.*

16. Notwithstanding any other law, proceedings for an offence against these regulations may be commenced at any time within six years from the commission of the offence.

Added by: L.N. 337 of 2009.

SCHEDULE

[Regulation 7(2)]

Application and Licence Fees to Water Tanker Operators

Licence fees and charges for e-tracking to water tankers:

1	Annual licence fee	€200 per water tanker or trailer licensed to transport water
2	Annual fee for e-tracking	€425 per water tanker or trailer licensed to transport water
3	One time fee for installation of water level sensor to water tanker or trailer	€800 per water tanker or trailer licensed to transport water

---