SUBSIDIARY LEGISLATION 623.06

AVOIDANCE OF DAMAGE TO THIRD PARTY PROPERTY REGULATIONS

25th June, 2019

LEGAL NOTICE 136 of 2019, as amended by Legal Notices 180 of 2019, 409, 426 and 468 of 2021 and 37 of 2024.

Citation.

1. The title of these regulations is the Avoidance of Damage to Third Party Property Regulations.

Scope.

2. (1) The scope of these regulations is to ensure that before the start of any type of works consisting of any demolition, excavation, or construction, methodologies that are technically secure are prepared in order to minimise the risk of damages to third party property or injury to persons that may result through the proposed works.

(2) 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. *Amended by: L.N. 180 of 2019.*

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

"the Act" means Building Regulation Act; Cap. 513.

"Building and Construction Authority" means the same as the definition provided in the Building and Construction Authority Act; Cap. 623.

"building work" means construction work excluding excavation work and demolition work but includes structural alterations;

"construction work" means that it includes all construction works carried out on the structure of the fabric of a building or on a civil engineering structure, including alterations on existing buildings, demolition or excavation activities taking place on a development site, streets, open spaces and shall also include tunnelling works;

"contiguous property" means immediately adjacent to third party property, including any building sharing a dividing party wall with the site, whether on the side or back of the site, or overlying or underlying third party property, excluding those listed in the First Schedule;

"contractor" means the person engaged by the developer in order to execute the works;

"demolition" means the pulling down or removal of structural elements which form part of the building;

"developer" means the person in whose name the application had been submitted for a development permit, in accordance with the provisions of the Development Planning Act or in accordance with the provisions of the regulations made thereunder;

Cap. 552.

"Director" means the Director responsible for the Building and Construction Authority or any public officer duly delegated by the Director to act on his behalf;

"enforcement notice" means the same as the definition assigned to it in article 14 of the Act;

"excavation" means the cutting or removal of rock, clay and any other natural or human placed material, that forms part of the land, or the removal of any consolidated material;

"excavation affected zones" means, a zone surrounded by excavation, that reaches a distance of not more than the equivalent measure for the height proposed for the excavation, far from the limits of the excavation;

"method statement" means a report prepared by a *perit* and shall have the meaning assigned to it in these regulations;

"Minister" means the Minister responsible for the building industry;

"particulars of a person" means that it includes the name and surname, Identity Card number, address and a twenty-four (24) hour contact number as well as the email address of a person;

"*perit* in charge of the project" means the *perit* that is going to assume responsibility for the execution of the project approved in the development permit;

"Planning Authority" means the Authority as established under the Development Planning Act;

Cap. 552.

"pneumatic drill" means equipment driven by compressed air or other means, used for drilling or breaking of hard materials such as rock or concrete;

"site technical officer" means a person carrying out the duty or duties derived from the provisions of these regulations. Such person shall be:

(a) nominated by the contractor and shall be accepted by the *perit* in charge of the project;

(b) competent as provided in the Third Schedule;

(c) responsible for the enforcement of the method statement covering the works which the contractor who nominates him is responsible for.

(d) present on site whenever decisions are being taken that influence the risk of damage to third party property or injury to persons that may be caused by the works;

"sub-contractor" means the person engaged by the contractor in order to execute the works. Such a person has no juridical relationship with the developer. The sub-contractor is subject to the same obligations that are impinged on the contractor in these regulations with the exception that the nomination of the site technical officer shall remain the responsibility of the contractor;

"third party" means a person having a legal title over property or making use of the property by other lawful means, contiguous to a construction site, excluding those properties listed in the First Schedule.

Applicability.

4. These regulations shall be applicable to any construction work which involves:

(a) excavation, that in its affected zone includes third party property; or

(b) the demolition or removal of any existing structure, or roof or structure abutting with, or immediately adjacent to, or underlying or overlying any property belonging to or occupied by third parties or toothing work with existing buildings; or

(c) the building of additional storeys or load-bearing walls or structures over any property belonging to or occupied by third parties; or

(d) the construction of new buildings or additional storeys adjacent to existing third party property.

Responsibilities of developer and official site technician.
Amended by: L.N. 180 of 2019.

5. (1) The contractor shall nominate a site technical officer, after he has been accepted by the *perit* in charge of the project.

(2) If the developer has changed when construction works

are still to be carried out or are being carried out, such new developer shall abide by these regulations.

(3) The developer shall take all reasonable precautions to ensure that the construction activity will not result in any damage to contiguous properties, including damage that may result from the infiltration of water.

Insurance and bank guarantee.
Amended by: L.N. 37 of 2024.

6. (1) *Repealed by Legal Notice 37 of 2024.*

(2) *Repealed by Legal Notice 37 of 2024.*

(3) The developer shall submit a bank guarantee to the Director, for all construction activities, other than those listed in regulation 26. The value of the bank guarantee shall be of three thousand euro (€3,000) for each storey of developed third party property or properties which is or are contiguous to a development site, for the first five (5) properties and a further one thousand euro (€1,000) for each additional contiguous property, up to a maximum of forty thousand euro (€40,000):

Provided that the Director shall exempt the developer from the submission of a bank guarantee, as indicated, if the developer submits to the Director a certified statement issued by an insurance company attesting that the developer is insured in such a manner as to cover indemnity for damages to third party property, including damages of a minor nature:

Provided further that the developer shall submit in this case, a bank guarantee to the Director, equivalent to the maximum amount in excess indicated in the insurance policy.

(4) Any third party having a claim for damages against the developer shall immediately inform the Director and the developer. The Director shall retain either the full bank guarantee up to the maximum of forty thousand euro (€40,000) calculated according to sub-regulation (3), or a part thereof equivalent to the amount being claimed by third parties until such time that a court of law or arbitral award decides on the matter, by means of a judgement or award, which is final:

Provided that in the case where an amicable settlement is reached with respect to such claim for damages, the parties shall submit to the Director the settlement agreement, which shall also make a clear provision for the bank guarantee withheld by the Director and its release.

(5) Should a court of law or arbitral award liquidate damages against the developer, the bank guarantee shall be forfeited in favour of the Director, who will in turn, under the order of the court or in terms of the arbitrations award, shall effect payment to any party awarded

damages, in accordance with the judgement of the court or the award of the arbitration.

(6) On completion of the project, the developer shall, within two (2) weeks, submit a certification issued by the *perit* in charge of the project that the works have been completed. For the purpose of this sub-regulation project completion shall mean the completion of all structural and other works including the roof, screed of roofs, terraces and yards, the closure of apertures and other works to render the building sealed against the ingress of water.

(7) The Director shall, as soon as he is in receipt of the certification from the *perit* in charge of the project, mentioned in sub-regulation (6), immediately place on a website prescribed by the Director, a notice giving the date of notification of project completion. The *perit* in charge of the project shall also within (2) two weeks, notify all the owners and occupiers of those properties, for which a condition report had been submitted by the developer's *perit*, with the details of such certification regarding project completion.

(8) Following a request made by the owner of a contiguous property, the Director shall retain the bank guarantee in those cases where such owner submits proof that judicial or arbitral proceedings for compensation of damages caused to the property have been initiated.

(9) Unless such a request from the owner is received by the Director within three (3) months from the date of notification of project completion, the Director shall release the bank guarantee:

Provided that a bank guarantee shall be released if the Director has been informed in writing by the owners of the contiguous property, as indicated in the method statement, that they do not have ulterior claims.

Submission of a method statement and condition report. *Amended by: L.N. 468 of 2021.*

7. (1) Not later than two (2) weeks before the commencement of any works of excavation, demolition or construction, the *perit* in charge of the project shall submit the relative method statement in accordance with the Fourth, Fifth and Sixth Schedules and a report on the condition of the property according to the Seventh Schedule that has been issued in the English language only, on the website prescribed by the Director.

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

(3) Following a written request by a third party owner or occupant of any property abutting, overlying or underlying any site, on

which construction works are to be undertaken, and in the case of excavation, a third party who is the owner or occupant of any property that falls within the affected zone of excavation, the Director may request from the developer the submission of a partial method statement at any stage. Such method statement shall be submitted within three (3) weeks from the date when the developer receives the request. In his request, the Director shall indicate the details that are to be included in the partial method statement.

(4) The developer shall also be required to submit to the Director, the report on the condition of the property which is located opposite, overlying or underlying any site, on which construction works are going to be carried out, and in the case of excavation, the properties which fall within the affected zone of excavation, on a website prescribed by the Director, by not later than two (2) weeks before the works are commenced. A copy of the report must be sent to the owners or the respective occupants of the relative property by means of a registered letter.

(5) If the owner or occupant of such third party property does not agree with the condition report of the property, he shall give notice to the Director within two (2) weeks. If no corrections or no other condition report are submitted to the Director within such time from receipt thereof by the owner or occupant of third party property, it shall be understood that the owner or occupant of such property agrees with the condition report submitted by the developer.

(6) In the eventuality of corrections, or another condition report being submitted by third parties, the Director may, at his discretion, ask the *perit* in charge of the project to consult with the *perit* of the owner or occupant of third party property to review the condition report and, should parties reach agreement, resubmit to the Director a new report signed by both (2) *periti*.

(7) Should the developer and the owner of third party property fail to reach an agreement as described in sub-regulation (6), the Director shall commission an inspection to be carried out by the Building and Construction Authority, to issue a final report. The costs of such an inspection report shall be shared equally by the developer and by the third party owner or occupant.

(8) Where a third party owner or occupant refuses entry to the developer's *perit*, or where the *perit* in charge of the project is unable to obtain access to contiguous property, or where the identity of the owner or, occupant of contiguous property is unknown or cannot be traced, for the purpose of preparing the condition report, such *perit* shall make a written declaration giving details of his attempts to be allowed access to the neighbour's property, including the notification or attempts of notification by registered mail, for the purpose of preparing the condition report and include such details in the method statement.

(9) Where the occupant of a property for which a condition report is required is not the owner, the occupant shall:

(a) inform the owner that a *perit* responsible for the project, acting on behalf of the developer of a contiguous development site, has requested access to the property for purposes of preparing a condition report; and

(b) forward the condition report to the owner upon its receipt from the developer.

(10) The Building and Construction Authority reserves the right to have any information provided verified by independent persons.

(11) (a) Wherever more than fifty percent (50%) of the total number of owners of any one complex which falls within an excavation affected zone as defined in these regulations are in disagreement with the condition reports and, or method statements prepared by the *perit* on behalf of the developer in terms of these regulations, they may elect to engage one *perit* of their choice to review the said condition reports and, or method statements that were prepared by the *perit* on behalf of the developer and may make a claim for disbursement as provided in this sub-regulation.

(b) The amount claimed for disbursement in terms of paragraph (a) shall not exceed five hundred euro (€500) exclusive of VAT for any one complex.

(c) The developer shall deposit a bank guarantee to the Building and Construction Authority equivalent to five hundred euro (€500) exclusive of VAT for each complex situated within the excavation affected zone to make good for any claims made in terms of paragraph (a). No clearance to commence works shall be given by the Building and Construction Authority unless the relative sum is deposited in full.

(d) Any claim made in terms of paragraph (a) by an owner of a complex situated within the excavation affected zone shall be made to the developer and notified to the Building and Construction Authority. Payment by the developer shall be made against an authentic copy of the fiscal receipt issued by the *perit* appointed to review the condition reports and, or method statements. The Building and Construction Authority shall, within two (2) weeks, after the *perit* in charge of the project submits a certification that the works have been completed together with the authentic copy of the fiscal receipts related to the payments done by the developer with respect to all claims, release back to the developer the bank guarantee raised in terms of paragraph (c).

(e) The *perit* appointed to review the condition reports and, or method statements shall not be prohibited from making

other independent arrangements with the owner or owners of the complex appointing him or her, for any fees that are considered over and above the said amount.

(f) For the purpose of this sub-regulation, "complex" means any property on one or more levels sharing the same footprint or part thereof and having access onto a street and where more than fifty percent (50%) of the total number of owners elect to commission the same *perit* to review the condition reports and, or method statements that were prepared by the *perit* on behalf of the developer:

Provided that each un-divided co-owned property having independent access within a complex is considered to be owned by one owner for the purpose of computing the total number of owners in paragraph (a).

(12) The commencement of any works of excavation, demolition or construction may take effect only after the Building and Construction Authority provides clearance in writing.

(13) When a stop order issued by the Director is revoked, the resumption of any works of excavation, demolition or construction described in that order may take effect only after the Building and Construction Authority provides clearance in writing.

Form and content of the method statement. *Amended by: L.N. 426 of 2021.*

8. (1) The method statement shall be prepared by a *perit* in collaboration with the site technical officer and the contractor who are responsible for the works covered by such statement.

(2) The method statement shall include the information requested in the Second Schedule.

(3) Not later than two (2) weeks prior to the start of demolition works, the relative method statement shall be sent with the information requested in the Fourth Schedule, that has been issued in the English language only.

(4) Not later than two (2) weeks prior to the start of any excavation works, the relative method statement shall be sent with the information requested in the Fifth Schedule, that has been issued in the English language only.

(5) Not later than two (2) weeks prior to the start of construction works, that don’t include excavation and demolition, the relative method statement shall be sent with the information requested in the Sixth Schedule, that has been issued in the English language only.

(6) It shall not be lawful to make use of:

(a) a mechanical excavator with a hydraulic hammer

attachment; or

(b) a pneumatic drill,

before half past seven in the morning (7.30a.m.) and after four in the afternoon (4.00p.m.) and all day on Sundays and public holidays:

Provided that the Director may, at his own discretion, either waive the condition set out in this sub-regulation, following a request in writing from the site technical officer, or impose further restrictions on the time at which this equipment can be used, with respect to specific sites:

Provided further that the Director may exempt certain works from the provisions of this sub-regulation, such certain emergency works of an infrastructural nature, including drainage works, as well as mechanical and electrical works, and works undertaken to eliminate danger to the public, such as those related to the outbreak and spread of fire and, or where there is an imminent danger of collapse of buildings or structures:

Provided further that this sub-regulation does not apply when, in the opinion of the Minister, the works are deemed of a public interest.

Professional responsibility for the method statement.

9. Professional responsibility for the method statement remains with the *perit* who prepares it. The responsibility for the enforcement of the method statement rests with the site technical officer, and the implementation of the measures in the method statement, lies with the contractor.

Compliance with method statement or enforcement notice.

10. (1) When the site technical officer is in doubt about how works are to proceed, he shall stop the works and request direction from the *perit* who would have prepared the method statement.

(2) The site technical officer shall ensure that the contractor is complying with all their obligations as provided for in these regulations. If the site technical officer notices any violation of these regulations, he shall immediately stop the works and notify the *perit*(*i*) in charge and the Building and Construction Authority.

(3) Upon being served with an enforcement notice issued by the Director, the site technical officer shall immediately communicate this notice to the contractor and the *perit*(*i*) and see to it that this order is complied with by ceasing the demolition, excavation and/or construction activity, as applicable.

Applicability of other laws.

11. These regulations do not exempt the developer, the *perit* in charge of the project, the site technical officer and contractor or the

sub-contractor from observing other obligations and provisions of the law that are regulated by other laws.

Responsibilities of the Director.

12. The Director shall, for construction works which fall within any one (1) category of the works listed in regulation 4:

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

(c) verify that demolition, excavation and, or construction works are covered by a third party insurance policy, in accordance with these regulations; and

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

Power of the Director to issue an enforcement notice.

13. (1) The Director shall have the power to issue an enforcement notice in any one (1) 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 with the method statement or in accordance with 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 and Construction Authority and any person appointed by him the power to issue on his behalf an enforcement notice.

(3) Should a 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 Force of Order 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 shall not be construed as a form of endorsement of the method statement, nor shall it be construed as an endorsement of the work methodology being carried out on site.

(4) All expenses reasonably incurred by the Director in the exercise of his power under this regulation shall be recoverable as a civil debt by the Director from the person or persons to whom the enforcement notice is issued, subject to any right of recovery such person or persons may have against any other person.

Interim measures.

14. (1) Where the Director holds that an infringement of these regulations represents a serious threat to the safety of third parties or to the safety of third party property, he may take urgent *interim* measures which may include requesting the developer to remedy the situation in advance of reaching a final decision, or the imposition of administrative fines, or both.

(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 he deems necessary, 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 force of order to 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 regulation shall be recoverable as a civil debt by the Director from the developer subject to such right of recovery which the developer may have against any other person.

(4) The Director or any delegated official or *perit* shall not be liable for any damages as a result of the exercise of his powers under this regulation 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 and Construction Authority.

Procedure when taking a measure under regulation 15.

15. (1) The Director shall, before proceeding to take any of the measures envisaged under regulation 14, inform the developer, the *perit* in charge of the project, the site technical officer and the person carrying out the construction works, warning them of the measure that may be taken and the specific reason as to why it may be taken. The Director may order the developer to cease or to rectify any act or omission and, or to make submissions thereto within such period

of time not being less than seven (7) days, which period may be abridged if the Director considers that the continuance of the infringement represents an immediate and serious threat to public safety or public health, and, or warrants the immediate intervention of the Building and Construction Authority:

Provided that where the measure is or includes an administrative fine the person concerned shall also be informed of the amount of the fine:

Provided further that when issuing a warning under this sub-regulation, the Director may impose such conditions as he may consider reasonable in the circumstances.

(2) If the developer remedies the infringement within the period established by the Director in accordance with sub-regulation (1), and agrees in writing to abide with any condition that the Director may impose, the Director may desist from proceeding any further, without prejudice to any regulatory measures that may have already been imposed.

(3) If, after the lapse of the period mentioned in sub-regulation (1), the Director considers that the developer has not given any valid reasons to demonstrate why no measure should be taken against him, the Director shall notify in writing, specifying the nature of the infringement, stating the measure being taken and, if the measure is or includes an administrative fine, stating the amount of the fine being imposed:

Provided that the notification mentioned in this sub-regulation shall be in the form of a judicial act and the fines provided for in these regulations shall be due to the Government as a civil debt and following the service of a judicial act, in terms of article 466 of the Code of Organization and Civil Procedure, which is either not opposed or the opposition of which is denied, according to the provisions of the said article, the same administrative fine 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.

Cap. 12.

Cap. 12.

Responsibility of a delegated official or *perit*.

16. (1) The Director may delegate to another person the responsibilities pertaining to the Director in regulations 13 and 14, and the person thus delegated shall be responsible for such delegated matters.

(2) The Director or any delegated official or representative shall only issue an enforcement notice to stop the construction works after verifying and taking into consideration the provisions of regulation 14.

(3) Where an enforcement notice is issued by the delegated

official or representative, a copy of the enforcement notice shall be submitted to the Director as soon as possible, after the serving of the notice, but not later than close of business of the first full working day after the serving of the notice.

Form and content of enforcement notices.

17. (1) An enforcement notice shall include:

(a) an instruction to the developer, site technical officer and the contractor and the *perit* in charge of the project 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 with the method statement, or not in accordance with these regulations, and which technical report is to be signed by a *perit*;

(c) instructions (if any) to prevent further damage or danger to the public or to third parties.

(2) When the Director or his delegated representative deems that the cessation of construction activity is to be immediate because of imminent severe damage to contiguous properties or danger to the public, or third parties, the enforcement notice and the required preventive measures may be issued on site in a verbal manner and later confirmed in writing within twenty-four (24) hours of the issuance of the said notice.

Withdrawal of enforcement notice.

18. An enforcement notice may 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.

Contestations of method statements.

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

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

Onus of proof.

20. (1) The developer shall take all reasonable precautions to ensure that the construction activity will not result in damage to contiguous properties, including damage that may result from the infiltration of water.

Arbitration.

(2) Any dispute regarding building construction, not being one in connection with a claim for personal injuries, but being a dispute arising from damage to third party property resulting from construction activity on a contiguous site shall be referred to arbitration. The rules contained in the Arbitration Act or made thereunder relating to mandatory arbitration shall apply:

Cap. 387.

Provided that:

(a) the damage incurred by the third party does not impair the stability of his property nor endangers its users; or

(b) the cost of damages being claimed by the third party does not exceed one million euro (€1,000,000).

Offences and penalties.

21. (1) Any person who acts in contravention of the provisions of regulation 6 shall be guilty of an offence in terms of these regulations and shall be liable on conviction to a fine (*multa*) not exceeding five hundred euro (€500) and in the case of a continuing offence, to a further fine (*multa*) of one hundred euro (€100) for each day the offence continues.

(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 these regulations shall also be considered as an offence in terms of sub-regulation (1) and shall be liable to the fines set out in the said sub-regulation.

(3) Any person who fails to comply with a method statement in terms of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) not exceeding ten thousand euro (€ 10,000) and in the case of a continuing offence, to a further fine (*multa*) of five hundred euro (€500) for each day the offence continues.

(4) Any person who fails to abide by the provisions of an enforcement notice in terms of these regulations or to cease operations as requested in the notice or adopts any *interim* measures without the permission of the Director or in any other manner acts in contravention of regulations 14 and 15, shall be guilty of an offence in terms of these regulations and shall be liable, on conviction, to a fine (multa) not exceeding fifty thousand euro (€50,000) and in the case of a continuing offence, to a further fine (*multa*) of one thousand euro (€1,000) for each day the offence continues.

(5) 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 one thousand five hundred euro (€1,500), without prejudice to any other punishment for which the applicant may have become liable under any other law.

(6) Notwithstanding the provisions of the Criminal Code, proceedings for an offence against these regulations are to be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and they shall be in accordance with the provisions of the Criminal Code that regulate the procedure of those as courts of criminal judicature. Cap. 9. Cap. 9.

(7) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal from any judgement given by the Court of Magistrates (Malta) of the Court of Magistrates (Gozo), in respect of proceedings for any offence against these regulations. Cap. 9.

22. (1) Without prejudice to regulation 16 and any other provisions under these regulations which the Director is entitled to enforce, the Director may impose an administrative penalty in accordance with the provisions of this regulation, 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. Administrative penalties.

(2) Any person who fails to comply with the provisions of regulations 6, 7, 8 and 10 or refuses to comply with an enforcement notice or the method statement and any person who fails or refuses to adopt urgent *interim* measures in terms of these regulations or shall commit an infringement of these regulations, shall be liable to the imposition of an administrative fine from the Director.

(3) An administrative penalty imposed under this regulation shall not exceed one-half of the maximum fine (*multa*) which the offender may be liable to, for the corresponding offence, in accordance with the provisions of regulation 21:

Provided that it shall always be at the Director's sole discretion as to whether to offer the offender the payment of the administrative penalty or to commence criminal proceedings against him for the commission of the offence.

(4) In all cases where the Director imposes an administrative penalty 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 regulation shall be due to the Government as a civil debt and following the service of a judicial act, in terms of article 466 of the Code of Organization and Civil Procedure, which is either not opposed or the opposition of which is denied, according to the provisions of the said article, the same administrative penalty shall constitute an executive title for all the effects and purposes of the Code of Organization and Civil Procedure, Book Second, Part I, Title VII. Cap. 12. Cap. 12.

(5) The payment of an administrative fine as a penalty shall not prejudice the duty of a person to undertake any measure which may be requested of him, whether such duty arises out of these regulations, or out of an order issued by the Director through an enforcement notice or to adopt an interim measure in terms of these regulations.

Continuing offence.

23. Where, following the payment of a penalty, the violation of any provision of these regulations persists, regardless of any instructions the Director may have given for the redress of same, the Director may refer the matter to the police to institute proceedings referred to in regulation 22 for such continuing violation.

Appeal procedure.

24. Without prejudice to the provisions of regulations 15, 16 and 23, any decision taken by the Director in terms of these regulations shall be subject to the right of appeal before the Building and Construction Authority, in terms of articles 12 and 13 of the Act.

Transitory provision.

25. Works of excavation, demolition and construction, that would have started but are not complete on the date of 25th June 2019, as well as those works of excavation, demolition and construction, that still need to begin, fall under the provisions of these regulations:

Provided that the Director of the Building and Construction Authority reserves the right to issue appropriate orders according to the requirements and nature of the particular site.

Exemptions from submission.

26. When before the start of works, the *perit* in charge of the project certifies, after giving clear reasons, that the structural interventions will not affect third party property, the provisions of regulations 4, 5, 6, 7 and 8 do not apply:

Provided that if requested by the Director, the developer shall submit a method statement and, or a copy of the insurance that covers third parties and, or the bank guarantee and, or the condition report of the contiguous property according to the provisions of the regulations:

Provided also that nothing will prevent, apart from the *perit* in charge of the project, the appointment of a site technical officer or officers to assume responsibility in terms of these regulations.

FIRST SCHEDULE
(Regulation 3)

1. Public footpaths and pavements.

2. Services underlying public footpaths and pavements, within the immediate vicinity of the frontage of the construction site.

SECOND SCHEDULE
(Regulation 8)

Developer's name and surname;

Perit/*i* in charge of the project;

Perit responsible for the demolition method statement;

Perit responsible for t he excavation method statement

Perit responsible method statement for building works

Site technical officer during demolition;

Site technical officer during excavation;

Site technical officer during building works

Contractor and/or sub-contractor responsible for demolition;

Contractor and/or sub-contractor responsible for excavation;

Contractor and/or sub-contractor responsible for building works

Project supervisor as provided for in Legal Notice 88 of 2018 or subsequent amendments

Site manager as provided for in Legal Notice 295 of 2007 or subsequent amendments.

Substituted by: L.N. 180 of 2019.

THIRD SCHEDULE
(Regulation 3)
(Competence of Site Technical Officer)

(Competence of Site Technical Officer)

In the case of demolition:

- *Perit*

- A person who is in possession of a Bachelors degree in Engineering

In the case of excavation:

- *Perit*

- A person who is in possession of a Bachelors degree in Engineering

In the case of building works:

- *Perit*

- A person who is in possession of a Bachelors degree in Engineering

FOURTH SCHEDULE
(Regulations 7 and 8)

(Method Statement for Demolition Works)

1. The commencement date of the works.

2. The identification of risks involved.

3. The proposed methodology, supported by any other documentation as may be required, which should specify:

   (a) the risks involved after taking account of the structural condition of the construction itself and contiguous structures;

   (b) the sequence of works to be undertaken;

   (c) measures to safeguard the stability of the works being undertaken, the stability of contiguous structures or terrain as the case may be;

   (d) the type of machinery equipment that is allowed to be used;

   (e) the type of machinery equipment that is not allowed to be used;

   (f) if applicable, the type of crane to be used, the location where this is to be set-up, the methodology for setting up the crane, information about ground conditions below the proposed crane locations, and other relevant information relating to the crane that may be supported by certification by a warranted engineer;

   (g) the precautions and safeguards to be adopted:

      (i) against instability of the structure;

      (ii) for parts thereof being demolished;

      (iii) for any contiguous structures;

      (iv) for the safety of persons.

(4) Procedure to be adopted for the loading and carting away of the resulting debris.

FIFTH SCHEDULE

(Regulations 7 and 8)

(Method Statement for Excavation Works)

1. The commencement date of the works.

2. A description of the affected zone of the excavation, explained schematically in inclusive of a dimensioned plan that includes the following:

   (a) the limits of excavation;

   (b) the depth of each part of the excavation;

   (c) the affected zone of the excavation, shown shaded and dimensioned;

   (d) the properties and buildings belonging to third parties that fall within the affected zone of the excavation.

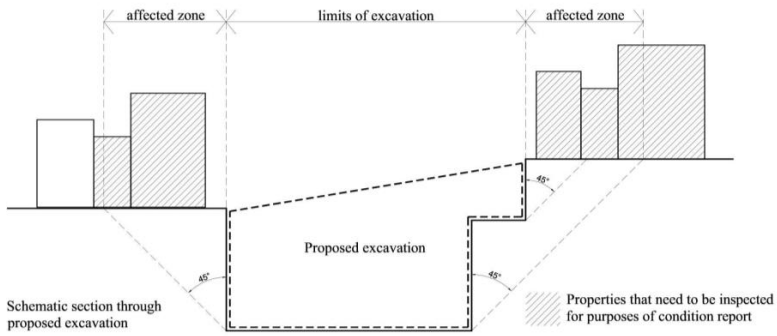


Figure 2.1 Definition of the affected zone.

3. A description of the loads acting on the ground within the affected zone shown in Figure 2.1, referenced to the condition reports as per Seventh Schedule.

4. A description of the ground conditions. This should include the following:

   (a) identification of ground materials through the geological map of the Maltese Islands;

   (b) information from any ground investigation reports that fall within the immediate surroundings, specifically within the affected zone;

(c) information from other *periti* who have built or supervised excavation in the immediate surroundings, after having obtained the necessary consent to use this information;

(d) if information requested in items (b) or (c) is not available, information from a ground investigation that would need to be commissioned for the proposed project. This investigation shall be carried out from within the site that is to be excavated. In the case of excavations not exceeding 2m in depth, such information may be obtained from trial pits, whereas borehole drilling with full recovery shall be required for all other proposed excavation depths. If agreement is reached with the neighbouring third parties within the affected zone, boreholes shall be drilled, inclined, from within the site that is to be excavated, into the ground beneath the neighbouring third party properties.

5. Identification of the risks involved in carrying out the excavation, taking into account the expected strength of the ground materials, the presence or otherwise of fissures, and the loads within the affected zone.

6. A signed declaration by the *perit* responsible for the method statement stating that after having had regard for the requirements of items 2, 3, 4 and 5, the excavation works are possible and can be safely executed.

7. If ground improvement or underpinning is not considered necessary, a signed declaration by the *perit* responsible for the excavation method statement stating why a ground improvement intervention or an underpinning intervention is not necessary.

8. proposed methodology of excavation, supported by any other documentation as may be required, which should specify:

(a) where the excavation is to be started from;

(b) any phasing required to achieve the required rock buttressing;

(c) the levels that should be attained in each stage of the excavation;

(d) the type of machinery equipment that is allowed to be used;

(e) the type of machinery equipment that is not allowed to be used;

(f) if applicable, the type of crane to be used, the location where this is to be set-up, the methodology for setting up the crane, the relevant ground conditions below the crane, and other information relating to the crane that may be relevant, supported by certification by a warranted engineer;

(g) the precautions and safeguards to be adopted:

(i) against instability of structures falling within the affected zone;

(ii) for the safety of persons.

9. Procedure to be adopted for the loading and carting away of resulting debris.

10. Subject to the provisions of the Civil Code (Cap. 16.), where underpinning is to be undertaken, full details of how the underpinning works are to be executed, supported by scaled plans, sections and detailed drawings. A description of how the underpinning works are to be phased in relation to other excavation work needs to be described.

11. Issues to be observed during the excavation.

12. A signed declaration by the *perit* responsible for the excavation method statement stating that the contents of the excavation method statement were discussed with the site technical officer and the contractor/subcontractor undertaking the works, who have accepted to proceed with the works according to the method statement.

13. Any monitoring readings that are required to be undertaken during the excavation, describing where, how and what is to be measured and what results are to be tolerated prior to taking ulterior action.

SIXTH SCHEDULE
(Regulations 7 and 8)

(Method Statement for building works)

1. The commencement date of the works.

2. Checks showing that any existing floors are capable of sustaining the additional load being imposed by the new construction these should include:

    (a) an estimate of existing and proposed loads in every floor, and a declaration that the structural elements of each individual floor are capable of sustaining the additional loads when checked in accordance with established codes of practice;

    (b) a description of any additional reinforcement work that may be necessary in each floor.

3. Checks showing that the foundations of the building are capable of sustaining any additional loads placed over the existing storeys. These should include:

    (a) an estimate of the existing and proposed loads at foundation level;

    (b) information about the nature of the foundations of the building, including type and dimensions;

    (c) information on the nature of the ground, supported by the respective ground investigation reports that shall be attached to the method statement.

4. Identification of risks involved. If any of the information required in items 2 and 3 is not available, then the method statement shall contain a declaration by the *perit* responsible for the project that he/she is assuming full responsibility for the structural capacity of the building, the safety of its occupants, and the safety of operatives working on its construction, notwithstanding the missing information that precludes the necessary checks from being made.

5. Proposed methodology, supported by any other documentation as may be required, which should specify:

    (a) the risks involved after taking account of the structural condition of the construction itself and contiguous structures;

    (b) the sequence of works to be undertaken;

    (c) measures to safeguard the stability of the works being undertaken, the stability of contiguous

structures or terrain as the case may be;

(d) the type of machinery equipment that is allowed to be used;

(e) the type of machinery equipment that is not allowed to be used;

(f) any specific interventions required during the course of works;

(g) if applicable, the type of crane to be used, the location where this is to be set-up, the methodology for setting up the crane, the relevant ground conditions below the crane, and other information relating to the crane that may be relevant, supported by certification by a warranted engineer;

(h) the precautions and safeguards to be adopted:

(i) against instability of the structure;

(ii) for parts thereof being demolished;

(iii) for any contiguous structures;

(iv) for the safety of persons;

6. Procedure to be adopted for the loading and carting away of the resulting debris.

SEVENTH SCHEDULE
(Regulation 7)
(Condition Reports)

1. Details of property.

2. Description of the structure system used for floors (e.g reinforced concrete slabs, stone slabs on timber beams, concrete frame, etc).

3. Description of the structure system used for transmitting vertical load (e.g. masonry walls, concrete columns, etc).

4. Brief description of finishes and their general condition.

5. Brief description of the condition of existing services, including, but not limited to, any leakages, blockages etc.

6. Sketch plan of property.

7. List of observed defects, by room, cross-referenced to photos.

8. In the case of properties falling within the affected zone of excavations, the report shall, in addition to items 1 to 7, include:

   (a) A dimensioned sketch plan of the lowest floor of the building.

   (b) Clear identification of the structural system of the building, within this zone, describing how load is transmitted to the foundations.

   (c) An estimate of the load reaching foundation level, in kN/m or kN.

   (d) Identification of the type and dimensions of foundations within this zone.

   (e) An estimate of the bearing pressure at foundation level in kN/m2 in the case of strip footings, pad footings and raft foundations.

9. In the case of buildings over which additional floors are to be constructed, the report shall, in addition to items 1 to 7, include:

   (a) dimensioned sketch plan of all floors of the existing building.

   (b) Clear identification of the structural system of the building, within all floors describing how load is transmitted from floor to floor and to the foundations.

   (c) An estimate of the loads at floor level of each floor, and reaching foundation level, in kN/m or kN.

   (d) Identification of the type and dimensions of foundations of the existing building.

   (e) An estimate of the bearing pressure at foundation level in kN/m2 in the case of strip footings, pad footings and raft foundations.

10. If information about the foundations of the building is not readily available, this is to be clearly stated in the report, and the assumptions made in calculating the bearing

pressure are to be described, for both of the above cases.