VERŻJONI ELETTRONIKA

L.N. 38 of 2010

MALTA RESOURCES AUTHORITY ACT (CAP. 423)

Water Supply and Sewerage Services (Amendment) (No. 2) Regulations, 2010

IN exercise of the powers conferred by sub-article (1) of article 28 of the Malta Resources Authority Act, the Minister for Resources and Rural Affairs, after consultation with the Malta Resources Authority has made the following regulations:

Title.

1. The title of these regulations is the Water Supply and Sewerage Services (Amendment) (No. 2) Regulations, 2010, and they shall be read and construed as one with the Water Supply and Sewerage Services Regulations, 2004 hereinafter referred to as "the principal regulations".

L.N. 525 of 2004.

Amends regulation 1 of the principal regulations.

2. Sub-regulation (2) of regulation 1 of the principal regulations shall be renumbered as sub-regulation (3) thereof and immediately after sub-regulation (1) thereof there shall be added the following new sub-regulation:

"(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.".

Amends regulation 2 of the principal regulations.

3. Regulation 2 of the principal regulations shall be amended as follows:

(a) immediately after the definition "the Act" there shall be added the following new definition:

" "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;";

(b) immediately after the definition "domestic sewage" there shall be added the following new definition:

" "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;";

(c) in the definition "licensee", immediately after the word "regulations" there shall be added the words ", or an authorised provider who is authorised by the Authority 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;";

(d) immediately after the definition "licensee" there shall be added the following new definition:

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

(e) immediately after the definition "non-potable water", there shall be added the following new definition:

" "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;";

(f) immediately after the definition "public water distribution network" there shall be added the following new definition:

" "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;";

(g) immediately after the new definition "recipient", there shall be added the following new definition:

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

(h) immediately after the new definition "service", there shall be added the following new definition:

" "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;"; and

(i) immediately after the definition "supply of water" there shall be added the following new definition:

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

Amends regulation 6 of the principal regulations.

4. Regulation 6 of the principal regulations shall be amended as follows:

(a) for sub-regulation (1) thereof, there shall be substituted the following:

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

(b) in sub-regulation (2) thereof, immediately after the words "may prescribe" there shall be added the words "or as provided by the Act";

(c) in sub-regulation (3) thereof, for the words "sewerage service licence.", there shall be substituted the words "sewerage service licence:", and immediately thereafter there shall be added the following proviso:-

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

(d) in sub-regulation (4) thereof, for the words "such services.", there shall be substituted the words "such services:", and immediately thereafter there shall be added the following provisos:-

"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.";

(e) in sub-regulation (7) thereof, for the words "by the Authority.", there shall be substituted the words "by the Authority:", and immediately thereafter there shall be inserted the following proviso:-

"Provided that such duration shall not be inconsistent with or contrary to the provisions of the Act."; and

(f) in sub-regulation (8) thereof, for the words "for any specified service to reach objectives of national interest such as consumer protection, fair competition and the securing of public service obligations.", there shall be substituted the words "for services regulated by these regulations:" and immediately thereafter there shall be inserted the following proviso:-

"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 in the Internal Market Act.".

Amends regulation 7 of the principal regulations.

5. Regulation 7 of the principal regulations shall be renumbered as sub-regulation (1) thereof and immediately after sub-regulation (1) as renumbered, there shall be added the following new sub-regulation:

"(2) 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.".

Amends regulation 8 of the principal regulations.

6. In paragraph (b) of sub-regulation (5) of regulation 8 of the principal regulations, for the words "licence conditions;", there shall be substituted the words "licence conditions:" and immediately thereafter, there shall be added the following proviso:

"Provided that the authorised provider shall inform the Authority 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.".

Amends regulation 9 of the principal regulations.

7. In the proviso to sub-regulation (1) of regulation 9 of the principal regulations, for the words "that the Authority may deem relevant.", there shall be substituted the words "that the Authority may deem relevant:", and immediately thereafter, there shall be added the following provisos:

"Provided further that, any decision taken by the Authority, including refusal or withdrawal of an authorisation,

shall be fully reasoned and shall be open to challenge before the Appeals board:

Provided also that, in case of failure by the Authority 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 Authority has tacitly granted such authorisation and that the applicant has automatically been granted access to a service activity, or the exercise thereof.".

8. Immediately after regulation 15 of the principal regulations, there shall be added the following new regulation:

"Commencement of proceedings.

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.".

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