

**L.N. 72 of 2013**

**BUILDING REGULATION ACT  
(CAP. 513)**

**Avoidance of Damage to Third Party Property Regulations, 2013**

IN exercise of the powers conferred by articles 6, 11 and 24 of the Building (Regulation) Act, the Minister for Resources and Rural Affairs, has made the following regulations:-

**1.** (1) The title of these regulations is the Avoidance of Damage to Third Party Property Regulations, 2013. Citation and commencement.

(2) These regulations shall come into force on the 1st May, 2013.

**2.** (1) The objective of these regulations is to ensure that before any demolition, excavation and, or construction works are taken in hand, methodologies that are technically sound are prepared by a *perit*, in collaboration with the site manager and the contractor, to minimise the risk of damages to third party property or injury to persons that may result through the proposed works. Objective and scope.

(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.

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

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

"Building Regulation Office" has the meaning as defined in the Act;

"construction work" includes all construction work carried out on the fabric of a building or civil engineering structure, or 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 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 Schedule;

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"demolition" means the pulling down or removal of any of the structural elements which form the building, such as the roof, internal or external load-bearing walls and other load-bearing elements;

Cap. 504.

"developer" means the person on whose behalf the development application in terms of the Environment and Development Planning Act, or in terms of other regulations made thereunder, for the works on site is submitted or, for construction activities which do not require a development permit, any person, entity or company on whose behalf the construction activity is undertaken;

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

"enforcement notice" shall have the same meaning assigned to it in article 14 of the Act;

"excavation" means the cutting of rock or the removal of any consolidated material, except that the removal of topsoil up to 600mm in depth is not considered excavation;

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

Cap. 504.

"Malta Environment and Planning Authority" means the Authority as established under article 6 of the Environment and Development Planning Act;

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

"particulars of a person" include the name and surname, Identity Card number, address and contact number of a person;

Cap. 390.

"*perit*" means that person who is duly warranted in terms of the Periti Act to exercise the profession assuming the responsibility for the design, and, or the construction of building works, under the generic title of *perit*;

Cap. 16.  
Cap. 504.

"*perit* in charge of the project" means the *perit* who applies for the development application or is in any other way legally responsible for a project in terms of the Civil Code and the Environment and Development Planning Act or regulations made thereunder, or such a *perit* who takes over the works following a change of *perit* in terms of the Environment and Development Planning Act or regulations made thereunder;

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

"registered contractors" means contractors who are duly registered in accordance with the Act;

"site manager" means a person carrying out the duty or duties derived from the provisions of these regulations. Such person shall be nominated by, and be responsible on behalf of, the developer for ensuring the correct implementation of these regulations;

"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 Schedule.

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

(a) excavation which is underlying, or contiguous to or within a distance of 2.5 metres to any existing building, earth-retaining or water-retaining structure belonging to or occupied by third parties; or

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

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

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

Provided that the Director may decide that, notwithstanding that a construction activity does not fall within any one of the parameters listed in this regulation, it shall still be required to comply with all the requirements of these regulations. Such a decision shall be taken following a request made by a third party whose property may be affected by such construction activity. The decision of the Director is to be communicated to the developer and to the third party making the request, by registered mail.

5. (1) The developer shall nominate a site manager who shall be responsible to ensure that the development site and the construction activities carried within it are in conformity with all the

Responsibilities of developer and site manager.

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provisions of these regulations.

(2) Unless otherwise stated in these regulations, responsibility for adherence to these regulations shall rest solely with the site manager.

(3) As soon as is practicable, but no later than the submission of the method statement in accordance with regulation 7, the developer shall nominate a site manager and submit such a person's particulars to the Director. The developer shall also submit a declaration of acceptance, duly signed by the site manager, that he has undertaken to accept this role and that he shall abide by the provisions of these regulations.

(4) In the absence of a nomination of a site manager and declaration in accordance with sub-regulations (1) and (3), the developer shall *ipso facto* be deemed to be the site manager for the purpose of these regulations.

(5) If the developer has changed because the development site is sold, or for any other reason, when construction works are still to be carried out or are being carried out, the original developer shall be bound to inform the Director in writing submitting the details of the new developer. Such new developer shall abide by these regulations and shall have the duty to inform the Director whether he intends to retain the same site manager or to nominate a new one, in which case the provisions of the other sub-regulations to this regulation shall still apply:

Cap. 390.

Provided that nothing in these regulations shall exempt the *perit* in charge of the project from the responsibilities which by reason of the Periti Act or other relevant regulations, pertain solely to the *perit* in charge of the project:

Provided further that decisions relating to the applicability of these regulations shall rest with the Director.

(6) 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.

6. (1) The developer shall ensure that demolition, excavation and construction works which fall under the provisions of these regulations are appropriately and adequately insured to cover any single occurrence or recurrence of damages sustained by third party property, disability to persons or death as a result of the construction works or activity being undertaken by the developer and

the contractors working on the site:

Provided that the insurance cover shall not be less than five hundred thousand euro (€500,000):

Provided also that the insurer shall carry out an appropriate and adequate assessment of the risks involved in each particular case and issue an appropriately valued insurance cover.

(2) The developer shall submit to the Director a copy of the insurance cover, in accordance with sub-regulation (1), together with a letter from the insurer -

(a) confirming that the works are duly covered by an insurance policy; and

(b) stating the value of the excess of the relevant insurance policy.

The copy of the insurance and the statement from the insurer regarding the insurance cover and the amount of the excess shall be submitted to the Director with the method statement indicated in regulations 7 and 8.

(3) In addition to the provisions of sub-regulations (1) and (2), the developer shall submit a bank guarantee to the Director, for all construction activities, other than those listed in regulation 8. 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 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 provided for in this sub-regulation, 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, notwithstanding the provisions of this sub-regulation and following a request made by the developer to the Director, the value of the bank guarantee shall be equivalent to twice the excess of the relevant insurance policy that has been issued to the developer.

(4) Any third party having a claim for damages against the

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developer shall immediately inform the Director. 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 arbitration award, 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 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 in a prominent location upon the website of the Building Regulation Office, a notice giving the date of notification of project completion. The Director shall also within two weeks, notify in writing 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 months from the date of notification of project completion, the Director shall release the bank guarantee.

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

Submission of a method statement.

(2) The Director shall place the digital copy of the method statement on the website of the Building Regulation Office and also make available for the scrutiny of the public the hard copy of such method statement. The Director shall also forward a hard copy of each method statement it receives to the Malta Environment and Planning Authority, so that it may be made available for the scrutiny of members of the public at the offices of such Authority, except that the condition reports of contiguous properties mentioned in these regulations shall not be placed on the website nor be made accessible to members of the public in any way. Method statement information which is submitted separately and at a later date in accordance with regulation 9(2) and (4) shall also be made accessible to the public in accordance with this regulation.

(3) 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.

(4) Following a written request by a third party owner or occupant of any property abutting, underlying or overlying any site, on which construction works are to be undertaken, the Director may request from the developer the submission of a partial method statement at any stage during the processing of the application by the Malta Environment and Planning Authority. Such method statement shall be submitted within three 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 to be submitted.

(5) The developer shall also be required to submit to the Director, as well as to the respective owner or occupant of third party property, the condition report of such third party property which is contiguous to any development site, together with the method statement. The condition report shall be prepared by a *perit* and submitted to the Director and to the respective owner or occupant of such third party property by registered mail.

(6) 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 three weeks and shall submit corrections

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to the condition report or another condition report drawn up by his own *perit*, to the developer and to the Director within a further three weeks. If no corrections or no other condition report are submitted to the Director within six weeks from receipt 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.

(7) In the eventuality of corrections, or another condition report being submitted by third parties, the Director may, at his discretion, ask the *perit* of the developer 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 *periti*.

(8) Should the developer and the owner of third party property fail to reach an agreement as described in sub-regulation (7), the Director shall commission an inspection to be carried out by the Building Regulation Office, 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.

(9) Where a third party owner or occupant refuses entry to the developer's *perit*, or where the developer's *perit* 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.

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

(a) inform the owner that a *perit*, 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.

**8.** Notwithstanding the provisions of regulations 4, 5, 6 and 7, the following construction works are exempt from the submission of the method statement and a copy of third-party insurance:

(a) excavations, including trenching works, which are

Exemptions  
from  
submission.

less than 1.5 metres deep;

(b) internal and external structural alterations of a building, including removal of walls, building of walls or replacement of roofs where the total cost of the structural alteration works does not exceed thirty thousand euro (€30,000):

Provided that the developer shall submit the method statement and a copy of a third party insurance to the Director if requested to do so by the Director in accordance with regulations 6 and 7, in which case all the relevant provisions of regulations 5, 6 and 7 shall become applicable:

Provided further that for the purposes of paragraph (b), the Director may request the developer for the submission of detailed costings of the works, which costings shall be prepared by a competent person.

**9.** (1) The method statement shall be prepared by a *perit* in collaboration with the site manager and the contractor.

Form and  
content of the  
method  
statement.

(2) The method statement shall indicate:

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

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to site and any other information which the Director may from time to time request;

(i) the type of crane to be used, the location where this is to be set-up, the methodology for setting up the crane, ground condition information, and other information relating to the crane that may be relevant. Inspection certificates for the crane are also to be submitted:

Provided that information relating to paragraphs (c), (g) and (i) may be submitted to the Director separately and at a later date, however no later than one month from commencement of related works. The developer shall give a justification why this information cannot be provided with the submission of the method statement in accordance with regulation 7. Information submitted to the Director at a later date shall be made accessible to the public in accordance with regulation 7(2).

(3) In the case of demolition works, the method statement shall take account of the structural condition of the construction itself and of contiguous structures, the sequence of work, the type of tools equipment and plant to be used, and the precautions to be taken at each stage to cater for safeguards to be adopted:

- (a) against instability of the structure;
- (b) for parts thereof being demolished;
- (c) for any contiguous structures;
- (d) for the safety of workers; and
- (e) for the safety of third parties.

(4) For excavations exceeding 3 metres in depth, prior to the commencement of any excavation on the development site, the developer shall carry out an appropriate geological investigation of the area to be excavated. The geological investigation may be carried out following the demolition of a building overlying the area to be excavated. Prior to commencement of excavation works, the developer shall submit to the Director the results of the investigation and, if necessary, an amended method statement based on the results of the investigation.

(5) For excavations in areas which are within a distance of 5 metres from the boundary of a contiguous site and which involve the use of -

(a) a mechanical excavator with a hydraulic hammer attachment; or

(b) a pneumatic drill;

the contractor shall excavate a trench by means of a trencher to a depth of at least 1.5 metres. The location of the trench shall be such that the vibration from the excavation equipment that will reach the site boundary will be kept to a minimum. For this purpose, the trench shall be between the excavator and that part of the site boundary which is within 5 metres from the excavator.

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

(a) a mechanical excavator with a hydraulic hammer attachment; or

(b) a pneumatic drill,

either before 8 o'clock in the morning, or between 2 o'clock and 4 in the afternoon or after 8 o'clock in the evening 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 manager, 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 as in the case of quarries operating with a valid permit, certain emergency works of an infrastructural nature, including drainage works and works undertaken to eliminate danger to the public, such as where there is an imminent danger of collapse of buildings or structures.

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

Professional responsibility for the method statement.

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

Compliance with method statement or enforcement notice.

(2) Upon being served with an enforcement notice issued by the Director, the site manager and the contractor shall immediately comply with the notice and, if requested to do so in the notice, cease

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construction activity.

Applicability of  
other laws.

Cap.10.

Cap.16.

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

Responsibilities  
of the Director.

**13.** The Director shall, for construction jobs which fall within any one 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 regulation 6; 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:

Provided that the Director, delegated *perit*, or other official of the Buildings Regulation Office so authorised, may at any reasonable time and if so required by the Director, with the assistance of the Police Force, enter upon any development site in order to execute his responsibilities as specified in this regulation.

Power of the  
Director to issue  
an enforcement  
notice.

**14.** (1) The Director shall have the power to issue an enforcement notice in any of the following circumstances:

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

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

(c) if the demolition, excavation or construction works are not being carried out in accordance 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 Regulation Office and any *perit* duly appointed by him the power to issue on his behalf an enforcement notice.

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

Provided that should the Director or his delegated representative decide not to issue an enforcement notice, this 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.

(5) The Director or any delegated official or *perit* shall not be liable for any damages as a result of the exercise of one's powers under this regulation, unless it is proved that such damage resulted from gross negligence on the part of the Director, his delegated official or *perit*.

**15.** (1) Notwithstanding the provisions of regulations 22, 23, 24 and 25, 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.

Interim  
measures.

(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

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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 Police Force, and the Police Force shall for such purpose exercise such powers as are vested in them at law.

(3) All expenses reasonably incurred by the Director in the exercise of his powers under this 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 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 Regulation Office.

Procedure when  
taking a  
measure under  
regulation 15.

**16. (1)** The Director shall, before proceeding to take any of the measures envisaged under regulation 15, write a letter to the developer and send a copy of the said letter to the site manager and to the person carrying out the construction works, warning them of the measure that may be taken and the specific reason why it may be taken. The Director may require 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 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, public security or public health, and, or warrants the immediate intervention of the Building Regulation Office:

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 the developer 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.

**17.** (1) The Director may delegate to an official of the Building Regulation Office or to any *perit* in private practice, any or all of the responsibilities pertaining to the Director in regulations 13 and 14, and the person thus delegated shall be responsible for such delegated matters. Responsibility of a delegated official or *perit*.

(2) The Director or any delegated official or *perit* 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 *perit*, a copy of the enforcement notice shall be submitted to the Director as soon as possible, after the serving of the notice, but no later than close of business of the first full working day after the serving of the notice.

- 18.** (1) An enforcement notice shall include: Form and content of enforcement notices.
- (a) an instruction to the developer, site manager and the contractor not to initiate any construction activity or to cease all or part of a construction activity;
  - (b) the reasons as to why the notice is being issued, including where necessary for technical reasons, a technical report supported by photos of the construction activity which is deemed to be unsafe, or not in accordance with the method statement, or not in accordance with these regulations, and which technical report is to be signed by a *perit*;

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

(2) Where the Director or his delegated representative deems that the cessation of construction activity is to be immediate because of imminent severe damage to 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 hours of the issuance of the said notice.

Withdrawal of enforcement notice.

**19.** 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.

**20.** 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.

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

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.

**22.** (1) Any person who acts in contravention of the provisions of regulations 6 or 7 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 regulation 9 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 regulation 11(1) shall be guilty of an offence 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.

(4) Any person who fails to abide by the provisions of an enforcement notice in terms of regulation 11(2) or to cease operations as requested in the notice or to adopt any urgent interim measures 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 one thousand two hundred euro (€1,200) and in the case of a continuing offence, to a further fine (*multa*) of one hundred euro (€100) 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 shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, sitting as courts of criminal judicature. 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 Courts of Magistrates (Malta) or the Court of Magistrates (Gozo), in respect of proceedings for any offence against these regulations. Cap. 9.

**23.** (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 Administrative penalties.

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person who infringes any provision of these regulations, or who fails to comply with any directive or decision given by the Director.

(2) Any person who fails to comply with the provisions of regulations 6, 7 and 9 or refuses to comply with an enforcement notice issued under regulation 14 and any person who fails or refuses to adopt urgent interim measures in terms of regulations 15 and 16 shall commit an infringement of these regulations and shall be liable to the imposition of an administrative fine.

(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 22:

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 proceedings 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, 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.

(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 urgent interim measure in terms of these regulations.

Continuing  
offence.

**24.** 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.

**25.** 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 Regulation Board, in terms of articles 12 and 13 of the Act. Appeal procedure.

**26. (1)** Construction works which have been taken in hand and completed within a calendar month from the date of the coming into force of these regulations shall not fall within the provisions of these regulations. Transitory provision.

(2) With reference to construction works which have been commenced but not completed within a calendar month from the date of coming into force of these regulations, those construction works which are still to be taken in hand shall fall within the provisions of these regulations:

Provided that the Director shall exempt the developer from the submission of the bank guarantee following a request made by the developer in writing within one calendar month from the coming into force of these regulations, in which case the developer shall complete the works within four months of the coming into force of these regulations.

**27.** These regulations have been notified in terms of Directive 98/34/EC, as amended by Directive 98/48/EC, as transposed by the Notification Procedure Regulations. Notification.  
S.L. 419.06

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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.
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