

I assent.

(L.S.)

GEORGE ABELA
President

1st July, 2011

ACT No. XII of 2011

AN ACT to provide for matters relating to the construction of buildings and other matters connected therewith and to make consequential and other amendments.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and commencement.

1. (1) The short title of this Act is the Building Regulation Act, 2011.

(2) This Act shall come into force on such a date or dates as the Minister responsible for the building industry may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

“authorised person” means a person authorised for the purposes of this Act by the Director, Building Regulation Office, or by the Building Regulation Board (in the case of appeals in accordance with article 13), as the case may be;

“the Board” means the Building Regulation Board established under article 3;

“building” includes part of a building and any class of structures which are prescribed by the Minister to be a building for the purposes of this Act;

“building contractors and building tradespersons” means any person, including a body of persons and any body corporate established by or under any law, who is listed under article 5(4);

“building matter” means any building or other matter whatsoever to which this Act or any building regulations are in any circumstances applicable;

“building regulations” means regulations made by the Minister under article 6;

“Building Regulation Office” means the Government organisation which is responsible for the administration of building regulations and building control regulations made in accordance with this Act which administration may include, but is not limited to, the issue of licences and registration of masons, building contractors and tradespersons, the monitoring of the application of building regulations, the endorsement of certificates of compliance, the enforcement of building control regulations and the provision of technical assistance to the Board, in the preparation of technical guidance documents;

“certificates of compliance” means documents issued by a perit or warranted engineer, to certify that a building or works conform with building regulations;

“construction” includes the execution of works in connection with buildings and any act or operation necessary for or related to the construction, extension, alteration, repair or renewal of a building and “constructed” shall be construed accordingly;

“design” includes the preparation of plans, particulars, drawings, specifications, calculations and other expressions of purpose according to which the construction, extension, alteration, repair or renewal concerned are to be executed, but shall not include matters relating to development planning, urban design and aesthetics, and “designed” shall be construed accordingly;

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

“enforcement notice” has the meaning assigned to it by article 14;

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“engineer” has the meaning assigned to it in the Engineering Profession Act;

“fire consultant” means any person or firm who, after applying to the Director, Building Regulation Office and presenting to the said Director diplomas, certificates and other evidence of formal qualifications indicating the holder’s professional knowledge and experience in fire safety engineering, is accepted and registered by the Director as a recognised fire safety consultant;

“functions” includes powers and duties;

“mason” means any person who has a licence issued by the Director, Building Regulation Office, to construct wholly or in part, any stone or brick building laid in mortar, or concrete building, even though the work done or commenced by such person consists merely in the erection of a wall intended to form part of a building, or in the formation of a cistern, privy, sink or cesspool or of a conduit for the passage of filthy water or sewage matter;

“the Minister” means the Minister responsible for the building industry;

“operative date” means the day on which particular building regulations first come into operation;

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“*perit*” has the meaning as defined by the term “profession”, in the *Periti* Act;

“prescribed” means prescribed by regulations made by the Minister under this Act;

L.N. 295 of 2007.

“site manager” means a person carrying out the duty or duties derived from the provisions of the Environmental Management Construction Site Regulations, 2007. Such

person shall be nominated by, and be responsible on behalf of, the owner for ensuring the correct implementation of the aforementioned regulations;

“technical guidance document” means a document which provides technical guidance on matters relating to any aspect of building regulations and shall also include any methodology;

“warranted”, in relation to a perit or an engineer, means a person who holds a warrant to practice as a perit or as an engineer, as the case may be, under the Periti Act or the Engineering Profession Act;

Cap. 390.
Cap. 321.

“works” includes any act or operation in connection with the construction, extension, alteration, repair or renewal of a building.

3. (1) There shall be a board to be known as the Building Regulation Board, hereinafter referred to as “the Board”, which shall consist of a chairperson and not less than six and not more than eight other members as follows:

Building Regulation
Board.

(a) a *perit* with at least eight years experience in building construction, who shall preside;

(b) two other persons, one a *perit* nominated by the Kamra tal-*Periti* and, a warranted engineer nominated by the Chamber of Professional Engineers; and

(c) at least four other persons, each with professional qualifications and, or knowledge and experience on matters related to building construction, or health and safety, or building services.

All the members of the Board shall be appointed by the Minister for a period of three years. The Minister may designate one of the other members of the Board as Deputy Chairperson and the member so designated shall have all the powers and perform all the functions of the Chairperson during his absence or inability to act as chairperson or while the Chairperson is on vacation or when there is a vacancy in the office of chairperson; and the Minister may also, in any of the circumstances aforesaid, appoint another person to act as chairperson and in such case the foregoing provisions shall apply in respect of such person.

(2) The Chairperson and each of the other members of the Board shall, before entering upon the duties of their office, take an oath in the form set out below:

“I.....do swear that I will faithfully perform the duties of Chairperson/Member of the Building Regulation Board without favour or partiality according to law. So help me God.”.

(3) At least four members of the Board, together with the Chairperson, shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairperson, or in his absence the Deputy Chairperson or other person appointed to act as chairperson, shall have an initial vote and in the event of an equality of votes, a casting vote.

(4) In the exercise of its functions, the Board shall -

(a) be consulted by the Minister in accordance with articles 4(1), 6(1), 6(6), 11(1), 18(2) and 19 regarding regulations that may be made from time to time under this Act;

(b) consult with stakeholders including Government departments or bodies corporate established by law, on matters relating to building regulations and building control regulations;

(c) advise the Minister on all matters relating to building regulations and building control regulations, and any other functions as prescribed by this Act;

(d) set the parameters, in accordance with article 5(1), by which the Building Regulation Office shall evaluate the capabilities of fire consultants or other consultants in the building industry, and of building contractors and building tradespersons for registration in any of the categories or sub-categories established by article 5(4) and for the issue of licences to masons in connection with building works in Malta;

(e) advise the Minister on the setting of criteria for the suspension, withdrawal or cancellation of a registration or licence;

(f) issue technical guidance documents as may be required from time to time.

(g) decide upon the dispensing with or relaxation of a requirement of the building regulations, following an application or on its own accord, in accordance with articles 6 to 10;

(h) consider appeals from any decision taken by the Director in accordance with articles 12 and 13;

(i) carry out any activity or function in relation to building regulations or building control regulations which may be assigned to it by means of regulations made by the Minister in accordance to the provisions of this Act.

(5) The meetings of the Board shall be called by the Chairperson as often as may be necessary but at least once a month either on his own initiative or at the request of any two of the other members. Subject to the provisions of this Act, the Board may regulate its own procedure.

(6) There shall be paid to the members of the Board such remuneration as the Minister may, with the concurrence of the Minister responsible for finance, determine.

(7) The Minister shall designate public officers to be the administrative secretariat of the Board consisting of a Secretary and such other officers or employees as may be necessary to assist the Board efficiently in the matters which fall within its jurisdiction.

(8) The members of the Board shall on the expiration of their term of office be eligible for reappointment.

(9) (a) The Board shall keep a register of all its decisions in relation to -

(i) the relaxation or dispensation of building regulations in accordance with article 10; and

(ii) appeals made under article 13(3).

(b) For each decision, the information kept in the register shall include the name of the applicant and

details of the proposal including documents, detailed plans, if applicable, and a reasoned justification for the decision.

(c) The register shall be made available for public inspection at such reasonable times as may be determined by the Board and on the website of the Building Regulation Office or, in the case of absence for a while of a website of the Building Regulation Office, on the website of another government department or agency in which case, such other website shall be notified in the Gazette.

(10) In the performance of its functions, the Board shall have the power to appoint from time to time sub-committees for the purpose of compiling technical reports and, or identifying procedures to be adopted.

Committee of Appeals.

(11) If the need arises, the Board may request that the Minister appoints a Committee of Appeals composed of not less than three and not more than five members, one of whom shall be appointed from among the members of the Board, who shall be the Chairperson and preside the Committee meetings. The members of the Committee of Appeals shall be appointed by the Minister for a period of three years, and may be so appointed for further periods as the Minister may deem appropriate.

(12) The other members of the Committee of Appeals shall be a *perit*, a warranted engineer or any other suitably qualified professional with qualifications and, or experience on matters related to building construction, or health and safety, or building services. The provisions of sub-articles (2), (6), (7) and (8) of this article shall, *mutatis mutandis*, be applicable to the Committee of Appeals.

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(13) A member of the Board or of the Committee of Appeals may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with article 734 of the Code of Organization and Civil Procedure. In any such case the Minister shall appoint a person, having the qualifications of the member challenged or abstaining, to sit as a member of the Board or of the Committee of Appeals in substitution of the said member.

(14) A member of the Board or of the Committee of Appeals may be removed from office by the Minister, on grounds of gross negligence, conflict of interest, incompetence, acts or omissions unbecoming a member of the Board or of the Committee of Appeals or if such member is unfit to continue in office or has become incapable of properly performing his duties as a member.

(15) If a member resigns or on the expiration of his term of office or if the office of a member of the Board or of the Committee of Appeals is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed as a member to be a temporary member of the Board or the Committee of Appeals, as the case may be; and any person so appointed shall, subject to the provisions of sub-articles (13) and (14), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

PART I

Registration of Contractors

4. (1) The Minister may, after consultation with the Board, make regulations to regulate or otherwise provide for any matter relating to the registration of fire consultants, other consultants in the building industry, building contractors and building tradespersons and the issuing of licences in the building industry and may by such regulations -

Power to make regulations on the issue of licences in the building industry and the registration of consultants in the building industry, building contractors and building tradespersons.

(a) provide for the issuing of licences and the registration of persons, companies and other entities in order to officially recognize their capacity to perform work or supply material for the building construction industry and to authorise them to perform such work;

(b) provide for the suspension of licences issued or registrations made, and that any licence issued or registration made under the provisions of this Act be withdrawn or deleted;

(c) establish such sub-categories to the main categories referred to in article 5(4) as he may deem appropriate;

(d) prescribe the form of any notice, order or other document authorised or required by this Act to be made, served or given;

(e) establish criteria for the issue of a licence and registration of applicants under this Part;

(f) establish the forms and procedures to be used in the operation of the Registry for the carrying out of the provisions of this Part;

(g) establish, with the concurrence of the Minister responsible for finance, the fees payable in respect of any of the licences and registration of masons, building contractors and building tradespersons under this Part:

Provided that for any regulation relating to road construction works, the Minister shall issue such regulations with the concurrence of the Minister responsible for roads.

(2) Regulations made under this article may provide that any person who contravenes or fails to comply with any provision thereof shall be guilty of an offence against this Act or against those regulations and shall, on conviction be liable to a fine (*multa*) not exceeding ten thousand euro (€10,000), or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Evaluation of capabilities and registration.

5. (1) The Building Regulation Office shall be the entity responsible to issue licences for masons, and to register fire consultants, other consultants in the building industry, building contractors and building tradespersons.

(2) The Director, Building Regulation Office shall examine applications for the issuing of licences and registration of masons, fire consultants, other consultants in the building industry, building contractors and tradespersons on the basis of the criteria as may be prescribed by the Minister and if an applicant satisfies the established criteria, the Director shall issue a licence where applicable and register it in the designated category or sub-category as the case may be.

(3) In carrying out the functions under sub-article (2) the Director may appoint ad hoc technical experts to examine, evaluate and report on the technical capabilities of fire consultants,

other consultants in the building industry, building contractors, building tradespersons and masons.

(4) Registration of building tradespersons and building contractors shall be categorized by trade or activity of the applicant, into one of the following main work categories:

- (a) general building and civil engineering
- (b) building (only);
- (c) civil engineering (only);
- (d) road construction works (only);
- (e) demolition works (only);
- (f) excavation(only);
- (g) scaffolding (only);
- (h) installations;
- (i) building completion; and
- (j) any other category which the Minister may deem fit to prescribe.

(5) The Director, Building Regulation Office, shall keep a register or registers of masons, building contractors and building tradespersons according to the categories or sub-categories established in sub-article (4).

(6) The register or registers mentioned in sub-article (5) shall be accessible to the public, including by means of an electronic site.

(7) (a) In the case of road construction works, the Minister shall, with the concurrence of the Minister responsible for roads, make regulations in respect of any matters relating to this article.

(b) The Minister may delegate any or part of the functions listed under this article, to any other Government department or body corporate established by law as the said Minister may deem competent on the matter.

PART II**Building Regulations**

Power to make
building regulations.

6. (1) The Minister may, after consultation with the Board, make regulations in respect of any of the functions of the Board and in connection with any matter relating to building regulations.

(2) Without prejudice to the generality of sub-article (1) such regulations under this article may, in particular with respect to building regulations, provide for all or any of the following -

- (a) the design and construction of buildings;
- (b) material alterations or extensions of buildings;
- (c) the provision of services, fittings and equipment in, or in connection with, buildings;
- (d) provisions which are to apply where any material change takes place for the purposes for which a building is used;
- (e) for securing the health, safety, convenience and welfare of -
 - (i) persons in or about buildings which are under construction; and
 - (ii) persons who may be affected by buildings or by matters connected with buildings;
- (f) for the requirements of persons with disabilities in relation to buildings;
- (g) for the conservation of fuel and energy in relation to buildings;
- (h) for securing in relation to buildings the efficient use of resources;
- (i) for the encouragement of good building practice;

(j) for such other matters as appear to be necessary or expedient in relation to buildings;

(k) fees which may be payable in accordance with this Act;

(l) for the purposes of prescribing administrative fines for infringement against any regulations made under this Act;

(m) for the purposes of prescribing penalties for criminal offences against any regulations made under this Act; and

(n) for the procedures to be followed in the case of appeals before the Board or the Committee of Appeals as the case may be and for the establishment of any such fees as are considered to be necessary in relation to any proceedings of appeal before the Board or the Committee of Appeals.

(3) Without prejudice to any regulations made under sub-article (2)(d), there shall be deemed to be a material change in the purposes for which a building is used if, on or after the operative date –

(a) a building or part of a building, which was not originally constructed for occupation as a dwelling, or which, though so constructed, has been used for other purposes, is again used as a dwelling;

(b) a building, which was originally constructed for occupation as a dwelling by one household only, is occupied by two or more households ; or

(c) where building regulations contain special provisions in relation to buildings used for any particular purpose, a building which was previously used for such purpose is used for a purpose to which the regulations apply.

(4) Building regulations which relate to –

(a) any material change taking place in the purposes for which the building is used; or

(b) material alterations or extensions of buildings; or

(c) the provision of services, fittings or equipment, in or in connection with, buildings, may apply to a building, the construction of which was commenced before the operative date, in so far as such building is affected by any material change for the purposes for which such building is used or any material alteration, extension, provision of services, fittings or equipment, as the case may be, which occurs on or after the operative date and in all other cases building regulations shall apply only to buildings the construction of which is commenced on or after the operative date.

(5) Subject to sub-article (7) and to any dispensation or relaxation granted -

(a) by the Board, according to articles 7 or 10; or

(b) after any application to the Court which has been allowed,

every building to which building regulations apply shall be designed and constructed in accordance with the provisions of such regulations.

(6) Building regulations may -

(a) prescribe standards or recommend codes of practice, expressed in terms of performance, types of material, methods of construction or otherwise, in relation to all or any of the matters specified in the Schedule or in relation to any other matter which, in the opinion of the Minister in consultation with the Board, is relevant to the purposes for which building regulations may be made;

(b) require specified action to be taken in connection with buildings;

(c) provide for the regulation of specified actions in and about buildings;

(d) specify the manner in which construction operations are to be carried out; and

(e) contain such supplementary and incidental provisions as appear to be necessary or expedient to the Minister on the advice of the Board:

Provided that building regulations may specify different standards or codes of practice for, or make different provisions in relation to, different classes or descriptions of buildings.

(7) Building regulations may exempt, in whole or in part, from all or any of the provisions of such regulations, such classes or descriptions of buildings, services, fittings or equipment as may be specified in the regulations, including classes or descriptions of buildings, services, fittings or equipment in any area specified in the regulations.

(8) Building regulations, or any provisions contained therein, may be made so as to apply generally, or with regard to any area specified in the regulations, and the regulations may contain different provisions for different areas:

Provided that building regulations shall also apply to buildings belonging to or occupied by the Government other than buildings which are used on a temporary basis, places of detention for persons detained in connection with or as a consequence of criminal procedures, and buildings used by the Police Force or the Armed Forces of Malta or by some other established Authority, for the purpose of detention or the defence of the State.

7. Where building regulations so provide, the Board may, following an application for a direction under this article, consider that the adoption of a requirement in such building regulations would be unreasonable in relation to the particular case to which the application relates, give a direction dispensing with or relaxing that requirement, subject to any additional conditions that the Board may deem fit.

Case dispensation or relaxation of building regulations.

8. (1) An application pursuant to article 7 may be in such form and shall contain such particulars as may be prescribed.

Application for case dispensation or relaxation.

(2) The application shall be made to the Board and it shall include a detailed technical report giving the reasons why a case dispensation or relaxation would be justified.

Advertisement
of proposal for
case relaxation or
dispensation of
building regulations.

9. (1) The Board shall, within thirty days of receiving an application in accordance with article 8, in respect of any particular case, make available a notice on the website of the Building Regulation Office, and publish such notice in at least two newspapers, one of which shall be in the Maltese language -

(a) indicating the site and nature of the work and the requirement to be dispensed with or relaxed; and

(b) stating that representations with regard to the effect that the direction may have on public health or safety may be submitted by such date that shall be specified in the notice, which period shall not be less than twenty-one days from the date of the notice; and

(c) indicating the date of hearing of the case subject of the application before the Board, and that for such hearing there can attend both the applicant as well as any other person who has submitted a representation mentioned in this paragraph and who has a direct interest in the outcome of the application,

and the Board may, as a condition for considering the application, require the applicant to pay or undertake to pay the cost of publication.

(2) No notice shall be required to be published under sub-article (1) where it appears to the Board that any effect that the direction may have on public health or safety will be limited to the site of the work or to premises adjoining the site of the work, but in the latter case the Board shall give such notice to the owners and occupiers of those premises as it may consider adequate for them to make any necessary representations.

(3) The notice referred to in sub-articles (1) or (2) is required even where the work involves only an internal part of the building.

(4) (a) Before giving the direction, the Board shall give due consideration to any application made in accordance with article 8, any representations in writing made under sub-article (1), as well as any other proof brought forward during the hearing of the case.

(b) The Board shall have the power to determine who has a direct interest in the outcome of the application, and to summon witnesses and to administer the oath to any person appearing before it.

(c) The Board may appoint experts and may require any department or agency of Government to provide it with such information as the Board may deem necessary for the proper execution of its functions.

(d) During the hearing of the case subject of the application, both the applicant as well as any other person who has submitted a representation mentioned in this paragraph and who has a direct interest in the application, shall be assisted by a lawyer and, or a perit as the applicant may deem fit.

10. (1) If the Board considers that compliance with any requirement of building regulations would be unreasonable in relation to any specified class of building operations, works or material, the Board may, either on an application made to the Board or of its own accord, give a direction dispensing with or relaxing such requirement generally in relation to the type of building, either -

Relaxation or dispensation of building regulations to specified classes of works or materials.

(a) unconditionally; or

(b) subject to compliance with any such condition as may be specified in the direction, being conditions on matters directly connected with the dispensation or relaxation.

(2) A direction under sub-article (1) -

(a) if it so provides, shall cease to have effect at the end of such period as may be specified in the direction; and

(b) may be varied or revoked by a subsequent direction of the Board.

(3) (a) Building regulations may require a person making an application under sub-article (1) to pay the Board any such fee as may be prescribed, and regulations so made may prescribe different fees for different cases.

(b) The Board may, if in agreement in whole or in part with the application, remit the whole or part of a fee payable by virtue of this sub-article.

(4) In addition to the provisions of article 3(9), where the Board gives a direction under sub-article (1), the Board shall write to the Minister informing him of such decision and include the reasons that justify it.

(5) If at any time a direction under sub-article (1) dispensing with or relaxing a requirement of building regulations ceases to have effect in accordance with sub-article (2)(a), or is varied or revoked under sub-article (2)(b), this shall not affect the continued operation of the direction or any conditions specified therein, in any case where before such time, at the commencement of building operations, plans of the proposed work were in accordance with building regulations as applicable to it before the dispensation or relaxation ceased to have effect.

(6) (a) Each decision by the Board shall be reached following a case by case analysis and no decision shall constitute a precedent for other cases, in that each case has to be decided on its own merits.

(b) The Board shall deliver its decision regarding whether it shall issue an order to relax or dispense building regulations, within thirty days from the date of hearing. That decision shall be notified to the parties within fifteen days and shall include the reasons which justify the Board's conclusion.

(c) The decisions of the Board shall be supported by the majority of its members.

(d) The Board shall, in any case, inform the applicant in writing, with a copy of the decision whether the application for relaxation or dispensation of building regulations has been accepted or not. A copy of such a decision should also be given to any person who submitted a representation before the Board and a copy shall be kept in a register which shall be available for inspection by the public in accordance to article 3(9).

(7) The decisions of the Board shall be final except with respect to points of law, from which there may lie an appeal to the Court of Appeal (Inferior Jurisdiction).

(8) Appeals to the Court of Appeal (Inferior Jurisdiction) from decisions of the Board, as provided for in sub-article (7), shall be made within twenty days from the day the applicant and any person making the representation before the

Board is notified with the decision of the Board, and such appeals shall be regulated by such rules of court as may be made in accordance with article 29 of the Code of Organization and Civil Procedure.

PART III

Building Control Regulations

11. (1) The Minister may, after consultation with the Board, make regulations providing for matters of procedure, administration and control for the purposes of securing the implementation of, and compliance with, the requirements of building regulations, and may by such building control regulations make such incidental, consequential or supplementary provisions as may appear to him, on the advice of the Board, to be necessary or expedient.

Power to make building control regulations.

(2) Without prejudice to the generality of sub-article (1), building control regulations may make provision for all or any of the following matters:

(a) requiring -

(i) the submission to the Director, Building Regulation Office, of certificates of compliance by the owner or his representative, duly completed and certified by a *perit* or warranted engineer or both as the case may necessitate, being certificates relating to compliance with the building regulations (subject to any relevant dispensation or relaxation already granted by the Board, in accordance with articles 7 or 10, or by the Court of Appeal), prior to the completion of the construction of any building works or class of work to which such building regulations apply;

(ii) in respect of a building, of a prescribed class or classes, the submission by the owner or his representative of a fire safety certificate issued by a fire consultant, that a building, if constructed in accordance with the plans, documents and information submitted, or so constructed, would comply (subject to any relevant dispensation or relaxation already granted by the Board, according to articles 7 or 10, or by the Court of Appeal),

with the provisions of the building regulations as prescribed;

(iii) the submission of a “commencement notice” to the Director, Building Regulation Office, prior to the commencement of the construction of any buildings, works or classes of work to which building regulations apply:

Provided that the notice may be communicated to the Malta Environment and Planning Authority and to any other Government department or body corporate established by law as the Minister deems competent;

(b) prescribing -

(i) the form and content of certificates of compliance, fire safety certificates and commencement notices;

(ii) the plans, documents and information to be submitted with certificates of compliance, fire safety certificates and commencement notices;

(iii) the time within which such certificates or notices are to be submitted;

(iv) the report of any *perit*, warranted engineer or specialist consultant professionally responsible for the works which is to be included in or with the certificate;

(c) the designation of the persons or the classes of persons by whom certificates of compliance, fire safety certificates and commencement notices may be given, and the classes of buildings or works in respect of which such certificates are to be given;

(d) the registration of certificates of compliance, fire safety certificates, commencement notices, and of such information as may be prescribed, and the making available of such information to such persons as may be prescribed;

(e) the charging of fees for -

(i) the registration of certificates of compliance, fire safety certificates and commencement notices;

(ii) the provision of copies of certificates or other documents or extracts therefrom; and

(iii) the carrying out of inspections and tests and the testing of samples taken pursuant to article 16;

(f) the combining, in one document, of any two or more of any application, notice, certificate or other document provided for in this Act or in any regulations made thereunder;

(g) the dispensation from any provision regarding the submission of certificates of compliance or fire safety certificates, of such buildings, or classes thereof as may be specified in the regulations;

(h) any other matter that the Minister, acting on the advice of the Board, considers appropriate.

(3) Building control regulations may make different provisions in relation to different buildings or classes of buildings situated in different areas, or in relation to different provisions of the building regulations.

(4) Where a certificate of compliance, fire safety certificate, or a commencement notice is submitted to the Director, Building Regulation Office, the Director shall not be under a duty to any person, entity or institution to:

(a) ensure that the building or works to which the certificate or notice relates shall, either during the course of the work or when completed, comply with the requirements of the building regulations or be free from any defect;

(b) ensure that the certificate complies with the requirements of this Act or of regulations or orders made under this Act; or

(c) verify the facts stated in the certificate.

12. (1) A person or institution or any department or agency of Government having a direct interest and aggrieved by any Appeals.

decision, ruling or direction by the Director, Building Regulation Office, may submit an appeal to the Board in accordance with the provisions of this Act and any regulations made thereunder.

(2) An appeal against any ruling, order or direction issued by the Director, Building Regulation Office, shall be made within a period of twenty days from the issue of such ruling, order or direction, by means of an application filed with the Secretary of the Board. Notice of such an application shall be served on the Director, Building Regulation Office, and a representative of the Director shall be entitled to file a written reply, appear, be heard and submit evidence at the hearing of the application.

(3) The Board may delegate hearing of appeals submitted to it to a Committee of Appeal, provided that this has been duly appointed by the Minister in accordance with article 3 (11).

(4) The Board or Committee of Appeals, as the case may be, shall appoint a date for the hearing of the appeal which shall in no case be later than thirty days from the date when the application of appeal is filed with the Secretary of the Board.

(5) In determining an appeal the Board or the Committee of Appeals shall take into account the merits of the appeal, and may in whole or in part, confirm, annul or vary the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

(6) The procedure to be followed before the Board or the Committee of Appeals and the time within which and the manner in which an appeal to the Board or the Committee of Appeals, is to be made shall be such as may be prescribed; and subject thereto, and to any other applicable provision of this Act, the Board or the Committee of Appeals may establish its own procedure.

Provisions relating to appeals.

13. (1) The provisions of this article shall be applicable in relation to appeals submitted to the Board against any decision taken by the Director, Building Regulation Office.

(2) The Board or the Committee of Appeal, as the case may be, shall have the power to hear and determine all appeals made by a person or institution or any department or agency of

Government aggrieved by any decision of the Director, Building Regulation Office.

(3) The decisions of the Board or the Committee of Appeals, as the case may be, shall be final except with respect to points of law, from which there shall lie the right to appeal to the Court of Appeal (Inferior Jurisdiction). Any party to an appeal before the Board or Committee of Appeals who feels aggrieved by a decision of the Board or the Committee of Appeals, or the Director if he feels dissatisfied with any such decision, may on a question of law appeal to the Court of Appeal (Inferior Jurisdiction).

(4) The decisions of the Board or the Committee of Appeal, as the case may be, shall be supported by the majority of its members; all decisions of the Board or the Committee of Appeal, as the case may be, shall be delivered in public and shall be kept in a register which shall be available for inspection by the public in accordance to article 3(9).

(5) Advance notice of not less than fourteen days shall be given of the meetings of the Board or the Committee of Appeal, as the case may be, in such manner as the Board or the Committee of Appeal may deem appropriate. The parties to the appeal who have filed an application or a reply in writing and expressed the intention to make representations shall be invited to do so.

(6) The sittings of the Board or the Committee of Appeal, as the case may be, shall be open to the public, subject to the power of the Board or the Committee of Appeal to exclude any member of the public if it deems it necessary to do so for the maintenance of order or for public security reasons.

(7) The Board or the Committee of Appeal, as the case may be, shall endeavour to give its decision within three months of the first sitting in a case.

(8) The Board or the Committee of Appeal, as the case may be, may appoint experts and may require any department or agency of Government to provide it with such information as the Board or Committee of Appeal may deem necessary for the proper execution of its functions. In the exercise of its functions, the Board or the Committee of Appeals may summon any person

to appear before it and give evidence and produce documents; and the Chairperson shall have the power to administer the oath.

(9) Appeals to the Court of Appeal (Inferior Jurisdiction) from decisions of the Board or the Committee of Appeal, as the case may be, as provided in sub-article (3) shall be made by means of an application filed in the registry of that court, within twenty days from the date on which that decision has been notified to the parties and such appeals shall be regulated by such rules of court as may be made in accordance with article 29 of the Code of Organization and Civil Procedure.

Cap. 12.

Enforcement notice.

14. (1) The Director, Building Regulation Office, or any person duly appointed to act on his behalf, may serve an enforcement notice in any of the following circumstances -

(a) where the construction of any building or carrying out of any works to which building regulations apply is commenced or has been completed or any material change takes place in the purposes for which any building is used, which construction, works or change are not carried out in conformity with building regulations; or

(b) where the building or works are not designed or have not been, or are not being, constructed or carried out in conformity with building regulations; or

(c) where the failure to comply with building regulations results following a decision by the Board not to grant a dispensation or relaxation pursuant to this Act, which decision by the Board is final, or following a judgement by the Court of Appeal (Inferior Jurisdiction), as the case may be; or

(d) where the Director, Building Regulation Office, is not supplied with the particulars and, or the documentation required within the period established by the building control regulations.

(2) An enforcement notice may be served on -

(a) the owner of the building or works concerned; or

(b) any other person who carried out, or is carrying out, the works to which the notice applies; or

(c) the occupier or persons making use of the building who shall immediately inform the owner of the building of such enforcement notice.

(3) The Director Building Regulation Office, shall also inform the site manager and the *perit* responsible for the said works, if known, that an enforcement notice has been issued by the Building Regulation Office.

(4) An enforcement notice, in particular and without prejudice to the other provisions of this article, may-

(a) subject to any relevant dispensation or relaxation already granted by the Board, according to articles 10 or 13 or by the Court of Appeal (Inferior Jurisdiction), require such steps as may be specified in the notice to be taken within such period as may be so specified for the purposes of ensuring compliance with building regulations, and such notice may require-

(i) the removal, alteration or making safe of any structure service, fitting or equipment; or

(ii) the cessation of any works or the doing of any other thing as may be specified in the notice in relation to the building or works to which the notice relates;

(b) prohibit the use of a building, or a specified part of a building, for any purpose specified in the notice until the specified measures are taken to the satisfaction of the Director, Building Regulation Office, by the removing, altering or making safe of any structure, service, fitting or equipment or the cessation of any works or by the doing of any other thing in relation to such building or such specified part of a building that may be required by the notice.

(5) Subject to sub-article (6), an enforcement notice shall take effect at the expiration of such period, being a period of not less than fourteen days beginning on the date of the service of such notice, as may be specified therein:

Provided that where the notice orders the cessation of any work, it shall have effect immediately.

(6) A person on whom an enforcement notice has been served pursuant to this article shall comply with the terms of the notice within the period specified therein.

(7) Where a person fails to comply with the requirements of sub-article (6), the Director, Building Regulation Office, or his representative may enter into any building or works to which the enforcement notice relates and may enter any land as may be necessary for that purpose, and therein take any action or do anything required by the notice.

(8) Where, pursuant to sub-article (7), the Director, Building Regulation Office, or his representative enters into any building or works to which the enforcement notice relates and takes any action or does anything in relation thereto, the Director or his representative may, on satisfying the Court that the person on whom the enforcement notice was served is either the owner of the building or a person who carried out the works to which the enforcement notice relates, or the occupier in terms of article 14 (2)(c) and that such person failed to comply with the requirements of sub-article (6), recover the costs involved in taking the action as a civil debt.

Service of
enforcement notice.

15. (1) Where an enforcement notice is authorised under this Act to be served on a person, it shall be addressed to such person and may be served on him in one of the following methods:

(a) where it is addressed to such person by name, by delivering it to him in person;

(b) by leaving it at the address at which such person ordinarily resides or, in a case where an address for service has been furnished, at that address;

(c) by sending it by registered mail at the address where such person ordinarily resides or, in a case where an address for service has been furnished, at that address;

(d) where the address at which such person ordinarily resides cannot be ascertained by reasonable enquiry and the enforcement notice is authorised to be given in respect of any particular building or works, by delivering it to a person residing in such building or employed on such works or by

affixing it in a conspicuous place on or near such building or works.

(2) Where an enforcement notice is authorised by this Act to be served on or given to the owner of a building or works or a person who carried out or is carrying out the works to which building regulations apply, and the name of such person cannot be ascertained by reasonable enquiry, the notice may be addressed to “the owner”, “the occupier”, or “the person concerned executing the works”, or “the site manager” as the circumstances may require, without naming such owner or person.

(3) For the purposes of this article, a company registered under the Companies Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business. Cap. 386.

(4) Where an enforcement notice is served on or given to a person pursuant to sub-article (1)(d), a copy of the notice shall, within two weeks thereafter, be published in at least three daily newspapers.

(5) All expenses reasonably incurred by the Director Building Regulation Office in the exercise of his powers under this article shall be recoverable as a civil debt by the Building Regulation Office, from the owner of the building concerned subject to such right of recovery such person may have against any other person.

(6) A person who at any time after a notice is affixed pursuant to sub-article (1)(d), removes, damages or defaces the notice without lawful authority shall be guilty of an offence against this Act.

16. (1) Any authorised person shall be entitled to enter, at all reasonable times, into any land or building, subject to his producing, a means of identification and if so required, the authorisation in writing and thereon inspect for the purposes of this Act any building, permanent building installations and any plans or documents relating to such building. Powers of inspection by authorised persons.

(2) Any authorised person may -

(a) inspect any building -

(i) following its completion; or

(ii) during its construction, alteration or extension; or

(iii) during the installation therein of any fittings, services or equipment to which building regulations apply; or

(iv) in respect of which any material change takes place in the purposes for which such building is used;

(b) require to be informed by the owner or occupier of such a building, or by any person responsible for the construction of such a building, or by any of the aforementioned persons, to the extent that such persons have knowledge of the matters in question, as to the purpose for which the building, or any part thereof, has been, is being, or will be, used, the number of persons who are, or will be, employed or accommodated therein or who resort or will resort thereto, the material with which any such building or any part of such building is constructed, and the method of construction employed and as to any other matter which the authorised person considers to be relevant;

(c) require the owner or occupier of the building, or any person responsible for the construction of the building, to provide such plans, documents and information as are necessary to establish whether the requirements of building regulations are being complied with in relation to the building;

(d) take such samples of the materials used in the carrying out of any construction work or take such other action in relation to such construction work as may be necessary to establish whether the requirements of building regulations are being complied with in relation to the building.

(3) An authorised person shall be entitled to be assisted by such persons and bring with him such equipment as he considers necessary to enable him to exercise the powers under this article.

(4) Any person who -

(a) refuses to allow an authorised person to enter any land or building; or

(b) obstructs or impedes an authorised person in the exercise of any of the powers conferred on him by this article; or

(c) wilfully or recklessly gives, either to an authorised person, or to the Building Regulation Office, or to the Board, any information which is false or misleading in a material respect, shall be guilty of an offence against this sub-article.

(5) Where an authorised person is prevented from exercising his power of entry into any land or building in the exercise of his powers under this article, the Building Regulation Office, or the Board, as the case may be, may request the assistance of the police.

(6) Nothing in this article shall empower an authorised person to enter into or to inspect any plans or documents relating to land or building which is in the occupation of the Armed Forces of Malta or the Malta Police Force, or Correctional Facilities or such other building that the Minister may designate in writing from time to time, if in the opinion of the respective commanding officers such inspection of documentation would breach security.

17. For the purposes of articles 14, 15 and 16 of this Act, the Director or any authorised person shall not be liable for any damages to any person or any property as a result of the exercise of his powers under the aforementioned articles, or attributable to the performance of his duties imposed by this Act, unless it is proven that such damage resulted from bad faith and gross negligence on the part of the Director or such authorised person.

Liability of Director for damages resulting from gross negligence.

PART IV

Miscellaneous Provisions

18. (1) Without prejudice to any other information requirements emanating from any other applicable law, it shall be unlawful for any person to engage a building contractor or building tradesperson to undertake any works falling under these regulations without making an agreement as to the price to be charged in respect of material to be supplied and the price of the

Contract for works or services.

service or work to be done, and if an exact price cannot be quoted, the method for calculating the price or a detailed estimate. Such agreement shall result either from a public deed or from a private writing.

(2) A person shall not be acting in breach of the provisions of sub-article (1) if during the execution of the works, for which there is an agreement according to that sub-article, there results the need for the provision of extra materials, services or works to be carried out or variations in works from those mentioned in said agreement.

(3) The Minister may, following consultation with the Board or with any Government department or body corporate established by law, as the said Minister may deem competent on the matter, issue guidelines on the format and content of the agreements referred to in sub-article (1) and such guidelines may list the materials to be supplied or work to be done for which the two parties have to agree a price.

Power to prohibit the use of certain materials, etc.

19. The Minister may, following consultation with the Board, by order prohibit the use of such materials or classes of materials or such form of construction or such type of equipment, fittings or services in relation to such class or classes of buildings or to such class or classes of works as may be specified in the order, if he is satisfied that such use would be a danger to public health or safety or that such use would contravene any provision of the building regulations made under article 6 and may by a subsequent order amend or revoke such an order.

Authenticity of documents.

20. (1) A document purporting to be a copy of an entry in a register or to be a copy of a document lodged with the Board, or the Building Regulation Office, and which is certified by an officer of the Board or the Building Regulation Office, as the case may be, to be a correct copy of such entry or document, shall be *prima facie* evidence of the entry or the document of which it purports to be a copy and it shall not be necessary to prove the signature of such officer or that he was in fact such officer.

(2) Evidence of an entry in a register may be given by the production of a copy of such entry, certified in accordance with the provisions of sub-article (1), and it shall not be necessary to produce the register itself.

Technical guidance documents.

21. Any technical guidance document or methodology issued in connection with this Act may be issued in either the Maltese or English language only, or both.

PART V**Offences and Penalties**

22. (1) Without prejudice to any other provisions under this Act, or other provisions of regulations, made under this Act, which the Director is entitled to enforce, the Director shall have the power to impose in respect of any person who infringes any provision of this Act or of any regulations made thereunder, or who fails to comply with any directive or decision given by the Director or the Board, whether under this Act, or regulations prescribed thereunder, or under any other law which the Director is entitled to enforce, an administrative fine using such procedures as established in this Act or regulations made thereunder.

Administrative
Penalties.

(2) An administrative fine imposed shall not, unless provided otherwise by or under this Act, exceed two hundred thousand euro (€200,000), and two thousand euro (€2,000) each day, in the case where the infringement persists:

Provided that all the fines provided for in this article shall be due to the Government as a civil debt and following the service of a judicial act, 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.

23. (1) Any person who -

Offences.

(a) being an applicant, makes a false declaration for the purposes of any application made under the provisions of this Act, or

(b) supplies false or misleading information in contravention of article 16(4)(c),

shall be guilty of an offence against this Act 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.

(2) Any person who fails to comply with an enforcement notice issued under this Act in accordance with article 14(6) 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 during which the offence continues.

(3) Any person who refuses to allow an authorised person to enter any land or building, or obstructs or impedes an authorised person in the exercise of any of that authorised person's powers shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding two thousand four hundred euro (€2,400), and to a further fine (*multa*) of two hundred euro (€200) for each day the offence continues.

(4) Any person who is convicted of an offence under article 16(4) may also, at the request of the prosecution, be disqualified from signing and submitting to the Director, Building Regulation Office, for a period not exceeding two years from the date of conviction for the offence, certificates of compliance or fire safety certificates, or any other certificate required in accordance with this Act or any other regulations made thereunder and, accordingly, the Director, shall not accept certificates for registration which are signed by a person while so disqualified.

Power of Minister to make regulations in respect of criminal offences.

24. Without prejudice to any other special provisions of this Act, the Minister may, after consultation with the Board, make regulations which prescribe that the breach of regulations made under this Act shall constitute a criminal offence and which prescribe penalties for criminal offences against any regulations made under this Act, and such regulations may:

(a) prescribe imprisonment and different fines (*multa*) for different offences; and

(b) prescribe fines (*multa*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for:

(i) imprisonment for more than two years, or a fine (*multa*) of more than two hundred thousand euro (€200,000); or

(ii) fines of more than five thousand euro (€5,000) for each day during which the offence persists.

25. (1) Criminal proceedings for an offence against this Act shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts of criminal judicature. Prosecution.

(2) 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 by the Court of Magistrates (Gozo) in respect of proceedings for any offence against this Act or any regulations made by virtue of this Act.

PART VI

Amendment of the Code of Police Laws

26. (1) With effect from such date as the Minister may, by order in the Gazette, establish and without prejudice to the provisions of sub-article (2) of this article, the Minister may by regulations amend, substitute or repeal any of the provisions of Part V of the Code of Police Laws. Amendment, substitution or repeal of Part V of the Code of Police Laws. Cap 10.

(2) The Minister may by regulations made under this sub-article provide for transitory provisions.

(3) In the case of any provision of Part V of the Code of Police Laws, related to public health matters, the Minister shall make those regulations with the concurrence of the Minister responsible for public health.

Part VII

Repeal of the Building (Price Control) Act

27. (1) Without prejudice to the provisions of sub-article (2) of this article, the Building (Price Control) Act is hereby being repealed. Repeal of the Building (Price Control) Act. Cap 288.

(2) Notwithstanding the coming into force of the provisions of this Act and the repeal of the Building (Price Control) Act, the provisions of the Building (Price Control) Act and any

subsidiary legislation enacted under the Building (Price Control) Act, as in force prior to the coming into force of this Act, shall continue to apply in respect of any civil or criminal action, right of action or obligation relating to or arising out of payments due or made in respect of any material or work supplied or done, prior to the coming into force of this Act.

PART VIII

Notification

Act has been notified.
L.N. 373 of 2003.

28. This Act has been notified in terms of Directive 98/34/EC, as amended by Directive 98/48/EC, as transposed by the Notification Procedure Regulations, 2003.

Transitory provision.

29. The Minister shall not be required to consult the Board if any regulations made by virtue of articles 4(1), 6(1) and 11(1), were subject to public consultation prior to the passing of this Act.

SCHEDULE**[Article 6(6)]****Matters for which building regulations may prescribe Standards or recommend Codes of Practice**

1. Preparation of sites.
2. Suitability, durability, classification, use and testing of materials and components (including surface finishes) used in buildings.
3. Structural strength and stability of buildings including -
 - (a) precautions against overloading, impact and explosion;
 - (b) measures to safeguard adjacent buildings and services;
 - (c) underpinning.
4. Resistance to moisture and decay.
5. Fire precautions including -
 - (a) resistance of the structure to the outbreak and spread of fire;
 - (b) means of escape in the event of fire and measures to ensure that such means can be effectively and safely used at all times;
 - (c) services, fittings and equipment designed to facilitate fire fighting to mitigate the effects of fire, for the early detection of fire and to provide warning in the event of fire.
6. Prevention of danger and obstruction to persons in and about buildings.
7. Measures affecting the emission of smoke, gases, fumes, grit or dust or other noxious or offensive substances.
8. Measures to prevent infestation.
9. Measures affecting the transmission of heat and solar heat gain.
10. Measures affecting the transmission of sound.
11. Storage, treatment and removal of waste or hazardous material.

12. Accommodation for specific purposes or in connection with buildings, and the dimensions of rooms, components and other spaces within buildings.
13. Ventilation and natural lighting (including the provision of open space thereof).
14. Means of access to and egress from buildings and parts of buildings.
15. Water services, ducts, fittings and fixed equipment and materials associated therewith.
16. Electrical services, ducts, fittings and fixed equipment and materials associated therewith.
17. Drainage (including waste disposal units).
18. Postal and electronic communications services installations, ducts, ancillary fixed equipment and materials associated therewith.
19. Services, installations and ancillary equipment, including installations (including appliances, storage tanks, heat exchangers, ducts and fans) utilising solid fuel, oil, gas, electricity or any other fuel or power for the purpose of, or in connection with, providing heat or ventilation or producing hot water in buildings.

Passed by the House of Representatives at Sitting No. 373 of 27th June, 2011.

MICHAEL FRENDU
Speaker

PAULINE ABELA
Clerk to the House of Representatives

