

**L.N. 52 of 2013**

**ENVIRONMENT AND DEVELOPMENT PLANNING ACT  
(CAP. 504)**

**Environment and Development Planning Act  
(Amendment of Eighth Schedule) Regulations, 2013**

BY VIRTUE of the powers conferred by articles 61(2)(q) and 62 of the Environment and Development Planning Act, the Minister for Tourism, Culture and the Environment, after consultation with the Malta Environment and Planning Authority, has made the following regulations:-

**1.** (1) The title of these regulations is the Environment and Development Planning Act (Amendment of Eighth Schedule) Regulations, 2013, and these regulations shall be read and construed as one with the Eighth Schedule of the Environment and Development Planning Act, hereinafter referred to as the "the Eighth Schedule".

Citation and commencement.

Cap. 504.

(2) These regulations shall come into force as follows:

(a) with respect to developments within residences within areas zoned for terraced development in the development zone specified in sub-categories (i), (ii), (iii) and (iv) of paragraph 1 of Category B, as substituted by regulation 2, these regulations shall be deemed to have come into force on 1st August, 2012; and

(b) with respect to all other developments specified in the remaining sub-categories of paragraph 1 of Category B, as substituted by regulation 2, these regulations shall come into force on 29th January, 2013.

**2.** Paragraph 1 of Category B of the Eighth Schedule shall be substituted by the following:

Amends the Eighth Schedule.

"1. These provisions shall apply to development in existence on the coming into force of these regulations and shall include the following:

(i) Size of internal yards

(a) if the length of any side of the internal yard is up to 65% of that required by law and the overall area of

the yard is more than 65% of what it should have otherwise been;

(b) if the length of any side of the internal yard is between 50% and 65% of that required by law and the overall area of the yard is within the same range, subject to an engineer's report stating that the habitable rooms in the premises have adequate lighting and ventilation aided, if necessary, but not exclusively limited to artificial lighting and forced mechanical ventilation respectively;

(c) premises which have internal yards that are less than half the size of what they should have otherwise been are not included:

Provided that the provisions of sub-category (i) shall be applicable to dwellings in all areas and to premises within development zones limited to Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(b), (d), (e), (m), (n) and (p) of the Development Planning (Use Classes) Order, 1994.

(ii) Size of back yard

(a) if the depth of any back yard is up to 65% of that required by law and the overall area of the yard is more than 65% of what it should have otherwise been;

(b) if the depth of any back yard is between 50% and 65% of that required by law and the overall area of the yard is within the same range, subject to an engineer's report stating that the habitable rooms in the premises have adequate lighting and ventilation;

(c) premises which have a back yard less than half the size of what it should have otherwise been are not included:

Provided that the provisions of sub-category (ii) shall not be applicable to backyards where the remaining distance from the back party wall is less than 1.5 metres at any point:

Provided also that the provisions of sub-category (ii) shall be applicable to dwellings within areas zoned for terraced development within the development zone and to premises within development zones limited to Class 2, Class 3, Class 4,

Class 5, Class 7, Class 8, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(d), (e), (m), (n) and (p) of the Development Planning (Use Classes) Order, 1994:

Provided further that the provisions of sub-category (ii) shall also be applicable to residences in Category 1 and Category 2 Rural Settlements ODZ, and to residences in areas zoned for villa and bungalow developments as long as the statutory site coverage is not being exceeded or conforms with sub-category (viii)(a) and as long as the side curtilage is not being encroached upon in excess of that covered by sub-category (vi)(a).

(iii) Internal height of structures

(a) premises with a clear floor to ceiling internal height of more than 2.6 metres;

(b) premises with a clear floor to ceiling height of less than 2.6 metres but more than 2.4 metres subject to an engineer's report stating that the habitable rooms in the premises have adequate lighting and ventilation;

(c) premises with a clear floor to ceiling height which is less than 2.4 metres are not included:

Provided that the provisions of sub-category (iii) shall be applicable to dwellings in all areas and to premises within development zones but limited to Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, Class 8, Class 9, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(d), (e), (m), (n) and (p) of the Development Planning (Use Classes) Order, 1994.

(iv) Room in back yards

Rooms at the ground floor level or at the floor level immediately above garage or shop levels of any premises, provided that the room has natural ventilation and natural lighting, as long as the cumulative area of the room and any reduction in size of the backyard does not exceed 35% of the required back yard area, and provided that the external height of the room including any *opramorta* is not higher than 3.4 metres above the finished floor level of the backyard:

Provided that the provisions of sub-category (iv) shall be applicable to dwellings within areas zoned for terraced development within the development zone and to premises within development zones limited to Class 2, Class 3, Class 4, Class 5, Class 7, Class 8, Class 10 of which class the term "commercial premises" applies only to "schools", Class 17, as well as the uses listed in article 4(d), (e), (m), (n) and (p) of the Development Planning (Use Classes) Order, 1994:

Provided further that the provisions of sub-category (iv) shall also be applicable to residences in Category 1 and Category 2 Rural Settlements ODZ, and to residences in areas zoned for villa and bungalow developments as long as the statutory site coverage is not being exceeded or conforms with sub-category (viii)(a) and as long as the site curtilage is not being encroached upon in excess of that covered by sub-category (vi)(a).

(v) Encroachments beyond property

(a) ramps or steps which do not protrude more than 30 centimetres beyond the official alignment onto the pavement as long as the pavement width of 1.2 metres is retained. This is not applicable in respect of areas schemed with front garden;

(b) pilasters whose height does not exceed 1.4 metres, which are not wider than 50 centimetres and which do not protrude more than 30 centimetres beyond the official alignment:

Provided that the provisions of sub-category (v) shall only be applicable to:

(i) residential development within the development zone;

(ii) Class 4 shops within the development zone (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);

(iii) Class 5 offices within the development zone (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);

(iv) Social, Community, Educational, Governmental and Religious facilities within the

development zone;

(v) areas zoned for Industry or Warehousing; and

(vi) above-mentioned uses located in Category 1 Rural Settlements ODZ:

Provided further that the development identified in this sub-category shall be removed at the request of any public authority, including the Local Council, and nothing contained in the provisions of this Act including this Schedule may prejudice such a request.

(vi) Encroachments within property

(a) where the facades proper of the buildings themselves, excluding enclosures, porches, and any other structures whose height exceeds 1.25 metres, encroach within the first 1/3 of front gardens, and not more than 25 centimetres within villa or bungalow side gardens;

(b) structures in front and side gardens and roof setbacks whose height does not exceed 1.25 metres above floor level externally and which are not larger than 10m<sup>2</sup>;

(c) where the setbacks of permitted roof structures on residences are reduced to not less than 4 metres from the underlying building elevations; and

(d) where the setbacks of permitted garages in the side curtilage of schemed villa or bungalow development are reduced to not less than 4 metres from the building alignment:

Provided that the provisions of sub-category (vi) shall only be applicable to:

(i) residential development within the development zone;

(ii) Class 4 shops within the development zone (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);

(iii) Class 5 offices within the development zone (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);

(iv) above mentioned uses located in Category 1 Rural Settlements ODZ.

(vii) Creation of additional residential units

In areas zoned for terraced residential development or for residential developments in Category 1 Rural Settlements ODZ, the change of use to residential development and, or the creation of additional residential units by the sub-division of a permitted residential unit into two or more. This shall not be applicable to the creation of or change of use to residential units situated at penthouse level if this involves a change of use from washrooms, and to residential units at basement level unless more than 50% of the facade area of the unit is above public road level or in cases where the back elevation of the residence fronts on and above an internal unroofed drive or larger open space that cannot be developed or that has an open outlook overlooking diminishing terrain levels:

Provided that for cases of change of use into a residential unit, the provisions of sub-category (vii) shall only be applicable if contractual or other valid proof is provided to the Authority's satisfaction to the effect that the change of use to a residence had already occurred by the 29th January 2013:

Provided also that for cases of sub-divisioning of a permitted residential unit into two or more, the provisions of sub-category (vii) shall only be applicable if contractual or other valid proof is provided to the Authority's satisfaction to the effect that by the 29th January 2013 the subdivisioning had already occurred, AND:

(i) that the present owner of the unit is not its original owner; OR

(ii) that if the present owner of the unit is still its original owner, the provisions of sub-category (vii) shall only be applicable if the original owner does not still own any unit adjacent to the unit under consideration on the same floor such that these units can be amalgamated into one larger unit:

Provided further that the six-month grace period granted hereunder, wherein an architect's declaration is deemed to suffice for the purposes of these provisions, shall not be applicable to this sub-category.

(viii) Site area and coverage

(a) built site coverage not exceeding 15% of that permissible and as long as any encroachment into front and side gardens and backyards is not larger than that specified in the provisions of this Schedule;

(b) inadequate plot or site area where the resultant plot area is not less than 75% of the minimum permissible area and as long as the provisions in paragraph (a) of this sub-category relating to both coverage and setbacks are also respected:

Provided that the provisions of sub-category (viii) shall only be applicable to residential development in areas zoned for villa and bungalow development.

(ix) Increase in height

An increase in the height of the overall building development, or parts thereof (except in the height of any roof structure), as long as:

(a) the overall height, including parapet wall, is not increased by more than 1.25 metres from that approved in the development permit;

(b) the increase in height does not involve additional floors;

(c) in the case of a ground floor garage in terraced development, the garage is not roofed over in excess of 4.1 metres and the garage door lintel does not exceed 3.3 metres; and

(d) the external garage height in the side curtilage of a schemed villa and, or bungalow development or in an internal garage development does not exceed 3.3 metres, including any *opramorta*, and the garage door lintel does not exceed 2.8 metres:

Provided that in paragraph (c) of this sub-category, the owner of an overlying residence may also submit an application for the provisions of these regulations to apply with respect to the underlying garage even if such person is not the owner of the garage. In any such case the applicant shall inform the owner of the garage:

Provided further that the provisions of sub-category (ix) shall only be applicable to:

(i) residential development within the development zone;

(ii) Social, Community, Educational, Governmental and Religious facilities within the development zone; and

(iii) areas zoned for Industry or Warehousing, in which areas the limitations relating to door lintel heights aforementioned are not applicable.

(x) External modifications

Excluding cases falling under sub-category (vi), external elevational additions, modifications and alterations (including materials) existing on the facades and, or on elevations fronting on public areas, except for:

(a) the creation or enlargement of projecting rooms on road facades;

(b) balcony extensions exceeding 25 centimetres of that permissible in any direction;

(c) porches;

(d) air-conditioning units and telecommunication equipment affixed to facades;

(e) solid front or side garden walls which exceed 1.6 metres in height:

Provided that extensions to property in schemed villa or bungalow areas are only applicable as per sub-category (viii). Any other extensions in this sub-category are not applicable to footprints exceeding 10m<sup>2</sup> and, when within statutory front or side gardens, not to encroach beyond the limits set out in sub-category (vi)(a) and (d) as applicable:

Provided further that the provisions of sub-category (x) shall only be applicable to:

(i) residential development within the development zone excluding within UCAs;

(ii) Class 5 offices (with  $< 75\text{m}^2$  usable office floor-space and at ground floor level) within the development zone excluding within UCAs.

(xi) External modifications not visible from public roads

Excluding cases falling under sub-category (vi), external elevational additions, modifications and alterations (including materials) for elevations that are not fronting on public areas and that are not visible from and conspicuous from public areas:

Provided that extensions to property in schemed villa or bungalow areas are only applicable as per sub-category (viii). Any other extensions in this sub-category are not applicable to footprints exceeding  $10\text{m}^2$  and, when within statutory front or side gardens, not to encroach beyond the limits set out in sub-category (vi)(a) and (d) as applicable:

Provided further that the provisions of sub-category (xi) shall only be applicable to:

(i) residential development within the development zone;

(ii) Class 4 shops within the development zone (with  $< 75\text{m}^2$  usable retail floor-space and with no commercial freezers on site);

(iii) Class 5 offices within the development zone (with  $< 75\text{m}^2$  usable office floor-space and at ground floor level);

(iv) Social, Community, Educational, Governmental and Religious facilities within the development zone; and

(v) above-mentioned uses located in Category 1 Rural Settlements ODZ.

(xii) Garage level modifications

Internal alterations and, or modifications to garage levels and to circulation therein as long as no entries and, or exits are eliminated, the development is in use, and in cases with more than one level of parking: insofar as the changes are confirmed by a Fire Safety Report and a Transport Safety Report (covering manoeuvrability, exits, etc.) as not affecting the safety of users and, or third parties. These provisions are not applicable to

major developments. Furthermore, these provisions are also not applicable in cases where there is a difference in the number of garage levels or in the amount of garages from what was approved in the development permit:

Provided that the provisions of sub-category (xii) shall only be applicable where the overlying development is limited to:

(i) residential development within the development zone;

(ii) Class 4 shops within the development zone (with  $< 75\text{m}^2$  usable retail floor-space and with no commercial freezers on site);

(iii) Class 5 offices within the development zone (with  $< 75\text{m}^2$  usable office floor-space and at ground floor level);

(iv) above-mentioned uses located in Category 1 Rural Settlements ODZ,

or a mix of the above.

(xiii) Internal modifications

Internal planimetric alterations and, or modifications within units:

Provided that these provisions shall only be applicable as long as these alterations and, or modifications -

(i) are contained within the permitted built footprint;

(ii) do not give rise to additional units;

(iii) do not include a change of use;

(iv) do not run counter to permit conditions;

(v) do not run counter to sanitary requirements:

Provided that the above limitations in items (i), (ii), (iii), (iv) and (v) shall not be applicable if they are covered by other provisions in this Schedule:

Provided further that the provisions of sub-category (xiii) shall only be applicable to:

- (i) residential development;
- (ii) Class 4 shops (with < 75m<sup>2</sup> usable retail floor-space and with no commercial freezers on site);
- (iii) Class 5 offices (with < 75m<sup>2</sup> usable office floor-space and at ground floor level);
- (iv) Social, Community, Educational, Governmental and Religious facilities; and
- (v) Industry or Warehousing development.

Applicability.

2. The provisions of paragraph 1 shall apply subject to the following:

(a) the provisions listed in paragraph 1 shall not apply to scheduled buildings and to development that involved excavations within Areas of Archaeological Importance;

(b) if a request, under the provisions of article 91 of the Act in respect of developments in paragraph 1 in sub-categories (i), (ii), (iii) and (iv) within residences within areas zoned for terraced development in the development zone, is made to the Authority by the 31st January 2013, it shall be presumed that the development to which the request refers to existed prior to 1st August 2012 as long as the architect submitting the request certifies that the development to which the request relates had existed prior to 1st August 2012, and the same request includes photographic evidence that shows the same development as existing on site, and as long as there is no evidence to the contrary, or that no such evidence to the contrary subsequently emerges:

Provided that if such a request is not submitted by the 31st January 2013, the onus of proof that the development in question existed before the 1st August 2012 lies with the applicant or his architect;

(c) if a request under the provisions of article 91 of the Act in respect of all other of the developments in paragraph 1 that are not included in paragraph (b) above, is made to the Authority by the 28th July 2013, it shall be presumed that the

development to which the request refers to existed prior to 29th January 2013 as long as the architect submitting the request certifies that the development to which the request relates had existed prior to 29th January 2013, and the same request includes photographic evidence that shows the same development as existing on site, and as long as there is no evidence to the contrary, or that no such evidence to the contrary subsequently emerges:

Provided that if such a request is not submitted by the 28th July 2013, the onus of proof that the development in question existed before the 29th January 2013 lies with the applicant or his architect."

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