
A.L. 38 tal-2010

**ATT TAL-AWTORITÀ TA' MALTA DWAR IR-RIŻORSI
(KAP. 423)**

**Regolamenti ta' l-2010 li Jemendaw ir-Regolamenti dwar
il-Provvista ta' l-Ilma u s-Servizzi tad-Drenaġġ
(Emenda Nru. 2)**

BIS-SAHHA tas-setgħat mogħtija bis-subartikolu (1) ta' l-artikolu 28 ta' l-Att dwar l-Awtorità ta' Malta dwar ir-Riżorsi, il-Ministru għar-Riżorsi u Affarijiet Rurali, wara konsultazzjoni ma' l-Awtorità ta' Malta dwar ir-Riżorsi, għamel dawn ir-regolamenti li ġejjin:

1. It-titolu ta' dawn ir-regolamenti hu Regolamenti tal-2010 li Jemendaw ir-Regolamenti dwar il-Provvista tal-Ilma u s-Servizzi tad-Drenaġġ (Emenda Nru. 2) u għandhom jinqraw u jiftiehm bħala haġa waħda mar-Regolamenti tal-2004 dwar il-Provvista tal-Ilma u s-Servizzi tad-Drenaġġ, hawn aktar 'il quddiem imsejha "ir-regolamenti prinċipali".

Titolu.

A.L. 525 tal-2004.

2. Is-subregolament (2) tar-regolament 1 tar-regolamenti prinċipali għandu jiġi enumerat mill-ġdid bħala s-subregolament (3) tiegħu u minnufih wara s-subregolament (1) tiegħu għandu jidhol dan is-subregolament ġdid li ġej:

Jemenda r-regolament 1 tar-regolamenti prinċipali.

“(2) L-iskop ta' dawn ir-regolamenti hu biex jirregolaw il-liċenzar tal-provvista tal-ilma u s-servizzi tad-drenaġġ f'Malta. Dawn ir-regolamenti qegħdin isiru għall-ħarsien tal-interess pubbliku u s-sigurta` pubblika. Kull ħtieġa u, jew kundizzjoni msemmija f'dawk ir-regolamenti, inklużi dawk relatati ma' awtorizzazzjonijiet u ma' licenzi, qegħdin isiru għal raġunijiet aktar importanti relatati mal-interess pubbliku.”.

Jemenda r-regolament
2 tar-regolamenti
prinċipali.

3. Ir-regolament 2 tar-regolamenti prinċipali għandu jiġi emendat kif ġejj:

(a) minnufih wara t-tifsira “l-Awtorità”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “awtorizzazzjoni” tfisser kull awtorizzazzjoni jew liċenza mogħtija taħt dawn ir-regolamenti, u f’dak li għandu x’jaqsam ma’ servizzi u provdituri ta’ servizz tfisser permess, liċenza, appuntament, konċessjoni jew kull deċiżjoni formali li tirrigwarda aċċess għal attività tas-servizz jew l-eżercizzju tagħha;”;

(b) fit-tifsira “persuna li jkollha liċenza”, minnufih wara l-kelma “ir-regolamenti” għandhom jidhlu l-kliem “, jew provditur awtorizzat li jkun awtorizzat mill-Awtorità skond dawn ir-regolamenti biex iwettaq l-attività f’dak li għandu x’jaqsam mal-ġbir, purifikazzjoni u distribuzzjoni ta’ ilma, u wkoll f’dak li għandu x’jaqsam mar-rimi u trattament ta’ ilma tad-drenaġġ, jew provditur tas-servizz li jkun awtorizzat biex jopera taħt kull liġi fis-seħħ fi Stat Membru tal-Unjoni Ewropea jew stat li jkun partecipant fiż-Żona Ekonomika Ewropea.”;

(c) minnufih wara t-tifsira “provvista ta’ ilma” għandha tidhol din it-tifsira ġdida li ġejja:

“ “provditur ta’ servizz” tfisser kull persuna naturali li tkun ċittadin ta’ Stat Membru, jew kull persuna ġuridika stabbilita fi Stat Membru, li tkun toffri jew li tkun tipprovdi servizz;”;

(d) minnufih wara t-tifsira l-ġdida “provditur ta’ servizz”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “raġunijiet aktar importanti relatati mal-interess pubbliku” tfisser raġunijiet rikonoxxuti bħala tali fil-każistika tal-Qorti tal-Gustizzja Ewropea, u li dawn ir-raġunijiet joffru ġustifikazzjoni għal hruġ ta’ xi awtorizzazzjoni jew għall-hruġ ta’ xi kundizzjoni għal dik l-awtorizzazzjoni jew għal kull deċiżjoni politika oħra meħuda skond dik l-awtorizzazzjoni, meta dik l-awtorizzazzjoni, u, jew kundizzjoni u, jew deċiżjoni politika għal dik l-awtorizzazzjoni ma tkunx tista’ tinhareġ jew tingħata taħt ċirkustanzi normali hliet għal

dawk ir-raġunijiet aktar importanti relatati mal-interess pubbliku li jinkludu xi waħda minn dawn ir-raġunijiet li ġejjin:

(a) il-politika pubblika, is-sigurezza pubblika, s-sigurtà pubblika u s-saħħa pubblika, iżda, dawn ir-raġunijiet għandhom jiġu interpretati skond l-Artikolu 46 u Artikolu 55 tat-Trattat;

(b) iż-żamma tal-ordni fis-soċjetà;

(ċ) objettivi politiċi soċjali;

(d) il-protezzjoni tar-riċevituri ta' servizz;

(e) il-protezzjoni tal-konsumatur;

(f) il-ġlieda kontra l-frodi;

(g) il-prevenzjoni ta' kompetizzjoni ingusta; u

(h) il-protezzjoni tal-ambjent;”;

(e) minnufih wara t-tifsira l-ġdida “raġunijiet aktar importanti fir-rigward tal-interess pubbliku”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “riċevitur” tfisser kull persuna naturali li tkun ċittadin ta’ Stat Membru jew li tibbenefika mid-drittijiet mogħtija lilha mill-atti Komunitarji, jew kull persuna ġuridika stabbilita fi Stat Membru, li, għal finijiet professjonali jew mhux professjonali, tuża jew tkun tixtieq tuża servizz mhux għal korrispettiv finanzjarju;”;

(f) minnufih wara t-tifsira l-ġdida “riċevitur”, għandha tidhol din it-tifsira ġdida li ġejja:

“ “servizz” tfisser kull attività ta’ persuni li jaħdmu għal rashom, għal korrispettiv finanzjarju;”;

(g) minnufih wara t-tifsira “sistema ta’ ġbir tad-drenagg” għandha tidhol din it-tifsira ġdida li ġejja:

“ “stabbiliment” tfisser l-għemil attwali ta’ xi attività ekonomika, mill-provditur awtorizzat għal

perjodu indefinit u permezz ta' infrastruttura stabbli li minnu n-negozju ta' provvista ta' servizzi jkun qiegħed tassew isehħ;”;

(h) minnufih wara t-tifsira l-ġdida “stabiliment” għandha tidhol din it-tifsira ġdida li ġejja:

“ “Stat Membru” tfisser stat membru tal-Unjoni Ewropea;”; u

(i) minnufih wara t-tifsira l-ġdida “Stat Membru” għandha tidhol din it-tifsira ġdida li ġejja:

“ “Trattat” tfisser it-trattat li jwaqqaf l-Komunità Ewropea.”.

Jemenda r-regolament
6 tar-regolamenti
prinċipali.

4. Ir-regolament 6 tar-regolamenti prinċipali għandu jiġi emendat kif ġej:

(a) minflok is-subregolament (1) tiegħu, għandu jidhol dan is-subregolament ġdid li ġej:

“(1) Il-provvista ta' servizzi msemmija fir-regolament 3 ta' dawn ir-regolamenti għandhom jeħtieġu awtorizzazzjoni ġenerali jew liċenza individwali maħruġa skond dawn ir-regolamenti jew kif provdut bl-Att.”;

(b) fis-subregolament (2) tiegħu, minnufih wara l-kliem “kif tista' titlob l-Awtorità” għandhom jidhlu l-kliem “jew kif provdut bl-Att”;

(ċ) fis-subregolament (3) tiegħu, minflok il-kliem “liċenza għas-servizzi tad-drenaġġ.”, għandhom jidhlu l-kliem “liċenza għas-servizzi tad-drenaġġ.”, u minnufih wara għandu jidhol dan il-proviso li ġej:-

“Iżda dawk il-proċeduri għandhom ikunu skond id-disposizzjonijiet tal-Att.”;

(d) fis-subregolament (4) tiegħu, minflok il-kliem “servizzi bħal dawk.”, għandhom jidhlu l-kliem “dawk is-servizzi.”, u minnufih wara għandhom jidhlu dawn il-provisos li ġejjin:-

“Izda dawk il-liċenzi għandhom ikunu meħtieġa biss, kemm-il darba ma jkunx provdut xort’oħra, skond l-Att:

“Izda wkoll il-kundizzjonijiet għall-għoti ta’ awtorizzazzjoni għal stabbiliment ġdid m’għandhomx jidduplikaw il-ħtiġiet u l-kontrolli li jkunu ekwivalenti jew komparabbli b’mod essenzjali fir-rigward tal-fini tagħhom li għalihom il-provditur ta’ servizz ikun diġà soġġett fi Stat Membru ieħor jew f’Malta.”;

(e) fis-subregolament (7) tiegħu, minflok il-kliem “mill-Awtorità.”, għandhom jidhlu l-kliem “mill-Awtorità.”, u minnufih wara għandu jidhol dan il-proviso li ġej:-

“Izda dak il-perjodu m’għandux ikun inkonsistenti ma’ jew kuntrarju għad-disposizzjonijiet tal-Att.”; u

(f) fis-subregolament (8) tiegħu, minflok il-kliem “għal kull servizz speċifikat sabiex jintlaħqu l-oġġettivi ta’ l-interess nazzjonali bħall-protezzjoni tal-konsumatur, il-kompetizzjoni ġusta u l-assikurar tal-obbligi għas-servizz pubbliku.”, għandhom jidhlu l-kliem “għal servizzi regolati minn dawn ir-regolamenti.” u minnufih wara għandu jidhol dan il-proviso li ġej:-

“Izda dik il-limitazzjoni għandha tkun ġustifikata permezz ta’ raġunijiet aktar importanti relatati mal-interess pubbliku u skond id-disposizzjonijiet tal-Att u tal-Att dwar is-Servizzi fis-Suq Intern.”.

5. Ir-regolament 7 tar-regolamenti prinċipali għandu jiġi enumerat mill-ġdid bħala s-subregolament (1) tiegħu u minnufih wara s-subregolament (1) kif enumerat mill-ġdid, għandhu jidhol dan is-subregolament ġdid li ġej:-

Jemenda r-regolament 7 tar-regolamenti prinċipali.

“(2) “Il-kriterji stabbiliti għall-ħruġ ta’ xi awtorizzazzjoni taħt dawn ir-regolamenti għandhom ikunu mhux diskriminatorji, iżda proporzjonati, ċari u mhux ambigwi u oġġettivi, għandhom jiġu pubblikati minn qabel, ikunu trasparenti u aċċessibbli.”

6. Fil-paragrafu (b) tas-subregolament (5) tar-regolament 8 tar-regolamenti prinċipali, minflok il-kliem “il-kundizzjonijiet ta’ liċenza.”, għandhom jidhlu l-kliem “il-kundizzjonijiet ta’ liċenza.” u minnufih wara għandu jidhol dan il-proviso li ġej:

Jemenda r-regolament 8 tar-regolamenti prinċipali.

“Izda l-provditur awtorizzat għandu jinforma lill-Awtorità b’kull bidla f’dak li għandu x’jaqsam mal-attività tas-servizz tiegħu li permezz tagħha l-kundizzjonijiet għall-awtorizzazzjoni tiegħu ma jkunux jistgħu jiġu milfuqa u t-twaqqif ta’ sussidjarji li l-attivitàjiet tagħhom jaqgħu taħt l-iskop tal-awtorizzazzjoni u, jew tal-iskema tal-awtorizzazzjoni.”.

Jemenda r-regolament
9 tar-regolamenti
prinċipali.

7. Fil-proviso li jinsab mas-subregolament (1) tar-regolament 9 tar-regolamenti prinċipali, minflok il-kliem “li l-Awtorità tqis li jista’ jkun relevanti.”, għandhom jidhlu l-kliem “li l-Awtorità tqis li jista’ jkun relevanti.”, u minnufih wara, għandhom jidhlu dawn il-provisos godda li ġejjin:

“Izda għal kull deċiżjoni meħuda mill-Awtorità, inkluż ir-rifjut jew ir-revoka ta’ xi awtorizzazzjoni, għandha tingħata raġuni sħiħa u għandha tkun soġġetta għal sfida quddiem il-Bord tal-Appelli:

Izda wkoll fil-każ ta’ nuqqas tal-Awtorità li tinforma lill-applikant f’dak li għandhu x’jaqsam ma’ xi deċiżjoni meħuda li tirrigwarda aċċess għal xi attività tas-servizz jew l-eżerċizzju tagħha, inkluż ir-rifjut jew ir-revoka ta’ xi awtorizzazzjoni, m’għandu b’ebda mod ikun ifisser, li l-Awtorità tkun approvat b’mod impliċitu dik l-awtorizzazzjoni għal xi attività tas-servizz jew l-eżerċizzju tagħha u li l-applikant ikun ġie mogħti b’mod awtomatiku aċċess għal attività tas-servizz, jew l-eżerċizzju tagħha.”.

8. Minnufih wara r-regolament 15 tar-regolamenti prinċipali, għandu jizdied dan ir-regolament ġdid li ġej:

“Bidu ta’
proċeduri

16. Minkejja kull liġi oħra, proċeduri għal reat kontra dawn ir-regolamenti jistgħu ikunu mibdija f’kull waqt fi żmien sitt snin minn meta jkun sar ir-reat.”.

L.N. 38 of 2010

**MALTA RESOURCES AUTHORITY ACT
(CAP. 423)**

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

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

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

Title.

L.N. 525 of 2004.

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

Amends regulation 1 of the principal regulations.

“(2) The scope of these regulations is to regulate the licensing of water supply and sewerage services in Malta. These regulations are being made for the safeguarding of the public interest and public safety. Any requirements and, or conditions contained therein, including those relating to authorisations and licences, are being made for overriding reasons relating to public interest.”.

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

Amends regulation 2 of the principal regulations.

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

“ “authorisation” means any authorisation or licence granted under these regulations and in relation to services and service providers it means a permit, licence, appointment, concession or any formal decision concerning access to a service activity or the exercise thereof;”;

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

“ “establishment” means the actual pursuit of an economic activity by a service provider for an indefinite period and through stable infrastructure from where the business of providing services is actually carried out;”;

(c) in the definition “licensee”, immediately after the word “regulations” there shall be added the words “, or an authorised provider who is authorised by the Authority in terms of these regulations to carry out the activity regarding the collection, purification and distribution of water, and also regarding the disposal and treatment of waste water, or a service provider who is authorised to operate under any law in force in a Member State of the European Union or a state which is a participant to the European Economic Area;”;

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

“ “Member State” means a member state of the European Union;”;

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

“ “overriding reasons relating to public interest” means reasons recognised as such in case law of the European Courts of Justice and which reasons present a justification for the issue of an authorisation and, or the issue of a condition thereto and, or any other policy decision taken in terms of such authorisation, when such authorisation, and, or condition and, or policy decision thereto could not have been issued or taken under normal circumstances but for such overriding reasons relating to public interest which include any of the following grounds:

(a) public policy, public security, public safety and public health; provided that these grounds shall be interpreted within the meaning of Article 46 and Article 55 of the Treaty;

(b) the maintenance of order in society;

- (c) social policy objectives;
- (d) the protection of the recipients of services;
- (e) consumer protection;
- (f) the prevention of fraud;
- (g) the prevention of unfair competition; and
- (h) the protection of the environment;”;

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

“ “recipient” means any natural person who is a national of a Member State, who benefits from rights conferred upon him by community acts or any legal person established in a Member State, who for professional or non-professional purposes, uses or wishes to use a service against non-economic considerations;”;

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

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

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

“ “service provider” means any natural person who is a national of a Member State, or any legal person established in a Member State, who offers or provides a service;”;

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

“ “the Treaty” means the Treaty establishing the European Community;”.

Amends regulation
6 of the principal
regulations.

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

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

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

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

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

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

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

“Provided that such licenses shall only be required, unless otherwise provided for, in terms of the Act:

“Provided further that the conditions for the granting of an authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable, as regards the purpose to which the service provider is already subject in another Member State or in Malta.”;

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

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

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

“Provided that such limitation shall be justified by means of overriding reasons relating to public interest and in accordance with the provisions of the Act and of the Services in the Internal Market Act.”.

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

Amends regulation 7 of the principal regulations.

“(2) The criteria established for the issue of any authorisation under these regulations shall be non-discriminatory, proportionate, clear and unambiguous, objective, made public in advance, transparent and accessible.”.

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

Amends regulation 8 of the principal regulations.

“Provided that the authorised provider shall inform the Authority of any changes relating to his service activity which result in the conditions for his authorisation no longer being met and the creation of subsidiaries whose activities fall within the scope of the authorisation and, or the authorisation scheme.”.

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

Amends regulation 9 of the principal regulations.

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

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

Provided also that, in case of failure by the Authority to inform the applicant regarding any decision taken concerning access to a service activity or the exercise thereof, including refusal or withdrawal of an authorisation, shall not mean in any manner whatsoever, that the Authority has tacitly granted such authorisation and that the applicant has automatically been granted access to a service activity, or the exercise thereof.”.

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

“Commencement of proceedings. 16. Notwithstanding any other law, proceedings for an offence against these regulations may be commenced at any time within six years from the commission of the offence.”.

