



## Media Release

### Proposal for amendments to existing OHS construction regulations

24<sup>th</sup> February 2017

The Occupational Health and Safety Authority (OHSa) has prepared draft amendments to the current Workplace (Minimum Health and Safety Requirements for Work at Construction Sites) Regulations (Legal Notice 281 of 2004) with the intention of removing unnecessary bureaucratic burdens (thus reducing compliance costs for a number of duty holders in terms of the regulations) while consolidating regulations which deal with occupational health and safety during construction projects. At the end of this process, the Building (Safety) Regulations (Legal Notice 96 of 1968) will be repealed.

#### Background Information

LN 281 of 2004 transposes Council Directive 92/57/EEC – Minimum safety and health requirements at temporary or mobile construction sites, which formulates a framework assigning specific and active roles to all those involved in a construction project. This directive (as also reflected in LN 281 of 2004) does not concern only the actual building phase, but establishes a number of onerous provisions, placing various legal obligations upon named duty holders, starting from the design stage, and covering also the post-building phase (renovation, maintenance and upkeep of a finished building).

The Directive itself is in fact one of the most complex Directives within that part of the *acquis* dealing with occupational health and safety. Whereas the majority of directives refer to the employment relationship between an employer and an employee, Directive 92/57/EEC also refers to ‘the client’ (that is, the person for whom the project is to be carried out) and assigns to such person the obligation, amongst others, to appoint project supervisors. This Directive is very clear on a very important point, namely that a client cannot be exonerated of his/her responsibilities through the appointment of the afore-mentioned supervisors. This is a principle established by the Construction Site Directive, and cannot therefore be done away with.

OHSa has been very much aware of both the complexity of the Directive itself as well as the burdens that are created for the named duty-holders. When transposing the Directive into local regulations, it in fact tried to reduce burdens as much as possible (keeping within the strict obligation to maintain the level of protection determined by the Directive) while trying to simplify the legislative regime – the local regulations, for example, do away with the obligation to appoint project coordinators, whose role has been incorporated into that pertaining to project supervisors.

The salient features of the amendments being proposed are:

- The duties of the project supervisor are being made clearer and are being addressed in a systematic manner. It is also being suggested that where a client fails to appoint a project supervisor, then the client will *ipso facto* be assumed to be the project supervisor.
- It is also being proposed that the prior notification form (required by the Directive) is sent by the project supervisor, rather than the client. At the same time, project supervisors are being given protection under the law, so that no action can be taken by a client against a project supervisor for performing the duties required (except when acting in a negligent manner).
- In certain situations, a number of duties pertaining to domestic clients are being removed: where the client is a domestic one and when several conditions are met (project does not require a notification form and when only one contractor for the whole project will be present), the duty of appointing a project supervisor will not apply. As a result, such low risk activities no longer need to be covered by an OHS Plan or OHS File and in order to preserve OHS, a risk assessment already required under different OHS regulations may be considered sufficient.
- The proposed amendments also include new legal provisions regulating work at height. Current provisions may be considered as inadequate, despite the fact that they are the major cause of accidents, both in Malta as well as abroad. Further provisions have been included in the technical annexes concerning safe means of access, while additional interpretations concerning competent persons, domestic clients, and the health and safety file and plan, are being included. An interpretation of the term 'scaffold' is also being included in the interests of clarity.

At the same time, OHS regulations published in 1968, and which are still in force are being proposed to be repealed, since their provisions have either become outdated or they have been included in other legislative instruments.

**In conclusion:**

OHSA considers these amendments necessary so as to simplify and make clearer a number of legal provisions. At the same time, these amendments will benefit several 'clients' of construction projects in view of the reduced obligations.

The full text of the proposed regulations is available from OHSA's website: <http://ohsa.org.mt/Home/Consultations.aspx> . Interested parties are to send their comments in writing to OHSA by not later than the 15<sup>th</sup> March 2017.

Any comments and feedback are to be addressed to the Senior Manager (Policies and Programmes), OHSA on [ohsa@gov.mt](mailto:ohsa@gov.mt)

We thank you in advance for your input and participation in this process.

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