
Prime Minister

**Parliamentary Secretary
For Planning and the
Property Market**

**Executive Chairman
Planning Authority**

**Minister for Sustainable Development,
the Environment and Climate Change**

**Chairperson
Environment and Resources Authority**

L.N. of 2017

**ENVIRONMENT PROTECTION ACT
(CAP. 549)**

**DEVELOPMENT PLANNING ACT
(CAP. 552)**

**Action on Illegal Deposit of Material on Land and Illegal Reclamation of Land
Regulations, 2017**

IN EXERCISE of the powers conferred by virtue of the powers conferred by article 85 of the Development Planning Act, and by virtue of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Parliamentary Secretary for Planning and the Property Market, with the concurrence of the Minister for Sustainable Development, the Environment and Climate Change, and in consultation with the Planning Authority and the Environment and Resources Authority, has made the following Regulations.

Title. **1.** The title of these Regulations is the Action on Illegal Deposit of Material on Land and Illegal Reclamation of Land Regulations, 2017.

Definitions and interpretation. **2.** (1) In these Regulations, unless the context otherwise requires:

"afforestation" means the planting of trees on non-forested land

"the Act" means the Development Planning Act;

"the Authority" shall have the same meaning as that assigned to it by the Act;

“contravener” means any person who has been notified with an enforcement notice which has been rendered executable, where such enforcement notice relates to the illegalities specified in regulation 3 of these regulations.

“executable enforcement notice” means an enforcement notice which can be executed by the Authority through the direct action procedures as set out in Article 100 of the Act.

"protected area" means any area protected through the Environment Protection Act, Cap 549 or scheduled for ecological and scientific reasons under the Development Planning Act, Cap 552.

(2) In these Regulations, words and expressions defined in the Act shall have the same meaning as they have in the Act.

Illegalities subject
to these regulations

3. These regulations shall apply to any land subject to an executable enforcement notice, issued prior or after the entry into force of the Act or prior or after the entry into force of these regulations, which enforcement notice relates to any illegality which constitutes, or refers to:-

- (i) land rendered derelict to the extent of constituting an injury to amenity, provided that such illegality appears on the Authority’s aerial photographs of the year 2012 but does not appear on the Authority’s aerial photographs of the year 1994; or
- (ii) the illegal deposit, dumping or tipping of any material on any land, provided that such illegality appears on the Authority’s aerial photographs of the year 2012 but does not appear on the Authority’s aerial photographs of the year 1994; or
- (iii) the illegal reclamation of any land, provided that such illegality appears on the Authority’s aerial photographs of the year 2012 but does not appear on the Authority’s aerial photographs of the year 1994. Where the illegal reclamation

of land appears on the Authority's aerial photographs of the year 1994 and the Authority's aerial photographs of year 2012 confirm that further illegal reclamation of land took place after the year 1994, the Authority shall have the right to execute the necessary action in terms of these regulations both in relation to the illegal reclamation of land which appears on the aerial photographs of the year 1994 as well as any illegal reclamation of land which took place subsequent to that year and which appears on Authority's aerial photographs of year 2012.

Study and
Guidelines for
appropriate
restoration and
afforestation

4. (1) Land subject to an executable enforcement notice relating to any illegality specified in regulation 3 shall be regenerated either by being restored to its original state or afforested. A study to identify the most suitable regeneration method for land subject to an executable enforcement notice relating to any illegality specified in regulation 3, shall be prepared by the Environment and Resources Authority, in consultation with the Superintendence for Cultural Heritage, where the site is of cultural value.

(2) Where it is evident to the Authority that more than half the area of the land subject to an executable enforcement notice is covered by more than 3m of inert material and the site is not located within protected areas forming part of the Natura 2000 network, the site shall be afforested. The Authority shall notify the Environment and Resources Authority of those sites covered by the provisions of this sub-regulation and within three months of notification, the Environment and Resources Authority shall issue afforestation methodological guidelines.

Method statement
procedure

5. (1) Without prejudice to the provisions of regulation 4(2), following the preparation of the study required by regulation 4(1) the Authority shall notify the contravener to prepare a method statement, according to the Terms of Reference in Schedule I of these Regulations, for the restoration of the land to its original state, or afforestation as relevant, to the satisfaction of the Environment and Resources Authority, and where the site is of cultural value, to the satisfaction of the Superintendence of Cultural Heritage. The Environment and Resources Authority and the Superintendence of Cultural Heritage shall have the right to request the method statement to address other issues over and above those defined in Schedule I.

(2) The Authority shall notify the contravener, by means of registered

mail, of his requirement to submit a method statement in terms of sub-regulation (1). The Authority's notification shall specify the requirements and the terms of reference for the proposed method statement, which shall also include those as requested by the Environment and Resources Authority and the Superintendence of Cultural Heritage, and the time-frame within which such method statement is to be submitted by the contravener to the Authority.

(3) A method statement submitted in terms of sub-regulation (2) shall be endorsed by the Authority provided that the same method statement fully addresses all the requirements laid down in the terms of reference notified to the contravener in accordance with sub-regulation (2) and has also received the endorsement of the Environment and Resources Authority and the Superintendence of Cultural Heritage. In its endorsement, and without prejudice to any other legislation, the Authority may impose any additional requirements or conditions it may deem fit to impose.

(4) The contravener shall be notified of the endorsed method statement by means of registered mail. The date of notification of the endorsed method statement shall be deemed to constitute the date upon which the works specified in the same method statement are to commence.

Necessary Action

6. (1) In those cases where:-

(i) The contravener fails to submit the method statement within the time-period imposed by the Authority in accordance with sub-regulation (2) of regulation 5 and consequently the same method statement is prepared by the Authority; or

(ii) The contravener submits a method statement which is not to the satisfaction of the Authority, the Environment and Resources Authority and, where applicable, the Superintendence of Cultural Heritage; or

(iii) The contravener fails to execute the necessary works authorised by the Authority in the endorsed method statement or fails to complete such works within the time-frame imposed in the endorsed method statement; or

(iv) The contravener executes works in a manner which is not in accordance with the terms and conditions of the endorsed method statement; or

(v) The Authority is notified by the Environment and Resources Authority or the Superintendence of Cultural Heritage of a default by the contravener in respect of the implementation of any portion of the method statement:

The Authority, without prejudice to other legislation, shall have the right to exercise all powers conferred to it by the Act so as to enter the land in question and execute all the works necessary in order to implement the method statement to the satisfaction of the Environment and Resources Authority and the Superintendence of Cultural Heritage.

(2) In cases where the land subject to an executable enforcement notice refers to an unknown owner and occupier or land which is Government property and subject to an executable enforcement notice which refers to an unknown occupier, the Authority shall be responsible to prepare the appropriate method statement and shall have the same powers conferred to it in terms of sub regulation 1.

(3) The Authority shall supervise the work and certify compliance in relation to the works carried out.

7.(1) All expenses incurred by the Authority in the exercise of its powers under this regulation shall be recovered by the same Authority in accordance with the procedure set out in sub-articles (5) to (9) of Article 100 of the Act.

Costs

(2) In any of the cases specified in sub-regulation (1), the Authority shall, without prejudice to any other legislation, also impose an administrative fine on the contravener, which fine shall be calculated on the basis of the estimated expenses for the maintenance of the land by the Authority in terms of sub-regulation (1) of this regulation. Both the Environment and Resources Authority and the Superintendence of Cultural Heritage shall have a right to reclaim their expenses for services rendered to the Authority through the administrative fine.

(3) The Authority shall recover the administrative fine imposed upon the contravener in accordance with the procedure specified in sub-regulation (1) of this regulation.

(4) The costs imposed upon the contravener in terms of these Regulations shall include; planning; procurement; ground preparation; uprooting of alien species, if any; planting; irrigation; weeding; beating

up; staking of trees; and any other operation necessary for the successful afforestation of the site.

(5) The administrative fine imposed upon the contravener in terms of these Regulations shall be calculated on the basis of the estimated costs required to maintain the afforested and, or restored land for the first five years.

8. Where a site is afforested and the afforestation is not suitably maintained, or else material is deposited illegally on any land after the entry into force of these regulations, the Authority shall notify the Government of any such breach and the Government may proceed either to (i) terminate the occupancy agreement to which the land is subject, if the land in question is a Government owned land; or (ii) expropriate the land, if the land in question is a privately owned land; and this in order to ensure that the relative afforested land is suitably maintained and, or the relative land is protected from further illegal deposit of material.

Further action

Schedule I

Outline Requirements and Terms of Reference for the Method Statement,

1. Outline Requirements

1.1 Use of Trees and Shrubs

(a) The trees and shrubs used for the rehabilitation shall be indigenous species which are native to the area/site concerned and compatible and appropriate to the adjacent habitats. The method statement shall indicate the species, in Latin, Maltese and English names; the number; and the approximate location of the trees.

(b) The choice of species shall be guided by the policy document “*Guidelines on Trees, Shrubs and Plants for Planting and Landscaping in the Maltese Islands*” of the year 2002 as amended, and the “Guidelines on managing non-native plant invaders and restoring native plant communities in terrestrial settings in the Maltese Islands (MEPA, 2011)”, together with the list laid down in the appendix to this schedule. If any alien invasive species are already growing on site, these must be uprooted and destroyed as part of the rehabilitation procedures.

2. Terms of Reference

The method statement is required to identify how the interventions to re-instate a site should be carried out with the least possible damage on the site and its surroundings. The likely environmental impacts of the interventions and mitigation measures should be included in the method statement. The method statement document shall include the following basic information in addition to other specific site re-instatement and ecological requirements as determined by the Environment and Resources Authority on a case-by-case basis:

A. Organization and responsibilities

Proposed project management arrangements during all phases of the development are to be presented in the document, which should include the following:

- i. Description of the timing of the works defining the expected duration of the whole project, including start date and end date, and for each respective phase
- ii. An identification and contact details of the site manager (as approved by the Environment and Resources Authority) that shall be responsible for overseeing the completion of works in accordance with the method statement on behalf of the responsible party;
- iii. A description of how the progress of works will be monitored and recorded eg. Photographic means (before, during and after). After the completion of works, a

copy of the photographs shall be submitted to the Environment and Resources Authority for record-keeping purposes.

B. Description of site and its surroundings

- i. A site plan including a clear outline of the extent of the site boundary and surrounding area(s) which may be affected;
- ii. Details, including maps and drawings, are to be provided of the site topography, geology and hydrology, as well as natural habitats/ecology and other natural features within (or under) the site and its surrounding area of influence;
- iii. Details of any other trees, vegetation or natural feature to be affected by the proposed works, such as uprooted/cut or otherwise affected features of topographical and natural importance e.g. old trees.

C. Description of works

- i. a site plan indicating the location of the material, interventions and/or illegalities to be removed;
- ii. a description of the nature of the material, interventions and/or illegalities to be removed;
- iii. a description of the interventions that are required to remedy environmental damage and to re-instate/rehabilitatethe site in particular, but not solely limited to:
 - (a) plans, elevations and sections detailing the proposed operations/works to be undertaken and any other interventions (if relevant);
 - (b) a list of machinery (including vehicles) and/or tools to be deployed and for each machinery/tool the intended use;
 - (c) a description of how the site is going to be accessed (including travel routes) and how any machinery and/or tools shall be brought on site and subsequently removed - both for demolition and carting away of material;
 - (d) a site plan indicating where machinery (including vehicles), equipment and /or tools shall be kept once works are in progress;
 - (e) a site plan indicating which areas shall be cordoned off before, during or after the required works and for which purpose;
 - (f) a description of the type of hoarding to be employed for cordoned off areas;
 - (g) a description of how the offending material is to be removed from site and the location of its final disposal. In the case of temporary storage and/or deposition of the offending material prior to its removal, a site plan indicating which area shall be utilised for such purpose is to be provided;
 - (h) a list of mitigation measures to ensure that no spillage of material due to agents such as wind, runoff, wave action, subsidence or collapse, anthropogenic factors, or a combination of the foregoing factors occurs during any phase of the project;
 - (i) an indication of any species to be planted in connection with the works, also taking into account the habitat previously existing on site prior to the illegal reclamation or degradation as well as the surrounding natural habitats;

- (j) any mitigation measures deployed to contain as much as possible any murkyng, silting, smothering, scouring and pollution of any features, habitats and water bodies (terrestrial or marine) located further downslope or downstream;
- (k) a list of mitigation measures to ensure that no deleterious impacts to the natural and physical environment occurs during any phase of the project, in particular to ensure that no trampling, disturbance, and/or spillages or leakages of fuels, oils or other substances occur;
- (l) any additional measures (e.g. finishing works) that will be undertaken to restore the site as much as possible to a pristine natural condition;
- (m) clarification of any additional conditions required to ensure recovery of the site environment and/or to prevent deterioration or degradation of the site and its surrounding environment both during and after the works;
- (n) an undertaking by the contravener to notify the [competent authority] at least a fortnight in advance of any changes in the work schedule in the method statement approved by the Environment and Resources Authority;
- (o) an undertaking by the contravener not to carry out any works unless under the supervision of officials from the Authority].
- (p) identification of which parts of the proposed works/interventions require prior authorisation from the Environment and Resources Authority under the respective environmental regulations
- (q) a contingency plan to prevent accidental risks of environmental damage from the proposed works/interventions.