



Public Consultation Submissions & Responses

Daily Penalties (Environment) (Amendment) Regulations, 2022

November 2022

Environment & Resources Authority



CONSULTATION FEEDBACK

Ref No.	Name of Stakeholder / Date	Comments Received	Response / Remarks
1	Dr Daniel Cauchi 12/01/2022	<p>I am submitting my comments on the public consultation regarding the amendment to the 'Daily Penalties (Environment) Regulations 2022.</p> <p>These regulations are currently not fit for purpose, being too lenient and with the fines being too low to serve as a deterrent. The proposed amendments only serve to make them even more lenient, since as per paragraph 5: <i>"4. Where a person is subject to separate daily fines for different offences which fall under any part of the Schedule, the person shall be subject to the highest daily fine applicable at any one time."</i></p> <p>How is it possible that, given the rampant illegalities on the island and the irreversible destruction of our historical, cultural, and environmental heritage, the maximum daily fine within a 365 day period would only be €50? Such a maximum fine is a joke, and does not serve as a deterrent in any way.</p> <p>As the entity responsible for safeguarding the environment, you should be making it more difficult and financially damaging for people who do not have Malta's cultural, historical and environmental heritage at heart and instead destroy everything that we hold dear. Instead, the proposed amendments essentially give a free pass to developers and irresponsible individuals to do as they</p>	<p>Feedback has been noted and the Legal Notice has been amended such that the rates included within the Schedule of fines have been increased to act as a further deterrent for offenders. Regulation 4 concerning concurrent offences has also been amended such that for separate offences, the daily fines shall now accrue separately and continue to run until the respective offence is addressed to the Authority's satisfaction and illegalities in breach of existing Orders will be considered individually and additionally.</p> <p>ERA will continue working to take action against environmental illegalities. Notably, the simplified Schedule includes a further, more broad category of offences that may be subject to daily fines which was not covered by Legal Notice 45 of 2018, i.e. breach of any regulations issued under the Environment Protection Act, thereby adding a further tool for more effective enforcement of environmental legislation.</p>

		<p>please, knowing that it is worth their while to pay the small fine until, as usually happens, the illegality is sanctioned.</p> <p>The fines should be at the very least tripled at each stage, to ensure that there is sufficient financial incentive to resolve any issues quickly.</p> <p>Please do not render ERA even more powerless, even more of a joke than it already is. The country needs a strong entity to protect its heritage.</p>	
2	<p>Dr John Paul Cauchi</p> <p>12/01/2022</p>	<p>I am submitting my comments on the public consultation regarding the amendment to the 'Daily Penalties (Environment) Regulations 2022.</p> <p>These regulations are currently not fit for purpose, being too lenient and with the fines being too low to serve as a deterrent. The proposed amendments only serve to make them even more lenient, since as per paragraph 5:</p> <p><i>"4. Where a person is subject to separate daily fines for different offences which fall under any part of the Schedule, the person shall be subject to the highest daily fine applicable at any one time."</i></p> <p>How is it possible that, given the rampant illegalities on the island and the irreversible destruction of our historical, cultural, and environmental heritage, the maximum daily fine within a 365 day period would only be €50? Such a maximum fine is a joke, and does not serve as a deterrent in any way.</p> <p>Additionally, fines are not being increased in any significant way. This is quite literally the opposite of where we should be going - ramping up fines, doubling down on</p>	<p>Feedback has been noted and the Legal Notice has been amended such that the rates included within the Schedule of fines have been increased to act as a further deterrent for offenders. Regulation 4 concerning concurrent offences has also been amended such that for separate offences, the daily fines shall now accrue separately and continue to run until the respective offence is addressed to the Authority's satisfaction and illegalities in breach of existing Orders will be considered individually and additionally.</p> <p>ERA will continue working to take action against environmental illegalities. Notably, the simplified Schedule includes a further, more broad category of offences that may be subject to daily fines which was not covered by Legal Notice 45 of 2018, i.e. breach of any regulations issued under the Environment Protection Act, thereby adding a further tool for more effective enforcement of environmental legislation.</p>

		<p>illegalities and ensuring that they are a deterrent such that people will not be tempted to go ahead with their illegal plans.</p> <p>As the entity responsible for safeguarding the environment, you should be making it more difficult and financially damaging for people who do not have Malta's cultural, historical and environmental heritage at heart and instead destroy everything that we hold dear. Instead, the proposed amendments essentially give a free pass to developers and irresponsible individuals to do as they please, knowing that it is worth their while to pay the small fine until, as usually happens, the illegality is sanctioned.</p> <p>The fines should be at the very least tripled at each stage, to ensure that there is sufficient financial incentive to resolve any issues quickly.</p> <p>Please do not render ERA even more powerless, even more of a joke than it already is. The country needs a strong entity to protect its heritage.</p> <p>Frankly, with regulations such as these, it almost seems as if the agenda is to make sure Malta's environment is decimated as quickly as possible.</p>	
3	<p>Polina Venka</p> <p>BirdLife Malta</p> <p>02/02/2022</p>	<p>BirdLife Malta has analysed the proposed amendments to the Daily Penalties (Environment) Regulations and we would like to express our concern with regards to some proposed changes.</p> <p>First of all, from the document itself it is not evident what is the justification behind the amendments. Taking into account the general tendency at the European level to</p>	<p>The intention of the proposed Legal Notice was essentially to simplify the daily penalties regime so as to create a more transparent, fair and effective system.</p> <p>Feedback has been noted and the Legal Notice has been amended such that the rates included within the Schedule of fines have been increased to act as a further deterrent for offenders. Regulation 4 concerning</p>

	<p>strengthen the law to combat environmental crime¹ in line with the Green Deal, the amendments in question seem to fall out of this context.</p> <p>The document proposes to exclude the provision under which a person who is subject to separate daily fines shall remain responsible for all the applicable fines, instead under the new proposal, such a person would only be “<i>subject to the highest daily fine applicable at any one time</i>” which is a considerable and unjustifiable indulgence.</p> <p>Apart from that, the amendment also touches on the Daily Fines Schedule, proposing generally significantly lower fine rates compared to the present version of the Schedule (for example, when it comes to failure to submit data/reports under the relevant legislation: according to the current Schedule the maximum daily penalty could reach up to €100, while the amended version sets the maximum rate at as low as €30/day). From our point of view, such amendments are not only indefensible, but have the potential to compromise the state of the national environmental budget.</p> <p>Another ambiguous amendment to the Regulation is the possibility of filing a petition to the EPRT (Environment and Planning Review Tribunal) which can create a room for a potential loophole to avoid responsibility for certain offences and lengthen the process of fining an offender. To conclude, BirdLife Malta does not support the proposed amendments on the basis of the absence of their justification and the fact that the amendments can jeopardise the state of environmental justice leaving a considerable amount of offences uncharged, thus doing</p>	<p>concurrent offences has also been amended such that for separate offences, the daily fines shall now accrue separately and continue to run until the respective offence is addressed to the Authority’s satisfaction and illegalities in breach of existing Orders will be considered individually and additionally.</p> <p>ERA will continue working to take action against environmental illegalities. Notably, the simplified Schedule includes a further, more broad category of offences that may be subject to daily fines which was not covered by Legal Notice 45 of 2018, i.e. breach of any regulations issued under the Environment Protection Act, thereby adding a further tool for more effective enforcement of environmental legislation.</p> <p>The introduction of a petition is to cater for a more effective access to justice mechanism in specific cases when there are compelling reasons for it to do so as detailed in the legislation, and subject to the decision of the Environment and Planning Review Tribunal, which is an independent and impartial body established through Chapter 551 of the Laws of Malta.</p>
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		the opposite of instilling a deterrent to prevent environmental crime in the first place.	
4	Dr Marie Claire Gatt Moviment Graffitti 4/02/2022	<p>Moviment Graffitti reviewed the consultation document Daily Penalties (Environment) (Amendment) Regulations, 2022 and is hereby expressing its disagreement with these legal amendments that will lower fines for many environmental offences and give offenders the opportunity to have their fines cancelled.</p> <p>This proposed legal amendment should be withdrawn and substituted with a law that significantly strengthens and not weakens sanctions against environmental offenders.</p> <p>It is incomprehensible how, whilst many Maltese are alarmed at the degradation of our environment and quality of life, the Environment and Resources Authority (ERA) deemed it fit to propose more leniency towards breaches of environmental regulations.</p> <p>The draft regulations are objectionable on many counts:</p> <ul style="list-style-type: none"> • The new schedule of fines significantly lowers the fines for many environmental offences by, inter alia, prescribing lower fines for unauthorised emissions, for the failure to obtain an environmental permit and when failing to submit reports on emissions. Considering the rampant environmental illegalities and their deleterious impact on people, nature and agriculture, such fines should be substantially increased, not halved. 	<p>Feedback has been noted and the Legal Notice has been amended such that the rates included within the Schedule of fines have been increased to act as a further deterrent for offenders. Regulation 4 concerning concurrent offences has also been amended such that for separate offences, the daily fines shall now accrue separately and continue to run until the respective offence is addressed to the Authority's satisfaction and illegalities in breach of existing Orders will be considered individually and additionally.</p>

		<ul style="list-style-type: none"> The new regulations would make the offender liable to pay only one fine at any one time, even when engaging in multiple irregularities. It is unjust and illogical to have offences go unpenalised simply because they are happening concurrently with other offences. Rather than decreasing liability, the presence of multiple, concurrent, irregularities should be considered an aggravating factor. The proposed regulations would be sending the message that an offender can engage in multiple offences at the same time since s/he will only be fined for the offence with the highest fine. 	
		<ul style="list-style-type: none"> The consultation document goes further and proposes that offenders who obtain a permit after having carried out an illegal activity, pay only the accumulated daily fine or the regularisation fine, whichever the higher. This will incentivise persons to carry out illegal activities knowing that, should they be forced to regularise their position, they will have to pay much less - only the regularisation fine or the accumulated daily fine - instead of both. 	<p>This is intended to prioritise regularisation, where possible, as this is more beneficial from an environmental perspective.</p>
		<ul style="list-style-type: none"> The new regulations would introduce grounds on which the Environment and Planning Review Tribunal (EPRT) can cancel or lower fines, by including opaque, open-ended, provisions via the use of words like “such as” and “humanitarian reasons”. It is to be noted that the EPRT is a dysfunctional institution that lacks independence and that has repeatedly demonstrated it is beholden to powerful political and commercial interests. It has very often disrespected principles 	<p>The EPRT is a lawfully established Tribunal regulated through the provisions of Chapter 551 of the Laws of Malta and is best suited in terms of its competence and jurisdiction to hear such appeals.</p>

		<p>of natural justice and handed down decisions that are deeply flawed. Introducing unclear legal grounds that allow the EPRT to quash fines for environmental offences will worsen an already-dire situation.</p>	
		<p>Moviment Grafitti is continuously contacted by members of the public with reports of environmental illegalities happening around Malta and Gozo. Most often, these people have very little faith in the institutions and believe that very little, if anything, will be done by the authorities against environmental offenders.</p> <p>The ERA's proposal for a law that would reduce already-meagre fines, as well as complicate their effective application, will certainly strengthen the perception that the authorities are on the side of those exploiting our environment for their personal gain, rather than striving to protect our environment and quality of life.</p>	<p>ERA will continue working to take action against environmental illegalities and encourages the public to report any such illegalities directly to ERA. Notably, the simplified Schedule includes a further, more broad category of offences that may be subject to daily fines which was not covered by Legal Notice 45 of 2018, i.e. breach of any regulations issued under the Environment Protection Act, thereby adding a further tool for more effective enforcement of environmental legislation.</p>
5	<p>Romano Cassar</p> <p>Ramblers' Association of Malta</p> <p>09/02/2022</p>	<p>Ramblers Association is concerned about the proposed amendment to the penalties subsidiary legislation under the Environment Protection Act (SL 549.72).</p> <ol style="list-style-type: none"> 1. The current penalties do not provide a sufficient deterrent to potential transgressors. They should be increased by a factor of three, as a minimum. 2. Article 5, amending regulation 4 of the principal regulations would eliminate the provision of a person being subject to separate daily penalties/fines, incurred for more than one infringement. Instead, the transgressor would only be "<i>subject to the highest daily fine applicable at any one time</i>". The proposed penalties, in our view, do not provide a sufficient deterrent. (See 1 above). They provide only a minimal obstacle to 	<p>Feedback has been noted and the Legal Notice has been amended such that the rates included within the Schedule of fines have been increased to act as a further deterrent for offenders. Regulation 4 concerning concurrent offences has also been amended such that for separate offences, the daily fines shall now accrue separately and continue to run until the respective offence is addressed to the Authority's satisfaction and illegalities in breach of existing Orders will be considered individually and additionally.</p> <p>ERA will continue working to take action against environmental illegalities. Notably, the simplified Schedule includes a further, more broad category of offences that may be subject to daily fines which was not covered by Legal Notice 45 of 2018, i.e. breach of any regulations issued under the Environment Protection Act, thereby adding a further tool for more effective enforcement of environmental legislation.</p>

		<p>transgressors, and practically none at all to a determined transgressor. Removing the possibility of a penalty for a second infringement will only make the matter worse from an environmental aspect.</p> <p>3. Article 7 of the proposed amendment provides for the possibility of a petition to the EPRT (Environment and Planning Review Tribunal). Judging from the experience of petitions for offences under the Development Planning Act (SL552.24), this can only have a negative impact on the environment; knowing that even the relatively minor penalties can be petitioned away decreases substantially the deterrence impact on the transgressor.</p>	<p>The introduction of a petition is to cater for a more effective access to justice mechanism in specific cases when there are compelling reasons for it to do so as detailed in the legislation, and subject to the decision of the Environment and Planning Review Tribunal, which is an independent and impartial body established through Chapter 551 of the Laws of Malta.</p>
6	<p>Dr Claire Bonello</p> <p>Friends of the Earth Malta</p> <p>09/02/2022</p>	<p>I am submitting this consultation reply and on behalf of Friends of the Earth Malta.</p> <p>It is extremely disappointing to see that whilst there is close to no enforcement and/or deterrent against the commission of environmental offences in Malta, ERA is now seeking to do away with the last vestigial regulation in this regard and keeling over totally towards a contravenor-friendly regime.</p> <p>The way the whole regulatory amendment process has been conducted is wrong on so many levels.</p> <p>1. In the first place, if there is more environmental regulation violation (everywhere and every day even by the authorities such as Infrastructure Malta) why is ERA</p>	<p>Feedback has been noted and the Legal Notice has been amended such that the rates included within the Schedule of fines have been increased to act as a further deterrent for offenders. Regulation 4 concerning concurrent offences has also been amended such that for separate offences, the daily fines shall now accrue separately and continue to run until the respective offence is addressed to the Authority's satisfaction and illegalities in breach of existing Orders will be considered individually and additionally.</p> <p>ERA will continue working to take action against environmental illegalities. Notably, the simplified Schedule includes a further, more broad category of offences that may be subject to daily fines which was not covered by Legal Notice 45 of 2018, i.e. breach of any regulations issued under the Environment Protection Act, thereby adding a further tool for more effective enforcement of environmental legislation.</p>

	<p>decreasing the fines payable? This is not conducive to environmental preservation in any way.</p> <p>2. It is noted that ERA is adopting the obscure and environmentally unfriendly petition procedure whereby contravenors petition the EPRT which has the power to accede to their petition on "humanitarian grounds". This echoes what happens in the planning sphere with repeat offenders using this cheap (free) and easy route to avoid the consequences of their actions. What is a humanitarian ground anyway? A developer not being liquid enough to pay for the legal dumping of construction debris and dumping it (for free) in a green area? And then moaning about the how the cost of inflation has hit profit margins? Is there no attention given to the extent of the environmental damage done? The inconvenience caused to the public? Why is ERA choosing to act as a reverse Robin Hood finding ways to reward/sanction contravenors who pillage and destroy the common environment for the rest of us?</p> <p>3. These amendments are totally ill-conceived and retrograde. I trust some notice will be taken of this representation, though if past consultation exercises are anything to go by I will not hold my breath.</p>	<p>The introduction of a petition is to cater for a more effective access to justice mechanism in specific cases when there are compelling reasons for it to do so as detailed in the legislation, and subject to the decision of the Environment and Planning Review Tribunal.</p>
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