No. 993

MINISTRY FOR PUBLIC WORKS AND PLANNING

Explanatory Notes[1]

Construction Industry Licensing Regulations, 2023

1. Introduction

By means of the Construction Industry Licensing Regulations, 2023 (hereinafter referred to as the "regulations"), contractors currently offering Demolition, Excavation and Construction services in the construction industry shall be obliged to submit an application to obtain a licence to operate with the Building and Construction Authority (hereinafter referred to as "BCA"). This process shall serve as a tool for the licencing of all contractors offering services of Demolition, Excavation and Construction in the building and construction industry.

2. Summary and background

The coming into force of the regulations shall be an initial step towards the licencing of contractors in the industry, hence these regulations shall layout a general plan with the following intentions and purposes:

a) to ensure operators in the industry are experienced and, or qualified to perform the works and services being offered;
b) to provide better protection to clients, consumers and third parties;
c) to lead towards better quality and standard of works;
d) to lead towards improving the reputation of the construction industry

The regulations aim to provide a regulatory framework which will define the criteria require by a natural or legal person to act as a contractor within the building construction industry in Malta. Through licensing there will be improved enforcement of construction regulations as well as clear requirements as to who may provide the said services. This combination aims to improve the quality standards in construction, provide a more professional working environment for operators, and establish contractors' responsibility in the three main service activities being subject to licensing.

The Building and Construction Authority Act (Cap. 623) already provides for the issue of licences by the Building and Construction Authority (BCA), whilst the recent amendments to the Building and Construction Authority Act[2] have enabled the Minister to set-up committees to perform duties assigned to the Authority including the issue of licences.

The Construction Licensing Regulations will provide:

(i) The setting up of the Construction Licensing Committee with the specific task to issue licenses to eligible applicants;
(ii) Licenses will be introduced in relation to three service activities, namely Demolition, Excavation and Construction;
(iii) The establishing of procedures and criteria against which licenses for the respective service activity can be issued.

The licensing regime shall be fully operational by 1st January 2025. However interim temporary measures will be in place with regards to applications submitted till 31 May 2024 in the form of a provisional clearance will be provided so that any prospective licensed contractors will be allowed to meet the minimum criteria thresholds to be eligible for the licence but will still be able to operate.

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[1]These Explanatory Notes are for the purpose of and in accordance with Article 3(2)(c) and Schedule III of Chapter 512 of the Laws of Malta.

[2]Act XVI of 2023 – Various Laws relating to Building and Construction (Amendment Act), 2023

The main objectives of these regulations are:

1. to define the responsibilities and obligations of the contractors;
2. the setting up of a licensing regime which will seek the improvement in the level of professionality in the industry through defined criteria;
3. the setting up of adequate administrative tools for better enforcement and control of the industry.

3. Overview of the structure of the instrument

Regulation 1 – Citation and Commencement
Regulation 2 – Interpretation
Regulation 3 – Applicability and transitory provisions
Regulation 4 – Contractor's licence
Regulation 5 – Responsibility
Regulation 6 – Establishment of the Committee
Regulation 7 – Secretary to the Board
Regulation 8 – Committee
Regulation 9 – Term of office
Regulation 10 – Functions of the Committee
Regulation 11 – Meetings of the Committee and procedure
Regulation 12 – Remuneration of the Committee members
Regulation 13 – Publication of the application for licence
Regulation 14 – Eligibility
Regulation 15 – Application for issuance of licence
Regulation 16 – Licencing decisions by the Committee
Regulation 17 – Notice to grant a licence
Regulation 18 – Licence certificate
Regulation 19 – Decision to refuse an application for a licence
Regulation 20 – Renewal of licences and provision of training and courses
Regulation 21 – Changes to register
Regulation 22 – Application for the cancellation of a licence
Regulation 23 – Offences
Regulation 24 – Administrative penalties
Regulation 25 – Suspension and revocation of a licence

Schedule I – Service Activity
Schedule II – Criteria for Each Service Activity
Schedule III – Fees

4. Commentary

Regulation 1 introduces the title of the regulations being the Construction Industry Licensing Regulations, 2023.

Regulation 2 introduces a set of definitions, defining the main terms that are being referred to in these regulations.

Regulation 3 explains the general provisions of the regulations, namely:

a) Provides that the licence regime is to be fully functional by the 1st January 2025.
b) The timelines for the rollout out of the legislation, including when it will not be possible to provide services without an initial clearance and subsequently without a licence as indicated in Figure 1.
c) The implications to a service provider if he does not abide by this regulation or any other regulations within the Act or other regulations thereunder.

Regulation 4 establishes the contractor's licence as well as the institutions that are exempt from the requirement of holding a licence to perform works. The regulation also outlines that fees are applicable for licence holders.

Regulation 5 provides the responsibilities of licence holders and directs licence holders to abide by all other regulations at law or any directions given to them by the Authority, that they abide by directions given by the perit or any other person responsible at law and that any works carried out by a contractor should be adequately covered by an insurance policy.

Regulations 6 to 10 specify how the Construction Industry Licensing Committee shall be established, its remit, its composition, its term and the criteria required to be eligible to sit on the committee.

Regulations 11 and 12 outline the minimum procedural requirements of the committee's function including how the committee shall meet, the quorum, remuneration, conflict of interest and voting on decisions whilst at the same time allowing the committee to regulate its own procedure on other matters.

Regulation 13 explains how the Authority shall communicate with the public and where it shall publish information regarding licence applications, the criteria to become eligible to apply for a licence and the related fees.

Regulations 14 and 15 detail the eligibility criteria and the information required to apply for a contractor's licence and highlights that each service activity requires a separate licence application.

Regulations 16, 17 and 19 explain the operational activities of the Committee while processing licencing, including the time that certain activities should take, the additional information that the Committee might request and how the Committee shall publicise its decisions and inform the applicant. The regulations also specify the content that the licence document shall hold including its expiry date and where to find the fees applicable to be issued the licence. In the case a licence application is turned down the regulations stipulate that the applicant needs to be informed of the reason to refuse the application and also his rights under the regulations including appeal to the Building and Construction Tribunal.

Regulation 18 specifies that the licence that has been issued to the contractor should be always held by the contractor, and that any defaced licence certificates must be replaced. The regulation also specifies that the information of the contractor shall be held in a register.

Regulation 20 specifies the validity period of the licence, following which the contractor shall have to submit a new valid complete application to renew his licence that will have to be re-evaluated and where necessary the contractor shall be requested to attend courses to keep up-to-date on the latest advances in the sector.

Regulation 21 specifies that any changes in licence details or change in the nominated persons must be communicated to the Authority without delay. If there is a change in the licence administrator, the Authority must be informed within 3 working days. In such a case works must be suspended until an appropriate substitute is approved by the Committee.

Regulation 22 explains the process to apply for the cancellation of a licence and the timelines for the committee to process the application and the terms associated with the cancellation request.

Regulations 23 and 24 explain the types of offences that any person or entity can be found guilty of and the fines or imprisonment, or both, that he shall be liable to in such cases while also providing for administrative penalties that can also be issued in respect of such offences and the remedies available in such circumstances. In the case where the offender accepts responsibility for an offence and pays the associated administrative penalty and implements remedial measures, the Authority shall not institute criminal proceedings against him.

Regulation 25 details the circumstances under which a licence can be suspended or revoked by the Building and Construction Authority Board or the Court of Magistrates as a Court of Criminal Judicature. Such decisions shall be published by the Authority in the Gazette and the Authority's website. An aggrieved person or entity shall have a right of appeal before the Tribunal. This regulation also provides for re-instatement of a licence based on remedial action by the contractor.

Schedule I lists the service activities that require a licence.

Schedule II lists the criteria that must be fulfilled to obtain a licence for the service activities listed in Schedule I and indicates that such criteria must be fulfilled as from the 1st of January 2025 by a licenced contractor. This Schedule also provides for considerations that the Committee might have to qualify applicants in light of satisfying the criteria.

Schedule III define the Fees payable for administrative work and the licence respectively.

5. Implementation

In accordance with the regulations the implementation shall be as indicated in the following diagram:

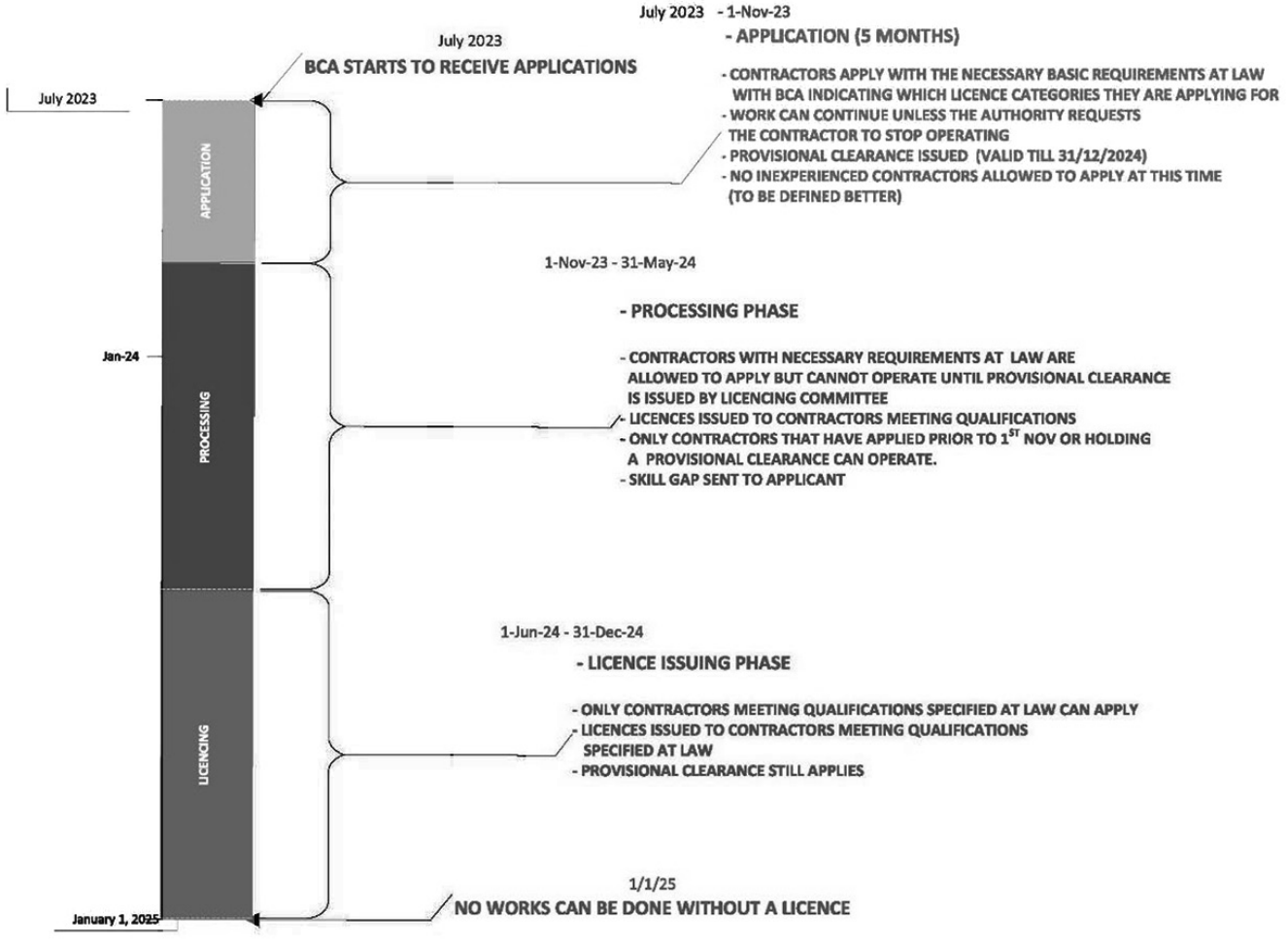


Figure 1 . Implementation timeline of the Regulations.

Contractors failing to apply with the BCA by the 31st of October 2023 shall not be allowed to offer the services outlined in this legislation.

6. Conclusion

These regulations shall come into force on the date established by the Minister.

For more information or clarification on the implementation of these regulations, kindly refer your queries to BCA via email on (info@bca.org.mt) or via telephone on 80049000.

N.B. These Explanatory Notes are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Explanatory Notes do not purport to be an authoritative ruling on the interpretation of the legislation.

18th July, 2023