



THE PROFESSIONAL CENTRE
SLIEMA ROAD
GZIRA GZR 1633 - MALTA
TEL./FAX. (+356) 2131 4265
EMAIL: info@kamratalperiti.org
WEBSITE: www.kamratalperiti.org

K A M R A T A L - P E R I T I

To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community

CIRCULAR 09/2019

2nd July 2019

RE: Further updates on Legal Notice 136 of 2019

Dear Colleagues,

As you are aware, another meeting was held this morning with the Minister Dr Ian Borg, the Parliamentary Secretary Mr Chris Agius, and the Director BRO Mr Johann Buttigieg. Updates on our position taken at the last EGM will be announced at the next EGM which has been urgently called for Friday 5th June 2019, details of which were issued earlier today. Your presence is solicited and appreciated.

It is to be noted that the forms relating to requests for exemptions, site management, etc have been amended in line with the *Kamra's* requests, and are now available online on the PA website and on eApps.

Meanwhile, the following guidance notes supercede those issued in Circular 07/2019 and Circular 08/2019 with regards to Legal Notice 136 of 2019.

Declaration in terms of Regulation 4 of the Legal Notice

This declaration is to be submitted for all projects which do not fall under the requirements of the Legal Notice in the sense that they do not include any of the activities listed in Regulation 4. Typical examples could include:

- Change of use;
- Fixing of signage;
- Façade restoration works including replacement of external apertures;
- Internal alterations relating to non-loadbearing structures; or
- Excavation, demolition or construction works where there are no adjacent third parties.

This declaration must always be made, unless the works fall under Regulation 4, in which case the other forms outlined below are to be used.

Declaration in terms of Regulation 26 of the Legal Notice

The declaration in terms of Regulation 26 is to be used when the works are contemplated in Regulation 4 but, in your professional opinion, the "*structural interventions will not affect third party property*". This declaration must be made before any works may continue on any ongoing site, including works which were previously covered by the exemptions of LN 72 of 2013 (which are now no longer exempt). The following considerations are important when submitting declarations in terms of Regulation 26:

- (1) In your assessment, it is important to consider whether the execution of the works may cause a risk of damage to third parties, as a result of the structural interventions. This generally means that:

- there are no excavations which, even though not directly abutting third party property, could affect, in some way, third party property;
 - that there are no demolition works adjacent to existing buildings, even if not directly in contact with such building, which could affect such adjacent buildings; or
 - that there are no construction works that could, in some way, impact any adjacent or underlying existing buildings, even if the intention is to build separate party walls.
- (2) The form has been updated, at the request of the *Kamra*, to state that “*I, the perit in charge of the project, hereby certify that the proposed structural interventions will not affect third party property save for minor damages that could occur and hence regulations 4,5,6,7,8 of the Legal Notice do not apply.*” In addition, the *Kamra* has requested that the word “certify” is changed to “declare”, however this would require a change to the Legal Notice, which we hope will be updated shortly.
- (3) In using this form, your professional judgement prevails.
- (4) In situations where *periti* are being pressured to issue declarations on the basis of Regulation 26, and where this is, in their professional judgement, not justified, you are advised to following the same procedure outlined in Directives 03/2019 and 04/2019.

Guidance regarding Regulation 25 of Legal Notice 136 of 2019 – Form A

Form A is to be used in cases where it is deemed that an exemption may be requested from the submission of a method statement, condition report or the requirement for insurance and bank guarantee in cases where the works still pose a risk to third parties. This form has been updated, following the *Kamra's* request, to clarify that one may request exemption from one or more of the listed items.

This request may be used, as an example, in the following cases:

- Where a method statement had already been submitted prior to the coming into force of the Legal Notice and the remaining works do not affect such method statement;
- Where condition report/s had already been submitted prior to the coming into force of the Legal Notice and the remaining works will not have any impact on the adjacent third parties other than what had already been previously assumed in the first place;
- Where insurance cover and bank guarantees were taken out prior to the coming into force of the Legal Notice, and where the new requirements are considered to be excessive or where the remaining works have already been practically executed and are thus less likely to have an impact on third party property.

In all cases, it is the *Kamra's* opinion that insurance cover should always been taken out, and in cases were clients insist on the submission of such a request for exemption it is recommended that you follow the procedure outlined below.

Requests in terms of Form A require approval by the Director BRO.

Guidance regarding Regulation 25 of Legal Notice 136 of 2019 – Form B

Form B consists of a request for exemption from the requirement imposed by Regulation 5(1) for the contractor to nominate a Site Technical Officer. In various fora, the legislator has declared that the Site Technical Officer is only required in cases where demolition and excavation works are being carried out, and not where the works consist of construction only, including the addition of floors over existing third parties. It is unclear where this exemption from the requirement of providing a Site Technical Office emanates from and we are seeking further legal advice on this matter.

This form simply states that the perit and the mason are assuming the obligations and responsibilities emanating from the Civil Code, and that the contractor (who could also be the mason) is assuming responsibilities in terms of Legal Notice 293/16.

It is important to note that the perit in charge of the project, who is assuming responsibility for the works in terms of the Civil Code, may be different from the *perit* in charge of the planning permit application, as long as there is a written agreement between the two *periti* clearly establishing lines of responsibility. The *Kamra* will be working on creating standard forms of agreement for use by periti in the coming months. In any case, the form is to be uploaded by the *perit* in charge of the planning permit application.

Meanwhile, the *Kamra tal-Periti* will continue to insist with the Planning Authority that the planning application form is amended to remove the declaration regarding responsibility for the works, as approved by our last EGM.

Requests in terms of Form B require approval by the Director BRO.

Guidance regarding Regulation 25 of Legal Notice 136 of 2019 – Form C

Form C is to be used where there is a risk to third party properties, but where there is an urgency to carry out the works, since delays may increase the relative risks.

In such cases, *periti* are to fill in the respective form, ticking the “*Request to effect emergency works*” option. Works under this category may include the following, which are given only as examples for guidance purposes:

- Shoring up or replacement of dangerous structures, subject to the standard clearance having been received from the Planning Authority;
- Closing off of excavation sites where exposed third party foundations are at risk, especially where the exposed rock or land formation shows evidence of possible instability;
- Bracing of partly constructed walls, such as in the case where the loadbearing walls have partly or completely built, but require the casting of the ceiling structure to ensure their stability;
- Construction of parapet walls for safety purposes;

- Casting of roof screeds and waterproofing works;
- And similar cases.

Requests in terms of Form C require approval by the Director BRO.

Additional Guidance

The following is additional guidance that may be useful in terms of the Legal Notice:

- (1) Road works fall within the definition of “*construction work*” and therefore if they pose a danger to third party property, should be compliant with the Legal Notice. The *Kamra* has been informed that works within a certain distance of third party property are to comply with the Legal Notice. We are seeking clarification on the actual distance.
- (2) Any requests for exemptions granted by the BRO prior to the coming into force of Legal Notice 136 of 2019 are to be resubmitted in order to confirm their compliance with the new Regulations, if applicable. It is important to keep in mind that all requirements of the Legal Notice should be in place, including insurances to be taken out by the respective parties.
- (3) With regard to the content of the method statements, the *Kamra tal-Periti* has requested that these be split into two: Works Specifications to be prepared by a *perit*, and a method statement to be prepared by the contractor. This proposal has not yet been accepted by Government, however we will continue to put forward our case in this regard. In the meanwhile you are within your rights, in terms also of your contracts with your clients and the contractor’s contract with the client, to request that parts of the requirements in the Schedules relating to Method Statements are prepared by the contractor and submitted together with the rest of the submissions prepared by the *perit*.
- (4) In all cases, it is recommended that you ensure with your PII provider that the declarations being submitted in terms of this Legal Notice are covered by your policy.
- (5) The *Kamra tal-Periti* has requested several other amendments to the Legal Notice, a few of which have been taken on board, but others not. These will be discussed at the forthcoming EGM.

Submissions in terms of the Legal Notice

Periti are advised that in all cases, submission of information or requests for exemptions as outlined above, are to be made via eApps and uploaded to the relevant PA number, rather than sending them by email to BRO. This will avoid double handling and will also allow the information to be instantly available to the public.

Endorsement by Developer

Regulation 5(3) of the Legal Notice states that *“The developer shall take all reasonable precautions to ensure that the construction activity will not result in any damage to contiguous properties, including damage that may result from the infiltration of water.”*

The *Kamra* requested that the developer is included as one of the signatories to the forms, however this request has not yet been acceded to. In view of this it is recommended that you request a signed declaration from the developer, to be uploaded onto eApps with the relevant form, stating the following (or similar wording depending on the case):

I, ..., ID No ..., in my capacity developer for the works approved under PA..., hereby declare that I am aware of the responsibilities pertaining to the undersigned in terms of Legal Notice 136 of 2019, and that I have acknowledged the submission and content of the following (include list of forms / method statements / condition reports / etc).

Particularly in the case of the Regulation 25 Form A, where a request for exemption for taking out insurance cover and bank guarantees is being made it is recommended that the following declaration is requested from the client (or similar wording depending on the case):

I, ..., ID No ..., in my capacity as developer for the works approved under PA..., hereby declare that I have requested Perit ... to submit a request for exemption from the requirements of Regulation 6 of Legal Notice 136 of 2019 (insurance cover and bank guarantee). I further declare that I am aware of the responsibilities pertaining to the undersigned in terms of the Legal Notice 136 of 2019, and that I have acknowledged the submission and content of the following (include list of forms / method statements / condition reports / etc).

Direction from BRO

The *Kamra tal-Periti* has requested the BRO to publish clear guidelines as to other circumstances where Regulation 25 can be used. Instead, it is to be noted that the requests for exemptions and approvals will be available to the public, even so that you may guide your clients who are the third parties concerned with regard to works on adjacent sites. This will give you an indication of the sort of works that are being granted exemptions. Third parties may, if they so wish, object to the granting of such exemption, and the Director BRO will consider such claim.

Note

All Directives and Circulars are being sent to all *periti* who are on the *Kamra's* database. If you meet colleagues who are not receiving such communications, kindly ask them to send an email to buildingregs@kamratalperiti.org so that the records can be updated.

Perit Simone Vella Lenicker

President

The *Kamra tal-Periti* is affiliated to the International Union of Architects (UIA), the Architects' Council of Europe (ACE), the Commonwealth Architects' Association (CAA), Union of Mediterranean Architects (UMAR) and European Forum for Architectural Policies (EFAP).