



Consultation Reply

Draft Legal Notice

Amendments to the Regularisation of Existing Development Regulations

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Reference is made to the consultation process currently under way in relation to the draft legal notice to amend the Regularisation of Existing Development Regulations, S.L.552.26.

The introduction to the public consultation webpage states that “[t]he government has requested the Planning Authority (PA) to propose amendments to the Regularisation of Existing Development Regulations. These proposals include developments that fall within a Category 1 Rural Settlement, and pre-2016 properties which have their site perimeter partially beyond the development boundaries but covered with an existing permit.”

The Kamra tal-Periti is hereby providing its position on the draft published for public consultation.

General Comments

The Kamra had already raised several objections to the original set of regulations, which it still stands by today. Please refer to the links below.

https://kamratalperiti.org/wp-content/uploads/Regularisation-regulations_KTP-comments.pdf

<https://kamratalperiti.org/cir-16-19-ctbs-and-regularisation/>

<https://kamratalperiti.org/property-owners-with-a-ctb-concession-at-risk-2/>

<https://kamratalperiti.org/planning-authority-responds-to-the-kamras-concerns-about-ctbs-by-citing-the-funds-it-has-generated-as-a-result/>

Five years have passed since the regularisation regulations were brought into force, making it possible to provide an assessment of their impact and utility in their current format.

The regularisation scheme served the purpose of placing properties that could not be put on the market due to unsanctionable and irreversible illegalities, and thus had no effective value, back into the real estate market.

Such unsanctionable and irreversible illegalities can only be regularised if they meet both of the following criteria:

- 1.They were effected prior to 2016
- 2.They do not cause injury to amenity

Since the original regulations were published for consultation in 2016, the Kamra has insisted that the PA should provide an adequate definition of the term “injury to amenity”, however such calls fell on deaf ears.

A recent decision of the Environment & Planning Review Tribunal, concerning ownership of airspaces, indicates that many, if not most, regularisation permits issued since 2016 on the grounds that they do not cause injury to amenity, may actually be null and void, potentially placing a ticking time bomb under the industry and exposing the PA to significant financial liability. This could have been altogether avoided, had the Kamra's expert opinions been seriously considered, rather than summarily dismissed.

It is also incomprehensible how those whose amenity could potentially be injured are not entitled to register their objection and appeal any decision the PA may take. Indeed, unlike in other types of planning applications, no site notices are affixed on buildings subject to regularisation applications reducing the opportunity for public participation in decision-making in breach of European Directives on the matter.

It is also pertinent to note that regularisation applications are exempt from consultations from other relevant public authorities, including the Superintendence of Cultural Heritage (SCH). This is particularly problematic given that properties located within UCA are currently included in the regularisation scheme. The illegalities being regularised may very well be in conflict with heritage policies. The expansion of the scheme to partially include the ODZ without the possibility to receive feedback from other regulatory authorities, such as the Environment & Resources Authority (ERA) and the Agricultural Advisory Committee (AAC), may further undermine the protection of the environment and the agricultural industry.

Who benefitted from this scheme?

It is evident that the primary beneficiaries of this scheme were the **owners** who were unaware that they bought a property with illegalities. They were, for all intents and purposes, conned and their good faith abused. When putting their property on the market, they suddenly realised that all the effort, time and sacrifice put into paying their home off was in vain, as the illegalities which they were unaware of rendered their property devoid of any value.

While it is true that they could have sought professional advice before acquiring their homes, all property buyers have a legitimate expectation that a vendor is selling them a legally compliant property. Indeed, many transfer deeds contain clauses wherein vendors guarantee that the property is "built according to planning and building regulations". Thus, property owners could

seek legal recourse for compensation or redress from the vendors, who in most cases would be the developers of the building. Thus, the regularisation scheme provided an opportunity to avoid going to Court to seek redress with an uncertain outcome and apply for regularisation to make their property compliant with at least planning regulations, if not building regulations. This effectively put **developers** off the hook from having deeds they signed off rendered null and void, and limiting the scope of compensation to planning and professional fees. In practice, however, the victims paid the (monetary) price for regularising their position while the perpetrators were absolved from all penalties.

Indeed, the high fees effectively make it unaffordable for people on lower incomes, who are more likely to have been cheated when acquiring their homes if they could not afford professional support. It is the Kamra's view that the perpetrators of the illegalities should be responsible for paying the regularisation fees, and not the victims.

The **Planning Authority** also greatly benefitted financially from the scheme. In 2019 alone, the PA generated €29 million through regularisation applications, some of which it used to finance the Irrestawra Darek scheme. Indeed, it may be argued that the PA has become financially dependent on regularisations. It reached the point where regularisation applications are being demanded from planning officers to regularise discrepancies of one or two centimetres, adding thousands of euro to the total planning fee revenues per applicant.

It is pertinent to understand as part of this consultation process, whether the PA has made any estimates or forecasts on the number of regularisation applications it is expecting to receive and the funds it will generate as result of the expansion of the scope of the scheme. Moreover, it would be important to understand where any increase in revenues shall be diverted.

Indeed, the number of regularisation applications under the current scheme have been gradually declining, as the stock of eligible buildings requiring such regularisations diminishes, with the few that are left being owned by those who cannot afford the regularisation fees or those that are still unaware that their property is illegal.

The current regularisation scheme is morally dubious, as it rewards those who break the law at the environmental and social expense of all those who follow it. This scheme encourages a

mentality that paying money and asking for forgiveness while still profiting from misdeeds is an acceptable substitute for behaving correctly and complying with statutory requirements.

Social justice and equity seem to have been side-lined altogether in the design of the original regularisation scheme. Moreover, whilst the scheme has allowed several properties to be placed on the market, the end result is still a significant number of properties that are substandard, poorly fabricated, or which fail to comply with building regulations, including the Energy Performance in Buildings Regulations. It is the Kamra's position that the scheme should be reconsidered in its entirety to mitigate its social and environmental impacts.

Proposed amendments

1. Inclusion of Category I Rural Settlements

Category I rural settlements form part of the Outside Development Zone. It is thus essential that regularisation permits do not legalise developments that are not compatible with the local rural identity.

However, the term “injury to amenity” is too broad and vague to effectively curtail environmentally, socially or culturally unacceptable illegalities from being regularised. The Kamra’s calls back in 2016 to clearly define this term fell on deaf ears, opening it up to subjective interpretation.

While regularisation of deficient clear internal heights and other minor discrepancies with sanitary regulations may be deemed to have a negligible impact, this amendment will allow the regularisation of changes of use to Class 4a (offices) and Class 4b (shops), which would otherwise be in breach of the Local Plans for such rural settlements. These types of illegalities should not be regularised due to their incompatibility with the rural character of ODZ.

The urbanisation of any part of the ODZ, including rural settlements, should be avoided at all costs, no matter the impact this has on individual private owners. The public good and the preservation of the rural environment and its characteristics should always prevail over private interests.

It is further recommended that the ERA and AAC be brought in as consultees of such applications.

2. Illegal development straddling Development Scheme and ODZ

While the Kamra recognises that there are indeed cases where properties built within the development scheme having parts of their site boundaries located within ODZ have thus far been ineligible for regularisation, it is essential to avoid creating regulations that are open to

abuse. Once again, the need arises for specific parameters to be set within which regularisation of such properties can and cannot be sought.

The Kamra thus proposes that no part of the illegal building should be located within ODZ, and that the site boundary that extends into the ODZ should be entirely undeveloped and free from hard landscaping.

END