

THE LOCAL GOVERNMENT (AMENDMENT) BILL

Bill No. 09 of 2018

Government Gazette of Mauritius No. 63 of 14 July 2018

THE LOCAL GOVERNMENT (AMENDMENT) BILL

(No. IX of 2018)

Explanatory Memorandum

The main object of this Bill is to amend the Local Government Act to provide for the implementation of measures announced in the Budget Speech 2018-2019 as regards illegal constructions and developments.

2. The Bill, accordingly, provides for –

- (a) the harmonisation and strengthening of legal provisions pertaining to illegal constructions and developments, and give more powers to local authorities;
- (b) the increase of penalties for illegal constructions and developments;
- (c) mandatory pulling down orders by District Courts for illegal constructions and developments; and
- (d) related matters.

06 July 2018

F. JEEWA-DAUREEAWOO, G.C.S.K.
*Vice-Prime Minister, Minister of Local
Government and Outer Islands*

THE LOCAL GOVERNMENT (AMENDMENT) BILL

(No. IX of 2018)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 2 of principal Act amended
4. Section 61 of principal Act amended
5. Part VIII of principal Act amended

6. Section 158 of principal Act amended
7. Consequential amendments
8. Commencement

A BILL

To amend the Local Government Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Local Government (Amendment) Act 2018.

2. Interpretation

In this Act –

“principal Act” means the Local Government Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “development”;
- (b) by inserting, in the appropriate alphabetical order, the following new definitions –

“building” includes –

- (a) a movable dwelling or other movable structure;
- (b) a permanent or temporary structure erected or made on, in or under any land;
- (c) any added structure to an existing building which materially affects the external appearance of the building;

“development works” –

- (a) means construction works involving a permanent or temporary structure;
and
- (b) includes –

- (i) the erection, extension or demolition of a building;
- (ii) the alteration of, or repair to, a building;
- (iii) the making of a material change in the use of a building or land within the curtilage of the building;
- (iv) the division of land;
- (v) any construction on any drain, river, canal or any other watercourse;
- (vi) any site preparation works or excavation works carried out for the purpose of subparagraph (i), (ii), (iii), (iv) or (v), including urban landscaping works; but

(c) does not include –

- (i) works for the maintenance, improvement or other alteration of a building, where the works affect only the interior of the building or do not materially affect the external appearance of the building;
- (ii) works required for the maintenance or improvement of a road where the works are carried out on land within the boundaries of the road;
- (iii) works carried out for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, underground or overhead cables or other apparatus;
- (iv) the use of a building or land within the curtilage of a dwelling house for a purpose incidental to the enjoyment of the dwelling house;
- (v) the use of any land for the purposes of agriculture and forestry;
- (vi) works relating to a gate, hoarding or boundary wall not higher than 1.8 metres, other than –

(A) one which borders a road; or

- (B) an enclosure crossing, or standing within 2 metres of, a watercourse;
- (vii) works relating to a single storey trellis, pergola or gazebo;
- (viii) works relating to a drain not more than 300 millimetres deep in residential premises;
- (ix) works relating to the setting up of a greenhouse for crop production on agricultural land;
- (x) works relating to a temporary stall or shed of lightweight material within any premises used for the purpose of holding a trade fair, a fun fair, or an exhibition, lasting not more than 6 months;
- (xi) works relating to the demolition, restoration or reinstatement of a non-load bearing wall;
- (xii) works relating to the replacement or changing of windows or doors in a building not exceeding 2 storeys; or
- (xiii) works relating to the replacement of existing floor and wall finishes;

“Environment and Land Use Appeal Tribunal” means the Environment and Land Use Appeal Tribunal established under section 3(1) of the Environment and Land Use Appeal Tribunal Act;

“Outline Planning Permission” has the same meaning as in section 6A(5) of the Town and Country Planning Act;

4. Section 61 of principal Act amended

Section 61 of the principal Act is amended by inserting, after subsection 7, the following new subsection –

(7A) Any person who fails to comply with subsection (7)(a) shall commit an offence and shall, on conviction, be liable to a fine of not less than 10,000 rupees and not exceeding 50,000 rupees.

5. Part VIII of principal Act amended

Part VIII of the principal Act is amended –

(a) in Sub-part F –

(i) in section 117 –

(A) by repealing subsections (1) and (2) and replacing them by the following subsections –

(1) No development works shall be undertaken unless a Building and Land Use Permit has been issued in respect of those works.

(2) Where a person intends to undertake development works, he shall make an application to the Municipal City Council, Municipal Town Council or District Council, as the case may be, for a Building and Land Use Permit.

(B) in subsection (3), by adding the following new paragraph, the full stop at the end of paragraph (e) being deleted and replaced by the words “; and” and the word “and” at the end of paragraph (d) being deleted –

(f) any other enactment as may be prescribed.

(C) in subsection (4) –

(I) in paragraph (a), by deleting the words “under subsection (2) or” and replacing them by the words “for a Building and Land Use Permit under subsection (2) or section 127A(4)(b), or for an Outline Planning Permission”;

(II) in paragraph (aa), by inserting, after the word “permit”, the words “an approved preliminary environmental report or an EIA licence”;

(III) in paragraph (e), by inserting, in the appropriate alphabetical order, the following new definitions –

“approved preliminary environmental report” means a preliminary environmental report approved under section 16(6)(a) of the Environment Protection Act;

“EIA licence” has the same meaning as in the Environment Protection Act;

- (D) in subsection (6), by inserting, after the words “Building Control Act”, the words “, the Environment Protection Act”;
- (E) in subsection (7) –
 - (i) by deleting the words “subsections (9) and (10)” and replacing them by the words “subsection (9)”;
 - (ii) in paragraph (a), by deleting the words “issue to the applicant an Outline Planning Permission or a Building and Land Use Permit, as the case may be,” and replacing them by the words “approve the application”;
- (F) in subsection (8)(a), by deleting the words “issue to the applicant an Outline Planning Permission or a Building and Land Use Permit, as the case may be” and replacing them by the words “approve the application”;
- (G) in subsection (9), by deleting the words “development of land, construction of a building or extensive alterations, or additions or repairs to an existing building” and replacing them by the words “development works”;
- (H) in subsection (10) –
 - (i) by repealing paragraph (a) and replacing it by the following paragraph –
 - (a) Where an application is approved under subsection (7)(a) or (8)(a), the Municipal City Council, Municipal Town Council or District Council, as the case may be, shall –

- (i) on payment of such fee as may be prescribed by the Council; and
- (ii) on payment of the penalty fee referred to in section 127A(5)(a), where applicable,

issue the Building and Land Use Permit or Outline Planning Permission, as the case may be, on such conditions as the Council may determine.

- (II) in paragraph (b), by deleting the words “paragraph (a)” and replacing them by the words “paragraph (a)(i)”;
 - (I) in subsection (11)(a), by inserting, after the words “subsection (10)”, the words “and, where applicable, on payment of the penalty fee referred to in section 127A(5)(a)”;
 - (J) in subsection (14), by deleting the words “established under section 3(1) of the Environment and Land Use Appeal Tribunal Act”;
- (ii) by repealing section 120 and replacing it by the following section –

120. Validity of Building and Land Use Permit

A Building and Land Use Permit shall lapse within 2 years from the date of issue of the permit unless any of the following works has been undertaken –

- (a) for works at ground level, the external walls of the building are raised to at least 600 millimetres above the floor slab;
- (b) for a vertical extension to an existing structure, the external walls of the building are raised to at least 600 millimetres above the floor slab of the lower floor;

- (c) for a building with basement, the external walls are raised to at least 600 millimetres above the poured slab of the ground floor above;
 - (d) for a timber construction, 20 per cent of the framing structure on the level where construction is being undertaken is lifted and standing;
 - (e) for a steel construction, 20 per cent of the steel framing structure on the level where construction is being undertaken is lifted and standing;
 - (f) the surrounding excavation of foundations are backfilled to avoid water ponds; or
 - (g) such other works as may be prescribed.
- (iii) by inserting, after section 120, the following new sections –

120A. Obligations of holder of Building and Land Use Permit

The holder of a Building and Land Use Permit shall –

- (a) before the development works start, inform, in writing, the local authority which issued the permit;
- (b) at all times, during which development works are being undertaken, comply with the conditions of the permit; and
- (c) at all times, during which buildings works are being undertaken, comply with such guidelines as may be issued, or regulations as may be made, by the Mauritius Fire and Rescue Service, the Sanitary Authority, the Energy Efficiency Management Office, the National Heritage Fund or any Ministry.

120B. Inspections

(1) An authorised officer shall, during the period where development works are being undertaken, carry out, in the presence of the holder of the Building and Land Use Permit,

regular inspections to ascertain whether the conditions of the Building and Land Use Permit are being complied with.

(2) An authorised officer shall, when an inspection is made, make an entry to that effect in a log book and the authorised officer and the holder of the Building and Land Use Permit shall both sign the entry.

120C.Occupation certificate

(1) Where a building or part of a building has been erected pursuant to a Building and Land Use Permit, that building or part of that building shall not be inhabited, used or occupied unless an occupation certificate has, subject to subsection (7), been issued by the local authority which issued the permit.

(2) An application for an occupation certificate shall –

- (a) be made by the holder of a Building and Land Use Permit;
- (b) be made on the completion of the erection of the building or part of the building;
- (c) be made, in such form as may be prescribed, to the local authority which issued the Building and Land Use Permit; and
- (d) in case the building or part of the building has a floor area of 150 square metres or more, be accompanied by a clearance certificate which shall be issued by a principal agent, certifying that the building or part of the building has been erected in accordance with the Building and Land Use Permit.

(3) Where an applicant complies with his Building and Land Use Permit and the builder and developer pay, where applicable, the necessary premiums for an insurance policy in accordance with section 21 of the Building Control Act, the local authority shall issue to the applicant an occupation certificate within 5 working days from the date of the application made under subsection (2).

(4) (a) Where an applicant fails to comply with his Building and Land Use Permit, the local authority shall, in accordance with section 127B, issue an enforcement notice specifying the measures that shall be taken to comply with his permit.

(b) Where an applicant takes the measures pursuant to paragraph (a) and the builder and developer pay, where applicable, the necessary premiums for an insurance policy in accordance with section 21 of the Building Control Act, the local authority shall issue an occupation certificate to him within 5 working days from the date on which all the measures have been taken.

(c) Where an applicant fails to take the measures pursuant to paragraph (a), the local authority shall reject the application and shall inform the applicant of its decision, giving its reasons.

(d) Any applicant who is aggrieved by the decision of a local authority under paragraph (c) may appeal to the Environment and Land Use Appeal Tribunal.

(5) Where a person allows a building, in respect of which no occupation certificate has been issued, to be inhabited, used or occupied, he shall commit an offence and shall, on conviction, be liable to a fine of not less than 10,000 rupees and not exceeding 50,000 rupees.

(6) The date of issue of an occupation certificate shall be deemed to be the date the building or part of the building is inhabited, used or occupied.

(7) No occupation certificate shall be required in relation to such building as may be prescribed.

(8) In this section –

“applicant” means a person who applies for an occupation certificate;

“builder” has the same meaning as in the Building Control Act;

“developer” has the same meaning as in the Building Control Act;

“principal agent” has the same meaning as in the Building Control Act.

(iv) (M) in section 122, in subsection (2), by deleting the word “Part” and replacing it by the words “Parts I and”;

(b) by adding the following new Sub-part –

Sub-Part G – Enforcement Provisions

127A.Compliance notice

(1) (a) Where a person undertakes development works without a Building and Land Use Permit, the Chief Executive shall, subject to paragraph (b), cause to be served on that person a compliance notice ordering that person to make an application for a Building and Land Use Permit.

(b) Where a person undertakes development works in a or on any canal, river or drain without having obtained an approval or a permission required under any other enactment, the Chief Executive shall, notwithstanding paragraph (a), serve on that person a pulling down notice in accordance with section 127C.

(2) A compliance notice shall, inter alia –

(a) specify the period, not exceeding 30 days, within which the application for a Building and Land Use Permit shall be made; and

(b) be in such form as may be prescribed.

(3) Where a compliance notice is served on a person, he shall not undertake any further development works unless he has been issued with a Building and Land Use Permit.

(4) Where a person who has been served with a compliance notice under subsection (1)(a) –

(a) fails to make an application for a Building and Land Use Permit, the Chief Executive shall, in accordance

with section 127C, serve on that person a pulling down notice ordering the pulling down of those development works; or

- (b) makes an application for a Building and Land Use Permit, that application shall be dealt with in accordance with section 117.

(5) (a) Where the local authority approves an application made pursuant to this section under section 117(7)(a) or (8)(b), the local authority shall not issue the Building and Land Use Permit unless the applicant pays to the local authority, in addition to the fee payable under section 117(10)(a)(i), a penalty fee of 50,000 rupees within 28 days of being notified that his application has been approved.

(b) Where the applicant referred to in paragraph (a) fails to pay the penalty fee, the approval of the Building and Land Use Permit shall lapse and the Chief Executive shall, in accordance with section 127C, cause to be served on that person a pulling down notice ordering the pulling down of the development works.

(6) A person shall not be prosecuted for having undertaken development works without being the holder of a Building and Land Use Permit –

- (a) as long as the delay granted in the compliance notice in relation to the development works has not lapsed; or
- (b) where he has, pursuant to a compliance notice, applied for, and been issued with, a Building and Land Use Permit in relation to the development works.

127B. Enforcement notice

(1) Where the holder of a Building and Land Use Permit undertakes development works which are not in accordance with the permit, the Chief Executive shall cause to be served on the person an enforcement notice.

- (2) An enforcement notice shall, inter alia –

- (a) specify the conditions that have not been complied with;
- (b) specify the measures, including pulling down measures, to be implemented to comply with the conditions;
- (c) specify the period, not exceeding 30 days, within which the measures shall be implemented; and
- (d) shall be in such form as may be prescribed.

(3) Where an enforcement notice in relation to the holder of a Building and Land Use Permit is in force, he shall not undertake any further development works unless the measures referred to in subsection (2)(b) have, to the satisfaction of the Chief Executive, been implemented.

(4) A holder of a Building and Land Use Permit shall not be prosecuted for not complying with his permit –

- (a) as long as the delay in the enforcement notice has not lapsed; or
- (b) where, pursuant to an enforcement notice, he complies with his permit.

127C. Pulling down notice

(1) Where a person undertakes development works –

- (a) without being the holder of a Building and Land Use Permit; or
- (b) in, or on any canal, river or drain without having obtained an approval or permission required under any other enactment,

the Chief Executive shall serve on that person a pulling down notice ordering the pulling down of those development works.

(2) A pulling down notice shall, inter alia –

- (a) specify the conditions that have not been complied with;
- (b) specify the period, not exceeding 30 days, within which the development works shall be pulled down; and
- (c) be in such form as may be prescribed.

(3) Where a pulling down notice has been served on a person, that person shall not proceed with the development works referred to in the notice.

(4) No person shall be prosecuted for undertaking development works without being the holder of a Building and Land Use Permit as long as the delay granted in the pulling down notice has not lapsed.

127D. Extension of time

(1) A person served with a compliance notice, an enforcement notice or a pulling down notice, as the case may be, may apply to the Chief Executive to extend the period specified in –

- (a) the compliance notice within which the application for a Building and Land Use Permit shall be made;
- (b) the enforcement notice within which measures shall be implemented; or
- (c) the pulling down notice within which the development works shall be pulled down.

(2) The Chief Executive may, on good cause shown, extend the period for a maximum period of 60 days.

127E. Service of notice

(1) (a) The Chief Executive shall cause personal service of any notice under this Part to be effected by a Court Usher or registered usher, as the case may be.

(b) Any notice shall be served in the district where the person resides.

(2) The Court Usher or registered usher, as the case may be, shall, within 24 hours of service, send his return of service to the Chief Executive.

127F. Revocation of notice

- (1) Where the Chief Executive is satisfied that a person on whom –
- (a) a compliance notice has been served has applied for, and been issued with, a Building and Land Use Permit;
 - (b) an enforcement notice has been served has implemented the measures required to be taken in the notice; or
 - (c) a pulling down notice has been served has pulled down the development works,

the Chief Executive shall revoke the notice and shall inform that person in writing.

(2) Where a notice served on a person is revoked pursuant to subsection (1), that person shall not be prosecuted under section 127G(1).

127G. Offences

- (1) Any person who –
- (a) undertakes development works without being the holder of a Building and Land Use Permit; or
 - (b) being the holder of a Building and Land Use Permit undertakes development works not in accordance with that permit,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 100,000 rupees and not exceeding 500,000 rupees.

(2) The Court shall, in addition to the penalty provided for in subsection (1), order the offender to pull down, at his own expense and within 30 days of the order, the development works.

(3) Where the offender fails, pursuant to subsection (2), to pull down the development works, the local authority shall pull down the development works.

(4) Where the local authority exercises its powers under subsection (3), it shall be entitled to recover, through its Financial Controller, the costs incurred in the pulling down of the development works from the offender in the manner provided for under the Recovery of State Debts Act.

(5) Section 153 of the Criminal Procedure Act shall not apply to a conviction under this section.

127H. Jurisdiction

Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a District Magistrate shall have jurisdiction to try any offence under this Sub-part.

127I. Application of this Sub-part

This Sub-part shall apply to development works undertaken on or after the commencement of this section

6. Section 158 of principal Act amended

Section 158 of the principal Act is amended, in subsection (1)(b), by inserting, after the words "or permit", the words ", other than a Building and Land Use Permit,".

7. Consequential amendments

(1) The Building Control Act is amended –

(a) in section 2 –

⓪ in the definition of "builder", by deleting the words "building works" and replacing them by the words "development works";

(i) by deleting the definition of “building” and replacing it by the following definition –

“building” has the same meaning as in the Local Government Act;

(ii) by deleting the definition of “building works”, “clearance certificate” and “compliance certificate”;

(iii) in the definition of “developer”, by deleting the words “building works” and replacing them by the words “development works”;

(iv) in the definition of “principal agent”, by deleting the words “building works” and replacing them by the words “development works”;

(v) in the definition of “project”, by deleting the words “building works” and replacing them by the words “development works”;

(vi) by inserting, in the appropriate alphabetical order, the following new definition –

“development works” has the same meaning as in the Local Government Act;

(b) by repealing section 4 and replacing it by the following section–

4. Requirements for permits

(1) No permit shall be issued by a local authority unless –

(a) the following enactments, as the case maybe, are complied with –

(i) this Act;

(ii) the Environment Protection Act;

(iii) the Local Government Act;

(iv) the Planning and Development Act; and

- (v) the Town and Country Planning Act;
 - (b) the requirements specified in section 3 and the minimum building standards are complied with;
 - (c) the prescribed minimum energy efficiency requirements, if any, are complied with; and
 - (d) plans and drawings for the proposed building works are drawn up and signed in accordance with subsection (2) and such guidelines as may be issued by a local authority.
- (2) Where a building has a floor area of –
- (a) more than 150 square metres, the plans and drawings for the proposed building works shall be –
 - (i) drawn up and signed electronically by an architect;
 - (ii) where required under guidelines issued or regulations made under the Local Government Act, certified by an engineer; and
 - (iii) forwarded by the architect or engineer, as the case may be, by such electronic or other technological means as the relevant local authority may direct;
 - (b) 150 square metres or less, the plans and drawings for the proposed building works –
 - (i) may be drawn up by a person other than an architect; and
 - (ii) where required under guidelines issued or regulations made under the Local Government Act, shall be certified by an engineer.

- (c) in section 6, by repealing paragraph (a) and replacing it by the following paragraph –
 - (a) advise the Minister on any regulations to be made under this Act;
- (d) by repealing Part III;
- (e) in Part IV, in the heading, by deleting the words “**BUILDING WORKS**” and replacing them by the words “**DEVELOPMENT WORKS**”;
- (f) in section 20 –
 - (i) in subsection (1)(b), by deleting the words “section 15(2)” and replacing them by the words “section 4”;
 - (ii) in subsection (1)(f), by deleting the words “building works” and replacing them by the words “development works”;
 - (iii) in subsection (3) –
 - (A) in paragraphs (a) and (b), by deleting the words “building works and replacing them by the words “development works”;
 - (B) by repealing paragraph (c) and replacing it by the following paragraph –
 - (c) issue, in case a building has a floor area of 150 square metres or more, a clearance certificate to the holder of a permit certifying that development works in respect of the building have been carried out in accordance with the permit; and
 - (iv) in subsection (4), by deleting the words “a stop order”, “building works” and “approved plans and drawings” and replacing them by the words “, in accordance with the Local Government Act, an enforcement notice”, “development works” and “the permit issued”, respectively.

(2) The Environment and Land Use Appeal Tribunal Act is amended, in section 4(1)(a)(ii), by deleting the words “section 117(14)” and replacing them by the words “sections 117(14) and 120C(4)(d)”.

(3) The Recovery of State Debts Act is amended, in section 10, by adding the following new paragraph, the full stop at the end of paragraph (e) being deleted and replaced by a semi colon –

- (f) costs incurred by a Municipal City Council, Municipal Town Council or District Council, as the case may be, in the pulling down of illegal development works pursuant to an Order of the Court under section 127G of the Local Government Act, be exercised by the Financial Controller of the Council.

(4) The Town and Country Planning Act is amended –

(a) in section 2 –

- (i) by deleting the definition of “building” and replacing it by the following definition –

“building” has the same meaning as in the Local Government Act;

- (ii) by deleting the definition of “development”;

- (iii) by inserting, in the appropriate alphabetical order, the following new definition –

“development works” has the same meaning as in the Local Government Act;

(b) in section 6A –

- (i) in subsection (3), by deleting the word “development” wherever it appears and replacing it by the words “development works”;

- (ii) in subsection (5), by deleting the words “the development of land” and “the development of the land” and replacing them by the words “development works” and “the development works”, respectively;

(c) by repealing section 7 and replacing it by the following section–

7. Building and Land Use Permit

(1) Notwithstanding any other enactment, this section shall have effect in relation to any area which is the subject of an Order under section 6.

(2) A local authority shall, in dealing with an application for a Building and Land Use Permit under section 117 of the Local Government Act, have regard to the question whether the proposed development works are in any way likely to contravene an outline or detailed scheme being prepared in respect of the area concerned.

(3) (a) The Board may, *proprio motu*, where a Building and Land Use Permit under section 117 of the Local Government Act has been issued by a local authority, inquire into the facts of the case and, if it is satisfied that the issuing of the permit is contrary to any scheme that is being prepared, may, subject to the Minister's approval, direct the local authority to cancel the permit.

(b) Any interested party may be represented at an inquiry under paragraph (a).

(4) Any person aggrieved by a decision of the Board under subsection (3) may appeal to the Tribunal in accordance with the Environment and Land Use Appeal Tribunal Act.

(5) The Board shall, for the purposes of this Act, issue guidelines relating to development works and planning.

(6) The guidelines referred to in subsection (5) shall be –

(a) available for consultation at the office of the Board;
and

(b) posted on the website of the Ministry responsible for the subject of lands.

(d) by repealing subsection (8);

- (e) in section 14(3), by deleting the words “building or development” and replacing them by the words “development works”;
- (f) in section 15(2), by deleting the words “building and development plans” and replacing them by the words “plans for development works”;
- (g) in section 18, by repealing paragraph (c) and replacing it by the following paragraph –
 - (c) whose Building and Land Use Permit is cancelled under section 7(3),
- (h) in section 19 –
 - (i) in subsection (1), by deleting the words “permit the erection of a building or the development of any land under section 7” and replacing them by the words “issue a Building and Land Use Permit”;
 - (ii) in subsection (3), by deleting the words “permission granted under section 7(3) to develop land or to construct, demolish, alter, extend, repair or renew buildings” and replacing them by the words “a Building and Land Use Permit”;
- (i) in section 22(3)(a), by deleting the word “development” and replacing it by the words “development works”;
- (j) in section 28, by deleting the words “2,000 rupees nor more than 50,000 rupees or” and replacing them by the words “50,000 rupees nor more than 100,000 rupees and”.

8. Commencement

(1) Subject to subsection (1), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
