

THE BUILDING CONTROL (AMENDMENT) BILL
(No. II of 2019)

Explanatory Memorandum

The main object of this Bill is to provide, in case a notice sent by registered post by a local authority on the owner or occupier of a dangerous building returns undelivered and personal service of the notice could not be effected on the owner or occupier by an officer of the local authority, for substituted service to be effected on the owner or occupier by –

- (a) affixing a notice at the owner's or occupier's last known residence or business address;
- (b) affixing a copy of the notice at the dangerous building; and
- (c) publication of the notice in 2 newspapers, subject to the publication of the notice in the second newspaper is effected not later than 15 days after the publication of the notice in the first newspaper.

2. The Bill, in addition, provides that in case the owner or occupier of the dangerous building still remains untraceable following substituted service, the local authority shall, notwithstanding any other enactment, cause the building to be pulled down, removed, secured or repaired, at the expense of the local authority.

3. The same procedure for substituted service shall apply where a notice served on the owner of a ruinous building returns undelivered.

4. Consequently, the Local Government Act is being amended to allow for substituted service where a compliance notice, an enforcement notice or a pulling down notice returns undelivered and personal service could not be effected by an officer of the local authority.

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29 March 2019

THE BUILDING CONTROL (AMENDMENT) BILL
(No. 11 of 2019)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 22 of principal Act amended
4. Section 25 of principal Act amended
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A BILL

To amend the Building Control Act to provide for substituted service in case notice sent by registered post returns undelivered and personal service could not be effected, and to provide for matters related thereto

ENACTED by the Parliament of Mauritius as follows –

1. Short title

This Act may be cited as the Building Control (Amendment) Act 2019.

2. Interpretation

In this Act –

“principal Act” means the Building Control Act.

3. Section 22 of principal Act amended

Section 22 of the principal Act is amended –

(a) in subsection (3) –

- (i) by inserting, after the words “to be served”, the words “in accordance with section 32”;

- (ii) in paragraph (b), by deleting the words “taken down” and replacing them by the words “pulled down, removed”;
- (b) by inserting, after subsection (3), the following new subsections –

(3A) A local authority shall –

- (a) where a notice sent by registered post on the owner or occupier returns undelivered and where personal service of the notice could not be effected on the owner or occupier by an officer of the local authority, cause substituted service –

- (i) by affixing a new notice at the owner’s or occupier’s last known residence or business address;

- (ii) by affixing a copy of the new notice at the building or wall; and

- (iii) by publication of the new notice in 2 newspapers, subject to the publication of the new notice in the second newspaper is effected not later than 15 days after the publication of the new notice in the first newspaper; or

- (b) where the owner or occupier is not known –

- (i) affix the notice at the building or wall;

- (ii) cause publication of the notice in 2 newspapers, subject to the publication of the notice in the second newspaper is effected not later than 15 days after the publication of the notice in the first newspaper; and

- (iii) serve a copy of the notice to the Curator of Vacant Estates under the Curatelle Act, inviting him to confirm, within 30 days of service, whether the building has been vested in him.

(3B) The notice referred to in subsection (3A) shall –

- (a) order the owner or occupier, not later than such date as specified therein, to pull down, remove, secure or repair the building or wall; and
 - (b) warn the owner or occupier that failure to pull down, remove, secure or repair the building or wall by such date as specified therein, the local authority shall cause the building or wall to be pulled down, removed, secured or repaired.
- (c) in subsection (4), by deleting the words “take down” and replacing them by the words “pull down, remove”;
- (d) by inserting, after subsection (4), the following new subsection –
 - (4A) Where –
 - (a) pursuant to subsection (3A)(a), the owner or occupier fails to comply with the new notice; or
 - (b) pursuant to subsection (3A)(b) –
 - (i) the owner or occupier fails to comply with the notice; and
 - (ii) the Curator of Vacant Estates confirms that the building has not been vested in him; or
 - (iii) the Curator of Vacant Estates fails to reply to the local authority within 30 days of service of the notice,

the local authority shall, notwithstanding any other enactment, cause the building or wall to be pulled down, removed, secured or repaired to the satisfaction of the engineer who issued the report under subsection (2).
- (e) in subsection (5), by deleting the words “who fails to comply with a notice served under subsection (3)” and replacing them by the words “on whom a notice has been served under this section fails to comply with the notice”;
- (f) by adding the following new subsection –

(6) No person shall be prosecuted for failing to comply with a notice served on him under this section as long as the delay granted in the notice has not lapsed.

4. Section 25 of principal Act amended

Section 25 of the principal Act is amended –

(a) by inserting, after subsection (1), the following new subsections –

(1A) A local authority shall –

(a) where a notice sent by registered post on the owner returns undelivered and where personal service of the notice could not be effected on the owner by an officer of the local authority, cause substituted service –

(i) by affixing a new notice at the owner's last known residence or business address;

(ii) by affixing a copy of the new notice at the ruinous building; and

(iii) by publication of the new notice in 2 newspapers, subject to the publication of the new notice in the second newspaper is effected not later than 15 days after the publication of the new notice in the first newspaper; or

(b) where the owner is not known –

(i) affix the notice at the ruinous building;

(ii) cause publication of the notice in 2 newspapers, subject to the publication of the notice in the second newspaper is effected not later than 15 days after the publication of the notice in the first newspaper; and

(iii) serve a copy of the notice to the Curator of Vacant Estates under the Curatelle Act,

inviting him to confirm, within 30 days of service, whether the ruinous building has been vested in him.

- (1B) The notice referred to in subsection (1A) shall –
- (a) order the owner, by such date as specified therein, to repair the ruinous building; and
 - (b) warn the owner that failure to repair the ruinous building by such date as specified therein, the local authority shall, in accordance with subsection (2), cause the sale of the building.

- (1C) Where –
- (a) pursuant to subsection (1A)(a), the owner fails to comply with the notice; or
 - (b) pursuant to subsection (1A)(b) –
 - (i) the owner fails to comply with the notice; and
 - (ii) the Curator of Vacant Estates confirms that the building has not been vested in him; or
 - (iii) the Curator of Vacant Estates fails to reply to the local authority within 30 days of service of the notice,

the local authority shall apply to the Judge in Chambers for an order for the sale of the building.

- (b) in subsection (2), by adding the following new paragraph, the existing provision being lettered as paragraph (a) –

(b) Where the owner remains unknown, the Judge shall authorise the local authority to prosecute the sale before the Master and Registrar of the Supreme Court.

5. Section 30 of principal Act amended

Section 30 of the principal Act is amended by adding the following new subsection –

(4) No person shall be prosecuted for failing to comply with a notice served on him under this section as long as the delay granted in the notice has not lapsed.

6. New section 32A inserted in principal Act

The principal Act is amended by inserting, after section 32, the following new section –

32A. Local authority to recover expenses

Where a local authority exercises its powers under section 22(4A) or 28(2), it shall be entitled to recover, through its Financial Controller, the costs incurred in the pulling down, in the removal, in securing or in repairing the dangerous building or hazardous building from the owner in the manner provided for under the Recovery of State Debts Act.

7. Consequential amendments

(1) The Local Government Act is amended –

(a) in section 127A, by adding the following new subsections –

(7) The Chief Executive shall –

(a) where a compliance notice sent by registered post returns undelivered and where personal service of the notice could not be effected by an officer of the local authority, cause substituted service –

(i) by affixing a new compliance notice at the last known residence or business address of the person undertaking the development works;

(ii) by affixing a copy of the new compliance notice where the development works are being undertaken; and

(iii) by publication of the new compliance notice in 2 newspapers, subject to the

publication of the new compliance notice in the second newspaper is effected not later than 15 days after the publication of the new compliance notice in the first newspaper; or

- (b) where the person undertaking the development works is not known –
 - (i) affix the compliance notice where the development works are being undertaken; and
 - (ii) cause publication of the compliance notice in 2 newspapers, subject to the publication of the compliance notice in the second newspaper is effected not later than 15 days after the publication of the compliance notice in the first newspaper.

(8) The compliance notice referred to in subsection (7) shall –

- (a) order the person undertaking the development works to apply, by such date as specified therein, for a Building and Land Use Permit; and
- (b) warn that person that if he fails to apply for a Building and Land Use Permit by such date as specified therein, the local authority shall cause the development works to be pulled down.

(9) Where, pursuant to subsection (7), the person undertaking the development works fails to comply with the compliance notice, the local authority shall, notwithstanding any other enactment, pull down the development works.

(b) in section 127B, adding the following new subsections –

(5) The Chief Executive shall, where an enforcement notice sent by registered post returns undelivered and where

personal service could not be effected by an officer of the local authority, cause substituted service –

- (a) by affixing a new enforcement notice at the last known residence or business address of the holder of the Building and Land Use Permit; and
- (b) by affixing a copy of the new enforcement notice where the development works are being undertaken.

(6) The new enforcement notice shall –

- (a) specify the matters referred to in subsection (2);
- (b) order the holder of the Building and Land Use Permit not to undertake any further development works; and
- (c) warn the holder of the Building and Land Use Permit that failure to comply with the measures referred to in subsection (2)(b), the local authority shall revoke his Building and Land Use Permit.

(7) Where, pursuant to subsection (5), the holder of the Building and Land Use Permit fails to comply with the new enforcement notice, the local authority shall revoke his Building and Land Use Permit.

(c) in section 127C, adding the following new subsections –

(5) The Chief Executive shall –

- (a) where a pulling down notice sent by registered post returns undelivered and where personal service could not be effected by an officer of the local authority, cause substituted service –

- (i) by affixing a new pulling down notice at the last known residence or business

address of the person undertaking the development works;

(ii) by affixing a copy of the new pulling down notice where the development works are being undertaken; and

(iii) by publication of the new pulling down notice in 2 newspapers, subject to the publication of the new pulling down notice in the second newspaper is effected not later than 15 days after the publication of the new pulling down notice in the first newspaper; or

(b) where the person undertaking the development works is not known –

(i) affix the pulling down notice where the building works are being undertaken; and

(ii) cause publication of the pulling down notice in 2 newspapers, subject to the publication of the pulling down notice in the second newspaper is effected not later than 15 days after the publication of the pulling down notice in the first newspaper.

(6) The pulling down notice referred to in subsection (5) shall –

(a) order the person undertaking the development works to pull down, by such date as specified therein, the development works; and

(b) warn that person that failure to pull down the development works by such date as specified therein, the local authority shall cause the development works to be pulled down.

(7) Where, pursuant to subsection (5), the person undertaking the development works fails to comply with the pulling down notice, the local authority shall, notwithstanding any other enactment, pull down the development works.

(d) in section 127D, by adding the following new section –

(3) This section shall apply to a new compliance notice, new enforcement notice and new pulling down notice.

(e) by repealing section 127E and replacing it by the following section –

127E. Service of notice

Any notice which is required to be served under section 127A, 127B and 127C shall be signed by the Chief Executive Officer and served by an officer of the local authority or sent by registered post to the person concerned.

(f) in section 127F, by adding the following new section –

(3) This section shall apply to a new compliance notice, new enforcement notice and new pulling down notice.

(2) The Recovery of State Debts Act is amended, in section 10 –

(a) in paragraph (f), by inserting, after the words “pursuant to”, the words “section 127A, 127B or 127C of the Local Government Act, or pursuant to”;

(b) by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and replaced by a semicolon –

(g) costs incurred by a Municipal City Council, Municipal Town Council or District Council, as the case may be, in the pulling down of a dangerous or hazardous building under the Building Control Act, be exercised by the Financial Controller of the Council.

8. Commencement

(1) Subject to subsection (2), 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.
