

Legal opinion

Amendment to Construction Law – part II

On 19 September 2020, revolutionary changes to Poland's construction regulations are coming into force. The amendment to the Construction Law that MPs passed on 13 February 2020 altered nearly 60 of its provisions. The aim is to expedite construction projects, and to make construction-related decisions more stable and predictable.

In part I of our article, published in last month's issue, we talked about changes in how the impact zone of a structure is determined; in the building design format; and in what constitutes a major deviation from the building design. In part II, we discuss the following: the introduction of a 5-year time limit for declaring a building permit or occupancy permit invalid; a simplified legalisation procedure for unauthorised structures; the requirement to obtain a fire protection expert opinion when seeking a change of use; and clarifications as to when a building permit is required, when a notice of construction, and when neither.

Time limit for declaring a permit invalid

In a truly revolutionary change, the amendment to the Construction Law coming into effect on 19 September sets a time limit within which a building permit or occupancy permit can be declared invalid. It is 5 years, from the date of receipt or announcement of the decision in the case of building permits, and from the date of the decision becoming final in the case of occupancy permits. 5 years is ample time to establish any irregularities, the amendment's authors have concluded.

This is something that the property market has waited a long time for. Under existing law, there is no time limit for when authorities can declare a building or occupancy permit invalid on the grounds of a gross violation of the law. This makes for a lack of stability of decisions, introducing uncertainty into construction projects and the use and sale of built-up properties.

Simplified legalisation of unauthorised structures

Constructions exist in Poland that were built many years ago without authorisation and have never been legalised. One reason is that construction supervision inspectors are not aware of their existence. The owners prefer not to report them, either for fear of being issued with a demolition order (in most cases for violating the local zoning plan), or to avoid high legalisation fees.

This problematic phenomenon could soon be largely eliminated thanks to another change in the Construction Law, namely the introduction of a simplified legalisation procedure. It will be applicable to structures, or parts thereof, built without permit or notice that were completed at least 20 years ago. To obtain legalisation, the owner will be required to submit the following documents: declaration of legal title to use the property for construction purposes; as-built geodetic inventory of the structure; and opinion by a licensed construction expert that the technical condition of the structure does not pose a hazard to human life or health, and that it can be safely used for the current or intended purpose. Importantly, compliance with the local zoning plan will not be taken into account.

If the competent authority concludes, based on the expert opinion, that the structure does not pose a hazard, it will issue an official decision legalising it (legalisation decision). There will be no need for a separate occupancy permit. Importantly, simplified legalisation will carry no fee.

Fire protection expert opinion

As of 19 September, a fire protection expert opinion will have to be enclosed when applying for a change of use of a structure (or part thereof) where the proposed change involves undertaking or refraining from an activity that affects the fire safety conditions. The objective is to increase fire safety.

A fire protection expert opinion will also be required when applying for permission to deviate from the standard technical-construction regulations as they pertain to fire safety. If the structure in question is of a type in which adequate protection of the life and health of persons, property, or the environment from fire, natural disaster, or other local threat is particularly important, a permit from the voivodship State Fire Service (PSP) commissioner will additionally be required.

When a building permit is required, when a notice of construction, and when neither

One of the main things that the amendment does – in fact, one of the primary motivations behind its adoption – is to clarify the notoriously murky provisions of Articles 29 and 30 of the Construction Law laying down which structures and construction activities require a building permit, which a notice of construction, and which neither. They were altered so many times in the past and contain so many references and “exceptions to exceptions” that they are really difficult to read, causing investors headaches. The amendment adds little in the way of new stipulations; it mainly brings order to, and simplifies, existing ones.

Thus, the current text of Article 29’s paragraph 1 lists structures that are exempt from building permit, but does not say if they require a notice of construction to be filed. The amended text will list structures that require a notice. The current text of paragraph 2 lists types of activities that do not require a building permit. The amended text lists structures that are exempt both from building permit and notice. Paragraph 3 will list activities that require a building permit, divided into three categories: alterations,

renovations, and installations. It will also list activities that require neither a permit nor a notice. As a result of these changes to Article 29, the provisions of Article 30 pertaining to activities that require a notice of construction to be filed were removed. After 19 September, Article 30 will describe the procedure for filing a notice of construction and the related formalities.

Certain structures, e.g. sewage treatment plants with treatment capacity of up to 7.5 m³ per day, household gas installations (indoor and outdoor), or LNG regasification plants with storage tank capacity of up to 10 m³, will no longer require a building permit. A notice of construction will no longer be required in the case of ponds and water reservoirs with a surface area of less than 1,000 m² and depth of up to 3 m if they are on agricultural land.

The following will require neither a building permit nor a notice of construction: sun decks up to 35 m²; drainage facilities; ATMs, cash deposit machines, ticket vending machines, other vending machines, parcel locker machines, and other service machines up to 3 metres in height; and ponds and water reservoirs with a surface area of up to 1,000 m² and depth of up to 3 m if they are entirely on agricultural land.

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