

03/02/2026

WHITE PAPER CONSULTATION

Administrative Instrument on the Protection of Workers from Inclement Weather and Red Alert Weather Warnings during Outdoor Work.

1. Scope

The scope of the Administrative Instrument is to address the protection of all workers and self-employed persons engaged in outdoor work activities during extreme weather conditions in particular but not limited to, conditions involving gale-force winds exceeding Force 9-10, heavy rain, and red alert weather warning in relation to extreme storms issued by the Meteorological Office (Malta).

The Administrative Instrument applies to all type of sectors involving out-door work activities, with the exception of those workers providing essential or emergency services, such as personnel working within the Civil Protection department, the Police and the Armed Forces, including activities relating to civil emergencies, public order, national security, or operations by the military. Additionally, any exemptions shall only apply for any works that needs to be carried out related to civil emergencies, to ensure public order, and to provide for public and workers protection.

2. Legal Mechanism – Administrative Instruments

Administrative Instruments may be published by the Occupational Health and Safety Authority (OHSA) with the approval of the Minister in terms of Art. 17 (1) of the Health and Safety at Work Act (Chapter 646 of the Laws of Malta) (“the Act”).

Administrative instruments are published to ensure adequate health and safety standards at work. These instruments may be used as measures for the implementation of any requirement which shall be enforced by or under the provisions of the Act. Pursuant to

Art.17(4) of the Act, administrative instruments shall have the force of law and be binding in their generality.

Any Administrative Instrument published under the Act shall have the force of law and be binding in its generality. However, any person who feels aggrieved by the applicability of an Administrative Instrument may appeal in front of the Health and Safety Tribunal established under the Act.

The Administrative Instrument must be read alongside the applicable provisions of the Act and subsidiary regulations made thereunder. For ease of guidance, the Administrative Instrument includes a non-exhaustive list of legislative provisions applicable to situations involving adverse weather conditions.

3. Consultation Process

The Administrative Instrument gives effect to the recommendations provided by the social partners represented on the OHSA Board pursuant to Art.5(4) of the Act and key stakeholders following an interactive consultation process which has informed our development of the Administrative Instrument. The members of the OHSA Board represent areas pertaining to health, economic affairs, workers' representatives, employers' representatives, OHS competent persons, and employment conditions and law.

Consultation meetings were also held with the Malta Occupational Safety and Health Practitioners (MOSHPA), the Union of Safety and Health Practitioners (USHP), and the Malta Developers Association (MDMA).

4. Subject Matter - Adverse Weather Conditions in relation to Health and Safety at Work

Adverse weather conditions in particular strong winds and heavy rain play a pivotal role in the safety of outdoor-work activities, particularly the safety of height-related work. By its nature, 'work at height' present inherent risks which may result in serious injuries and even fatalities. Strong winds and heavy rain can significantly amplify such risks.

The risks and hazards associated with adverse weather conditions, particularly strong winds and heavy rain will depend on the specific type of work, the worksite, the work equipment used, structures, and even the worker involved. In addition, certain factors and situations may also increase the likelihood of an accident. Typical factors involve unsecured objects which may be lifted and blown around, lifting activities and unsecured structures which may result in structural collapse. Such situations may affect the health and workers and the members of the general public, hence why Art.5(1) of the Act provides that the protection of health and safety at work shall be considered of public interest.

Whereas the main area governed by the Act and its subsidiary legislation concerns work-related activities, all duty holders are duty bound to ensure the health and safety of other persons who may be affected by the work-activity. In this regard, Art.12(1) of the Act imposes a duty on the employer to ensure the physical and psychological wellbeing of his workers at all times and of “all persons” who may be affected by the work being carried out for such employer. The Act, through Art.16 also provides that the statutory provisions applicable to the employer shall also apply to a self-employed persons.

This general duty of care is also reflected on the workers themselves mainly through Art.15(1) of the Act which provides that the worker shall take care as far as possible of his own health and safety and that of other persons affected by his acts or omissions at work in accordance with his training and the instructions given by his employer.

In regard to the duty holders revolving around construction-work related activities, mainly, the project supervisor for health and safety matters and the client, such duty of care is enshrined in the Health and Safety at Work (Minimum Health and Safety Requirements for Work at Construction Sites) Regulations, S.L.646.27. Both duty holders are required to take the necessary measures for the safeguard of health and safety.

5. The Contents of the Administrative Instrument

The OHSA is proposing the issuance of this Administrative Instrument in furtherance of its mandate under the Act to ensure better and adequate health and safety standards in relation to work activities during extreme weather conditions in particular but not limited to, conditions involving gale-force winds exceeding Force 9-10, heavy rain, and red alert weather warning in relation to extreme storms issued by the Meteorological Office (Malta).

The Administrative Instrument takes forwards OHSA's commitment to offer higher surveillance on the occupational health and safety protective measures being taken by the duty holders in terms of the prevailing health and safety at work legislation. In this regard, OHSA is proposing this administrative instrument with the aim of introducing statutory requirements in relation to the protective and preventive measures to be taken in regard to all out-door work activities and ancillary risks. Specifically, it introduces measures aimed at encouraging and ensuring improvements in the health and safety of workers and other persons reflected in a three-phases structure reflecting the principles of prevention of risks, and the safeguard of OHS through the implementation and review of protective and preventive measures to restore safety.

The overarching objective is the safeguard of OHS, which involves the following:

- (i) Protecting, promoting and maintaining the health and safety of the workers, self-employed persons and other persons who may be affected by the work-related activities,
- (ii) Maintaining public confidence in relation to the declaration of principles emanating from the Act whereby the protection of health and safety at work shall be considered of public interest, and
- (iii) Ensuring that the physical, psychological and social wellbeing of all workers in all workplaces is promoted and safeguarded by whoever is so obliged to do.

6. OHS Management

The protective and preventive measures that must be taken in relation to the safeguard of OHS in situations involving severe adverse weather conditions is structured on the basis of the general duty of care imposed on the employer by Reg.4(2) of the General Provisions for Health and Safety at Work Places Regulations, S.L.646.11 which reflects the principles of OHS management. According to such regulation, the employer is duty bound to make such appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures taking into account the nature of activities and the size of the undertaking.

In this regard, the preventive and protective measures provided in the Administrative Instrument are structured as follows:

1. Pre Phase – Preparedness / Prevention,
2. During adverse extreme weather, and
3. Post storm.

6.1 Phase 1 - Pre Phase – Preparedness / Prevention

The 'Pre Phase – Preparedness / Prevention' phase reflects the duty of the employer in relation to effective planning and control of OHS measures. This section incorporates the measures that every workplace which is at risk of extreme weather conditions must have in place. The measures include among others:

- (i) **Risk Assessment** - the provision of risk assessment which addresses environmental factors that present an increased risk during extreme weather conditions, particularly but not limited to, high wind, work at height and other activities where wind conditions may significantly elevate risk,
- (ii) **Contingency Plan** – A specific plan to provide for the measures and actions that must be implemented for the safeguard of OHS. The measures listed in the plan

must also incorporate and reflect the findings and recommendations of the risk assessment,

- (iii) **Preparation** – Inspections of areas and implementation of measures in relation to the clearance of places from any material which may be blown away and fall on workers and other persons, temporary / incomplete structures to prevent structural collapse and other ancillary measures.
- (iv) **Vulnerable workers** – Measures aimed at safeguarding the OHS of vulnerable workers such as but not limited to, young workers, workers covered by the maternity regulations, foreign workers, and older workers,
- (v) **Training, information and supervision** – Measures in relation to specific training, information and supervision covering aspects of extreme adverse weather conditions,
- (vi) **Emergency measures** - Measures in relation to the evacuation of workers and/or assistance, and
- (vii) **On-site monitoring** – Continuous monitoring of worksites to ensure the protection of workers.

6.2 Phase 2 - During adverse extreme weather

The 'During adverse extreme weather' phase implements the measures indicated in the above-mentioned pre-phase. Some of the key and critical measures to be taken in this phase involve the activation of the contingency plan, the stopping of outdoor work activities which may endanger the health and safety of workers and other persons, and actions concerning tower cranes or similar lifting equipment which must be left free to slew and not having suspended loads, chains, and materials attached to them. Operations in such regard will also be prohibited. Other measures involved in this phase also include but not limited to, clearance of areas, securing temporary structures, isolation of electrical power sources that may be

affected by such weather conditions, and provision of instructions and information to workers.

6.3 Phase 3 - Post Storm

As to the **'Post storm' stage**, this provision will only take effect 'once' the relevant competent Authority lifts the weather warning alert. This stage will involve the implementation of measures concerning the review of workplaces, risks assessments, plans and other relevant documents to address situations which require additional measures or situations which were not previously covered by the contents of the aforementioned documentation. Measures covered by this phase also involve among others, implementation of protective and preventive measures that may be required to ensure the safeguard of OHS. It is important to reiterate that works that have been stopped as a result of the provisions of the Administrative Instrument may only recommence upon the provision of the appropriate confirmation to do so by the competent authorities.

7. Public Consultation

The public is invited to make submissions to the Occupational Health and Safety Authority with their comments as to why and how this Administrative Instrument could be amended.

8. Documents

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