REmarks
PRACTICE IN LAWYERS VIEW

Requirements, technically, do not exist

The previous regulation of the Minister of Infrastructure of 12 April 2002 on the technical requirements to be met by buildings and their siting ceased to have effect on 20 September 2026, and the new regulations have not yet been issued. Does this mean there are no investment possibilities until the new regulation comes into force? We can answer this question, as befits lawyers: “it depends”.

Let us recall that the date of 20 September 2026 for the expiry of the regulation previously in force stems directly from the act of 28 June 2024. However, work on the draft of the new regulation only began in June 2025. The draft has gone through the standard legislative process for regulations, including the public consultation stage. The draft of the new conditions (provided it comes into force unchanged) has therefore been known for many months. The regulation is intended to govern many specific issues, including requirements relating to accessibility, acoustics, fire safety, energy efficiency and the siting of buildings, and in many respects, it provides for the continuation of existing regulations.

The absence of a new regulation does not, of course, mean that any requirements in this regard have disappeared entirely. Of key importance are the transitional provisions added to the Construction Law by the Act of 31 July 2026. These provide for an 18-month transitional period, commencing on 20 September 2026, during which the provisions of the existing regulation may be applied in the cases specified in the act. These transitional provisions create a separate basis for applying the previous regulations in specific situations. However, they do not restore their validity across the board, nor do they automatically cover every development project and all construction works.

So when can the existing provisions be applied? Primarily when drawing up construction designs. In accordance with Article 102a of the Construction Law, a plot or site development plan and an architectural and construction design may be drawn up in accordance with the provisions in force until 19 September 2026 in the case of an application for a building permit, an application for separate design approval, and a construction notification. This is subject to the investor submitting a declaration to the authority conducting the proceedings stating that the existing regulations will be applied. This arrangement also covers specific legalisation documents and obligations carried out as part of rectification proceedings conducted in connection with significant deviations from the approved construction design. The possibility of applying the provisions of the existing regulation is also provided for in relation to certain projects not requiring a building permit and construction works specified in Article 102b of the Construction Law. However, the scope of these cases is defined by this act; therefore, it cannot be assumed that the mere exemption of a project from the obligation to obtain a building permit is sufficient for the old requirements to apply. It is also

necessary to refer explicitly to the general provisions of construction law and the principles of technical knowledge.

The expiry of the previous regulation came as no surprise – the legislator had been aware of this deadline in advance. An open letter on this matter was issued on 11 September 2026 by the Polish Chamber of Civil Engineers and the Chamber of Architects of the Republic of Poland. As the signatories of the letter pointed out, technical conditions are the fundamental regulations for the construction sector, to which article 5 of the Construction Law refers, whilst the exercise of the statutory delegation set out in Article 7 of that act constitutes not a right but an obligation of the competent minister. They also point out that, without valid technical and construction regulations in force, there is no point of reference for assessing the compliance of a construction project with these regulations. Consequently, in the absence of these regulations, both the duty of the fire safety expert and the institution of derogation from technical and construction regulations remain void. In the authors' view, decisions issued under such a legal framework could be challenged on the grounds of lacking a legal basis. Depending on the approach adopted by the architectural and building authorities during this transitional period, such a scenario cannot be ruled out.

Nevertheless, the new regulations have not been adopted on time, and attempts are currently being made to fill the resulting gap with ad hoc provisions referring to the existing regulations. Paradoxically, it may therefore turn out that developers and investors who, anticipating new, more stringent regulations, had duly prepared for their entry into force and taken them into account when designing their planned projects, will be the biggest 'losers' of this protracted transitional period.

Do you want to know more? Contact us!

Weronika Własienko, Counsel
weronika.wlasienko@ngllegal.com

Karolina Pacholska, Associate
karolina.pacholska@ngllegal.com