

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 513

Pretoria, 7 March
Maart 2008

No. 30852

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GENERAL NOTICE

NOTICE 337 OF 2008



public works

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

**THE DEPARTMENT OF PUBLIC WORKS
HEREBY PUBLISHES THIS POLICY
DOCUMENT FOR PUBLIC COMMENTS.**

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POLICY DOCUMENT ON THE PROPOSED
AMENDMENTS OF THE STATUTORY
REGULATORY FRAMEWORK OF THE BUILT
ENVIRONMENT PROFESSIONS

MARCH 2008

PREAMBLE

As members of the third democratically elected government of the Republic, it remains our duty, perhaps with an ever increasing sense of urgency, to mobilize all the resources that our country has for the betterment of the lives of our people.

The deployment of human capital and professional expertise remains an extremely important cog in the wheel we must continue to turn in order to realize this dream. Professional expertise remains a national asset which ought to be managed as a scarce resource of high value. It remains Government's policy that professions must be regulated from within but in line with Government's overall policies and the national agenda.

In 1994, my predecessor, the Hon Mr J Radebe, MP, commenced the process of the regulation of the professions of architects, landscape architects engineers, property valuers, project and construction management professionals and quantity surveyors by undertaking a review of the merits and demerits of possible regulation, as well as the form of such envisaged regulation. This process culminated, in 2000, with the promulgation of six pieces of legislation, five Acts regulating the various professional councils, while the sixth established the Council for the Built Environment.

Eight years later, we have learnt from our experiences over the years. We have had to grapple with issues of access to the professions, the shortcomings in the present regulatory model, as well as the need for the organized professions to serve the imperatives of the national democratic revolution.

We consulted with the regulators of other regulated professions and key stakeholders in our own regulated professions. As a result, this document, which aims to stimulate debate regarding the regulation of the professions

going forward, has been compiled and is published for public comment to elicit the views of the public and stakeholders at large. Legislative changes will follow on the comments received on this policy document from the public as well as on further consultation with relevant stakeholders.

AT DIDIZA, MP
MINISTER OF PUBLIC WORKS

DEFINITIONS

Unless otherwise stated or the context indicates to the contrary, the following words used in this policy document shall bear the following meanings:

“accredit” means recognition or certification of educational programmes by the council or the relevant professional board as meeting the prescribed education and training requirements for registration in terms of new legislation;

“built environment” means the field within which registered persons practice their professions;

“built environment profession” means any of the following registrable professions:-

- (a) Architectural profession;
- (b) Project and construction management professions;
- (c) Engineering profession;
- (d) Landscape architectural profession;
- (e) Property valuers profession; or
- (f) Quantity surveying profession;

“community representative” means a person appointed by the Minister as a representative of the community serving on the council or a professional board and who is not a registered professional;

“council” means the South African Council for the Built Environment;

“Minister” means the Minister responsible for public works;

“prescribe” means prescribe by regulation or by a rule made by the council and the word **“prescribed”** shall have a corresponding meaning;

“professional” means a person who is registered as such in any of the professions registrable under new legislation;

“register” when used as a verb, means to enter in a register, and the words **“registrable”**, **“registration”** and all other words formed with or derived from the word **“register”** shall have a corresponding meaning.

1. BACKGROUND:

1.1 INTRODUCTION:

The built environment landscape in South Africa is governed by the Council for Built Environment Act, 2006 (Act No 43 of 2006), other legislation constituting and governing the professional councils of the various professions, namely the Architectural Profession Act, 2000 (Act No. 44 of 2000), the Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000), the Engineering Profession Act, 2000 (Act No 46 of 2000), the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), the Project and Construction Management Professions Act, 2000 (Act No 48 of 2000) and the Quantity Surveying Professions Act, 2000 (Act No 49 of 2000). The Council for Built Environment ("CBE") and the professional councils all came into existence in September 2001 and are thus entering their eighth year of existence.

In 2003, the Department of Public Works ("the DPW") commissioned a study entitled "*The Role of the Built Environment Professions in Enhancing Construction Industry Development in South Africa*". This study was commissioned by DPW as part of a mid-term review of DPW's policies pertaining to the built environment professions. Both the CBE and the professional councils were required to give feedback on the progress of the councils towards implementing policy, constraints being faced by the various councils in implementing policy, constraints in policy and legislation enabling councils to implement policy and future actions required from the DPW to implement policy.

Consequent upon the mid-term review and reports provided to the DPW by the statutory professions councils and the CBE on the one hand and the CSIR on the other, the DPW has identified a number of challenges facing the built environment professions.

These challenges have in turn given rise to a need for the DPW to determine whether the legislation governing the built environment professions and the professional councils constituted in terms thereof fulfill their mandate and whether there is a need to amend existing legislation to enable the CBE and the professional councils to fulfill their legislative mandate.

The DPW is of the view that a review of the current legislative framework within which the built environment professions operate, is warranted, hence this policy document.

1.2 **THE FINDINGS OF DPW'S MID-TERM REVIEW OF THE BUILT ENVIRONMENT PROFESSIONS:**

Following the study commissioned by the DPW in 2003 and the resultant interaction between the DPW, the CBE and the professional councils, the following challenges facing the built environment professions have been identified:

- The emigration of built environment professionals;
- Limited access to built environment educational programs, particularly for historically disadvantaged individuals;
- Limited opportunities for potential graduates to get practical training in work places – a requirement for graduating;

- The low level of registration of built environment professionals with the professional councils, resulting in insufficient funding for professional councils;
- The lack of integrated planning and action by the professional councils and the CBE. The current legislative framework provides for the professional councils and CBE to be independent juristic bodies and accordingly there is no strong link between the CBE and the professional councils in terms of executing Government policy and their legislative mandates;
- There is a lack of alignment between the work of the professional councils and national imperatives that change from time to time.

It is against this background that this policy document has been developed, which puts forward Government's revised policy with regard to the regulation of the built environment professions.

2. THE PRESENT REGULATION OF THE PROFESSIONS:

Professional expertise remains a national asset which ought to be managed as a scarce resource of high value. It remains Government's policy that professions must be regulated from within but in line with Government's overall policies. The current legislative framework of the built environment professions envisages self-regulation by the professions to ensure quality and development within the professions, whereas Government fulfills the role of protecting the public and providing policy direction to the professions to ensure that the professions continue to meet Government's imperatives.

It was envisaged that the CBE will act as an umbrella body for the professional councils in discharging the following legislative mandate and Government policy:

- Transforming the built environments professions to deliver all the needs of society in South Africa based on international competitive practices, while reflecting the composition of the South African society;
- Protecting the public in South Africa from unsafe practices by built environment professions and ensuring good governance of the provision of professional services related to the built environment sector by practitioners in both the public and private sectors;
- Ensuring uniform implementation of government mandated policy among councils that govern the various built environment professions; and
- Advice Government on issues related to the built environment professions.

The professional councils, on the other hand, are autonomous bodies which fulfill the role of self-regulation of the various professions. The current legislation provides for the statutory councils to be responsible for:

- All matters relating to the registration of professionals with the respective professional council;
- All matters relating to accreditation of educational institutions as well as academy of training;
- Determining and identifying the work which may be performed by persons registered in terms of the applicable profession's legislation and determining the categories in which persons may register in the built environment profession in question;
- Maintaining professional standards and holding inquiries into complaints regarding the professional conduct of registered persons;

- Providing the CBE with such reports as the latter may require to discharge its statutory functions and duties;
- Developing codes of conduct in terms of which all registered persons have to abide.

3. SHORTCOMINGS IN THE PRESENT REGULATORY FRAMEWORK

3.1. AUTONOMY OF COUNCILS IN RESPECT OF ACTIVITIES AND FUNDING

It must be noted that the current model provides for the autonomy of each professional council, each with its own Registrar, staff and funds. This, of course, leads to an unnecessary duplication of resources fulfilling similar functions in the same sector.

On the other hand, each professional council's funds primarily come from application, registration and annual fees paid by members. While this may be optimal in a large professional council with numerous members and a high level of registration, this does not augur well for a smaller professional council with less members but the same administrative and governance infrastructure.

The fact that the professional councils are essentially autonomous from each other loses the benefits of shared finances and infrastructure.

3.2. **LOW LEVEL OF REGISTRATION LEADING TO INSUFFICIENT FUNDING**

It was envisaged that each professional council would be self-sustaining in the sense that it would produce and collect enough revenue to meet its expenses in the normal course. However, with levels of registration with the professional councils hovering at around 23% of professional practising in those areas due to registration not being compulsory, the professional councils simply do not generate sufficient revenue from membership fees to sustain themselves and their duplicated infrastructure.

3.3. **GOVERNANCE AND ACCOUNTABILITY**

There is a disjuncture between the respective pieces of legislation establishing and regulating the professional councils and that establishing and regulating the CBE. The respective professional councils are essentially independent of the CBE, each with its own governing council.

They do not have the obligation of furnishing quarterly reports to the Ministry, which obligation the CBE has and neither are they listed entities (CBE is a schedule 3A entity) with responsibilities relating to public financial management as prescribed by the Public Finance Management Act of 1999 and regulations promulgated in terms thereof.

3.4. ALIGNMENT WITH NATIONAL POLICY AND IMPERATIVES

The fragmentation of the regulatory bodies operating on the built environment landscape ineluctably leads to a fragmentation of planning mechanisms, resulting in the left hand not knowing what the right one is doing and the loss of the synergistic advantages of a more integrated planning process. The one symptom of this challenge is the professions' apparent lack of centralized and co-ordinated plans to swiftly deal with the skills shortage in the sector.

3.5. ACCESS TO THE PROFESSIONS

There is, 14 years into democracy, still a shortage of previously disadvantaged professionals in this sector. While this is, admittedly, a product of many factors, which government is addressing, this is also a product of the lack of co-ordination between the various professional councils regarding this issue.

While this is a requirement for graduating, there are limited opportunities for potential graduates to get practical training in work places, resulting in a lag between the time these potential graduates could have entered the labour market and the time when they do eventually so enter.

Facilitating entrance to the profession, especially in view of the major infrastructure construction brought about by the Gauteng Rapid Rail Link, the 2010 World Cup and the government's Extended Public Works Programme, must be a priority that is

foremost in the minds of all responsible members of the professions.

4. PROPOSED PRINCIPLES DETERMINING THE PROPOSED CHANGES TO THE CURRENT LEGISLATIVE FRAMEWORK FOR THE REGULATION OF THE BUILT ENVIRONMENT PROFESSIONS:

This policy document has been developed arising from the findings and recommendations of the mid-term review process conducted by DPW assisted by the CSIR and the CBE. The policy framework envisaged in this policy document is based on the following principles:

4.1. ESTABLISHMENT OF THE SOUTH AFRICAN COUNCIL FOR BUILT ENVIRONMENT AND PROFESSIONAL BOARDS:

The Ministry proposes that a single juristic body be established to be named the South African Council for the Built Environment ("SACBE"). This body will serve as an umbrella body for professional boards (to substitute the current professional councils). The objects and functions of the Council will be:

- to control and exercise authority over the professional boards;
- to co-ordinate the activities of the professional boards to be established and to act as a communicatory body for such professional boards;
- to promote and regulate inter-professional liaison between built environment professions in the interest of the public;
- to determine strategic policy in accordance with national public works policy as determined by the Minister, and to make decisions in terms thereof, with regard to the professional boards and the built environment professions, for matters such

as finance, education, training, registration, codes of conduct, disciplinary procedures, scope of the professions, inter-professional matters and continued maintenance of professional competence;

- to promote and maintain a sustainable built environment and natural environment;
- to promote ongoing human resource development in the built environment industry;
- subject to the provisions of Higher Education Act, 1997 (Act 101 of 1997), to control and exercise authority in respect of all matters affecting the education and training of persons in the built environment;
- to promote liaison in the field of education and training referred to in the preceding paragraph, both in the Republic and elsewhere, and to promote the standard of such education and training in the Republic;
- to promote appropriate standards of health, safety and environmental protection within the built environment industry;
- to promote sound governance and transformation within the built environment professions;
- to ensure the uniform application of norms and guidelines set by professional boards throughout the built environment professions;
- to advise Government on any matter falling within the scope of the built environment, including resource utilization, socio-economic development, public health, safety and protection of the environment, and for this purpose carry out such investigations as it or the relevant Minister deems necessary;
- to communicate to the Minister information on matters of public importance acquired by the Council in the course of the performance of its functions ;

- to advise the Minister with regard to the amendment of the envisaged Act, if necessary, in order to support the norms and values of the built environment professions;
- to facilitate inter-ministerial co-operation concerning issues relating to the built environment;
- to provide advice and consultation on national policy that could impact on the built environment human resource development in relation to the built environment professions, and the recognition of new professions;
- to comment, if necessary, on all proposed legislation impacting on the built environment industry;
- to coordinate the establishment of mechanisms for professionals to gain international recognition;
- to ensure the consistent application of policy by the professional boards with regard to:
 - accreditation of education and training institutions;
 - the registration of different categories of professionals;
 - key elements of competence;
 - testing of professionals;
 - code of conduct for professionals;
 - the principles upon which professional boards must base the determination of fee tariffs which professionals may be entitled to charge for their services, and in accordance with any legislation relating to the promotion of competition; and
 - standards of health, safety and environmental protection within the built environment;
- in consultation with professional boards, to obtain recognition for the professional boards as bodies responsible for the establishment of education and training standards in terms of

the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

- to promote co-ordination between the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997) and the professional boards in relation to the accreditation of educational institutions.

The current professional councils will be converted into professional boards, which do not have juristic personality. Although the professional boards are not independent entities, they will retain autonomy in respect of matters relating to the built environment professions which they regulate. Professional boards will thus have the following functions and general powers:

- to consult and liaise with other professional boards and authorities on matters affecting the professional board;
- subject to the provisions of Higher Education Act, 1997 (Act 101 of 1997), to control and exercise authority in respect of all matters affecting the education and training of persons in, and the manner of the exercise of the practices pursued in connection with, any profession falling within the ambit of the professional board;
- to promote liaison in the field of education and training contemplated in the preceding paragraph, both in the Republic and elsewhere and to promote the standards of such education and training in the Republic;
- to make recommendations to the council to advise the Minister on any matter falling within the scope of the any profession falling within the ambit of the professional board in order to support the universal norms and values of such a profession, with greater emphasis on professional practice, democracy,

transparency, equity, accessibility and social responsibility or community involvement;

- to make recommendations to the council and the Minister on matters of public importance acquired by the professional board in the course of the performance of its functions;
- to maintain and enhance the dignity of the profession and the integrity of the persons practicing such profession; and
- to guide the profession and to protect the public interest.

A professional board will, it is envisaged, have the power to:

- conduct accreditation visits to any educational and/or training institution which has a department, school or faculty of a profession falling under the ambit of the professional board concerned;
- either conditionally or unconditionally grant, refuse or withdraw an accreditation with regard to all educational and/or training institutions and their educational *curricula* or training programmes with regard to the profession;
- consult with the Council on Higher Education established in terms of Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education and training within the profession;
- consult with the South African Qualifications Authority established under the South African Qualification Authority Act, 1995 (Act No.58 of 1995) to determine competency standards for the purpose of registration in the profession;
- establish mechanism for professionals to gain recognition of their qualifications and professional status in other countries;
- to remove any name from a register or, upon payment of a prescribed fee, restore thereto, or suspend a professional from

practicing his or her profession pending the institution of a formal disciplinary inquiry;

- appoint examiners and moderators, conduct examinations or evaluations, grant certificates, and charge fees in respect of the examinations, evaluations or certificates as may be prescribed;
- consider any matter affecting any profession falling within the ambit of the professional board and make representations or take such action in connection therewith as the professional board deems advisable;
- upon application by any person, recognize any qualification held by him or her (whether such qualification was obtained in the Republic or elsewhere) as being equal, either wholly or in part to any prescribed qualification, whereupon such person shall, to the extent to which the qualification has been so recognized, be deemed to hold such prescribed qualification and upon compliance with any other additional requirements as may be determined by the professional board, register such person; and
- perform such other functions as may be prescribed, and generally, do all such things as the professional board deems necessary or expedient to achieve the objects of new legislation in relation to the profession falling within the ambit of the professional board.

Any decision of a professional board relating to a matter falling entirely within its ambit shall not be subject to ratification by the council, and the council shall, for this purpose, determine whether a matter falls entirely within the ambit of a professional board.

Although it is proposed that professional boards no longer be independent entities, it is clear from the proposed functions and powers of the SACBE and the professional boards that there will be

a clear distinction between the powers and functions of the SACBE and those of the professional boards.

The proposed change in policy thus seeks to establish a principle in terms of which the SACBE is given the over-arching responsibility of dealing with all matters relating to strategic policy, implementation of Government policy and advising Government on matters falling within the scope of the built environment professions.

The professional boards, on the other hand, retain the function of self-regulation of the profession in matters relating to accreditation of training institutions, education and training, registration of professionals and maintaining and enhancing the dignity as well as the integrity of the relevant built environment profession. This role the professional boards will fulfill under the guidance of the SACBE which will ensure universal application of norms and standards by the professional boards.

It is further envisaged that the current professional councils will cease to exist and all their assets, liabilities, rights and obligations will be transferred to the SACBE. This will enable the SACBE to have the necessary economies of scale in regard to financial, human and other physical resources to support all the professional boards in fulfilling their legislative mandate.

4.2. THE COMPOSITION AND MANAGEMENT OF THE SACBE AND PROFESSIONAL BOARDS:

The SACBE will be constituted in a manner similar to the current prevailing legislative framework. In other words, the professional boards will designate a number of the members of their boards to

the SACBE, while the DPW and other departments will also be represented. Tertiary institutions as well as the community at large, will be represented.

The professional boards will also be constituted on similar principles which would involve the appointment of members of the particular profession by their fellow professionals, community representation, educational and institutional representation, as well as representation of relevant state departments.

In regard to the management and financial affairs of the SACBE and the professional boards, it is envisaged that SACBE will exercise overall authority in regard to the financial affairs of the SACBE and the professional boards. The SACBE will be required to raise its income from registration, examination, annual and other fees payable by professional registered in terms of the Act, as well as from donations, contributions or grants received from the Government or any other person.

Although the SACBE will have the final say on how its income is to be disbursed to discharge its and the professional boards' legislative obligations, it will be required to submit its proposed budget during each financial year to the professional boards for comment so as to allow for participation and input by the professional boards in the final allocation of the income and approval of budgeted expenses.

**4.3. COMPULSORY REGISTRATION FOR ALL PROFESSIONALS
INTENDING TO PRACTICE WITHIN THE BUILT ENVIRONMENT
PROFESSIONS:**

The current legislative framework of the professional councils does not make it compulsory for persons practising the built environment professions to be registered. Section 26 of the respective Professions' Acts, as well as Section 20 of the CBE Act, envisaged the identification of built environment professional work which may only be performed by persons registered in terms of the various Professions' Acts.

Section 26(4) of the respective Professions' Acts envisages that a person can perform work which is identified as falling within the scope of a profession, without registration with the relevant professional council, but under the direction, control and supervision of/or in association with the registered person entitled to perform the work regulated by the relevant Professions Act. As pointed out above, this has resulted in a low level of registration which has in turn impacted on the various professional councils' ability to discharge their legislative mandate.

This policy proposes that there be a definition of the scope of the built environment professions, to be promulgated by the Minister in terms of regulations which will define the scope of any built environment profession which would be registerable in terms of the new legislation. The scope of the built environment profession would be defined in terms of the regulations after the relevant built environment professional boards have submitted, through the SACBE, representations as to the definition such scope of the profession in question.

It is envisaged that once the professions' scope is defined, no person would be entitled to practice such a profession without being registered in terms of the Act. Registration in terms of the Act will in turn require that the professional hold the relevant qualifications as prescribed by the Minister in consultation with the professional board in question, that he or she undergoes relevant practical training and/or examination in addition to academic qualification.

Accordingly, the performance of professional acts, defined in terms of regulations defining the scope for built environment profession, can only be undertaken by persons who are registered with the professional boards in terms of the new legislation. A criminal sanction will attach to any person that holds themselves out to be a professional who can perform professional acts regulated in terms of the new legislation if they are not registered with the relevant professional board.

4.4 **TRANSITIONAL ARRANGEMENTS:**

The proposed new legislation will provide for certain deeming provisions as well as provisions relating to transitional matters. Any person who at the commencement of the new legislation was registered in terms of any of the previous Professions' Act, shall be deemed to be registered in a corresponding category of his profession as provided for in the new legislation.

Any registers which were maintained by the previous professional councils will be incorporated in and considered to form part of the register to be maintained and kept in terms of the new legislation.

The professional councils will cease to exist from the effective date of the new legislation and be replaced by professional boards which will be operating under the auspices of the newly established SA Council for Built Environment.

All rights, obligations, assets and liabilities acquired or incurred by the professional councils will vest in the new SACBE and all employees of the professional councils and CBE will be deemed to be the employees of the SACBE.

4.5 **ACCESS TO THE BUILT ENVIRONMENT PROFESSIONS:**

Although the professional boards, under the guidance of the SACBE, will retain their role in determining qualifications which will entitle holders thereof to registration in a registration category in terms of the new legislation, the Minister will be responsible for prescribing the said qualifications as well as the post-academic practical training and examinations that will be prescribed in order for professionals to qualify for registration in terms of new legislation.

It is envisaged thus that the professional boards, through the council, will make recommendations to the Minister and that the Minister will thus ensure that the conditions and requirements which are prescribed for registration are in harmony and consistent for all built environment professions and also that they advance the Government's imperative of opening access to the built environment professions and drive National Government's initiative on skills and development.

4.6 RETENTION OF SOME OF THE PRINCIPLES OF THE CURRENT LEGISLATIVE FRAMEWORK:

This policy does not propose a complete overhaul of the current legislative framework for regulating built environment professions. It accordingly sets out the extent to which major changes to the current legislative framework are proposed.

This policy envisages the retention of most of the major building blocks informing the regulation of the built environment professions through current legislation. By way of an example, the following principles relating to the current legislative regulation of the built environment professions will be retained:

- The professions will retain control over accreditation of training institutions which offer educational training which has as its object to qualify any person for the practice of any of the built environment professions;
- The built environment professions' authority over the registration of persons who intend to practice any built environment profession is maintained;
- The built environment professions' participation in the determination of the scope of the profession and of the nature and content of the qualifications which will entitle professionals to be registered in terms of the proposed policy is retained, although subject to Ministerial approval;
- the principle of self regulation of the dignity and standards of the profession is retained. A system of peer review and imposition of sanctions in the event of allegations of improper or unprofessional conduct is left intact although, through SACBE, a

consistent approach to protecting the public and prosecuting unprofessional conduct will be ensured.

- It retains a significant element of the current system of constitution of both the SACBE and the professional boards primarily by members of the profession. It retains, with some reservations, the profession's self funding model and resultant autonomy to disburse the funds in line with legislative mandate.

5. CONCLUSION:

In order to give effect to the principle changes as set out above, Government intends promulgating new legislation that will restructure how the built environment professions currently operate. The purpose of this policy document is to elicit comments from members of the public and interested parties on the proposed changes in Government's policy of regulating the built environment professions.

The comments to be received from members of the public and interested parties will be studied and, where necessary, incorporated into a bill which will be submitted to cabinet, the state law advisors and finally to Parliament. The Ministry and Department of Public Works is of the view that the proposed policy contained in this document will address major shortcomings which were revealed by the mid-term review of the current built environment regulatory framework.

The Department of Public Works has also consulted other regulatory bodies which regulate other professions and is of the view that this proposed policy will serve the interests of the general South African public and enable government policy to be implemented whilst affording the built environment professions the opportunity to continue regulating their respective professions.
