

NOTICE 370 OF 2014



public works

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

Department of Public Works
Built Environment (BEP) Policy for public comment

The draft BEP Policy, 2014, as set out in the schedule hereto, is hereby published for public comment. Persons who wish to submit comments in connection with the draft BEP Policy are invited to do so by no later than 16:00, **27 June 2014**. Comments received after this date may not be considered.

All comments must be submitted in writing to Mr Devan Pillay, Chief Director:
Construction Policy Development –

By mail: Mr Devan Pillay
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Kindly write **BEP Policy, 2014** in the subject field of your email.

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Department:
Public Works
REPUBLIC OF SOUTH AFRICA

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

January 2014

PREAMBLE

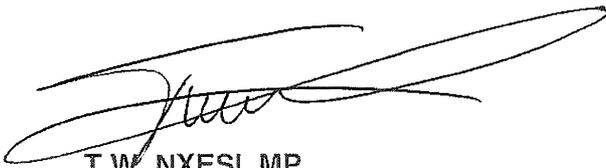
As members of the fourth democratically elected Government of the Republic of South Africa, it remains our duty, perhaps with an ever increasing sense of urgency, to mobilize all the resources of our country to better the lives of our people.

The deployment of human capital and professional expertise remains an important cog in the wheel that must continue to turn to realize a country that is free from hunger, decreasing levels of poverty, growing opportunities, and growth is a way of life. Professional expertise remains a national asset that must be managed as a high value scarce resource. It remains Government's policy that professions must be regulated from within and aligned to Government's overall policies and its national agenda.

In 1994, the Hon Mr JT Radebe, MP, then Minister of Public Works, commenced the process to align the regulation of the Built Environment Professions (BEP), of architects, landscape architects, engineers, property valuers, project and construction management and quantity surveyors by reviewing the merits and demerits of existing regulation and introducing new regulations. This process culminated, in 2000, with the promulgation of seven pieces of legislation, six Acts each regulating the Built Environment Profession through the establishment of statutory Councils, while the seventh established the Council for the Built Environment as an over-arching body.

Over the past decade the built environment grappled with a host of issues linked to the shortcomings of the regulatory environment, the need to organize professions to serve the imperatives of Government, including transformation, public protection, good governance, etc.

After consulting key stakeholders, drawing on the past experiences in the built environment, and regulators of other regulated professions, this policy document is published for public comment to elicit the views of the public and stakeholders at large.



T W. NXESI, MP

MINISTER OF PUBLIC WORKS

DATE: 9/4/14

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DEFINITIONS

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

Accreditation means recognition or certification of educational programmes by the professional council as meeting the prescribed minimum standards of education and training requirements for registration;

Built environment means the field within which registered persons practice;

Built environment profession means any of the following registrable professions:-

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

Minister means the Minister of 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 , in terms of built environment professions, means a person who is registered as such in any of the Professional Councils;

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;

Registered person means a person registered in terms of any of the professions’ Acts.

LIST OF ACRONYMS

BE – Built Environment

BEP – Built Environment Profession

BEPC - Built Environment Professional Council

CBE - Council for the Built Environment established in terms of the CBE Act, 2000 (Act No 43 of 2000)

DPW - Department of Public Works

PFMA - Public Finance Management Act (PFMA), 1999 (Act No 1 of 1999), as amended.

1. INTRODUCTION

The regulation of the Built Environment (BE) under the democratic Government began in 2000 with the enactment of the:

- a) Council for the Built Environment Act, 2000 (Act No 43 of 2000);
- b) Architectural Profession Act, 2000 (Act No 44 of 2000);
- c) Landscape Architectural Profession Act, 2000 (Act No 45 of 2000);
- d) Engineering Profession Act, 2000 (Act No 46 of 2000);
- e) Property Valuers Profession Act, 2000 (Act No 47 of 2000);
- f) Project and Construction Management Professions Act, 2000 (Act No 48 of 2000);
and
- g) Quantity Surveying Professions Act, 2000 (Act No 49 of 2000).

The Council for Built Environment (CBE) and the six Professional Councils came into existence in September 2001.

In 2003, the Department of Public Works (DPW) commissioned a study entitled "*The Role of the Built Environment Professions in Enhancing Construction Industry Development in South Africa*"; as part of the DPW's mid-term policy review of the BEPs. Both the CBE and the BEPCs participated and were required to provide feedback on:

- a) the progress by Councils towards the implementation of policy,
- b) constraints faced by the Councils in implementing policy,
- c) policy and legislative constraints that inhibit the Councils in implementing policy; and
- d) future actions required from the DPW to enable the implementation of policy.

Since the above study, the ongoing interaction between the DPW, CBE and the BEPCs, led to the establishment of a task team in 2011 to identify possible solutions to the challenges encountered in the BE. The challenges identified were broadly within the regulatory and organizational environment. Various options to address the challenges were advanced and this document puts forward the option the DPW deemed as most appropriate.

2. THE PRESENT REGULATION OF THE PROFESSIONS

The current legislative framework for the BEPs envisaged “self-regulation” by the professions to ensure quality and development within the professions, whereas Government fulfills the role of providing general policy direction to the professions as well as ensuring the professions contribute to Government’s imperatives.

The CBE, as an umbrella body for the BEPCs, is responsible for discharging the following legislative mandate and Government policy:

- a) Transforming the BEPs to deliver on the needs of society in South Africa based on international competitive practices, while reflecting the composition of the South African society through the co-ordination of skills development;
- b) protecting the public against unsafe practices in the Built Environment and ensuring good governance in the provisioning of professional services related to the Built Environment by practitioners in both the public and private sectors;
- c) ensuring uniform implementation of Government’s policies among BEPCs that govern the various BEPs;
- d) advise Government on issues related to the Built Environment Professions; and
- e) promote ongoing human resource development in the Built Environment.

The Professional Councils, on the other hand, are autonomous bodies that fulfill the role of self-regulation of the various professions. The current legislation establishes statutory Councils, responsible for:

- a) All matters relating to the registration of professionals with the respective Professional Councils, including determining the categories in which persons may register in the Built Environment in question;
- b) all matters relating to accreditation of educational institutions;
- c) determining and identifying the work, which may be performed by persons registered in terms of the applicable profession’s legislation and registration categories;
- d) maintaining professional standards and holding inquiries into complaints regarding the professional conduct of registered persons;
- e) taking any steps it considers necessary to protect the public;
- f) providing the CBE with such reports as the latter may require to discharge its statutory functions and duties; and
- g) developing codes of conduct to which all registered persons must abide.

3. PRINCIPLES OF THE REVIEW

The review of the current regulatory framework of the BE is structured within the principles of transformation, public protection, integrity of the professions, and good governance.

The BEPCs must safeguard the highest standards of quality to guarantee safety in the built environment. It is thus critical that professionals provide quality and reliable services with public health, safety and welfare as their primary consideration. This is achieved through, among others:

- a) Establishing standards for registration and performance;
- b) assessing competency of BEPs;
- c) authorizing the performance of designated activities;
- d) publishing and enforcing uniform code of practice; and
- e) robust dispute resolution mechanisms.

The integrity of the BEPs must be entrenched to instill public confidence in the industry, recognized through good governance, reliability, quality output, transparency, and accountability. Integrity is instituted through conformity to national and international standards endorsed by professional bodies to which professionals ascribe.

Government's national policy priorities are linked directly to its objectives of poverty eradication, job creation, and reduced inequality. A central theme embedded in the achievement of national priorities is that of transforming society by redressing historically skewed ownership, employment, skills, and other patterns. The BEPs have a central role to play in redressing the afore-mentioned.

The above principles condense the essential objectives of a regulator of any profession and the challenges in the BE, identified by the DPW, are addressed from this perspective.

4. CHALLENGES OF THE PRESENT REGULATORY FRAMEWORK

(a) Poor cooperation linked to legislative inadequacies

It is anticipated that the CBE would co-ordinate and facilitate the implementation of policy within the BE. However, like the CBE, each BEPC has its own independent Council accountable to the Minister of Public Works. Further, no mechanisms exist that oblige the BEPCs to act in synchrony on any matter. Thus, on matters that BEPCs do not consider important or where they disagree with the CBE, the BEPCs reinforce their independence from the CBE, thus inhibiting the CBE from effectively discharging its mandate. The prevailing legislative environment does not ensure synergy and uniformity in the implementation of policy amongst the BEPCs.

(b) Accountability

The BEPCs are established through legislation and in terms of the PFMA are defined as public entities established to maintain professional competence, protect the public, register professionals, and encourage growth of the profession. The BEPCs, although appointed by the Minister of Public Works to perform a regulatory role, perceive themselves as completely independent of the State, representing the professionals. Instead of seeking a mandate from the Minister of Public Works, the BEPCs seek their mandate from the professionals.

(c) Governance

Professional Councils raise fees through applications, registrations and services offered by the Professional Councils. They are empowered by legislation to raise such fees and thus such fees are public funds. Therefore, the BEPCs ought to comply with the Public Finance Management Act of 1999. Currently they do not and to a large extent there is resistance to do so.

Further, the majority of the Council members on the CBE are nominated from the BEPCs. Once appointed as members to the CBE, these members are required to act in the best interest of CBE and perform their fiduciary duties accordingly. To the contrary, it is found that members nominated by the BEPCs tend to conduct themselves as representatives of the BEPCs, each with their competing interests, leading to the paralysis of CBE.

(d) Alignment to Government policy planning

Currently there is poor alignment in policy planning and implementation between the DPW, the CBE and the BEPCs. The BEPCs, unlike the CBE, are at arm's length from the DPW and therefore are not privy to the debates and decisions taken by the DPW, thus hindering the implementation of the DPW's policy decisions by Professional Councils. This leads to the disjuncture in the business plans of Professional Councils and that of the DPW. The former have not embedded in their business plans their contributions to Government's national priorities.

(e) Oversight

The BEPCs are not monitored on a regular basis to ensure the extent to which they are implementing their respective legislative mandates. They do not participate in the quarterly meetings between the Minister and the DPW's other Public Entities. The CBE, as the "overarching council", represents the BEPCs at the meetings. Thus, through practice and design, there has been prolonged deficient oversight of the BEPCs in the implementation of policies and their legislative mandates by the Executive Authority.

(f) Transformation

After 19 years of democracy, the number of previously disadvantaged individuals registered as professionals across the BEPs is dismally low – averaging under 25%. While this is a product of many factors, which Government is addressing, it is also the outcome of scarcity of innovation by respective BEPCs to address the impediments encountered by previously disadvantaged individuals to register as professionals. For example, there are limited opportunities for graduates to get practical training, resulting in a lapse in time before the graduates enter the labour market. Hence, historic inequalities at educational institutions and socio-economic disparities ought to be challenges the BEPCs address, in partnership with all relevant stakeholders.

(g) Funding of mandates

The BEPCs, particularly those with low levels of registration experience great challenges to implement their legislative mandate as they do not generate sufficient revenue from registration fees to sustain themselves. The costing of mandates is essential to provide insight into shortfalls and the remedial measures to be implemented.

(h) Non- compulsory Registration

The current legislative framework requires a person to register with the respective BEPCs in order to practice in the profession. However it is observed that graduates with BE qualifications, whether registered as candidates or not, when employed and working under a registered professional, with the latter signing off the final output, lack the urgency to pursue professional registration. This practice avoids the legislative requirements of registration and deprives the BEPCs of registration fees.

(i) Investigations of complaints

The BEPCs are required to investigate complaints relating to professional misconduct as submitted by the public. The investigations must be comprehensive and conducted in a transparent manner to maintain public confidence that BEPCs are effective and competent in protection of the public. However, the costs of investigating complaints against professional have hindered BEPCs from effectively discharging this legislative mandate.

5. OPTION ANALYSIS

Following the engagements between the DPW, the CBE and the Professional Councils, three options were advanced. The options are as follows:-

Option 1: A single CBE with six Professional Boards

This option provides for the establishment of a super council that replaces the CBE. The six Professional Council Acts be repealed and BEPCs converted to Professional Boards that report to the Council. It restructures the current system to provide for standardised regulation of the Built Environment. The option was not supported by the BEPCs, National Treasury and the Department of Science and Technology.

Option 2: The CBE and six Professional Councils (amending legislation)

Option 2 reflects the current situation. This option proposed that the Minister would continue to regulate the CBE and the BEPCs – maintaining the current flat structure remains. This option provides for the BEPCs to report through the CBE, but they cannot be accountable to the CBE as the BEPCs remain regulatory instruments of the Minister of Public Works. Given that the relationship between the CBE and the Professional Councils is perceived as unclear, legislative amendments are required to clearly define the roles and responsibilities of the CBE and the BEPCs. This is a tedious exercise. However, as this option largely maintains the *status quo*, many of the current challenges, particularly with regard to accountability and aligned processes, may still be experienced. This option may not be ideal for the above-mentioned reasons.

Option 3: Relocate the function of the CBE to the DPW

The Minister of Public Works will directly regulate the Built Environment Professions and entrench the DPW's shareholder role. The CBE's promotional, facilitation and coordination role over BEPCs will be relocated within the DPW, leading to improved synergy between the DPW and the Professional Councils.

The operationalization and institutionalization of the DPW's oversight across the BEPCs will be determined through a comprehensive business case, post the approval of this policy.

This is the preferred option.

6. POLICY RECOMMENDATIONS

To arrest the above challenges and drive Government's national priorities, it is recommended that the Council for the Built Environment Act, 2000 (Act No 43 of 2000) be repealed. The CBE's function be transferred to the DPW.

The DPW will address the issues of:

- a) Alignment to Government policy planning and national imperatives – through a direct mandate from the Minister of Public Works, it making the DPW better placed to guide and direct the BEPCs on Government policy and national imperatives.
- b) Governance – in this regard there will be no competing interests or conflicting views that would impede the DPW from executing actions or tasks.
- c) Accountability – BEPCs will report directly to the DPW.
- d) Poor cooperation – cooperation will be enhanced through amendments to the legislation of the BEPCs to clearly define roles and responsibilities between the BEPCs and the DPW.
- e) Oversight –The DPW will be in good stead to oversee alignment in the implementation of the legislation and of Government’s priorities through a direct mandate from the Minister of Public Works and the amended legislation of the BEPCs.
- f) Procedural matters related to professionals gaining international recognition.
- g) Serving as the body for appeals for any person aggrieved by any decision taken by a BEPC.
- h) Ensuring consistent application of policy by the BEPCs and inform the Minister of Public Works of any inconsistencies.

The Acts regulating the BEPCs will be amended, where necessary, to improve governance and accountability, while clearly spelling out their responsibilities. The BEPCs will retain autonomy on matters related to the BEPs.

In the main the BEPCs will be responsible for:

- a) All matters relating to the registration of candidates and professionals with the respective BEPC;
- b) consulting and liaising with other Professional Councils and authorities on matters affecting the BEPCs;
- c) subject to the provisions of national legislation, controlling and exercising of authority of any profession falling within the ambit of the BEPC;
- d) consultation with the Council on Higher Education, established in terms of the Higher Education Act, 1997 (Act No 101 of 1997), regarding matters relevant to education in the professions;
- e) recommending to the Minister of Public Works any matter falling within the scope of any BEP;

- f) making recommendations to the Minister of Public Works on matters of public importance acquired by the BEPC in the course of the performance of its functions;
- g) maintaining and enhancing the dignity of the profession and the integrity of the persons practicing such a profession;
- h) guiding the profession and to protect the public interest;
- i) all complaints lodged against registered persons and/or related processes as well as appeals thereof;
- j) complying with the requirements of the PFMA; and
- k) subject to other national legislation, a BEPC has the power to:
 - i. 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 BEPC concerned;
 - ii. 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;
 - iii. determine competency standards for the purpose of registration in the profession;
 - iv. establish mechanisms for professionals to gain recognition of their qualifications and professional status in other countries;
 - v. maintain a register of professional persons;
 - vi. investigate complaints lodged against professional persons;
 - vii. act against professional persons when found to have acted contrary to legislation and any codes of good practice prescribed by the Professional Council; and
 - viii. determine Identification of Work for any of its categories of registration and work that falls within the scope of any other profession regulated by Built Environment Professions Acts.

An aggrieved party to any decision of a BEPC must lodge an appeal to the DPW, which will establish an *ad-hoc* committee to investigate and make a ruling, subject to compliance to any national legislation.

7. CONCLUSION

In order to give effect to the principal changes as set out above, the CBE Act shall be repealed and CBE's functions be transferred to the DPW. The legislation regulating the BEPs will be amended to improve accountability and governance while maintaining a streamlined and efficient BE that is geared to Government's development goals.

The purpose of this policy document is to stimulate discussion and solicit comments from interested parties on the proposed changes in Government's policy of regulating the BEPs.

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