



<p>22. Clause 25 – "The Minister may in consultation with the Minister responsible for education and, after consultation with the council, [prescribe] <u>identify</u> the qualifications obtained [by virtue of examination conducted by an accredited] from a recognized educational institution or examining authority in the Republic, which, when held singly or conjointly with any other qualification, entitle the holder thereof to a registration <u>of the professional designation registered on the NQF</u> in a registration category in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or such requirements [as may be prescribed]"</p>	<p>This clause empowers the Minister to prescribe qualifications that will entitle the holder thereof to registration in the BE. The Minister's empower is limited only to the prescription of qualifications for the purposes of registration in the BE.</p> <p>The Bill empowers the Minister to make such prescription in consultation with the Minister responsible for education, thus necessitating agreement between the two Ministers on what is to be prescribed.</p> <p>The determination of the requirements for registration in the built environment is the responsibility of the PBs.</p> <p>As the PB's will be applying for recognition as a professional body and for registration of their professional designation on the NQF, the application of this provision will result in the intention of the suggested amendment and therefore does not necessitate an amendment to include the words "of the professional designation registered on the NQF"</p> <p>The suggested amendments are therefore unnecessary.</p>
<p>23. Clause 26 – delete the entire subclause 26(1). No explanation given for deletion</p>	<p>This clause provides for the recognition of foreign qualifications for registration in the BE.</p> <p><u>In terms of clause 26(1)</u> the Minister is to prescribe qualifications which have been identified by the Council, as satisfying the education requirements for registration in the BE.</p> <p><u>Clause 26(2)</u> requires the person with foreign qualifications, who is applying for registration in a profession, to pass, to the satisfaction of the PB, an examination or evaluation [this is an example of peer review]. <u>Clause 26(3)</u> contemplates that such examination or evaluation be conducted by the PB in a manner determined by council. The council prescribes the manner in which the examination and evaluation will be</p>



	<p>conducted, to ensure consistency and transparency of such peer review process. Note that even if a foreigner has a corresponding professional status to that of a SA professional, an evaluation of the foreigner will still be necessary to ensure that he is familiar with the SA built environment industry, legislation, or any other condition peculiar to SA.</p> <p>Clause 26(1)(b) empowers the council to recognize foreign qualification as satisfying the educational requirements for registration in the BE.</p> <p>Clause 26(1)(a) empowers the Minister to prescribe qualifications that will entitle the holder thereof to registration in the BE. The Minister's empower is limited only to the prescription of qualifications for the purposes of registration in the BE. Clause 26(1) is necessary to ensure transparency of the foreign qualifications which have already be recognized by the SACBE as satisfying the educational requirements for registration in the BE.</p>
<p>DOE – unintended consequences of the following clauses</p>	
<p>1. Clause 28(1) provides that for the purposes of promoting education or training for the practicing of a built environment profession in respect of which registration in terms of this Act is a requirement, the relevant professional board may, notwithstanding anything to the contrary in this Act, register any person not permanently resident within the Republic to practice such profession for such period as the council may determine.</p> <p>2. Clause 28 (2) – A person registered in terms of subsection (1) may give demonstrations at an educational and training institution accredited by the council of techniques in respect of such profession.</p>	<p>Clause 28 provides for the registration of foreigners who intend to lecture in educational and training institutions. In does not require for all such foreign lecturers to register. Only those lecturers who will be performing acts that are required to be performed by registered person will be required to register.</p>



<p>3. Clause 29(2) provides that if any education and training institution fails or refuses to furnish any particulars requested by the professional board under that subsection or it appears to the professional board that a provision of this Act is not being properly complied with by that institution and that such improper compliance is having or may have an adverse effect on the standards of education and training maintained at that institution, the professional board concerned may, by notice in the Gazette, suspend accreditation of such education and training institution until such time as that institution complies with the conditions and terms determined by the professional board.</p> <p>4. Clause 29(3) provides that a professional board may, upon representations made by the affected education and training institution that satisfactory provision has been made for complying with the requirement of this Act by the said institution, reinstate the accreditation of that institution by notice in the Gazette.</p>	<p>Once an education programme has been accredited by the PB as satisfying the educational requirements for registration in a profession, the PBs thereafter have to monitor such accredited programme to ensure the programme maintains the requirements for registration.</p> <p>The information required in terms of <u>clause 29(1)</u> is for purposes of ensuring compliance with the accreditation granted an educational programme for purposes of registration in a profession. <u>Clause 29(2)</u> provides for the suspension of such accreditation by the PB of such educational programme if the educational institute fails to furnish such information as requested. Many were concerned that this was unfair on the innocent student. However the Minister, as responsible for the regulation of built environment, has to ensure that professionals registered in terms of this Bill are adequately trained. This clause is therefore a balancing act between the public interest/protection vs students who have not been adequately trained. In any event, the aforementioned suspension of accreditation will only happen after due notice to the educational institution. <u>Clause 29(3)</u> – Provides that a professional board may reinstate the accreditation of an institution or programme on proof that the affected institution has made satisfactory provision for complying with the requirements of the BEP Bill.</p>
<p>5. Clause 46(2) – provides that no person other than a registered person holding the necessary qualifications may hold any appointment to any establishment, institution, body, organization or association, whether public or private, if such appointment involves the performance of any act which an unregistered person, in terms of the provisions of this Act, may not perform: Provided that nothing in this subsection must be construed as prohibiting the education and training prospective built environment professionals under supervision of a registered professional, or the employment in any government department or similar institution of any person undergoing training with a view to registration in terms of this Act in respect of any built environment profession, under the supervision of a</p>	<p>If a person practices a BE profession in the absence of being registered with SACBE, such person in term of Clause 46(1) will not be able to recover costs for such services rendered. In other words he would not have recourse to the courts in the event of his client failing to pay him for his services. Clause 46 (2) – provides that no person other than a registered person may be appointed by any institution, whether public or private, in a post which requires the performance of acts which may, in terms of the BEP Bill, only be performed by a registered person. Notwithstanding the above, this clause includes a</p>



registered person.	proviso that permits a person in training to perform such acts, but only under the supervision of a registered person.
<p>6. Clause 47 – addresses the investigation of matters relating to education and training of certain persons</p> <p>Clause 47(1) – provides that notwithstanding anything to the contrary contained in any law, any person who has been authorized by a professional board in writing to investigate any matter relating to the education and training of any person who is undergoing such education and training for the purposes of qualifying for the practicing of any profession to which the provisions of this Act apply, may, for the purposes of making such investigations, enter any institution or premises utilized in the education and training of any such person.</p> <p>Clause 47(2) – provides that any person who prevents any person authorized in terms of subsection (1) from entering an institution or premises referred to in that subsection, or who hinders him or her in the making therein or thereon of any investigation contemplated in that subsection, is guilty of any offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.</p>	<p>After granting accreditation of an institution or educational programme the PB has the further function of monitoring the maintenance of standards at such institutions and of such educational programmes. The investigation referred to is therefore necessary for ensuring that the required standards for accreditation are being maintained. This is necessary both to protect students and the public from institutions which want to offer educational programmes which are meant to prepare students for professional registration but which prevent the PBs from conducting assessment to ensure the maintenance of appropriate standards and quality.</p>
7. Clause 48 – deals with the Minister's powers to regulate on an array of issues.	<p>This clause deals with the power of the Minister to make regulations. With reference to education, the prescription of educational and minimum requirements of curricula and the standards of education are for purposes of registration in a built environment profession for which the Minister of Public Works is responsible in ensuring that suitably trained professionals enter the built environment, to ensure public safety.</p>
CONCERNS RAISED BY TREASURY	
<p>1. ECSA's is concerns regarding the loss of International recognition are:</p> <p>(a) the allegation that only organizations controlled by engineers can be signatories to the accords;</p>	<p>1 The international accords provide for the recognition of equivalence of accredited educational programmes;</p> <ul style="list-style-type: none"> • In terms of the accords:

signatories/professionals must be responsible for accreditation of programmes;

enactment of the Bill in its current form will change the legal status of ECSA, resulting in the loss of international recognition;

Bill does not guarantee independent peer review in setting of standards, the registration and accreditation process, this could result in automatic cancellation of international recognition;

Minister's powers to prescribe the qualification for registration may jeopardize international recognition.

- The signatories have compared their respective processes, policies and procedures and have concluded that they are comparable;
- The signatories recognize the substantial equivalence of such programs in satisfying the educational requirements for practicing in the engineering profession at the relevant levels
- The accreditation of engineering academic programs is a key foundation for practicing at the professional level in territories covered by the accords;
- Each signatory will make every reasonable effort to ensure that the bodies responsible for registering or licensing professional engineers (or engineering technologist, as the case may be) to practice in its country or territory accept the substantial equivalence of engineering academic programs accredited by signatories to the agreements
- Any signatory which effects a substantial change to its accreditation criteria, policies or procedures is obligated to report such a change to the Committee via the secretariat and thereby to provide the other signatories with the opportunity to require that the scheduled monitoring and report be brought forward;
- A signatory is defined as "[a]n organization entitled (sic) to fully participate in an Accord, enjoying the same rights and obligations as all other signatories. Signatories must be independent of the academic institutions delivering accredited or recognized programs within their jurisdiction. They are typically authorities, agencies or institutions which are representative of the engineering profession and which have statutory powers or recognized professional authority for accrediting programs designed



	<p><u>to satisfy the academic requirements for admission to the practicing engineering community within the jurisdiction (e.g. country, economy, geographic region)."</u></p> <p>2. <u>The Bill, in terms of clause 51(4), provides for all rights, obligation, assets and liabilities of the existing councils to vest in the SACBE on effective date.</u></p> <p>3. <u>Thus, rights and obligations in terms of the international accords will also vest in the SACBE.</u></p> <p>4. <u>Notwithstanding, the accords require that if there is to be any change to the policies, procedures and processes then the Committee must be informed thereof.</u></p> <p>5. <u>We are of view that SACBE will qualify as a signatory to the accords as:</u></p> <p>(a) <u>The SACBE and the PBs are independent of the academic institutions;</u></p> <p>(b) <u>Although SACBE is not representative of the engineers, the accreditation competency is the function of the PB for engineers, which is representative of the engineers.</u></p> <p>(c) <u>The PB's, which will be conducting the accreditation, are representative of the engineering profession;</u></p> <p>(d) <u>The PBs, in terms of the Bill, have statutory powers or recognized professional authority for accrediting programs designed to satisfy the academic requirements for registration.</u></p>
<p>2. Establishing of the PB's is at the discretion of the Minister</p>	<p>The establishment of professional boards is not a function, but a power given to the Minister in terms of the Bill. A power is by nature discretionary.</p> <p>The Bill empowers the Minister to establish PBs after consulting with the SACBE. Clause 15 is drafted to empower the Minister, should the need arise, to establish more PBs, for</p>



	<p>example, presently Town Planners are regulated by Minister of Land Affairs but are integral to the built environment and may in future be regulated under the BEP Bill. This section further allows the Minister to consolidate councils should the need arise. The creation and/or consolidation of PBs would entail extensive consultation with the relevant profession.</p>
<p>3. Legal implications of the dissolution of the Prof. Council from effective date to establishment professional board, on eg. Signing to designs, payment certificates etc.</p>	<p>In terms of the transitional arrangement clause 51(7) and clause 51(9), the professional categories which were determined by the professional councils under the 2000 Acts remain intact in the BEP Bill unless repealed by the latter. Therefore professionals registered in terms of existing BE environment legislation will retain their professional status after repeal of such legislation. At effective date such professionals will be regarded as automatically registered under the SACBE under such categories. They may therefore continue to practice their profession and therefore sign-off on payments, designs, etc.</p>
<p>4. Professional representation on SACBE – structure</p>	<p>1 The SACBE has an overarching role and will:</p> <ul style="list-style-type: none">* Control and exercise authority over professional boards;• Co-ordinate the activities of professional boards;• Be a communicatory body for such professional board;• Determine strategic policy in accordance with national policy• Subject to the relevant educational laws, control and exercise authority iro education and training• Ensure uniform application of norms and guidelines set by professional boards• Advise government on any matter falling with the scope of the BE, including, resource utilization, socio-economic development, public health, safety and protection of the environment• coordinate the establishment of mechanisms for professionals to gain international recognition; <p>2 Members on the SACBE are to ensure and promote the</p>



	<p>interest of the BE as a whole and not specific individual professions. The interests of the specific individual professions will be protected by the respective PBs.</p>
5. Community Representation on the SACBE	<p>Community representatives have been included to bring other relevant expertise that would be required by the Council such as legal, financial, corporate governance, etc.</p>
6. Structure of the SACBE	<p>The Council is made up of:</p> <ul style="list-style-type: none">a. 6 professionals, one for each professional board,b. 1 person from DPW, registered to the BEP Bill,c. 1 person from DoE,d. 2 state employees (infrastructure departments), registered to the BEP Bille. 2 persons from HESA, andf. 6 community representatives. <p>The Council has been constituted in a manner that would ensure it meets its obligations in terms of Section 4 of the BEP Bill namely to ensure sound corporate governance, transparency, consistent application of policies to meet national priorities, an increase in the supply of professionals, etc. Members of the Council will therefore need to fulfill this role.</p> <p>The representation of the professionals on the Council (SACBE) has been limited to one professional for each Profession. The professionals are not there to represent the interest of their respective professions. This was deliberate to ensure the Council does not get bogged down by professional pushing agendas that benefit their respective professions.</p> <p>Community representatives have been included to bring other relevant expertise that would be required by the Council such as legal, financial, corporate governance, etc.</p>



<p>7. Loss of Peer Review</p>	<p>Peer review is a process by which an applicant's knowledge, skills and expertise are assessed by other professionals in the field.</p> <p>Peer review is addressed in clause 16(2)(a), (g) and (h) and in section 18 of the Bill, which empowers the PBs to conduct accreditation visits; to remove or restore a name on the register or to suspend a profession; and to conduct examinations or evaluations of applicants. The authority to institute disciplinary action against unprofessional conduct also vests in the respective PBs</p>
<p>8. Engineering Disciplines falling outside the BE</p>	<p>In terms of the current legislative environment the executive authority of each Act regulating the professional councils is the Minister of Public Works. Thus, all engineering disciplines are currently under the executive authority of the Minister of Public Works.</p> <p>In terms of the Bill the Minister remains the executive authority of all BE professions including all disciplines of the engineering profession. From an operational perspective there is no change, in that professional boards will be regulating all aspect specific to the respective professions.</p> <p>Although the definition of BE is limited to the physical world that has been intentionally created through science and technology, such definition is broad enough to provide for the inclusion of all disciplines within the engineering profession.</p>
<p>9. PB's responsibility iro safety, standards of academic qualifications, practical training etc.</p>	<p>The professional boards are empowered, in terms of 16(2), to control those aspects within the ambit of each profession, as such, will be responsible for the safety of the public and the environment, setting of standards of academic qualification and training required for registration, administering the process of accreditation and registration; and for the investigating and prosecuting unprofessional conduct. The SACBE will be responsible for the regulation of these aspects</p>



	within the built environment as a whole.
10. Extensive Power of the Minister to regulate	The Minister is given power to regulate the built environment, and to provide policy direction to ensure that the built environment contributes to the government's overall strategic objectives e.g. poverty alleviation, job creation, transformation, skills enhancement, rural development, etc. The Minister's regulates on these issues to ensure transparency and accountability. However, the PBs are given original powers in terms of clause 16, to conduct accreditation visits; to remove or restore a name on the register or to suspend a profession; and to conduct examinations or evaluations of applicants. The authority to institute disciplinary action against unprofessional conduct also vests in the respective PBs
11. Arbitrary powers of the Minister to exempt persons from registration without having a sound basis or consult the relevant Professional Board on process	The concern raised is that the Minister is given arbitrary power to "exempt people from registering without having a sound basis or consult the relevant Professional Board on process". This is an incorrect read of the Bill. In terms of clause 44.1 the Minister is empowered to exempt only juristic persons from registration, as a juristic person cannot be registered as a professional.