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NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998

(Gazette No. 19519, Notice No. 1540. Commencement date: 29 January 1999 [Proc. No. 8, Gazette No. 19703])

SECTION 24H REGISTRATION AUTHORITY REGULATIONS, 2016

Government Notice 849 in Government Gazette 40154 dated 22 July 2016.

Commencement date: Please refer to regulation 22(1) which states:

“(1) These Regulations are called the Section 24H Registration Authority Regulations, 2016, and, with the exception of regulation 14, take effect on the date of the appointment of the first registration authority.”

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby make the regulations pertaining to the appointment of a registration authority responsible for the registration of environmental assessment practitioners and pertaining to the specification of tasks in relation to an application for environmental authorisation that may only be performed by a registered environmental assessment practitioner, under sections 24(5)(e), 24H and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), in the Schedule hereto.

(Signed)

BOMO EDITH EDNA MOLEWA

MINISTER OF ENVIRONMENTAL AFFAIRS

SCHEDULE

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CHAPTER 1

INTERPRETATION AND PURPOSE

1. Interpretation

- (1) In these Regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context requires otherwise—

“**applicant**” means a person that lodged an application for registration as an environmental assessment practitioner;

“application” means an application by an association to be appointed as a registration authority in terms of section 24H of the Act;

“EMPr” has the meaning assigned to it in the Environmental Impact Assessment Regulations, 2014 or the meaning assigned to the term “environmental management programme” in Environmental Impact Assessment Regulations, 2006 or Environmental Impact Assessment Regulations, 2010;

“environmental assessment practitioner” means the individual responsible for the planning, management, coordination or review of environmental impact assessments and associated EMPrs;

“Qualification: Environmental Assessment Practice” means a qualification awarded by a higher education provider on completion of a learning programme that is accredited as meeting inter alia the standards contained in the Exit Level Outcomes, Associated Assessment Criteria and the critical Cross-Field Outcomes of the national qualification standard for Environmental Assessment Practice, South African Qualifications Authority ID 61831, with learning outcomes at least at the South African National Qualifications Framework (NQF) Level Descriptor 8; or a qualification consistent with a future qualification standard for Environmental Assessment Practice developed in conjunction with the Council on Higher Education, according to the requirements of the Higher Education Qualifications Sub-Framework of 2014, under the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);

“registered candidate environmental assessment practitioner” means an environmental assessment practitioner who is registered as such by the registration authority appointed in terms of section 24H of the Act in accordance with prescribed criteria and who may participate in, but not hold primary responsibility for, planning, management, coordination or review of environmental impact assessments and associated EMPrs;

“registered environmental assessment practitioner” means an environmental assessment practitioner who is registered as such by the registration authority appointed in terms of section 24H of the Act in accordance with prescribed criteria and who holds primary responsibility for planning, management, coordination or review of environmental impact assessments and associated EMPrs;

“registration authority” means a registration authority appointed in terms of section 24H of the Act; and

“the Act” means the National Environmental Management Act, 1998 (Act No. 107 of 1998).

2. Purpose of Regulations

The purpose of these Regulations is to—

- (1) prescribe the manner in which an association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority in terms of section 24H(1) of the Act;
- (2) specify tasks performed by an environmental assessment practitioner in connection with an application for environmental authorisation, where environmental impact assessment has been identified as the environmental instrument to be utilised in informing such application for environmental authorisation, that may only be performed by a registered environmental assessment practitioner, and
- (3) prescribe the criteria for registration and renewal of registration of environmental assessment practitioners and associated procedures for such registration or renewal of registration.

CHAPTER 2

APPLICATION FOR APPOINTMENT AS REGISTRATION AUTHORITY

3. Application for appointment as registration authority and content of application

- (1) An association proposing to register its members as environmental assessment practitioners may apply to the Minister to be appointed as a registration authority.
- (2) An application contemplated in subregulation (1) must contain—
 - (a) the constitution of the association;
 - (b) a list of the members of the association;
 - (c) a description of the criteria and process to be used to register environmental assessment practitioners;
 - (d) a list of the qualifications of the members of the association responsible for the assessment of applicants for registration;
 - (e) a code of conduct regulating the ethical and professional conduct of members of the association; and
 - (f) a proposed structure of the association and its intended committees.
- (3) The constitution of a registration authority must, amongst others, indicate the governance and management matters and measures to ensure that the structure of the association, its committees and its membership progressively achieve an association that is representative of the demographics of the country.

- (4) The code of conduct must, as a minimum, include commitments to—
- (a) carry out professional activities in accordance with the principles of sustainable development;
 - (b) consider environmental concerns as early as possible in the development of policies and project conception;
 - (c) ensure accountability for technical and professional conduct;
 - (d) ensure that the integrity of the environment, including conservation and sustainable use of the biophysical environment, and the social welfare, health and safety aspects of the socio-economic environment, is placed above sectional or private interests;
 - (e) update and improve own knowledge, skills and competency in environmental assessment practice;
 - (f) ensure objectivity and impartiality when carrying out professional activities;
 - (g) take responsibility for the findings and recommendations made as part of the carrying out of professional activities; and
 - (h) denounce dishonesty, fraud, deceit, misrepresentation, discrimination or bias in executing professional activities.

4. Consideration of application and appointment of a registration authority

- (1) Where the Minister intends to appoint an association as registration authority, the Minister must, after considering an application and any other additional information that the Minister may require—
- (a) by notice in the Gazette, invite comments on her intention to appoint an association as a registration authority;
 - (b) consider comments received; and
 - (c) by notice in the Gazette, appoint the association as a registration authority or, in writing addressed to the association, refuse the application, giving reasons for such refusal.
- (2) The Minister must maintain a register of all associations appointed as registration authorities in terms of section 24H of the Act.

- (3) The Minister may appoint as registration authorities such number of associations as are required for the purposes of the Act and may, if circumstances so require, limit the number of registration authorities to a single registration authority.

5. Termination of appointment of an association as a registration authority

- (1) The Minister may, for good cause and in writing addressed to the association, terminate the appointment of an association as a registration authority.
- (2) Any termination as contemplated in subregulation (1) must be preceded by—
- (a) notification to the association of the Minister's intention to terminate the appointment, including reasons;
 - (b) allowing the association an opportunity to submit any representations on the proposed termination; and
 - (c) consideration of any representations received.

CHAPTER 3

MINIMUM REQUIREMENTS OF REGISTRATION AUTHORITY

6. Objectives and responsibilities of a registration authority

- (1) The objectives of a registration authority contemplated in section 24H of the Act must, as a minimum—
- (a) promote quality assurance regarding environmental assessment practice;
 - (b) promote the best interest of the environment, sustainable development and the public good;
 - (c) facilitate the transformation and restructuring of environmental assessment practice profession;
 - (d) ensure the professionalisation of environmental assessment practitioners through continued training and development support, which must also focus specifically on support for candidate black people, women, youth and people with disabilities in order to achieve the progressive transformation and restructuring of the profession that is representative of the demographics of the country; and
 - (e) promote awareness of the purpose and practice of environmental assessment in South Africa.
- (2) A registration authority must—

- (a) keep and maintain proper financial records in respect of every financial year relating to the assets, liabilities, income and expenditure of the registration authority;
- (b) prepare audited financial statements for each financial year;
- (c) submit to the Minister—
 - (i) financial statements within six months of the end of its financial year; and
 - (ii) within a period of six months of the end of its financial year, a comprehensive report on the operations of the registration authority during that year;
- (d) advise the relevant authorities on issues that may impact on the practice of environmental assessment and the registration of environmental assessment practitioners;
- (e) communicate, to relevant authorities, information on matters of public importance acquired during the course of its work;
- (f) liaise with relevant government entities if necessary in order to effectively discharge its mandate under section 24H of the Act;
- (g) inform its members of issues which may have an impact on the profession and their work;
- (h) annually report to the Minister on the transformation of the sector; and
- (i) generally, do all such things as it deems necessary or expedient to achieve the objectives as contemplated in sub-regulation (1).

7. Functioning of a registration authority

- (1) Reasonable steps must be taken to ensure that the objectivity of the registration authority in performing any functions in terms of section 24H of the Act is not compromised.
- (2) The executive members of the registration authority must—
 - (a) have no business or financial interest in the registration authority other than fair remuneration for work performed in connection with the execution of functions of the registration authority;
 - (b) have expertise in ensuring compliance to these Regulations;

- (c) be able to perform the work relating to an application for registration as an environmental assessment practitioner or candidate environmental assessment practitioner in an objective manner; and
 - (d) recuse himself from any hearing, deliberation or decision of any committee, where there may be any circumstances that may pose an actual or potential conflict of interest.
- (3) A minimum of two thirds of the executive members of the registration authority must meet the requirements for registration as environmental assessment practitioners.
- (4) Each committee established as contemplated in subregulation (4) must consist of such number of members as the registration authority may determine, on condition that at least two thirds of the members of such committee must meet the requirements for registration as environmental assessment practitioners.
- (5) The registration authority may at any time reconstitute or dissolve any committee established in terms of sub-regulation (4) of these Regulations.
- (6) The registration authority must, from its members, appoint a registration committee which will be responsible to consider and decide on—
- (a) any application for registration as either registered environmental assessment practitioner or registered candidate environmental assessment practitioner;
 - (b) any application for renewal of registration as registered environmental assessment practitioners or registered candidate environmental assessment practitioners; and
 - (c) any termination of registration as contemplated in regulation 18.

8. Register of environmental assessment practitioners

The registration authority must keep and maintain a register of registered environmental assessment practitioners and registered candidate environmental assessment practitioners—

- (a) to be made available on the registration authority's website and in any other means decided by the registration authority; and
- (b) which provides the names of all registered environmental assessment practitioners and registered candidate environmental assessment practitioners, their qualifications, their race and gender, the province and town or city of residence and the year in which they were first registered.

9. Levying of Fees

Prepared by:

A registration authority—

- (a) may determine and review, from time to time, fees for application for registration and renewal of registration, for the lodging of appeals and annual fees for registered candidate environmental assessment practitioners and registered environmental assessment practitioners and must indicate the date on which such fees are payable; and
- (b) must obtain the approval of the Minister prior to levying such fees.

10. Professional Conduct

- (1) A registration authority must develop, administer and enforce a code of conduct regulating the ethical and professional conduct for registered environmental assessment practitioners and registered candidate environmental assessment practitioners.
- (2) A registration authority must ensure that the code of conduct is available at no cost and is accessible to all members of the public.
- (3) All members of a registration authority must comply with the code of conduct, as contemplated in subregulation (1) and regulation 3(2)(e) of these Regulations, of such registration authority.

11. Disciplinary procedures

A registration authority must establish procedures for disciplinary action and sanction mechanisms.

12. Appeal procedures

A registration authority must establish procedures for the submission and consideration of appeals on decisions taken by the registration authority and must ensure that no member of a registration committee that considered an application for registration may consider an appeal on such a decision.

13. Foreign qualifications

A registration authority must advise the relevant qualifications authority in evaluating and verifying any foreign qualification related to environmental assessment practice.

CHAPTER 4

REGISTRATION OF ENVIRONMENTAL ASSESSMENT PRACTITIONERS

14. Requirement to register as environmental assessment practitioner

No person other than a registered environmental assessment practitioner, registered with a registration authority, may hold primary responsibility for the planning, management, coordination or review of environmental impact assessments and associated EMPs.

(Publisher's note: Commencement date of regulations 14: Regulation 22(2) states: "Regulation 14 of these Regulations takes effect 24 months from the date of the appointment of the first registration authority.")

15. Categories of registration and minimum criteria for registration as environmental assessment practitioner or candidate environmental assessment practitioner

- (1) A registration authority may register an applicant as an environmental assessment practitioner if—
 - (a) he or she—
 - (i) has a Qualification: Environmental Assessment Practice; or
 - (ii) has an equivalent qualification to the qualification contemplated in subregulation (1)(a)(i); or
 - (iii) is deemed to be competent, based on a Recognition of Prior Learning assessment in terms of the relevant environmental assessment qualification registered with the national qualifications authority; and
 - (b) the nature and length of professional experience of the applicant is at least three years appropriate professional experience; and
 - (i) at least three environmental impact assessments or reviews concluded in the period of 10 years preceding the date of coming into effect of regulation 14 of these Regulations, or initiated in the period of 10 years preceding the date of coming into effect of regulation 14 of these Regulations but concluded after the date of the coming into effect of regulation 14 of these Regulations, which environmental impact assessments or reviews demonstrate the required level of competence; or
 - (ii) at least three environmental impact assessments or reviews concluded before the 10 year period contemplated in subregulation (1)(b)(i), coupled with active, in depth involvement in the field of environmental impact assessment during the 10 year period preceding the date of coming into effect of regulation 14 of these Regulations, which demonstrates the required level of competence.
- (2) A registration authority may register an applicant as a candidate environmental assessment practitioner if he or she —
 - (a) has a Qualification: Environmental Assessment Practice; or

- (b) has an equivalent qualification to the qualification contemplated in subregulation (2)(a); or
 - (c) is deemed to be competent, based on a Recognition of Prior Learning assessment in terms of the relevant environmental assessment qualification registered with the national qualifications authority.
- (3) A registration authority may register a person who is a non-resident of the Republic if he or she—
- (a) has complied with the prescribed registration criteria as contemplated in subregulation (1) or (2); and
 - (b) has paid such fees as may be determined by the registration authority and approved by the Minister.
- (4) The criteria for registration and renewal of registration may be amended by the Minister in consultation with the registration authority, the national qualifications authority and the sector, from time to time.

16. Procedure for registration

- (1) A person who wishes to register as an environmental assessment practitioner or candidate environmental assessment practitioner may apply to a registration authority.
- (2) An application to register must be—
- (a) made on an official application form obtainable from the registration authority; and
 - (b) accompanied by at least—
 - (i) certified copies of academic qualifications as specified in regulation 15;
 - (ii) a portfolio of evidence of competence;
 - (iii) the relevant application fee; and
 - (iv) any other information that the registration authority may require to consider such application.
- (3) Upon receipt of an application contemplated in subregulation (2), the registration authority must consider the application for registration and decide the application within 120 days.
- (4) The decision contemplated in subregulation (3) may be to—

- (a) register the applicant as registered environmental assessment practitioner or registered candidate environmental assessment practitioner for a period not exceeding five years;
- (b) refuse the application for registration; or
- (c) recommend that—
 - (i) further information or further evidence of competence be supplied; or
 - (ii) further relevant experience or training is acquired.

17. Procedure for renewal of registration

- (1) A registered environmental assessment practitioner or registered candidate environmental assessment practitioner must, at least three months prior to the expiry of his or her registration, apply to the registration authority for renewal of registration.
- (2) An application for renewal of registration must be made on an official application form obtainable from the registration authority and must contain —
 - (a) a portfolio of evidence demonstrating effective competence in practice over the previous five year period of registration;
 - (b) evidence that the applicant has updated and improved his/her skills, knowledge and understanding in the field of environmental assessment during the past five year registration period; and
 - (c) evidence that the applicant has contributed to transformation, skills transfer, capacity building and awareness raising in the environmental assessment field during the past five year registration period.
- (3) Upon receipt of an application for renewal of registration, the registration authority must consider and decide such application within 120 days.
- (4) The decision contemplated in subregulation (3) may be to—
 - (a) renew registration for a period not exceeding five years;
 - (b) request more information if the information is not sufficient for a decision to be made;
 - (c) refuse, in writing, the application for renewal of registration, giving reasons for such refusal.

- (5) If an application for the renewal of registration is pending when the registration period referred to in regulation 16(4)(a) expires, the current registration will be deemed valid until such time as the application has been finalised.

18. Termination of registration

- (1) A registration authority may terminate the registration of a registered environmental assessment practitioner or registered candidate environmental assessment practitioner if she or he—
- (a) no longer meets the criteria prescribed in regulation 15;
 - (b) has erroneously been registered, or has been registered on information subsequently proved to be false;
 - (c) breaches the code of conduct of the registration authority contemplated in regulations 3(2)(e) and 10;
 - (d) has been removed from an office of trust on account of improper conduct;
 - (e) has been convicted of an offence, either in the Republic or elsewhere, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and sentenced to imprisonment for a period exceeding 3 months or a fine as alternative thereto, where the offence relates to unethical or unprofessional conduct;
 - (f) is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
 - (g) is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration; or
 - (h) fails to pay the prescribed annual fee within 90 days from it becoming due.
- (2) The registration authority must—
- (a) give reasonable notification to the registered environmental assessment practitioner or registered candidate environmental assessment practitioner of its intention to terminate registration and the reasons why termination is considered; and
 - (b) give the registered environmental assessment practitioner or registered candidate environmental assessment practitioner a reasonable opportunity to submit any representations on the proposed

termination which the registered environmental assessment practitioner or registered candidate environmental assessment practitioner wishes to make.

- (3) Upon having reached a decision on whether or not to terminate registration, the registration authority must notify, in writing, the registered environmental assessment practitioner or registered candidate environmental assessment practitioner of the decision.
- (4) If the decision is to terminate registration, the registration authority must—
 - (a) provide reasons for the decision, in writing, to the registered environmental assessment practitioner or registered candidate environmental assessment practitioner; and
 - (b) indicate any measures to be taken to rectify non-compliance with regulation 14 of these Regulations in instances where the planning, management, coordination or review of an environmental impact assessment and associated EMPr has been initiated but not yet completed by the time of termination of registration.
- (5) Details of an environmental assessment practitioner whose registration has been terminated will be removed from the register of registered environmental assessment practitioners or registered candidate environmental assessment practitioners.

19. Appeal procedure

A person affected by a decision of the registration authority may submit an appeal, which appeal must be submitted and considered in accordance with the appeal procedures contemplated in regulation 12.

CHAPTER 5

GENERAL MATTERS, TRANSITIONAL ARRANGEMENTS AND COMMENCEMENT

20. Offences and penalties

- (1) A person is guilty of an offence if that person—
 - (a) contravenes regulation 14 of these Regulations; or
 - (b) pretends to be a registered environmental assessment practitioner or registered candidate environmental assessment practitioner.
- (2) A person convicted of an offence in terms of subregulation (1) is liable to the penalties contemplated in section 49B(3) of the Act.

21. Transitional provisions

Prepared by:

If a situation arises where an environmental impact assessment and associated EMPr have been initiated or submitted for review to a competent authority as contemplated in section 24C of the Act prior to the coming into effect of regulation 14 of these Regulations, the person responsible for the planning, management, coordination or review of such environmental impact assessment may dispense of his or her responsibilities without complying with regulation 14 of these Regulations.

22. Short title and commencement

- (1) These Regulations are called the Section 24H Registration Authority Regulations, 2016, and, with the exception of regulation 14, take effect on the date of the appointment of the first registration authority.
- (2) Regulation 14 of these Regulations takes effect 24 months from the date of the appointment of the first registration authority.