

ENGINEERS RULES 2018

(Pursuant to Section 58 of the Engineers Act 2011)

REGULATORY IMPACT STATEMENT

OCTOBER 2018

Issued by the Engineers Board of Kenya

1 THE ENGINEERS RULES 2018

The Engineers Rules 2018

The Engineers Rules 2018 constitute regulations to the Engineers Act 2011 developed within the provisions of Section 58 of the Engineers Act 2011.

2. PURPOSE AND INTENDED EFFECT

2.1 Introduction

The Engineering profession has been regulated since 1969 under the Engineers Registration Act (1969) now repealed, and currently, the Engineers Act 2011, referred to herein as the “Act”.

The Act provides for the establishment of the Engineers Board of Kenya, referred to herein as the “Board”. with a mandate of registration of engineers and firms, regulation of engineering professional services, setting of standards, development, and general practice of engineering.

Section 58 of the Act provides for the Board, with the approval of the Cabinet Secretary, to “make rules generally for the better carrying into effect the provisions of the Act.”

The Regulatory Impact Assessment statement provides the basis of the development of the Rules and assesses the costs and benefits of the implementation of the Rules.

2.2 Background

The Board developed draft regulations to the Act and subjected them to the stakeholders who gave their views and input with regard to the Rules. All the stakeholders’ views and comments were adequately incorporated to the draft Rules. The Board through several consultations and under the guidance of the State Law Office has finalized the Engineers Rules 2018.

The Board, upon receipt of the final copies from the office of the Attorney General has approved and executed and the Cabinet Secretary in-charge of the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works approved the Engineers rules 2018 pursuant to section 58 of the Engineers Act, 2011.

2.3 Engineers Rules

The Engineers Act 2011 establishes the Engineers Board of Kenya and provides the regulatory framework for the provision of professional engineering services with particular focus on requirements for training of engineers, membership, grounds for discipline and unauthorized practice offences.

The Act provides that the Board, with the approval of the Cabinet Secretary, may;

prescribe the form and method of keeping the Register under the Act;

(b) prescribe forms, methods and regulations concerning conditions for issuance of licences;

(c) prescribe the manner and subject matter of courses pertaining to training and continuing professional development;

(d) prescribe the standards and conditions of professional practice for persons registered or licensed under the Act which shall not be limited to conditions of engagement for engineering services in projects where engineers work with other professionals, scales of fees applicable to such engagements, hourly rates applicable for report and advisory work and any other guidelines for ethical professional practice of engineering;

(e) prescribe the registration procedure and any other powers and duties to be assigned to accredited checkers;

(f) provide for enforcing the attendance of witnesses and the production of books and documents at an inquiry by the Board;

(g) provide for composition, conduct and regulation of business and affairs of the Kenya Academy of Engineering and Technology established under section 7(p);

(h) prescribe forms to be used in connection with this Act or fees to be charged under the Act; and

(i) prescribe anything required under the Act to be prescribed

The Board has therefore developed rules that prescribe various requirements that need to be prescribed under the Act including the following :

- (a) Requirements for registration of engineers, accredited checkers and firms.
- (b) Forms and documents to show proof of eligibility and procedure for registration of engineers accredited checkers and firms.
- (c) Complaints and disciplinary process.
- (d) Administration of continuing professional development.
- (e) Administration of professional examinations
- (f) Fees payable.
- (g) Procedure for accreditation of engineering programs
- (h) Code of conduct and ethics.

2.4 Objective of the Rules

The aim of the Rules is to introduce the requisite application procedures, forms, and other necessary requirements as provided under the Act and provide clarity to the regulatory framework.

The following objectives are geared towards increasing efficiency in service delivery to the public:

- (a) To enhance service delivery through provision of specific requirements for registration of various categories of engineers and firms;
- (b) To provide for the registration of accredited checkers for safety assurance and adequacy of professional engineering works ;
- (c) To enforce the code of ethics for the engineers and regulate the conduct and ethics of engineering profession towards safeguarding public health and safety;
- (d) To provide for identification documents for engineers therefore increase accountability for professional services rendered;
- (e) To provide a comprehensive complaints and disciplinary procedure for engineers in line with fair administrative actions;
- (f) To provide for a framework for continuing professional development for engineers for better service delivery;
- (g) To provide for a framework for accreditation of engineering programs as a quality

assurance mechanism in line with global best practices;

- (h) To provide for Mutual Recognition Agreements for engineers for global mobility of engineers;
- (i) To support the development of engineering profession through payment of applicable fees.
- (j) To align with overall Government policies.

2.4.1 Options available for achieving the objectives.

The objectives of the Rules are in line with the Engineers Act 2011 and are geared towards achieving efficiency in service delivery, providing the right information to the public on redress mechanisms and institutionalising the growth of engineers

2.4.2 Do Nothing Option

This option will not help achieve the desired objectives as the status quo will remain;

The application process and registration procedures will not be well documented and legally enforceable. Registration of accredited checkers will not be provided for and the general growth and development of the profession will not be sustainable.

2.4.3 Explicit Government regulation option- Issuance of guidelines

The Rules are based on explicit government regulation option by way of Statute, the Engineers Act 2011. The Government may also adopt indirect regulation through issuance of guidelines. Whereas issuance of guidelines may achieve the same objectives, the Act requires the Board to make rules on the specific areas identified.

Failure to effectively regulate provision of professional engineering services poses major public health and safety risks arising from non- adherence to set standards and unethical professional practices.

3. COSTS AND BENEFITS OF THE RULES

3.1 Costs of the implementation of the Rules

The costs of implementation of these rules will emanate from the following provisions of the Rules :

3.1.1 Part II : Registration

The Rules provide for registration of additional categories of engineers (accredited checkers) and provide for closer scrutiny of applications and submissions of relevant documents. The Rules also provide for electronic register alongside the hard copy register. Online registration processes will be deployed for greater efficiency.

The additional costs associated with registration process are however not significant.

3.1.2 PART III Complaints and discipline by the Board

Enhanced Board inquiry process and disciplinary procedures to ensure fair administrative actions by the Board will occasion additional operational costs.

The Rules provide for ad hoc inquiry committees and elaborate processes to inquire on complaints on provision of professional engineering services.

3.1.3 PART V : Training & Continuing Professional; Development

The Rules provide for mandatory continuing professional development training for engineers.

The Rules provide for the Board to facilitate the training and ensure that the cost of such training is not prohibitive or unbearable for individual engineers.

3.1.4 Third schedule of Engineers Rules 2018 :Payable Fees

The Rules propose enhancement of fees payable to the Board for various services.

The proposed fees are meant to cater mainly for operations costs of the Board's secretariat and facilitate development of the profession.

The fees are comparable to fees charged by other professional regulators in Kenya and other jurisdictions and will result into strengthened secretariat for better and effective service delivery.

3.2 Resource Allocation Costs

Enactment of these rules will NOT result in any additional resource allocation from the Government. The Rules provide for the fees payable to the Board to be commensurate to services offered and comparable to payable fees within other regulated professions.

3.3 Administration costs

The enforcement of these Rules will not result to major administrative costs to the detriment of the Board. The rules will not necessitate revision of the Board's approved establishment and organizational structure but will facilitate full implementation of Board's mandate and enhance service delivery.

3.4 Benefits of implementation of the Rules

The benefits of the implementation of the Rules include:

3.4.1 Clarity on Registration Requirements

Part II Registration of Engineers

The Rules will enhance clarity on the registration process for the various categories of engineers and firms.

The provision of electronic register is to be complimented by an online registration system for efficiency and enhanced transparency.

3.4.2 Environmental Benefits

The Rules will enhance care and concern for the environment through:

- (a) The administration of Continuing Professional Development for engineers will contribute to equipping the engineers with skills and competencies for better management of the environment;
- (b) The enforcement of code of ethics for engineers requires engineers to take all reasonable steps to avoid waste of natural resources damage to the environment and wasteful damage or destruction of the products of human skill.

3.4.3 Economic Benefits

The rules will ultimately lead to a better regulated and more competent and accountable engineering profession as result of the following;

- (a) Provision of the procedures for the registration of accredited checkers as peer reviewers to enhance safety considerations in engineering designs minimizing losses occasioned by unsafe designs;
- (b) Greater accountability by engineers to the society through upholding code of ethics translating to economic benefits to all.
- (c) Introduction of rules governing Continuing Professional Development towards technological advancement for engineers leading to optimal engineering solutions;
- (d) Institutionalization of quality assurance on training of engineers through accreditation of programs leading to global recognition of Kenyan engineering programs and provide for mobility of Kenyan engineers;

3.4.4 Social Benefits

The Social benefits from the implementation of the Rules include:

- (a) Prescription on complaints and discipline by the Board will contribute to fair administrative actions by the Board in dealing with complaints of professional practice
- (b) Enforcement of the Code of ethics for engineers puts the interest of the society at the core of engineering practice in Kenya. The Code of ethics for engineers requires , inter alia, that“ an engineer shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public”
- (c) The Rules of accreditation of engineering programmes provide for social justice by offering quality assessment of programs for the benefit of engineering students and the training institutions.

4. CONCLUSION AND RECOMMENDATION

This regulatory impact statement has analysed two available options i.e do nothing option and explicit government regulation. The Board rejects do nothing option as it will not enable achievement of the set objectives.

The Board recommends explicit government regulation through the Engineers Rules 2018 as it provides the greatest net benefits across all the stakeholders.

The Rules will enable the Board to streamline the registration process for engineers and firms to ensure that only competent engineers and firms are allowed to provide engineering professional services for the benefit of the public to the highest ethical standards.

The Rules also provide an adequate framework to deliver on the Board's mandate for training and development of the profession.

5. IMPLEMENTATION AND REVIEW

The Board will implement the Engineers Rules 2018 through gazettelement in the Kenya gazette. Review shall be done when need arises by consulting all the stakeholders and gazettelement of the amendments