



Research Article

Register as Critical Instrument in the Regulation of Built Environment Professions: AQDA of Kenya's Institutional Frameworks for Practice

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sociology of professions
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ABSTRACT

The paper evaluates the register's mechanism as an instrument of regulation for professions in the built environment, taking the case of Kenya. It undertakes a qualitative document analysis (QDA) of the regulatory legislations for professions in the built environment: including architecture, engineering, planning and surveying professions. It proceeds with the analysis within the framework of key elements of professional regulation: registration, protection of title, fitness to practice, education and training. It demonstrates that the register is central to professional regulation, that it can easily guide what to include in the regulatory statutes to the extent that what cannot be manipulated using the register is outside the scope of professional regulation. The paper gives central focus to the register whereas most research have focused on fitness to practice and education and training. It embraces all the professions of the built environment while much of the professional regulation literature dwells on health and health care sectors. The limitation of the approach is that it neglects the standards as an equally significant driver of regulation. Recommendations are made to include standards as a complementary element.

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1. Introduction

Professional registration has received a lot of criticism from scholars around the world. Sociologists for example view registration with disdain. For instance, Macdonald, relying on the concept of social closure entertained the notion that professional registration is a “keystone which would lock into position, once and for

all, [professionals'] shaky structure of norms, practices, rights - and privileges [1]". The situation is not different from the side of law, political science and economics academies where the theory of regulatory capture is used to explain the economic adversity of professional regulation that is often achieved through registration.

Simply put, regulatory capture refers to a situation where professionals who are being regulated take advantage of the regulations to serve their own narrow interests [2]. Further commentators on this theory believe that the main interest of professionals would be the rent-seeking objective where they limit entry into the market by manipulating entry requirements to keep the prices of their services higher and earn more income than they would under competitive market situations [3-5].

Without necessarily disputing these theories, this paper takes an alternative look at the role of registration in the regulation of professions. Whether regulation culminates into positive or negative outcomes is without its scope. The register is The Book of Saints for the professionals where their names, qualifications and postal addresses are listed. Making it to the list can be a long and arduous journey for a professional. However, making it to the list is important as it confers the title and privilege that goes with that profession.

In this study, we look at the application of the register as an instrument in the regulation of professions of the built environment in Kenya. These include the architectural, engineering, planning and (agency, land, quantity, and valuation) surveying professions. The basic question the study seeks to answer is: What is the nature of the register and what strategies does it present for regulation of professions in the built environment? In other words, what is the operational effect of registration on regulation? In the next section, we unveil the regulatory model that connects registration to the other three key regulatory strategies.

The study is significant to the extent that it looks at the structure and mechanics of regulation of professions involved in construction activities. In this context construction is conceived as a cradle to grave set of activities involving erection and use of buildings and attendant infrastructure. For instance, Myers noted that there are a lot of useful economic activities that underly the construction process from conception to demolition [6]. We follow this definition of construction to broadly cover all the legally recognized professions in Kenya.

Regulation is an important area of study in the construction market because of the prevalence of unethical and corrupt practices by professionals and other actors especially in developing countries [7-10]. Researchers have carried out diagnostic studies leading to remedial recommendations including introduction of ethics in construction management education curriculum [8], and defeating flawed regulatory systems by code of conduct for Malaysia. Meanwhile, in Zambia Mukumbwa & Muya found that corruption, conflict of interest, fraud, collusion, negligence, and poor quality work were significant industry malpractices that could be solved through regulation [11]. In India Bhagat & Jha found that corruption risks were most severe in the contract management, bid design and payments stages of construction contracts [12]. Therefore, the study highlights the technical functioning of the mechanism that could be used to manage the people trusted with the management of the construction activities.

2. Literature Review

Regulation is necessary for the founding and development of any profession. Worsley et al. identified structural elements of regulation that include protection of title, registration, fitness to practice and education and training [13]. We have charted this in Figure 1 where we have placed registration a hierarchy above the others because registration is what can be used instrumentally to achieve them in the process of regulation [13].

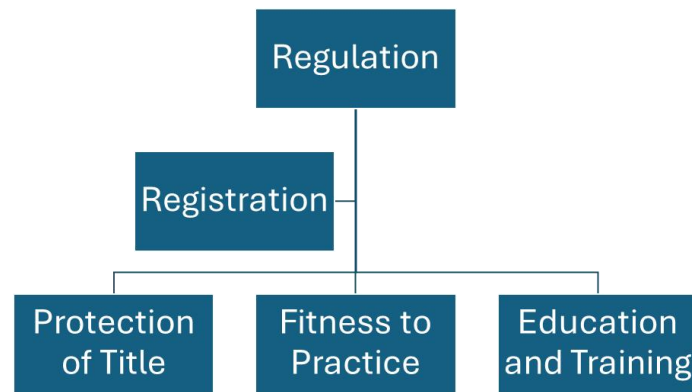


Figure 1. Structural elements of professional regulation

Source: Constructed with data from Worsley et al. (2020)

Registration of professionals refer to the process of the creation of a register for a profession and that of entering the names of professionals in it. The register marks the beginning of a profession and the career path of a professional. It gives birth to the profession and marks the entry to the professional world for the professional. Removal of the name from the register is commonly referred to as deregistration. The register is what underpins the regulation of professions [14].

Registration also is conceived as a certification process [15] that entails entry requirements that include requisite education qualification and competence training and examination. The journey to professional qualification begins in pre-college education from where individuals choose their careers. Entry requirements into certain career path or profession-rooted course are determined by education regulators at that level. According to the rationale for regulation is to achieve quality assurance and registration is one of the mechanisms for quality assurance purposes [15].

According to the UK's Professional Standards Authority (PSA), cited by Pickett, regulators do four basic things as highlighted in Table 1 [16].

Table 1. Role of regulators.

Structural Element	PSA's Description of role of regulators
Registration	• maintain a public register of professionals that anyone can search
Fitness to Practice	• set standards of competence, conduct and ethics which professionals must meet to register and practise • investigate complaints about registered professionals and make decisions about whether they should be allowed to continue to practise.
Education	• check the quality of education and training courses, including practice placements, to ensure trainees develop the knowledge, skills and qualities to practise competently and safely

Source: Compiled with data from Pickett (2017) Professional title is a designation earned by a person to certify that he or she is qualified to perform a specific job [17]. Although regulation entails legal protection of professional title [18], it is not in all cases that titles are expressly protected by law [16]. However, regarding the health and care professions in the UK, where protection of title is made into law, it is a criminal offence for someone who is not a registered professional to, claim he/she is registered, use a designated title, falsely claim he/she has qualifications in a regulated profession or describe the services he/she provides as that of a regulated profession [16].

The term fitness to practice or fitness for practice is commonly used in academic discussions in the health profession. However, it applies to all professions. Fitness to Practice may be invoked when the registrant fails to

adhere to code of conduct [18]. In these respects, a disciplinary proceeding could be initiated to determine Fitness to Practice, where complaints have been filed against a professional. Further Fitness to Practice may be invoked regarding concerns about the personal infirmities of the registrant that may impede capacity to practice [18]. According to Pickett regulators of professions play an important role in investigating concerns about a professional's fitness to practise that may include allegations regarding a professional's health, conduct or competence [16].

Lastly, concerning education regulators verify the academic qualifications of an applicant before admissions into a profession. Further regulators undertake or ensure that the applicant has undergone competence-based training and examinations relevant to the practice of the profession. Thereafter, regulators ensure that the registrant undertakes Continuous Professional Development [18]. Continuous Professional Development (CPD) refers to the learning activities a professional engages in to maintain proficiency and update skill set after formal training and certification. Promoting professional practice and continued professional development is the central role of regulation.

In the next sections, this paper uses the framing by Worsley et al. to thematically analyse the role of the register in achieving the basic objectives of regulation in terms of protection of title, fitness to practice and education and training in the built environment of Kenya [13].

3. Materials and Methods

This is a qualitative study that employed qualitative document analysis (QDA) to mine policy data in the form of legislations on professional regulations [19]. There are six statutes created for purposes of registration of professions of the built environment in Kenya. Accordingly, Table 2 presents the description of purpose for each statute [20-23].

Table 2. The enabling statutes

Statute	Description of purpose (Long Title)
Architects and Quantity Surveyors Act	An Act of Parliament to provide for the registration of architects and quantity surveyors
The Engineers Act	An Act of Parliament to provide for the training, registration and licensing of engineers, the regulation and development of the practice of engineers and for connected purposes
Estate Agents Act	An Act of Parliament to provide for the registration of persons who, by way of business, negotiate for or otherwise act in relation to the selling, purchasing or letting of land and buildings erected thereon; for the regulation and control of the professional conduct of such persons and for connected purposes
Survey Act	An Act of Parliament to make provision in relation to surveys and geographical names and the licensing of land surveyors, and for connected purposes
Physical Planners Registration Act	An Act of Parliament to provide for the registration of physical planners and for purposes connected therewith
Valuers Act	An Act of Parliament to provide for the registration of valuers and for connected purposes

The QDA is applied in this study according to the definition of Wach and Ward as “a research method for rigorously and systematically analysing the contents of written documents” that facilitates “impartial and consistent analysis of written policies” [24]. The method has been used in similar situations to analyze: the regulatory environment of professional services firms in the real estate industry [25]; the extent of state regulation of surveying professions [26]; the regulation professions in the construction labour market [27], in Kenya. All these studies did not consider the centrality of the register as an instrument of professional regulation. The results of the QDA are presented in the section that follows.

4. Results

Regulatory Institutions in Kenya

There are seven professions in the built environment of Kenya that are subject to regulation: architecture, engineering, estate agency, land surveying, physical planning, quantity surveying and valuation surveying. There is a registration statute for each profession except for architects and quantity surveyors who share one statute as shown in Table 3 [20-23]. Each statute creates a regulatory board for the respective profession as shown in Table 4 [20-23].

Table 3. Professions and enabling statutes

Professional	Enabling Statute
Architect	Architects and Quantity Surveyors Act
Engineer	The Engineers Act
Estate Agent	Estate Agents Act
Land Surveyor	Survey Act
Physical Planner	Physical Planners Registration Act
Quantity Surveyor	Architects and Quantity Surveyors Act
Valuation Surveyor	Valuers Act

Table 4. Regulatory boards

Professional	Regulatory Board
Architect	Board of Registration of Architects and Quantity Surveyors (BORAQS)
Engineer	Engineers Board of Kenya (EBK)
Estate Agent	Estate Agents Registration Board (EARB)
Land Surveyor	Land Surveyors' Board (LSB)
Physical Planner	Physical Planners Registration Board (PPRB)
Quantity Surveyor	Board of Registration of Architects and Quantity Surveyors (BORAQS)

Creation of the Register

After establishing a regulatory board, the laws invariably direct the board to create a register for each profession. The register should generally contain the name of the professional, date of entry into the register, postal address and qualifications of the registrant as shown in Table 5 [20-23].

Table 5. Content of the register.

Board	Contents
BORAQS	such particulars as the Board may, from time to time, direct.
EBK	date of entry; address; qualifications; category; engineering discipline; nationality; and such other particulars as the Board may, from time to time, direct.
EARB	the date of the entry in the register; the address of the person registered; the qualifications of the person; and such other particulars as the Board may from time to time direct.
LSB	the names, addresses and qualifications of all persons to whom licences have been granted, the date upon which each such licence was granted and any other particulars which may be prescribed.
PPRB	the date of the entry in the register; his address; his qualifications; and such other particulars as the Board may from time to time direct.

VRB	the date of the entry in the register; the address of the person registered; the qualifications of the person; and such other particulars as the Board may from time to time direct.
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Appointment of Registrar

After creating the register, the laws further make provision for appointment of registrar who maintains the register on behalf of the board. The registrar is an ex officio member of the board and works as the secretary. The registrar is a public officer in many cases is appointed by the cabinet minister in charge of the corresponding sector. For architects, engineers and quantity surveyors it is the cabinet minister in charge of public works while for estate agents, physical planners and valuers it is the cabinet minister in charge of land administration. For instance, Textbox 1 gives a list of the functions of the registrar under the Engineers Act [28].

14. Functions of the Registrar

The Registrar shall—

- (a) maintain the Register of persons registered in accordance with this Act;
- (b) sign, issue, renew and cancel certificates of registration and licences as may be directed by the Board;
- (c) keep all documents and records including records of all assets of the Board;
- (d) prepare all documents due for gazettment as directed by the Board;
- (e) take and keep minutes of the Board meetings;
- (f) enforce decisions of the Board;
- (g) keep the seal of the Board in such custody as the Board may direct;
- (h) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties;
- (i) ensure the maintenance of efficiency and discipline by all staff of the Board;
- (j) manage the budget of the Board to ensure that its funds are properly expended and accounted for; and
- (k) exercise and perform any other functions which the Board may determine from time to time.

Textbox 1: Functions of registrar under Engineers Act

Entry into the Register

Table 6a presents the entry requirements for professions in building construction including education attainment and professional qualifications [22,28]. Likewise, Table 6b presents the same for land and building management professions [21-22,29].

Table 6a. Entry requirements for building construction professions.

Profession	Entry Requirements
Architect	(a) has attained the age of twenty-one years; and (b) either— (i) has had a minimum of five years of approved training followed by at least one year of practical experience in the work of an architect to the satisfaction of the Board, and has passed a prescribed examination; or (ii) has been admitted as a corporate member of an approved professional institution whose qualifications for such admission are not less than those set out in subparagraph (i) of this paragraph; and
Engineer	(a) for a professional engineer, that person— (i) is registered as a graduate engineer and has obtained practical experience as prescribed under this Act; (ii) has passed professional assessment examination conducted by the Board; and (iii) is a corporate member of the Institution of Engineers of Kenya; (b) for a consulting engineer, that person—

Quantity Surveyor	(i) has practised in a specialized engineering field as a professional engineer for a period determined by the Board; and
	(ii) has achieved a standard of competence to enable him to practise as a consulting engineer in that particular specialization
	(a) has attained the age of twenty-one years; and
	(b) either—
	(i) has passed a prescribed examination; or
	(ii) has been admitted as a corporate member of an approved professional institution whose qualifications for such admission include the equivalent of such prescribed examination; and
	(c) has had a minimum of one year of professional experience in Kenya to the satisfaction of the Board or has satisfied the Board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures

Table 6b. Entry requirements for land/building management professions.

Profession	Entry Requirements
Estate Agent	(a) a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors; or (b) a corporate member of the Royal Institution of Chartered Surveyors (in the General Practice or Land Agency or Agriculture sections) and he is qualified to be or is a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors; (c) the holder of a degree, diploma or licence from any university or college or school which is recognized for the time being by the Board; or (d) a person who— (i) is the holder of a degree, diploma or licence of a university or college or school or a member of an institution the membership of which is recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training for practice as an estate agent; and (ii) has had, to the satisfaction of the Board, practical post-qualification experience in such practice of not less than two years of which not less than six months has been in Kenya; or (e) a person who is not qualified under paragraphs (a), (b), (c) or (d) but is of good character and satisfies the Board that he has not been convicted (whether in Kenya or elsewhere) of an offence involving fraud or dishonesty
Land Surveyor	(a) he has attained the age of twenty-one years; and (b) he has passed the prescribed examination to the satisfaction of the Board or has been exempted therefrom; and
Physical Planner	(a) he is the holder of a bachelor's or postgraduate degree in urban or regional planning or both from any university which is recognized for the time being by the Board and has passed an examination prescribed by the Board; (b) he has been admitted as a corporate member of an approved professional institution whose qualifications for such admission are not less than those prescribed in paragraph (a); or
Valuation Surveyor	(a) a full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors); or (b) a corporate member of the Royal Institution of Chartered Surveyors (in the General Practice or Land Agency or Agriculture Sections) and he is qualified to be or is a full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors); or (c) the holder of a degree or diploma from any university or college which is recognized for the time being by the Board and qualifies him to be a full member of the Institution of

Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors)

Once the register has been created, the Registrar has to gazette or publish it in the Kenya Gazette to give it a legal status and Gazettement is usually considered prima facie evidence of registration. The registrar has to issue a certificate of registration or licence where concerned to every person listed in the register. Where somebody's name has been removed from the register the certificate or licence will be officially withdrawn.

Protection of Title

One of the effects of the registration is to confer title. For instance, according to the Architects and Quantity Surveyors Act, titles like "Architect" or "Architecture", "Quantity Surveyor" or "Quantity Surveying" can only be used by registered professionals, see Table 7 [20-23]. All the enabling legislations confer title except the Estate Agents Registration Act. The Engineers Act confers two titles, "Professional Engineer", "Consulting Engineer", but it is upon the discretion of either to use the title "Engineer". These titles are protected by the Acts as shown in Table 8 [20-23]. It is a criminal offence to use any of these titles for those whose names are not in the register. Offenders are liable to criminal prosecution and fines or jail terms. This amounts to legal protection of the profession concerned. In general, composition of the register automatically leads to criminalization of unregulated practices. This is expressly stated in every Act.

Table 7. Conferment of titles

Enabling Statute	Conferred Title
Architects and Quantity Surveyors Act	Architect, Architecture, Quantity Surveyor, Quantity Surveying
The Engineers Act	Professional Engineer, Consulting Engineer, Engineer
Estate Agents Act	-
Survey Act	Licensed Surveyor
Physical Planners Registration Act	Registered Physical Planner
Valuers Act	Registered Valuer

Table 8. Protection of titles

Statute	Statement of legal protection
Architects and Quantity Surveyors Act	No person shall practice under any name, title or style containing any of the words or phrases "architect", "architecture", "architectural", "quantity surveyor" or "quantity surveying" unless he is registered under this Act as an architect or a quantity surveyor
The Engineers Act	The Engineers Act Any person, other than a professional engineer or a consulting engineer registered under this Act, who uses the title "engineer" before their names commits an offence.
Estate Agents Act	No individual shall practise as an estate agent unless he is a registered estate agent;
Survey Act	Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding six months or to both.
Physical Planners Registration Act	Any person who adopts or uses the title "Registered Physical Planner" or practices or holds himself out as a registered physical planner in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment not exceeding twelve months or to both
Valuers Act	No individual shall carry on business as a practising valuer unless he is a registered valuer

Fitness to Practice Proceedings

In Kenya a Fitness to Practice proceedings may be initiated against a registered professional arising from what the statutes invariably refer to as “professional misconduct” through a process known as “inquiry”. For instance, under the property valuation profession, if a board receives a complaint against a practitioner, the registrar of that board shall issue a summons letter for the suspect to appear before it [21]. If the practitioner fails to appear before the board, the name shall be struck of the register at this juncture. The inquiry entails quasi-judicial proceedings whose outcome can be appealed to the High Court.

If the practitioner honours the summons the inquiry will proceed, and the professional shall be accorded the right to defend him/herself. In the proceedings, the relevant board may “administer oaths, enforce attendance of persons as witnesses and production of books and documents as evidence”. The actions that each board can take against a professional who has been found guilty of professional misconduct are fairly standard. Depending on the severity of the breach, the board may:

1. Suspend the professional’s registration for a specified period of time
2. Caution the professional and record such caution on the register
3. Impose a fine of amounts of money as specified in the statute
4. Order that the name of the professional be deleted from the register.

The statutes grant the professional the right to appeal that shall be treated as an appeal to the High Court from a subordinate court of civil jurisdiction. The High Court which will decide on the matter, but whose decision shall be final.

Further on, we may note that although the Fitness to Practice may be initiated on the basis of Standards and Code of Conduct, the implementation of the decisions arising from the proceeding is done through the register.

Education and Training

Professions are knowledge-based enterprises involving applications of specialised knowledge in specific vocations. This knowledge base keeps on developing through research and innovations thereby requiring constant update. Regulation also involves control of this knowledge base for the benefit of the general public. The enabling statutes have made provisions on who takes charge of the knowledge base whether the respective board or professional association. Table 9 presents the distribution of control of knowledge among regulatory institutions [20-23].

Table 9. Management of knowledge.

Enabling Statute	Role of board as custodian of Knowledge
Architects and Quantity Surveyors Act	Holding of examinations authorised or permitted under the provisions of this Act carrying into effect of any scheme or curriculum for education in architecture or quantity surveying formulated under the provisions of section 10 hereof; shall have the right from time to time to formulate, vary and carry into effect a scheme and curriculum for education in architecture and quantity surveying, may apply its funds in making provision for and furthering and developing any such scheme and curriculum and in providing for lectures or teaching and for the holding of examinations in accordance therewith and for granting prizes, certificates and diplomas in connection therewith,
The Engineers Act	Evaluate other engineering programmes both local and foreign for recognition by the Board approve and accredit engineering programs in public and private universities and other tertiary level educational institutions offering education in engineering; prepare detailed curriculum for registration of engineers and conduct professional examinations for the purposes of registration establish a school of engineering and provide facilities and opportunities for learning, professional exposure and skills acquisition, and cause continuing professional development programmes for engineers to be held plan, arrange, co-ordinate and oversee continuing professional training and development and facilitate internship of graduate engineers;
Estate Agents Act	Not expressly stated
Survey Act	To conduct the examination of candidates for admission as licensed surveyors in accordance

	with the provisions of this Act
Physical Planners Registration Act	Set and conduct examinations for purposes of registration of members verify the qualifications and eligibility of the applications seeking registration with the Board
Valuers Act	Not expressly stated

In terms of custodianship of professional knowledge, the boards have embraced professional competence and conducting of examinations. However, BORAQS and EBK have gone beyond the mandate of competence to control academic institutions where the professional receives basic training [20-23]. The EARB and VRB have not staked any claim to the control of knowledge of professionals in these respective vocations [20]. It has left this to the Institution of Surveyors of Kenya (ISK) on self-regulation basis.

Management of the Register

The registration or licence must be renewed every year. The board may remove a name from the register in situations where a person has died, failed to pay renewal or registration fee, requested to be removed from the register, been found guilty of any act or omission contrary to the public interest or misconduct, has been convicted of an offence under the operational Act, had his name entered in the register by mistake or by reasons of false or misleading information, had his qualification withdrawn or cancelled by the body through which it was acquired/awarded, has been adjudged bankrupt.

On the other hand, a person's name can be returned to the register if he had been suspended and the suspension period has elapsed or upon inquiry if the board is satisfied that he can be registered again. Any person who is aggrieved by the board for refusing to register his name, removing his name from register, suspending his registration, or refusing to restore his name on the register may appeal to the high court.

There are elaborate instances when the certificate can be withdrawn, see for example the case of Physical Planners Registration Act in Textbox 2 [29].

The Board may, when satisfied that a registered physical planner has—

- (a) died; or
- (b) failed to pay the prescribed fee; or
- (c) failed, within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the address appearing in the register against his name, to notify the Registrar of his current address; or
- (d) requested his name to be removed from the register; or
- (e) had his name entered in the register by mistake or by reason of any false or misleading information; or
- (f) had his qualification under section 12 withdrawn or cancelled by the body through which it was acquired or by which it was awarded; or
- (g) been adjudged bankrupt; or
- (h) been found by the Board to be guilty of an act or omission prejudicial to the public interest or misconduct under section 23; or
- (i) been convicted of an offence under this Act; or
- (j) being a company, been placed under receivership or in liquidation whether compulsorily or voluntarily, direct that the name of such registered physical planner be removed from the register.

Textbox 2: Removal of names from register under the Physical Planners Registration Act

There are noncritical cases where a professionals' name can be removed from the register such as death, failure to pay subscription, or where one has requested to be removed or where one's name was entered by mistake as shown in Textbox 2 under the Physical Planners Registration Act (see a, b, d and e). However, (c) indicates that the register can be used to initiate and implement inquiry proceedings. Inquiry proceedings, as we have seen are to do with Fitness to Practice. Other Fitness to Practice issues are to do with bankruptcy (g), and where a corporate body is concerned, placement under receivership (i). The register also is used to manage education qualifications. Under (f) a professionals' name would be removed from the register if the qualification requirements that was initially used for entry into the register has been withdrawn.

29. Removal of persons from the Register

The Registrar shall remove from the Register—

(a) the name of any person—

- (i) found to be of unsound mind or a firm which has ceased to practise or wound up by a court order;
 - (ii) convicted of an offence under this Act or any other law;
 - (iii) whose name the Board has, under section 53(6)(c)(i), directed that it should be removed from the Register;
 - (iv) declared bankrupt;
 - (v) who has failed to satisfy requirements for continuing professional development programme for the time being in force;
 - (vi) who causes or permits or suffers any sole proprietorship, partnership or body corporate in which he is a sole proprietor, partner, director or shareholder to practise as a firm prior to its registration by the Board or after the Board has suspended or cancelled its registration;
 - (vii) who has failed within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the last known address appearing in the Register against his name, to respond to the, inquiry of the Registrar; or
 - (viii) who requests that his name be removed from the Register, in which case that person may be required to satisfy the Board by way of an affidavit lodged with the Registrar that criminal proceedings under this Act are not being or are not likely to be taken against him;
- (b) any person whose name has been incorrectly or fraudulently entered.

Textbox 3: Removal of names from the register under the Engineers Act

In the Engineers Act, Textbox 3, (a) (i), (ii), (iii) and (iv) are to do with Fitness to Practice [28]. Three is to do with outcome of the inquiry where a professional has been found “guilty of impropriety or misconduct” regarding professional practice. Therefore, the register is critical to the enforcement of Fitness to Practice. This Act includes CPD under (a)(v), hence the register also is instrumental in achieving CPD objectives. The register also can be used to enforce code of conduct as shown in (a) (vi) and (vii).

5. Discussion

From the results of the study it becomes apparent that professional regulation follows the statutory order where professions are established by legislation. There are operational Acts of Parliament as shown in Table 2. This is a case of co-regulation where the regulatory responsibilities are shared between a state agency (registration board) and the professional society [20-26]. After legislation, regulation starts by the creation of a registration board. The boards form the operational organs in the regulatory system. Their main role in the registration process and business being to create the register. This is done through the appointment of the registrar who becomes the custodian of the register.

The race to enter the registers rigorous, requiring prestigious academic qualifications, work experience and entry examinations. The register also is used to control those who are already in. There always is a threat that a professional’s name can be expunged from the register in case of misconduct. The register is Gazetted annually and once published usually becomes *prima facie* evidence that a professional is registered. Applicants who fail to get into the register can appeal to the High Court.

The act of registration enables three important regulatory strategies: Conferment/protection of title, fitness to study proceedings, and education and training. Conferment/protection of title establishes the legal boundary of the profession by defining who can practice and who cannot practice. Apart from giving the board powers to control those without the legal title and keep them out of practice, it also gives power to the board to control those with legal title during practice. Once the legal title is withdrawn, a professional’s shop is closed.

The fitness to practice proceeding in the context of Kenya is conducted through the inquiry process. Inquiry is more of a judicial process conducted by the board to determine misconduct by a registered professional.

Where a professional is found guilty of misconduct, there are standard remedies common across the Acts. The professional may be expelled or banned from practice, suspended for a period, fined or warned. If the professional is not satisfied with the determination of a board, he or she can lodge an appeal in the High Court.

Management of the register constitutes the regular management of professionals. This operation involves licensure or renewal of registration and removal/reinstatement of the professional's name from/back on the register. Practicing licences are renewed annually to remain in the register of practicing professionals. Certification, too, is an instrument that works hand in hand with the register. Although a certificate is issued upon registration it is considered property of the board. It must be handed back to the board where a situation arises; in the event it has been withdrawn or the bearer has died. It is a criminal offence to falsify information in order to obtain a certificate. Again, it is a criminal offence to practice a profession without certification.

Although the register will be altered in the event of misconduct by a professional, misconduct will be determined by the code of conduct and the inquiry process. Therefore, the code of conduct becomes another powerful tool that may be used to regulate a professional. The only problem is that, especially in the old legislations, in many cases the statute does not define it but allows for enactment through subsidiary legislations by the board or the cabinet minister. Further, it is important to recall at this juncture that the model based on Worsley did not take into consideration the issue of standards, Figure 1 [13]. The other authority the study relied on, Pickett, on the other hand considered standard setting as one of the key responsibilities of the regulator, Table 1[26,29]. Additionally, van der Gaag indicated that the primary role of regulators is to establish standards of [31]:

1. Education and training
2. Proficiency, which describes the skills and knowledge of the profession
3. Conduct, performance, and ethics
4. Continuous professional development

From this perspective, we can revise Figure 1, to mainstream standards as shown in Figure 2, where the latter are originated independent of the register, but depend on the register for operationalization.

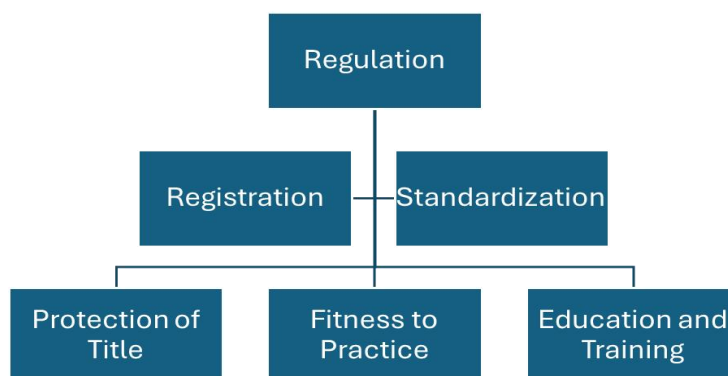


Figure 2. Revised structural elements of professional regulation.

6. Conclusion

In conclusion, the analysis has shown that the basic structure of professional regulation is anchored by the register and that the register is crucial to the achievement of the objectives of regulation. Whereas, the register is instrumental in regulating professionals, standards is an equally important structural element in the manipulation process hence there is need to mainstream the latter in the regulatory structure as shown in Figure 2. The study has unveiled how the register can be used to regulate the professional after achieving the feat of registration. This marks useful contribution as the register has always been overlooked by researchers who put emphasis on education, and standards and code of conduct. The paper demonstrates that all these can be achieved through the register.

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No data is associated with this article.

Conflicts of Interest

The author has no conflict of interest

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