

HERITAGE WESTERN CAPE:

POLICY ON THE APPOINTMENT AND POWERS OF HERITAGE INSPECTORS

Under the terms of Section 50 of the National Heritage Resources Act (NHRA), Act 25 of 1999, the Council of Heritage Western Cape may appoint heritage inspectors who have certain rights of access to sites and inspection of, or search for heritage resources protected in terms of the Act. They also have powers to detain individuals involved in commission of a suspected crime and to collect evidence thereof and may order the cessation of work that is believed is illegal.

The purpose of this policy is to create a framework for the appointment of heritage inspectors and to ensure, monitoring of their activities and generally to ensure that their operations are in compliance with the terms of Section 50 of the Act.

1. Legal Framework:

The contents of Section 50 of the NHRA are as follows:

Appointment and powers of heritage inspectors

50. (1) SAHRA or a provincial heritage resources authority may, in writing, appoint heritage inspectors: Provided that if a heritage inspector is a staff member of a government department or supported body, such appointment must only be made by agreement with the Minister or other person in charge of the administration of such department or body.

(2) By force of this section, each member of the South African Police Services and each customs and excise officer is deemed to be a heritage inspector.

(3) The heritage resources authority must issue to each heritage inspector, other than a person referred to in subsection (2), an identity card containing a photograph and the signature of the heritage inspector.

(4) For the purposes of this section, a reference to an identity card in relation to a person referred to in subsection (2), is a reference to written evidence of the fact that he or she is a member of the bodies referred to in subsection (2).

(5) A person who ceases to be a heritage inspector must forthwith return his or her identity card to the heritage authority concerned.

(6) A heritage inspector, other than a customs and excise officer or a member of the South African Police Services in uniform, may not exercise his or her powers in terms of this Act in relation to another person unless the heritage inspector first produces the identity card for inspection by the other person: Provided that if the production of the identity card would endanger the health or safety of the heritage inspector, he or she must produce it as soon as is practicable to do so.

(7) Subject to the provisions of any other law, a heritage inspector or any person authorised by a heritage resources authority in writing, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the provisions of this Act, or any other property in respect of which the heritage resources authority is exercising its functions and powers in terms of this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act.

(8) A heritage inspector may at any time inspect work being done under a permit issued in terms of this Act and may for that purpose at all reasonable times enter any place protected in terms of this Act.

(9) Where a heritage inspector has reasonable grounds to suspect that an offence in terms of this Act has been, is being, or is about to be committed, the heritage inspector may with such assistance as he or she thinks necessary—

- (a) enter and search any place, premises, vehicle, vessel or craft, and for that purpose stop and detain any vehicle, vessel or craft, in or on which the heritage inspector believes, on reasonable grounds, there is evidence related to that offence;
- (b) confiscate and detain any heritage resource or evidence concerned with the commission of the offence pending any further order from the responsible heritage resources authority; and
- (c) take such action as is reasonably necessary to prevent the commission of an offence in terms of this Act.

(10) A heritage inspector may, if there is reason to believe that any work is being done or any action is being taken in contravention of this Act or the conditions of a permit issued in terms of this Act, order the immediate cessation of such work or action pending any further order from the responsible heritage resources authority.

(11) A heritage inspector may require any person who he or she has reason to believe has committed an offence in terms of this Act to supply his or her name and address and reasonable evidence of his or her identity, and may arrest a person who refuses to comply with those requirements.

(12) A person—

- (a) must comply with a request or requirement lawfully made in terms of this section to the extent that the person is capable of complying with it;
- (b) may not knowingly furnish information that is false or misleading; and
- (c) may not hinder or obstruct any heritage inspector in the exercise of his or her powers in terms of this section.

2. Definitions:

2.1 "CEO" means the Chief Executive Officer of HWC.

2.2 "Council" means the Council of Heritage Western Cape;

2.3 "Department" means the Western Cape Department of Cultural Affairs and Sport.

2.4 "district" means the geographical area falling under the jurisdiction of a District or Metro Municipality.

2.5 "HWC" means Heritage Western Cape, the Provincial Heritage Resources Authority of the Western Cape Province as established in terms of Section 8 of the NHRA.

2.6 "NHRA" means the National Heritage Resources Act, Act 25 of 1999 and all regulations under the act that are applicable in the Western Cape.

3. Scope of application:

- 3.1 This policy applies only to the operational areas and geographical jurisdiction of HWC as set out in the NHRA.
- 3.2 This policy is not applicable to members of the SAPS or customs and excise officers as set out in Section 50(2) of the NHRA.

4. Minimum requirements for the appointment of Heritage Inspectors:

- 4.1 In order to be appointed as a Heritage Inspector an individual must demonstrate a sustained interest in and in depth knowledge of the value and need for conservation of heritage resources.
- 4.2 A Heritage Inspector should either be a qualified and/or experienced heritage conservationist, a senior members of a Conservation Body as set out in Section 25(1)(b), and/ or a specialist in one or more of the areas set out in Section 3(2) of the National Heritage Resources Act, excluding Section 3(2)(i) ie: heritage objects which do not fall within the domain of HWC.
- 4.3 A Heritage Inspector must be a citizen or permanent resident of South Africa normally resident in the Western Cape Province.
- 4.4 In order to avoid conflict of interest a Heritage Inspector should not be a member of the Council or a committee of HWC.
- 4.5 Heritage Inspectors may only be appointed by decision of the Council.
- 4.6 All candidates who are employees of a government department or supported body shall in terms of Section 50(1) of the NHRA obtain the consent of their Minister, Head of Department, or the head of their institution in writing as part of the process of appointment.
- 4.7 All candidates shall complete the application form as the initial step towards appointment.

5. Entrance requirements:

- 5.1 Unless exempted by the Council, Heritage Inspectors shall pass an examination prior to the issuing of their identity cards and shall be required to score a minimum of 80% in such examination.

- 5.2 The examination shall be set and administered by an institution recognised by the Council and according to a curriculum approved by it.
- 5.3 The examination shall assess individual knowledge of the core areas of the NHRA, the duties responsibilities and areas of functioning of Heritage Inspectors as set out in Section 50 thereof and the relevant contents of this policy.
- 5.4 Exams shall be held according to a schedule agreed by the Council and the examining institution.
- 5.5 The Council may decide upon a fee to be charged to candidates undertaking the examination and the basis on which such a fee is to be charged.
- 5.6 Officials appointed by DCAS as Heritage Officers are exempted from the examination however must undergo training

6. Categories of Heritage Inspector and conditions for appointment:

Heritage Inspectors shall be appointed in one of two categories, viz:

- 6.1 The CEO and staff of the Department employed in the Heritage Resources Management Sub- Directorate either as Heritage Officer or in an appropriate managerial position; and
 - 6.1.1 must in the opinion of the Council be suitably qualified with in the field of heritage resource management
 - 6.1.2 May only be appointed after the Council has considered a curriculum vitae and copies of relevant qualifications;
 - 6.1.3 areas of operation may by decision of the Council be restricted in the same way as is the case with other Heritage Inspectors; and
 - 6.1.4 can only be appointed upon obtaining the consent of the Department, as required in terms of Section 50(1) of the NHRA.
- 6.2 Volunteers and officials of municipalities who have one or more of the following and are appointed to operate on that basis:
 - 6.2.1 a thorough knowledge of the heritage resources of a particular district or districts, or the province as a whole; or
 - 6.2.2 a specialist knowledge of a particular category or categories of heritage resources as set out in Section 3(2) of the NHRA; or
 - 6.2.3 a specialist knowledge of the certain categories of heritage resource only in a certain district or districts, or the province as a whole.
 - 6.2.4 employed as an official responsible for aspects of heritage resources conservation at a municipality that has been devolved powers to act under the terms of the NHRA.

7. Who may apply for appointment as Heritage Inspectors:

7.1 Candidates for appointment as heritage inspectors may be identified by members of the Council of HWC, members of its committees, the staff of HWC, a municipality or may themselves express an interest.

8. Compensation of Heritage Inspectors:

8.1 Heritage Inspectors who are Public Servants working in the Heritage Resources Sub-Directorate of the Department or other branches of government do not receive additional compensation for such duties.

8.2 Heritage Inspectors who are volunteers give of their time freely in the interests of conservation and protection of the National Estate. They are not remunerated for such services other than costs of travel and sustenance and then only if funds are available and the costs are agreed to in advance and in writing by the CEO, who shall determine the maximum amount of such compensation.

9. Identification of Heritage Inspectors:

9.1 Each Heritage Inspector shall be provided with an identification card which must be worn at the time of conducting duties, or if there is good reason to believe that doing so will place the Heritage Inspector in danger, must be produced at the earliest possible time that individual safety permits.

9.2 The card must be in the format as set out by HWC. t

9.3 The card is and remains the property of HWC and is to be returned to Heritage Western Cape immediately should a Heritage Inspector resign, leave the Western Cape or be disqualified.

9.4 Cards shall be valid for a period of three years.

9.5 Heritage Inspectors who are Public Servants employed In the Heritage Resources Management Sub-Directorate of the Department may, budget permitting, be provided with clothing and other means of identification over and above a card.

9.6 A Municipality which has been devolved power in terms of the NHRA and wishes to have certain of its employees appointed as Heritage Inspectors shall carry the costs of the production of identification cards, which in addition to the format indicated by HWC, shall also bear the logo of the municipality concerned.

10. Conduct of inspections:

- 10.1 Heritage Inspectors represent HWC only in so far as permitted by the NHRA and this policy sets out. Misrepresentation of the office of Heritage Inspector, the powers it confers on an individual or the relationship of Heritage Inspectors to HWC is viewed in a serious light by the Council.
- 10.2 Heritage Inspectors are required to conduct inspections in a dignified and respectful manner and
 - 10.2.1 subject to the provisions of any other law, may at all reasonable times enter upon any land or premises for the purpose of inspecting any heritage resource protected in terms of the provisions of this Act, or any other property in respect of which the heritage resources authority is exercising its functions and powers in terms of this Act, and may take photographs, make measurements and sketches and use any other means of recording information necessary for the purposes of this Act.
 - 10.2.2 must do so if requested by the CEO to conduct an inspection.
 - 10.2.3 in situations where they have grounds to believe that an offence in terms of the NHRA is being, has been or is about to be committed.
- 10.3 Without derogating from their powers under Section 50(8) of the NHRA Heritage Inspectors may be asked by HWC to conduct inspections in terms of Section 50(8) of the NHRA, ie: inspections to ascertain levels of compliance with a permit provided that they are first fully informed of the conditions of the permit concerned and at intervals and according to a schedule set up by the relevant HWC case officer.
- 10.4 The CEO may request a Heritage Inspector to conduct other inspections in order to obtain information or an opinion that is relevant to work not necessarily related to law enforcement and in such circumstances only with the agreement of the owner, tenant or person otherwise responsible for the site in question.
- 10.5 Other than in emergency situations where only immediate action will prevent damage to or destruction of a heritage resource may a Heritage Inspector act without informing the CEO, or in his absence a manager of HWC and obtaining prior approval (verbal or written) to act and clarification of the steps that seem appropriate in the circumstances so far as they are known.
- 10.6 A full report on any inspections or other actions taken by Heritage Inspectors who are not Public Servants employed in the Heritage Resources Management Sub-Directorate of the Department is to be made in writing to the CEO no more than 48 hours afterward and should include suggestions as the manner in which the situation on the ground might be managed as it develops.

- 10.7 Actions taken in an emergency and without prior clearance are to be verbally reported to HWC immediately afterward if the event takes place during working hours, otherwise immediately on the commencement of the next working day.
- 10.8 Actions that led to the stoppage of work; an arrest; confiscation; resistance, confrontation or the use of force of any sort; or the involvement of other law enforcement agencies must also be reported to HWC on the same basis as set out immediately above.
- 10.9 The provisions of 10.3-8 above shall not apply to Heritage Inspectors who are appointed by virtue of their being officials of a municipality that has devolved powers in terms of the NHRA. They perform such duties as officials of that municipality and in terms of its policies and procedures and the terms under which powers have been devolved by HWC.

11. Expiry of term of office and disqualification:

- 11.1 Heritage Inspectors shall be appointed for a period of three years following which they may request renewal, or be invited to renew their term for a further three year period.
- 11.2 Heritage inspectors who are appointed through DCAS as Heritage Officers are appointed for their duration of employment.
- 11.3 After a maximum of six years after first appointment a Heritage Inspector may be invited to reapply by filling in the candidature form and, unless exempted by the Council, retaking the examination.
- 11.4 Should a Heritage Inspector fail for more than six months to request a renewal after serving a first term in office, s/he will be required reapply as a new candidate.
- 11.5 Should a Heritage Inspector in the opinion of the Council fail to perform his/her duties in the manner expected or in any way exceed or misrepresent his/her mandate as a Heritage inspector the individual concerned may be disqualified with immediate effect and if necessary an advert placed in the relevant press informing the public to this effect. This provision is subject to the right of the individual concerned to put his/her case to the Council either in person or in writing.

12. Transitional Provisions:

All previous appointments, decisions and policies pertaining to Heritage Inspectors are withdrawn from the time of adoption of this policy.