
GENERAL NOTICE

NOTICE 828 OF 2001

DEPARTMENT OF EDUCATION

INVITATION FOR COMMENT ON THE DRAFT BILLS, 2001

The Minister of Education hereby publishes the following Bills for comment:

- (a) Education Laws Amendment Bill, 2001
- (b) General and Further Education and Training Quality Assurance Bill, 2001
- (c) Higher Education Amendment Bill, 2001

All interested parties and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke, Fax No. (012) 326-9128 or by e-mail: locke.m@educ.pwv.gov.za.

Kindly provide the name, address, telephone number, fax number and e-mail address of the person or organisation submitting the comments.

The comments should reach the department not later than 7 May 2001.

PROFESSOR KADER ASMAL, MP

MINISTER OF EDUCATION

DATE:

GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL, 2001

BILL

To provide for quality assurance in general and further education and training; to provide for control over norms and standards of subject matter and assessment; to provide for the issuing of certificates at the exit points in general and further education and training; to provide for the establishment of the General and Further Education and Training Quality Assurance Council; to provide for the composition and functions of the council; to provide for the conducting of assessment; to provide for the repeal of the South African Certification Council Act, 1986; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Act seeks to provide a general and further education and training quality assurer to function within an education system where specific functions regarding the provisioning and assessment have been given to providers; and

WHEREAS the registration and developing of standards and development of national education quality framework is the responsibility of the South African Qualifications Authority; and

WHEREAS the purpose and function of this council is to ensure that a quality assurance framework is developed for general and further education and training; to improve and monitor achievements and after students and learners have reached the acquired standards, to certify such achievements;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

CHAPTER 1

DEFINITIONS, SCOPE AND PURPOSE OF ACT

Definitions

1. In this Act, unless the context otherwise indicates-

"accreditation" means the process of assessing a learning programme as registered on the National Qualifications Framework and the approval of the ability of a provider to perform a particular function in the quality assurance system set up in terms of national policy, or the council and subject to the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"assessment" means the process of identifying, gathering and interpreting information about a learner's achievement in order to-

(a) assist the learner's development and improve the process of learning and teaching; and

(b) evaluate and certify competence in order to ensure qualification credibility;

"assessment body" means an education department or any other body registered with the council as a body responsible for conducting external assessment;

"certificate" means a certificate contemplated in section 14(1)(c);

"council" means the General and Further Education and Training Quality Assurance Council established by section 4;

"department of education" means a department responsible for education at national level or a department responsible for education in a province;

"Director-General" means the Director-General of the department responsible for education at a national level;

"employee" means any person who is in the full-time or part-time employ of the council;

"exit point" means a stage in general or further education and training at which a candidate is required to demonstrate competence with a view to obtaining documentary proof of proficiency;

"external assessment" means an assessment at an exit point, taken by the candidates of an assessment body;

"financial year" means a year ending on 31 March in each year;

"further education and training" means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework, which levels are above general education but below higher education;

"general education and training" means all learning and training programmes leading to a qualification on level 1 of the National Qualifications Framework, which level is below further education and training;

"Head of Department" means the Head of a Department responsible for education in a province;

"Minister" means the Minister of Education;

"National Qualifications Framework" means the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

"provider" means –

(a) in the case of a public provider, the department of education in the province wherein public schools, public further education and training institutions and public adult basic education and training centres deliver learning programmes; and

(b) in the case of a private provider, the private or independent institutions which deliver learning programmes, and which learning programmes culminate in a specified National Qualifications Framework standard or qualification, and manages the assessment thereof;

"raw marks" means the actual marks obtained by a candidate in a subject in an external assessment before any adjustment of the marks is made by the council;

"SAQA" means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and

"verifier" means a person who is registered by the council to validate the internally conducted learner assessment as well as the internal moderation processes.

Scope of application

2. This Act applies to all education institutions which have been established, declared or registered under the-

- (a) South African Schools Act, 1996 (Act No. 84 of 1996);
- (b) Further Education and Training Act, 1998 (Act No. 98 of 1998); or
- (c) Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000).

Purpose of Act

3. (1) The purpose of this Act is to-

- (a) establish a quality assurance body to ensure that a continuous enhancement of quality is achieved in the delivery and outcomes of the national education system;
- (b) develop a quality assurance framework for the educational sector;
- (c) regulate the relationships between, the national Department of Education, SAQA the provider and the Council as the quality assurer within the general and further education system.

(2) The providers are responsible for the delivery and assessment of quality education by public schools, public further education and training institutions and public adult basic education and training centres.

(3) The National and provincial education departments are responsible for the setting of policy and for the monitoring and evaluation of the education system.

(4) SAQA has the responsibility to establish and maintain a national education framework and to accredit education and quality assurance bodies.

(5) The General and Further Education and Training Quality Assurance Council will be responsible for monitoring and evaluating quality standards with regard to programmes and institutions throughout the general and further education and training

system and to co-operate with SAQA and providers to ensure that qualifications offered are of the highest possible standards.

CHAPTER 2

ESTABLISHMENT OF COMMITTEES, FUNDING AND FUNCTIONS OF GENFETQA COUNCIL

Establishment of the General and Further Education and Training Council

4. (1) A council is hereby established to be known as the General and Further Education and Training Quality Assurance Council.

(2) The council is a juristic person.

(3) The council must comply with the policies and criteria formulated by SAQA in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995) and section 3(4)(b) of the National Education Policy Act, 1996 (Act No. 27 of 1996).

Composition

5. (1) The council consist of:

- (a) a chairperson;
- (b) 14 members; and
- (c) a chief executive officer, who will be a member in his official capacity.

(2) The selection of members of the council contemplated in subsection (1)(a) must be undertaken in such a manner as to ensure, insofar as is practically possible, that-

- (a) the functions of the council in terms of this Act are performed according to the highest professional standards;

- (b) the membership taken as a whole-
 - (i) is broadly representative of the general and further education and training system and related interests;
 - (ii) has thorough knowledge and understanding of general and further education and training;
 - (iii) appreciates the role of the general and further education and training system in reconstruction and development;
 - (iv) has known and attested commitment to the interests of general and further education and training;
 - (v) has knowledge and understanding of accreditation, assessment and certification of general and further education and training programmes; and
 - (vi) has experience in the statistical or financial field; and
- (c) due attention is given to the representivity of the council in terms of such relevant factors as race, gender and disability.

(3) The Minister must invite nominations, by notice in the Government Gazette, for the appointment of members of the council as contemplated in subsections (1)(a) and (b).

(4) (a) Any person, role-player or organisation active or involved in general and further education may nominate persons for appointment by the Minister.

(b) The Minister may at his or her discretion accept or refuse a nomination referred to in paragraph (a).

(5) The Minister appoints the chairperson and members of the council, except the chief executive officer, and must consider the nominations within the criteria contemplated in subsection (2).

(6) The chairperson and any member of the council, excluding the chief executive officer, hold office for a period not exceeding four years and may be reappointed at the expiry of his or her term of office.

(7) The chairperson and any member of the council, excluding the chief executive officer, may not serve for more than two consecutive terms of office.

(8) The members must elect one person from their own number as a deputy chairperson.

Vacation of office and filling of vacancies

6. (1) The chairperson or any member of the council shall vacate his or her office if he or she-

- (a) resigns by giving written notice to the chairperson, or in case of the chairperson, to the Minister;
- (b) is absent from three consecutive meetings of the council, without leave of the council;
- (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine; or
- (d) is declared unable to manage to his or her personal affairs by a court of law.

(2) The Minister may revoke the appointment of the chairperson or any member of the council appointed in terms of section 5(5) at any time before the expiry of his or her term of office, if in the opinion of the Minister, there exist sound reasons for doing so.

(3) If the chairperson or a member of the council vacates his or her office, the resultant vacancy must be filled by appointment in accordance with section 5.

Committees of council

7. (1) The council may establish committees to assist it in the performance of its functions.

(2) A committee may include persons who are not members of the council.

(3) The chairperson of a committee is appointed by the council and must be a member of the council.

(4) Members of committees are appointed for such periods as the council may determine.

Meetings of council and committees

8. (1) Meetings of the council and its committees must be held at such times and places as may be determined by the chairperson concerned, but the chairperson must convene a meeting of the council at least twice a year or if asked to do so in writing by at least one third of the members of the council, or by the Minister, as the case may be.

(2) Whenever both chairperson and deputy chairperson are absent from any meeting, the council must appoint a person from among themselves to preside at that meeting.

(3) The council may make rules relating to the procedure at meetings of the council and its committees, including the quorum at such meetings, and any other matter necessary or expedient for the performance of the functions of the council or its committees.

(4) The proceedings at a meeting of the council or a committee are not invalid by reason only of the fact that a vacancy exists on the council or committee, as the case may be, at the time of such meeting.

Appointment of chief executive officer and staff

9. (1) The council must appoint a chief executive officer and may appoint other employees as it may deem necessary to assist it to perform its functions.

(2) The secretariat of the council is the responsibility of the chief executive officer who must carry out the duties as assigned or delegated by the council.

(3) The council is the employer of the employees and must determine their remuneration, allowances, subsidies and other conditions of service, subject to the applicable labour law.

Functions of chief executive officer

10. (1) The chief executive officer must-

- (a) be responsible for the work in connection with the performance by the council of its functions in terms of this Act;
- (b) supervise the employees of the council; and
- (c) be accounting officer to the council charged with accounting for moneys received, payments made and movable property purchased by the council.

(2) The chief executive officer must be assisted in the performance of his or her functions in terms of subsection (1) by such employees of the council as the chief executive officer may designate for that purpose.

Funds of council

11. (1) The funds of the council consist of-

- (a) money appropriated by Parliament;
- (b) donations and contributions received by the council;
- (c) moneys received by the council in respect of fees charged for services;
- (d) interest received on investments referred to in subsection (5);
- (e) subject to chapter 8 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), money obtained by means of loans raised by the council with the approval of the Minister granted with the concurrence of the Minister of Finance; and

(f) any other income received by the council.

(2) The council-

- (a) must keep record of all funds received and spent and of all assets, liabilities and financial transactions;
- (b) must in each financial year, at such time and in such manner as the Minister may determine, subject to chapter 6 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit a budget for the ensuing financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance;
- (c) may in any financial year submit adjusted budgets to the Minister for his or her approval, granted with the concurrence of the Minister of Finance; and
- (d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).

(3) If the Minister does not approve the council's budget, the Minister must require the council to provide a revised budget to him or her within a specified period.

(4) The funds contemplated in subsection (1) must be used by the council in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year.

(5) Subject to subsection (4), the council may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve.

Alienation and encumbrance of council's property

12. The council shall not without the prior approval granted by the Minister with the concurrence of the Minister of Finance-

- (a) let, sell, exchange or otherwise alienate its immovable property; or
- (b) as long as a guarantee in terms of section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is in force in respect of any loan granted to the council-
 - (i) mortgage or otherwise encumber its immovable property acquired with money obtained by means of that loan; and
 - (ii) let, sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired with money obtained by means of that loan.

Auditing and annual report

13. (1) The statements of account and balance sheet of the council shall be audited at the end of each financial year by a person registered as an accountant and auditor in terms of the provisions of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and appointed by the council with the approval of the Director-General.

(2) The council must not later than three months after the end of each financial year submit to the Minister a report in such form as the Minister may determine on its functions during that financial year, including an audited balance sheet and a statement of income and expenditure.

(3) The Minister must table the report, including the balance sheet and statement of income and expenditure referred to in subsection (2), in Parliament within 14 days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

Functions of council

14. Subject to the policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996) and any general or specific directive given by the Minister, the council must-

- (1) (a) accredit general and further education and training providers, subject to chapter 3 and chapter 4, for specific National Quality Framework standards and qualifications and also-
 - (i) accredit those providers for delivery of learning programmes which culminate in specified standards and qualifications according to the criteria determined by the South African Qualifications Authority;
 - (ii) monitor provisioning of educational programmes by providers; and
 - (iii) promote quality among providers; and
- (b) recognise learner achievements in general and further education and training that meet the requirements of the council, and award qualifications and credits towards qualifications registered on the National Qualifications Framework, and also-
 - (i) manage assessment by providers, either directly or through accredited assessment bodies or agencies;
 - (ii) moderate across different accredited assessment bodies, agencies or providers to ensure reliability and validity of external assessment;
 - (iii) register assessment for specified registered standards of qualifications in terms of the criteria established for this purpose;
 - (iv) verify internally conducted assessments;
 - (v) verify internal moderation processes; and
 - (vi) ensure that internal and external quality management systems are in place;

- (c) must issue certificates in the form prescribed by the council to candidates who have, in one or more subjects at an exit point -
 - (i) met the requirements set by the council for a certificate; and
 - (ii) complied with every other condition determined by the council;
 - (d) co-operate with the relevant body or bodies appointed to moderate across Education and Training Quality Assurance Bodies including but not limited to, moderating the quality assurance on specified standards or qualifications for which one or more Education and Training Quality Assurance Bodies are accredited;
 - (e) recommend new standards or qualifications to the National Standards Bodies for consideration, or modifications to existing standards or qualifications to National Standards Bodies for consideration;
 - (f) maintain an acceptable data base and follow acknowledged recording and reporting procedures;
 - (g) monitor, audit and report to the Minister and SAQA in accordance with the requirements of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
 - (h) perform such other functions as may from time to time be assigned to it by SAQA; and
 - (i) monitor and report to the Minister on the performance of departments of education as providers, and recommend steps to rectify any deficiencies.
- (2) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the council, with regard to external assessment -

- (a) must perform the external moderation of assessment papers, memoranda and samples of assessment scripts of all providers or assessment bodies;
- (b) must in consultation with the Director-General and the provider approve the publication of the results of candidates if the council is satisfied that the provider or assessment body has -
 - (i) conducted the assessment free from any irregularity;
 - (ii) complied with the requirements prescribed by the council for conducting assessments;
 - (iii) applied the norms and standards prescribed by the council and SAQA, and with which a candidate is required to comply in those assessments in order to obtain a certificate; and
 - (iv) complied with every other condition determined by the council; and
- (c) may adjust raw marks during the standardisation process in consultation with the Director-General.

(3) Subject to the approval of the Minister and SAQA, the council may register an assessment body in accordance with the criteria determined by SAQA and the council.

(4) Subject to section 74 of the Higher Education Act, 1997 (No. 101 of 1997) the council may with the approval of the South African Universities Vice-Chancellor's Association or the Committee for Technikon Principals or any other similar body recognised by the Minister, endorse a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution accordingly.

(5) The council must apply to SAQA for accreditation as an education and training quality assurance body as contemplated in sections 5(1)(a)(ii)(bb) of the South African Qualifications Act, 1995 (No. 58 of 1995) for all education sectors and must within 18 months from the date of application, be accredited.

Functions of providers or assessment bodies with regard to external assessments

15. In respect of an external assessment to be conducted, an assessment body, subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996)-
- (a) must take adequate measures, including measures to combat irregularities in the assessment venue and security measures for ensuring the confidentiality of assessment papers, to ensure the integrity of the assessments;
 - (b) must ensure that each paper is representative of the prescribed subject matter;
 - (c) must ensure that each paper is moderated by at least one competent internal moderator;
 - (d) must submit a paper and memorandum to an external moderator for confirmation that they conform to the required standards;
 - (e) must ensure that a sample of the assessment scripts is moderated by an external moderator;
 - (f) must schedule a particular paper for a stipulated date and time on the assessment time-table;
 - (g) must supply the council on or before a date and in the form determined by the council, with a mark for each subject in which a candidate sat for assessment;
 - (h) must without delay and in writing supply the council and the Director-General with full details of any irregularities that occurred in respect of such assessment as well as the steps taken with regard to such irregularities;
 - (i) must publish the results of the assessment after obtaining the approval of the council; and

- (j) may recommend to the council during the standardisation process that raw marks be adjusted.

Functions of Director-General with regard to external assessment

16. With regard to external assessment the Director-General-

- (a) must promote the integrity of the assessment system;
- (b) must monitor the conduct of the council and the assessment body in upholding the minimum norms and standards set by SAQA, or determined by policy; and
- (c) may institute an investigation into any irregularities which may occur.

Fees payable to council

17. The council determines the fees payable to the council in respect of-

- (a) the issue of a certificate as contemplated in section 14(1)(c) or a duplicate certificate; and
- (b) the endorsement of a certificate as contemplated in section 14(4) or of a duplicate certificate.

Cancellation of certificates

18. (1) If in the opinion of the council a substantial irregularity has occurred in relation to the sitting for an external assessment, or if a certificate has been issued by the council to a candidate who in the opinion of the council has not complied with the norms and standards for obtaining that certificate, the council may refuse the issue of the relevant certificate or cancel a certificate that has been issued, as the case may be.

(2) For the purposes of such cancellation the council may by notice in writing direct the candidate to whom the certificate in question has been issued to return the certificate to the council within three weeks after such notice.

(3) Any person who fails to comply with such notice shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

CHAPTER 3

ACCREDITATION OF PUBLIC PROVIDERS

Quality assurance in regard to registration of public providers

19. (1) All public providers are deemed to be accredited.

(2) The council must develop criteria for accreditation to which public providers must adhere.

(3) Different criteria can be developed for different types of public institutions or between schools, further education and training centres and adult basic education and training centres.

(4) The criteria contemplated in subsection (2) must be submitted to the Minister for approval and after approval thereof, the Minister must make policy in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), with regard to the criteria for accreditation for public providers.

(5) The policy contemplated in subsection (4) is binding on all public providers.

(6) Council must monitor whether all public providers comply substantially with the policy contemplated in subsection (4).

(7) If any of the public providers fail to comply substantially, the council must -

- (a) give written notice to such a public provider and indicate the criteria in which the public provider failed to comply; and
- (b) give reasonable notice and determine a reasonable period within which such failures must be rectified.

(8) If after expiration of the period determined in terms of subsection (7)(b), the public provider is still in default, the council must report to the Minister -

- (a) the failure of the public provider in complying with the criteria;
- (b) that written notice was given to the public provider as contemplated in subsection (7)(a); and
- (c) that despite a reasonable period that was given, the public provider still failed to rectify the position.

(9) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and section (8) of the National Education Policy Act, 1996 (Act No. 27 of 1996) the Minister must request a report from the province concerning the public provider, giving full details as to why it could not comply with the criteria.

(10) After consideration of all the relevant factors, the Minister must direct the council and the public provider what reasonable steps to take to solve the problem.

(11) If there is still no compliance despite the direction given by the Minister, the Minister must report the matter to Parliament for its determination.

CHAPTER 4

ACCREDITATION OF PRIVATE PROVIDERS

Quality assurance in regard to registration of private or independent providers

20. (1) A person who intends to provide education within the general and further education bands as defined by SAQA and is required to register as -

- (a) an independent school in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
- (b) a private further education and training institution in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998); or
- (c) a private centre in terms of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000);

must apply to the council for accreditation;

(2) A person contemplated in subsection (1) must apply for accreditation to the council on the forms and according to the procedures as determinate by the council.

(3) A person contemplated in subsection (1) must supply the council with all relevant information concerning the institutions to be registered and any programmes that are to be provided by such institutions.

(4) The application for accreditation must include detailed curricula for all the programmes contemplated in subsection (3) and also indicate what educational resources are available in the provision of such programmes.

(5) The council may require any further information to perform its functions in terms of accreditation.

(6) The council must evaluate the programmes and institution within a period of 6 months, unless there are reasonable grounds for the extension of such a period by the Minister.

(7) The council may-

- (a) grant accreditation;
- (b) refuse accreditation; or
- (c) refer the application back to the candidate to supplement it.

(8) The council determines the fees payable to the council in respect of the accreditation of the programmes.

(9) The council must –

- (a) develop criteria for accreditation applicable to private providers; and
- (b) submit the criteria to the Minister for his or her approval.

(10) The Minister makes policy in terms of the National Education Policy Act, 1996 (No. 27 of 1996).

(11) All private providers are bound by these criteria.

Notification of accredited programmes

21. (1) The council must, within 14 days of accrediting the programmes as contemplated in section 20(7), notify -

- (a) the registrar of further education and training institutions; or
- (b) the relevant Head of the Department in the case of private centres or independent schools.

(2) The notification must indicate if any conditions are attached to the accreditation and the nature thereof.

Failure to comply with the criteria for accreditation

22. (1) The council must monitor the private providers to ensure that they comply with the criteria as contemplated in section 20(9) and (11).

(2) If a private provider fails to comply with any of the criteria for accreditation, the council must -

- (a) give notice to such a private provider of the nature and extent in which it failed to comply;
 - (b) determine a reasonable period in which such provider must rectify shortcomings; and
 - (c) evaluate the steps taken by the private provider to rectify shortcomings, as well as any other submissions made by the provider.
- (3) After consideration of the steps taken as contemplated in subsection (c), the council must -
- (a) re-accredit the private provider for a reasonable timeframe; or
 - (b) withdraw the private provider's accreditation as from a date specified by council.
- (4) The council must notify -
- (a) the head of the department in the case of independent and private adult basic education and training centres; and
 - (b) the registrar in the case of private further education and training institutions;
- of the intention to withdraw accreditation and also the effective date if it is decided to withdraw the accreditation, and this notification must be given within 3 weeks after the notification contemplated in subsection (a).

CHAPTER 5

GENERAL

Information to be provided to and by council

23. (1) Every education department, every provider of general or further education and training, every institution where general or further education and training is provided and every examining body must provide the council with such information as the council may reasonably require for the performance of its functions in terms of this Act.

(2) The council must on request provide such information as may be reasonably required by any body or organisation referred to in subsection (1).

Regulations

24. The Minister may make regulations on any matter which may or must be prescribed by regulation in terms of this Act, and any matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.

Transitional arrangements

25. (1) Despite section 26, the South African Certification Council established by section 2 of the South African Certification Council Act, 1986 (Act No. 85 of 1986), continues to perform the functions which it performed prior to the commencement of this Act, until the date on which the council is constituted in terms of section 4 of this Act.

(2) The Minister must immediately after the commencement of this Act, initiate the process to constitute the council as contemplated in section 4.

(3) All assets which vested in the South African Certification Council referred to in subsection (1) immediately prior to the date referred to in that subsection, vest in the council on that date.

(4) Existing agreements of employment between the South African Certification Council and its employees, must on the date referred to in subsection (1), be deemed to be agreements entered into between those employees and the council and must continue to exist subject to applicable labour laws, and those employees must be deemed to have served continuously under the same employer without interruption.

Repeal of law

26. The South African Certification Council Act, 1986 (No. 85 of 1986), is hereby repealed.

Short title

27. This Act is the General and Further Education and Training Quality Assurance Act, 2001.

EXPLANATORY MEMORANDUM TO THE GENERAL AND FURTHER EDUCATION AND TRAINING QUALITY ASSURANCE BILL, 2001

1. INTRODUCTION

- 1.1 This Bill provides for the repeal of the South African Certification Council Act, 1986 (Act No. 85 of 1986).
- 1.2 The Department of Education appointed a task team to investigate, develop and produce a suitable quality assurance model for the general and further education and training bands.

2. BACKGROUND

- 2.1 After extensive consultations with all relevant stakeholders and also with quality assurance authorities in Scotland and Canada, the task team proposed a model which was accepted by the Heads of Education Department Committee.
- 2.2 In terms of the proposed model, the main function of an Education and Training Quality Assurer is to monitor and audit education and training achievements and systems in terms of national standards and qualifications.
- 2.3 As the South African Certification Council Act emanates from the previous dispensation, various of its provisions are outdated and the language used is not user and gender friendly. Consequently, the Department of Education proposed that new legislation should be drafted to establish an Education and Training Quality Assurer for the general and further education and training bands on the basis of the model proposed by the task team.

3. DISCUSSION

- 3.1 In terms of clause 3 of the Bill, provision is made that the council must comply with the policies and criteria formulated by the South African Qualifications Authority.

- 3.2 The composition of the council is dealt with in clause 5 of the Bill. In terms of this clause, provision is made to the effect that the general and further education and training systems and related interests are sufficiently represented on the council. Furthermore, due attention is given to representivity of the council with regard to race, gender and disability.
- 3.3 Clause 9 of the Bill makes provision for the appointment of a chief executive officer and other staff. It also provides that the council is the employer of staff and determines the remuneration, allowances, subsidies and other conditions of service, subject to the applicable labour law.
- 3.4 In terms of section 18 of the South African Certification Council Act, 1986, the council is authorised to make regulations. However, in terms of clause 8 of the Bill, the council may only make rules relating to the procedure at meetings and develop criteria for accreditation of providers in terms of section 19(2) and 20(9). The regulations can only be made by the Minister in terms of section 24 of the Bill.
- 3.5 Clause 14 provides for the functions of the council. Its main functions are to accredit general and further education and training providers; to recognise learners achievements and award qualifications and credits towards qualifications registered on the National Qualifications Framework; to issue certificate, to co-operate with the relevant bodies appointed to moderate the quality assurance on specified standards or qualifications for which one or more Education and Training Quality Assurance Bodies are accredited; to recommend new standards or qualifications to the National Standards Bodies for consideration or modifications to existing standards. Furthermore, the council must apply to SAQA for accreditation as an education and training quality assurance body as contemplated in section 5(1)(a)(ii)(bb) of the South African Qualifications Act, 1995 (Act No. 58 of 1995).
- 3.6 Clause 23 of the Bill provides for information to be provided to the by certain bodies and institutions, and also for information to be provided to those bodies and institutions by the council.

- 3.7 Clause 25 of the Bill contains certain transitional arrangements providing for the terms of office of existing members of the council to terminate on the date on which the new council is constituted in terms of clause 4 of the Bill, and also for the manner in which the council must be constituted when the Bill becomes an Act of Parliament and comes into affect.

4. FINANCIAL IMPLICATIONS

As the new statutory body is merely replacing another statutory body it limits the financial implications to the Department of Education. However, the General and Further Quality Assurance Council will have much wider range of functions than its predecessor and will need additional funds. There will be no new financial implications to the provincial education departments.

5. PARLIAMENTARY PROCEDURE

The Department is of the opinion that the procedures contemplated sections 73 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)