

NOTICE 866 OF 2010**DEPARTMENT OF SCIENCE AND TECHNOLOGY
NOTICE OF INTRODUCTION OF BILL INTO PARLIAMENT**

The Minister of Science and Technology intends introducing the Bill set out below into Parliament during 2010:

Draft Science and Technology Laws Amendment Bill

Written comments must be received not later than 01 October 2010 and must be addressed to:

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REPUBLIC OF SOUTH AFRICA

**SCIENCE AND TECHNOLOGY LAWS
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of) (The English text is the official
text of the Bill)*

(MINISTER OF SCIENCE AND TECHNOLOGY)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate deletion from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

- To amend the **Natural Scientific Professions Act, 2003, (Act No. 27 of 2003)**, so as to amend certain definitions; to correct certain references; to effect certain technical corrections; and to provide for matters connected therewith;
- to amend the **National Research Foundation Act, 1998, (Act No. 23 of 1998)**, so as to amend certain definitions and insert certain new definitions; to correct certain references; to make provision for disqualification of members of the board; to effect certain technical corrections; and to provide for matters connected therewith ;
- to amend the **Africa Institute of South Africa Act, 2001, (Act No. 68 2001)**, so as to amend certain definitions; to correct certain references; to effect certain technical corrections; and to provide for matters connected therewith;
- to amend the **Academy of Science of South Africa Act , 2001, (Act No. 67 of 2001)** so as to amend certain definitions and insert certain new definitions; to effect certain technical corrections; and to provide for matters connected therewith;
- to amend the **Scientific Research Council Act, 1988 (Act No. 46 of 1988)** so as to amend certain definitions and insert certain new definitions; to correct certain references; to effect certain technical corrections; to delete certain inappropriate or obsolete provisions; and to provide for matters connected therewith; and
- to amend the **National Advisory Council on Innovation Act, 1997 (Act No. 55 of 1997)** so as to amend certain definitions and insert certain new definition; to provide for the appointment of an independent chief executive officer; to effect certain technical corrections; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 27 of 2003

1. Section 1 of the Natural Scientific Professions Act, 2003, is hereby amended:
 - (a) by the substitution for the definition of 'constitution' of the following definition:

"Constitution" means the Constitution of the Republic of South Africa, **[1993 (Act No. 200 of 1993)]** 1996 (Act No. 108 of 1996);
 - (b) by the substitution for the definition of 'Minister' of the following definition:

"Minister" means the Minister **[of Arts, Culture,]** responsible for Science and Technology."

Amendment of Section 3 of Act 27 of 2003

2. Section 3 of the Natural Scientific professions Act, 2003, is hereby amended-
 - a. by the addition of the following subparagraph to subsection 1:

"(iv) broadly represent the demographics of the Republic."
 - (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"not fewer than four and not more that six must be professional natural scientist or certified natural scientist who are in the service of the State, each nominated by his or her Director-General or chief executive officer of the organ of state concerned: Provided that at least one of the persons so nominated must be in the service of the Department and one in the service of the Department of Higher Education and Training; and"

Amendment of Section 6 of Act 27 of 2003

3. Section 6 of the Natural Scientific Professions Act, 2003, is hereby amended
 - (a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

- “(c) after the commencement of the Constitution of the Republic of South Africa, **[1993(Act No. 200 of 1993)] 1996 (Act No. 108 of 1996)**, has been convicted of an offence, whether in the Republic or elsewhere, and sentenced to imprisonment **[for a period exceeding three months, or to a] without an option of a fine [as alternative thereto]**”;
- (b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
- “(b) resigns by written notice addresses to the **[chief executive officer] Council**”;
- (c) by the substitution for paragraph (d) of subsection (2) of the following paragraph:
- “(d) has without leave of the Council, been absent from more than **[two] three** consecutive meetings of the Council”;
- (d) by the substitution for paragraph (e) of subsection (2) of the following paragraph:
- “(e) was appointed in terms of section 3 **(1)(a)** and is no longer a member of the body that nominated him or her”;
- (e) by the substitution for paragraph (f) of subsection (2) of the following paragraph:
- “(e) was appointed in terms of section 3 **(1)(b)** and ceases to be employed by the State”.

Amendment of Section 20 of Act 27 of 2003

4. Section 20 of the Natural Scientific Professions Act, 2003, is hereby amended by the substitution for subparagraph (i) of subsection (4)(a) of the following subparagraph:

“(i) if, after the commencement of the Constitution of the Republic of South Africa , **[1993 (Act no. 200 of 1993)] 1996 (Act No. 108 of 1996)**, the applicant has been convicted of an offence, either in the Republic or elsewhere, and sentenced to imprisonment **[for a period exceeding three months, or to a] without an option of a fine [as alternative thereto]**”;

Amendment of section 1 of Act 23 of 1998 - Definitions

1. Section 1 of the National Research Foundation Act, 1998, is hereby amended—

- (a) by the deletion of the numbering preceding each definition;
- (b) by the substitution for the definition of 'Minister' of the following definition:

"Minister' means the Minister **[of Arts, Culture,] responsible for** Science and Technology;"

- (c) by the substitution for the definition of 'research institution' of the following definition:

'research institution' means any organisation practising research, as recognised by the **Minister [Board,]** with primary emphasis on institutions in the **public higher education sector [tertiary education sector];**

- (d) by the substitution for the definition of science of the following definition:

'science' **[includes the natural sciences, engineering sciences, medical sciences, agricultural sciences, social sciences, and humanities]; includes any system of knowledge attained by verifiable means and the organised body of knowledge humans have gained by research.**"

- (e) by the substitution for the definition of regulation of the following definition

"[regulation] **'regulations'** means **[a regulation] regulations** made under this Act"

- (f) by the substitution for the definition of 'this Act' of the following definition:

"'this Act' includes **[a regulation] regulations.**"

Amendment of Section 6 of Act 23 of 1998

2. Section 6 of the National Research Foundation Act, 1998, is hereby amended -

- (a) by the substitution for subparagraph (ii) of subsection (1)(a) of the following subparagraph:
- “(ii) not fewer than nine and not more than eleven other members, appointed by the Minister; after consultation with the Minister responsible for [of] Higher Education and Training; and”.
- (b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
- “(a) **[Tertiary education]** higher education.”
- (c) by the insertion of the following subsection after subsection (5):
- “(5A) No member may serve more than two consecutive terms.”
- (d) by the addition of the following subsection after subsection (8)
- “(9) A person may not be appointed as a member of the Board if that person-
- (a) is not a citizen or permanent resident of the Republic;
 - (b) is an unrehabilitated insolvent;
 - (c) has, after the commencement of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), been convicted of an offence whether in the Republic or elsewhere, and sentenced to imprisonment without an option of a fine.”

Repeal of Section 22 of Act 23 of 1998

3. Section 22 of the National Research Foundation Act, 1998, is hereby repealed.

Substitution of certain expression in Act 23 of 1998

4. The National Research Foundation Act, 1998 is hereby amended by the substitution for the expression 'president', wherever it occurs in the Act, of the expression 'chief executive officer'.

Amendment of section 1 of Act 68 of 2001 – Definitions

1. Section 1 of the Africa Institute of South Africa Act, 2001, is hereby amended –

(a) by the substitution for the definition of Department of the following paragraph:

“Department” means the Department of **[Arts, Culture,]** Science and Technology;”

(b) by the substitution for the definition of Minister of the following paragraph:

“Minister” means the Minister responsible for **[of Arts, Culture,]** Science and Technology;”

Amendment of Section 8 of Act 68 of 2001

2. Section 8 of the Africa Institute of South Africa Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Council must meet at least **[three times a year]** once a quarter, and meetings shall be held at such times and places as the chairperson may determine by notice in writing to the other members.”

Repeal of Section 17 of Act 68 of 2001

3. Section 17 of the Africa Institute of South Africa Act, 2001 is hereby repealed.

Substitution of certain expression in Act 68 of 2001

4. The Africa Institute of South Africa Act, 2001 is hereby amended by the substitution for the expression ‘council’, wherever it occurs in sections 4, 8, 12, 14 and 18, of the expression ‘institute’.

Amendment of section 1 of Act 67 of 2001

1. Section 1 of the Academy of Science of South Africa Act, 2001, is hereby amended-

- (a) by the substitution for the definition of "Minister" of the following definition:

"Minister' means the Minister **[cabinet member]** responsible for **[Arts, Culture,]** Science and Technology;"

- (b) by the substitution for the definition of 'regulation' of the following definition:

"[regulation] 'regulations' means **[a regulation]** regulations made under this Act"

Amendment of section 7 of Act 67 of 2001

2. Section 7 of the Academy of Science of South Africa Act, 2001, is hereby amended

- (a) by the substitution for paragraph (f) of subsection (2) of the following paragraph:

"(f) has been found guilty of misconduct after a formal hearing for conduct which may bring the Academy into disrepute **[, but a member may not vacate office until the next annual general meeting at which the vacation of office must appear on the agenda.];** and such finding has been confirmed at the annual general meeting".

- (b) by the substitution for subsection (4) of the following subsection:

"(4) Membership lapses if subscription fees, as prescribed, have not been paid within **[three months after they become due]** a stipulated period."

Amendment of section 14 of Act 67 of 2001

3. Section 14 of Academy of Science of South Africa Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Academy may, subject to legislation and other formal agreements regarding international cooperation and in order to achieve its objectives, render support relevant thereto to any South African citizen in any territory outside the Republic."

Amendment of Section 1 of Act 46 of 1988, as amended by section 1 of Act 71 of 1990

1. Section 1 of the Scientific Research Council Act, 1988 is hereby amended –
 - (a) by the substitution for the definition of 'regulation' of the following definition:

“[Regulation[Regulations] [means] mean, subject to section 22 (3), [a regulation in force] regulations issued in terms of this Act;”
 - (b) by the substitution for the definition of 'research' of the following definition:

“‘research’ means the augmentation and improvement of knowledge through scientific investigations and methods directed towards the scientific and technological requirements of the private and public sectors, including the solution of relevant problems in the national interest, and includes the development, acquisition, diffusion, innovation and transfer of expertise and technology;”
 - (c) by the substitution for the definition of 'this Act' of the following definition:

“‘this Act’ includes **[a regulation] regulations**”

Amendment of Section 4 of Act 46 of 1988, as amended by section 3 of Act 71 of 1990

2. Section 4 of the Scientific Research Council Act, 1988 is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) For the achievement of its objects contemplated in section 3, the CSIR, may in the field of research co-operate with departments of State, universities, **[technikons]** universities of technology, colleges, scientific institutions and other persons.

Amendment of Section 6 of Act 46 of 1988

3. Section 6 of the Scientific Research Council Act, 1988 is hereby amended -

- (a) by the substitution for subsection (3) of the following subsection:

“(3) The Minister may after consultation with the **[concurrence of the]** Board determine that any property (excluding land and buildings) of the CSIR used by the CSIR in connection with the performance or exercise of the function or power transferred in terms of subsection (1), shall be transferred to the body of persons or department of State concerned.”

Amendment of Section 7 of Act 46 of 1988

4. Section 7 of the Scientific Research Council Act, 1988 is hereby amended –

- (a) by the insertion after subsection (2) of the following subsection:

“(2A) before appointing members of the Board, referred to in subsection 2(a) and (b), the Minister must appoint an independent panel which must compile a shortlist of candidates, after following a transparent and competitive nomination process.”

- (b) by the substitution for subsection (5) of the following subsection:

“(5) The members of the Board, including the chairman shall all be persons who have achieved distinction in science **[or]**, industry or finance or who have special knowledge or experience in relation to some aspect of the CSIR's functions, and be broadly representative of the demographics of the Republic”.

Amendment of Section 11 of Act 46 of 1988

5. Section 11 of the Scientific Research Council Act, 1988 is hereby amended by the addition after subsection (4) of the following subsection:

“(5) The Board must meet at least once a quarter”.

Amendment of Section 15 of Act 46 of 1988

6. Section 15 of the Scientific Research Council Act, 1988 is hereby amended
- (a) by the deletion of paragraph (b) of subsection (1).
 - (b) by the deletion of paragraph (a) of subsection (2).

Repeal of Section 17 of Act 46 of 1988

7. Section 17 of the Scientific Research Council Act, 1988 is hereby repealed

Amendment of Section 18 of Act 46 of 1988

8. Section 18 of the Scientific Research Council Act, 1988 is hereby amended
- (a) by the substitution for subsection (5) of the following subsection:

“(5) the procedure at meetings of the Board[, and generally, as to any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.]”.
 - (b) by the addition of the following subsection after subsection (5):

“(6) any matter in respect of which the Minister considers necessary or expedient to regulate, in order to achieve the objects of this Act.”

Substitution of Section 20 of Act 46 of 1988

9. The following section is hereby substituted for section 20 of the Scientific Research Council Act, 1988:
- “20 The **[State]** President may by proclamation in the Gazette assign the administration of this Act to any Minister, and may determine that any power or duty conferred or imposed by this Act on such Minister, shall be exercised or carried out by that Minister after consultation with one or more other Ministers”.

Repeal of Section 21 of Act 46 of 1988

10. Section 21 of the Scientific Research Council Act, 1988 is repealed.

Substitution of certain expressions in Act 46 of 1988

11. The Scientific Research Council Act, 1988 is hereby amended by the substitution for the expressions 'chairman', 'president' and 'Executive Management Board', respectively, wherever they occur in the Act, of the expressions 'chairperson', 'chief executive officer' and 'Executive Management Committee', respectively.

Insertion of certain words in Act 46 of 1988

12. The Scientific Research Council Act, 1988 is hereby amended by the insertion of the words 'or her' after the word 'his', wherever it occurs in the Act.

Substitution of Section 24 of Act 46 of 1988

13. The following section is hereby substituted for section 24 of the Scientific Research Council Act, 1988:

"24 This Act shall be called the Scientific Research Council Act, 1988, and shall come into operation on a date to be fixed by the **[State]** President by proclamation in the *Gazette*."

Amendment of section 1 of Act 55 of 1997

1. Section 1 of the National Advisory Council on Innovation Act, 1997 is hereby amended:

- (a) by the deletion of the numbering preceding each definition;
- (b) by the substitution for the definition of the 'chief executive officer' of the following:

"chief executive officer' means the **[Director-General of the Department]** person appointed under section 11 as the chief executive officer of NACI;"

- (c) by the substitution for the definition of 'Department' of the following definition:

"Department means the Department of **[Arts, Culture,]** Science and Technology";

- (d) by the substitution for the definition of 'higher education sector' of the following definition:

"'higher education sector' means universities, **[technikons]** universities of technology, colleges of education, whatever their source of finance or legal status";

- (e) by the substitution for the definition of 'innovation' of the following definition:

"'innovation' **[means the process of transforming an idea, generally generated through research and development into a new or improved product, process or approach, which realises to the real needs of society and which involves scientific, technological organisational or commercial activities]** refers to the application in practice of creative new ideas, which includes the processes by which new products and services enter the market (social or economic) and the creation of new businesses";

- (f) by the substitution for the definition of 'Minister' of the following definition:

"'Minister' means the Minister **[of Arts, Culture,]** responsible for Science and Technology";

- (g) by the substitution for the definition of 'Ministers Committee' of the following definition:

"'Ministers Committee' means Ministers Committee on Science and Technology established by the Minister [a decision of the Cabinet] and responsible for advice and decision-making on science and Technology matters";

- (h) by insertion after the definition of 'non-profit sector' of the following definition:

"'regulations' mean regulations made under section 13

- (i) by the substitution for the definition of 'this Act' of the following definition:

"this Act' includes **[any regulation] the regulations [made under section 13]**";

Amendment of Section 5 of Act 55 of 1997

2. Section 5 of the National Advisory Council on Innovation Act, 1997 is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) an officer of the Department of Trade and Industry nominated by the Minister responsible for Trade and Industry, appointed by the Minister. **[with the concurrence of the Minister of Trade and Industry]**"

Substitution of section 11 of Act 55 of 1997

3. The following section is hereby substituted for section 11 of the National Advisory Council on Innovation Act, 1997:

"Chief executive officer and staff of NACI

11.(1) The Minister must appoint a suitably qualified person as a chief executive officer of NACI.

[(1)] (2) Work incidental to the performance of NACI's functions shall be performed by the chief executive officer of NACI and officers appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

[(2)] (3) The Minister may-

- (a) at the request of NACI, for a temporary period or for a particular matter which is being investigated by NACI, appoint any person with special knowledge of any matter relating to the functions of NACI, or obtain the services of any body, to advise or to assist NACI in the performance of its functions; and
- (b) on recommendation of NACI and with the approval of the Minister of Finance, determine the remuneration, including reimbursement for travelling, subsistence and other expenses of such person or body."

Short title

1. This Act is called the Science and Technology Laws Amendment Act, 2010

SCIENCE AND TECHNOLOGY LAWS AMENDMENT BILL**MEMORANDUM ON THE OBJECTS OF THE BILL****1. BACKGROUND**

The Department of Science & Technology was established in 2004. Prior to 2004, it was part of the department of Arts, Culture, Science and Technology, under the Ministry of Arts, Culture, Science and Technology. The subsequent establishment of the Department of Science & Technology (DST) has impacted on a number of Acts, under the authority of the Minister of Science & Technology.

2. OBJECTS OF BILL

- 2.1 The draft Bill seeks to effect, amongst others, technical corrections to definitions and other references to enhance clarity, and to strengthen institutional oversight and governance of the public entities reporting to the Department.
- 2.2 The amendments therefore seek to eliminate possible confusion regarding definitions such as the title of the chief executive officer of some public entities as well as the designation of the portfolio of the Minister and to effect other consequential changes that were necessitated by the recent macro reorganization of State.

Natural Scientific Professions Act, 2003 (Act No. 27 of 2003)

Corrects incorrect references to, amongst others, the Constitution and the designation of the portfolio of the Minister, and provides for a requirement to ensure broad representativity on the board, and extends the requirement for a professional qualification or registration to state employees as well, as a condition for their appointment to the board.

National Research Foundation Act, 1998 (Act No. 23 of 1998)

Changes the title of the chief executive officer of the Foundation and corrects the references to the designation of the portfolio of the Minister and the Minister of Higher Education and Training, and sets a limit on the terms of office of members of the board, and set out grounds for their disqualification for members of the board.

Africa Institute of South Africa Act, 2001 (Act No. 68 of 2001)

Corrects the references of the department designation of the portfolio of the Minister and changes some incorrect references to 'Council' instead of 'Institute'.

Academy of Science of South Africa Act, 2001 (Act No. 67 of 2001)

Corrects references to the designation of the portfolio of the Minister and effects certain other technical corrections.

Scientific Research Council Act, 1988 (Act No. 46 of 1988)

Changes the title of the chief executive officer of The Council and provides for procedures prior to making appointments of members of the board to ensure consistency with all the public entities reporting to the Department, and provides for a requirement for broad representativity on the board.

National Advisory Council on Innovation Act, 1997 (Act No. 55 of 1997)

Corrects the references to the department and the portfolio of the Minister, and excludes the requirement for approval of Cabinet for the establishment of the Minister's Committee on Science and Technology, and provides for the appointment of an independent chief executive officer of NACI.

3. PARTIES CONSULTED

The proposed amendments are technical in nature and have therefore not required consultation.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be no costs implications relating to the implementation of the Bill. The proposed amendments are purely of an administrative nature.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisors and the Department of Science and Technology are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution, since it contains provisions to which the procedure set out in section 76 of the Constitution applies.

- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No.41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.