

REPUBLIC OF SOUTH AFRICA

HIGHER EDUCATION LAWS AMENDMENT BILL

*(As amended by the Portfolio Committee on Higher Education and Training
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 24B—2010]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend—

- the Higher Education Act, 1997, so as to amend certain definitions; to ensure that all higher education programmes offered in South Africa by a foreign juristic person are registered on the National Qualifications Framework; and to ensure that higher education institutions may offer a degree, diploma or certificate only if it is registered on the National Qualifications Framework;
- the Skills Development Act, 1998, so as to amend certain definitions; to provide for the appointment of the chief executive officer of the QCTO and for the transfer to and appointment of staff to the QCTO; and to further regulate the composition of the QCTO;
- the National Student Financial Aid Scheme Act, 1999, so as to amend certain definitions; and
- the National Qualifications Framework Act, 2008, so as to amend a definition and delete another; to amend the application of the Act in order to require that all qualifications offered in the Republic are registered on the National Qualifications Framework; and to remove references in the said Act to the Minister of Labour;

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 101 of 1997, as amended by section 1 of Act 55 of 1999, section 1 of Act 54 of 2000, section 1 of Act 63 of 2002 and section 1 of Act 38 of 2008

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1. Section 1 of the Higher Education Act, 1997, is hereby amended by—

(a) the substitution for the definition of “**Department of Education**” of the following definition:

“**‘Department of Education’** means the [Government department responsible for education at national level] Department of Higher Education and Training;”

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(b) the substitution for the definition of “**Director-General**” of the following definition:

“**‘Director-General’** means the Director-General of the Department of Higher Education and Training;” and

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- (c) the substitution for the definition of “**Minister**” of the following definition:
 “ ‘**Minister**’ means the Minister of Higher Education and Training;”.

Substitution of section 51 of Act 101 of 1997, as substituted by section 6 of Act 54 of 2000

2. The following section is hereby substituted for section 51 of the Higher Education Act, 1997:

“Registration of private higher education institutions

- 51.** (1) No person other than a public higher education institution or an organ of state may provide higher education unless that person is—
- (a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and
 - (b) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973), before such person is registered or conditionally registered **[as contemplated in]** in accordance with paragraph (a).
- (2) If the person contemplated in subsection (1) is a foreign juristic person, that person must ensure that any qualification or part-qualification offered within the Republic is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7(b) read with section 13(1)(h) of the National Qualifications Framework Act.”.

Insertion of section 65D in Act 101 of 1997

3. The following section is hereby inserted in the Higher Education Act, 1997, after section 65C:

“Qualifications registered on National Qualifications Framework

- 65D.** (1) No person may offer, award or confer a degree, or a higher education diploma or a higher education certificate, provided for on the HEQF unless such degree, diploma or certificate is registered on the sub-framework for higher education on the National Qualifications Framework contemplated in section 7(b) read with section 13(1)(h) of the National Qualifications Framework Act.
- (2) Notwithstanding subsection (1), a public higher education institution intending to offer any education programme or trade and occupational learning programme that leads to a qualification or part-qualification on the sub-framework for trade and occupation contemplated in section 7(c) of the National Qualifications Framework Act may offer the qualification or part-qualification subject to—
- (a) the approval of the Minister; and
 - (b) compliance with any condition set by the Minister.”.

Amendment of section 1 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999, section 1 of Act 31 of 2003 and section 1 of Act 37 of 2008

4. Section 1 of the Skills Development Act, 1998, is hereby amended by—

- (a) the substitution for the definition of “**Department**” of the following definition:
 “ ‘**Department**’ means the Department of **[Labour]** Higher Education and Training, except in—
- (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and
- (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to ‘employment services’ defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c),
where it means the Department of Labour;”;

- (b) the substitution for the definition of “**Director-General**” of the following definition:
- “**Director-General**’ means the Director-General of [**Labour**] Higher Education and Training;”; and
- (c) the substitution for the definition of “**Minister**” of the following definition: 5
- “**Minister**’ means the Minister of [**Labour**] Higher Education and Training, except in—
- (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and 10
- (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to ‘employment services’ defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c), 15
- where it means the Minister of Labour;”.

Amendment of section 26 of Act 97 of 1998, as inserted by section 11 of Act 37 of 2008

5. Section 26G of the Skills Development Act, 1998, is hereby amended by the substitution for subsection (5) of the following subsection: 20
- “(5) (a) The Minister must appoint the chief executive officer of the QCTO on the recommendation of the members of the QCTO.
- (b) If the Minister does not agree with the recommendation of the members of the QCTO, they must make another recommendation for consideration by the Minister. 25
- (c) The QCTO must appoint such number of employees to assist the QCTO in the performance of its functions as it may deem necessary.
- (d) Despite paragraph (a), the QCTO is the employer of the executive officer and employees and must determine their remuneration, allowances, subsidies and other conditions of service. 30
- (e) Staff identified in posts on the establishment of the Department who immediately before the commencement of the Higher Education Laws Amendment Act, 2010, performs functions relating to the administrative management of the QCTO may, subject to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), be appointed or transferred to the QCTO.”. 35

Amendment of Schedule 3 to Act 97 of 1998, as added by section 16 of Act 37 of 2008

6. Schedule 3 to the Skills Development Act, 1998, is hereby amended by—
- (a) the substitution in item 1(1) for paragraph (b) of the following paragraph: 40
- “(b) the chief executive officer of the SAQA;”; and
- (b) the substitution in item 1(1) for paragraphs (d) and (e) of the following paragraphs, respectively:
- “(d) the chief executive officer of the QCTO;
- (e) the chief executive [director] officer of the [Higher Education Quality Committee] Council on Higher Education established in terms of section [7] 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);”. 45

Amendment of section 1 of Act 56 of 1999, as amended by section 13 of Act 31 of 2007

7. Section 1 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by— 50
- (a) the substitution for the definition of “**Department**” of the following definition:
- “**Department**’ means the [**government department responsible for education at national level**] Department of Higher Education and Training;”; and 55

- (b) the substitution for the definition of “**Minister**” of the following definition:
 “‘**Minister**’ means the Minister of Higher Education and Training;”.

Amendment of section 1 of Act 67 of 2008

8. Section 1 of the National Qualifications Framework Act, 2008, is hereby amended—

- (a) by the substitution for the definition of “**Minister**” of the following definition:
 “‘**Minister**’ means the Minister of Higher Education and Training;” and
 (b) by the repeal of the definition of “relevant Minister”.

Substitution of section 3 of Act 67 of 2008

9. The following section is hereby substituted for section 3 of the National Qualifications Framework Act, 2008:

“Application of Act

3. (1) This Act applies to—

- (a) education programmes or learning programmes that lead to qualifications or part-qualifications offered within the Republic by—
 (i) education institutions; and
 (ii) skills development providers; and
 (b) professional designations,
 subject to the limitations prescribed in this Act.

(2) Every qualification or part-qualification contemplated in subsection (1) must be registered on the National Qualifications Framework in accordance with this Act.”.

Amendment of section 8 of Act 67 of 2008

10. Section 8 of the National Qualifications Framework Act, 2008, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) QC for General and Further Education and Training, **[and]** the QC for Higher Education and the QC for Trades and Occupations contemplated in Chapter 5.”;
 (b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively:
 “(b) determine policy on NQF matters in terms of this Act[, **after consultation with the Minister of Labour,**] and publish the policy in the *Gazette*;
 (c) **[after consultation with the Minister of Labour,**] publish guidelines which set out the government’s strategy and priorities for the NQF, and which may be updated annually;”;
 (c) by the substitution in subsection (2) for paragraphs (e) and (f) of the following paragraphs, respectively:
 “(e) **[determine,**] after considering advice from the SAQA **[and after consultation with the Minister of Labour,**] determine the sub-frameworks contemplated in section 7 [(a) and (b), **respectively,**] and publish them in the *Gazette*; and
 (f) determine, by regulation in the *Gazette*, **[after consultation with the Minister of Labour,**] the process by which a dispute involving the SAQA or a QC must be resolved, and any matter relating thereto.”; and
 (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “The Minister[, **after consultation with the Minister of Labour,**] must—”.

Repeal of section 9 of Act 67 of 2008

11. Section 9 of the National Qualifications Framework Act, 2008, is hereby repealed.

Amendment of section 13 of Act 67 of 2008

12. Section 13 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) advise the Minister **[and the Minister of Labour]** on NQF matters in terms of this Act.”. 5

Amendment of section 14 of Act 67 of 2008

13. Section 14 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 10

“(a) 12 members appointed in their personal capacities by the Minister **[after consultation with the Minister of Labour]**.”. 10

Amendment of section 27 of Act 67 of 2008

14. Section 27 of the National Qualifications Framework Act, 2008, is hereby amended— 15

(a) by the substitution for paragraphs (e) and (f) of the following paragraphs, respectively:

“(e) develop and manage its sub-framework, and make recommendations thereon to the **[relevant]** Minister;

(f) advise the **[relevant]** Minister on matters relating to its sub-frame- 20 work;” and

(b) by the substitution in paragraph (k) for subparagraph (iv) of the following subparagraph:

“(iv) perform any function consistent with this Act that the **[relevant]** Minister may determine.”. 25

Substitution of long title of Act 67 of 2008

15. The following long title is hereby substituted for the long title of the National Qualifications Framework Act, 2008:

“**To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Higher Education and [the Minister of Labour] Training; to provide for the South African Qualifications Authority; to provide for Quality Councils; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith.**” 30

Short title

16. This Act is the Higher Education Laws Amendment Act, 2010. 35

MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2010

1. MAIN OBJECT OF BILL

1.1 The main object of the Bill is to align the laws listed in subparagraph 1.2 with the new education dispensation that came about during 2009 when the former Department of Education was split into the Department of Basic Education and the Department of Higher Education and Training. In terms of section 97 of the Constitution of the Republic of South Africa, 1996, the administration and powers and functions entrusted by the laws listed in subparagraph 1.2 were transferred to the Minister of Higher Education and Training by means of Proclamation No. 44 of 2009, published in *Government Gazette* No. 32367 of 1 July 2009. The administration and powers and functions entrusted to the Minister of Labour by certain provisions of the Skill Development Act, 1998 (Act No. 7 of 1998) (the SD Act), were similarly transferred to the Minister of Higher Education and Training by Proclamation No. 56 of 2009, published in *Government Gazette* No. 32549 of 4 September 2009. The Bill also seeks to align those provisions of the SD Act with the new education dispensation referred to above.

1.2. The laws contemplated in paragraph 1.1 are—

- the Higher Education Act, 1997 (Act No. 101 of 1997) (the HE Act);
- the National Student Financial Aid Scheme Act, 1999 (Act No. 59 of 1999) (the NSFAS Act); and
- the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) (the NQF Act).

2. MAIN FEATURES OF BILL

2.1 HE Act (clauses 1 to 3)

2.1.1 The creation of the new Department of Higher Education and Training has necessitated a redefinition of certain words and expressions that occur in the HE Act. The Bill seeks to amend the definitions of “Department of Education”, “Director-General” and “Minister” in section 1 of the HE Act in order to reflect the new dispensation.

2.1.2 The Bill seeks to bring clarity in the HE Act in respect of the criteria for the registration of private higher education institutions and the registration of qualifications on the National Qualifications Framework.

2.2 SD Act (clauses 4 to 6)

2.2.1 The Bill seeks to amend the definitions of “Department” “Director-General” and “Minister” in section 1 of the SD Act in order to reflect the transfer brought about by the said Proclamation No. 56 of 2009.

2.2.2 The amendments proposed to section 26G of the SD Act are to further regulate the appointment of the chief executive officer of, and the appointment of employees to, the Quality Council for Trades and Occupations (QCTO). The amendments proposed to Schedule 3 to the SD Act are to correctly reflect the designations of certain members of the QCTO.

2.3 **NSFAS Act (clause 7)** The Bill seeks to amend the definitions of “Department” and “Minister” in section 1 of the NSFAS Act in order to reflect the new dispensation.

2.4 NQF Act (clauses 8 to 15)

- 2.4.1 The Bill seeks to amend the definition of “Minister” and delete the definition of “relevant Minister” in section 1 of the NQF Act in order to reflect the new dispensation.
- 2.4.2 The amendment proposed to section 3 is to ensure that every qualification or part-qualification offered within the Republic is registered on the National Qualifications Framework.
- 2.4.3 The amendments proposed to section 8 of the NQF Act are to provide that the Minister of Higher Education and Training now also has overall executive responsibility for the QCTO and no longer has to consult with the Minister of Labour on National Qualifications Framework matters.
- 2.4.4 The rest of the amendments proposed to the NQF Act are consequential amendments aimed at removing references to the Minister of Labour.

3. CONSULTATION

As these amendments to the relevant legislation were necessitated by the creation of the new Ministry, the Bill was not published for public comment in the *Government Gazette*.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be no financial implications for the State.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 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.