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GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

No. 1348.

19 June 1991

No. 1348.

19 Junie 1991

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

U No. 88 of 1991: Education Affairs Amendment Act (House of Assembly), 1991

No. 88 van 1991: Wysigingswet op Onderwysaangeleenthede (Volksraad), 1991

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.

ACT

To amend the Education Affairs Act (House of Assembly), 1988, so as to define or further define certain expressions; to change the designation of "Director of Education" to "Executive Director of Education"; to provide for the establishment of combined schools providing education on primary as well as secondary levels; to make further provision in connection with the continuation of certain councils; to provide that a public school may be declared to be a state-aided school and to regulate the consequences of such declaration; to make further provision in connection with specialized education; to provide for the conditions of service of persons appointed at state-aided schools under repealed laws; to make further provision in connection with the conditions of service of persons employed at state-aided schools; to regulate the transfer of persons employed at public schools to state-aided schools; to extend the power to delegate to include persons employed by the Department under other laws; to empower the Minister to make regulations regarding medical, psychological and dental inspection of pupils and persons employed at schools and hostels and for the health inspections of schools and hostels and the grounds thereof; and to alter the official designation of a Minister; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 5 June 1991.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 70 of 1988

1. Section 1 of the Education Affairs Act (House of Assembly), 1988 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of "centre" of the following definition: 5
- "combined school" means a public school providing education on levels falling under a primary school as well as levels falling under a secondary school;
- (b) by the substitution for the definition of "parent" of the following definition: 10
- "parent" in relation to a child, means **[also a]** the parent of such child or the person in whose custody the child has been lawfully placed;";
- and 15
- (c) by the substitution for the definition of "state-aided school" of the following definition:
- "state-aided school" means an education institution declared **[or**

deemed to be declared] to be a state-aided school for specialized education under section 29(1) or deemed to be so declared under section 29(4), as well as a public school declared to be a state-aided school under section 29(2A);”.

Substitution of section 4 of Act 70 of 1988

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2. The following section is hereby substituted for section 4 of the principal Act:

“Executive Directors of Education

4. (1) The Minister shall for each executive component designate an official in the public service as Executive Director of Education, who, in respect of the executive component for which he is designated, shall perform the functions assigned to him by this Act, the Minister or the Head of Education. 10

(2) [A] An Executive Director of Education shall perform his functions under the control of the Head of Education.

(3) A person who occupied the office of Director of Education of an executive component immediately prior to the [fixed] date of commencement of the Education Affairs Amendment Act (House of Assembly), 1991, shall from that date be deemed to have been designated as Executive Director of Education for that executive component in terms of this section.”. 15 20

Amendment of section 5 of Act 70 of 1988

3. Section 5 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (d) of subsection (1) of the following subparagraph:

“(i) to have pupils at schools medically, psychologically and dentally examined [under the prescribed circumstances], and to have health inspections carried out in respect of schools and hostel buildings and the grounds thereof;”. 25

Amendment of section 12 of Act 70 of 1988

4. Section 12 of the principal Act is hereby amended—

(a) by the insertion after paragraph (c) of subsection (1) of the following paragraph: 30

“(cA) combined schools;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) (a) A provincial nursery school and pre-primary school or class; 35

(b) a primary school;

(c) a high school, secondary school, agricultural high school, commercial high school, technical high school and vocational school;

(d) a junior high school and a secondary school;

(e) a school for specialized education, special school or class, clinic school and training centre for mentally retarded children; 40

(f) an industrial school; or

(g) a reform school,

established, founded or classified in terms of a law repealed by this Act, or deemed to be established, founded or classified in terms of such a law, and which was controlled and managed by the Department immediately prior to the fixed date, shall with effect from that date be deemed to be— 45

(i) a pre-primary school;

(ii) a primary school;

(iii) a secondary school; 50

(iv) a combined school;

(v) a school for specialized education;

(vi) an industrial school; or

(vii) a reform school,

respectively, established under this section.”. 55

Substitution of section 20 of Act 70 of 1988

5. The following section is hereby substituted for section 20 of the principal Act:

“Continuation of certain councils

- 20. (1) (a)** A regional council;
- (b) a regional committee and school board; 5
- (c) a management council, control board, special committee, school committee, council for a training centre and advisory council;
- (d) a board of management; or
- (e) a hostel committee,
- established, constituted or founded in terms of a law repealed by this Act and which existed immediately prior to the fixed date, shall from that date be deemed to be— 10
- (i) a regional council;
- (ii) a school board;
- (iii) a management council; 15
- (iv) a board of management; or
- (v) a hostel council,
- respectively, established and constituted under this Act, but the members of the council, committee or board concerned referred to in paragraphs (a) to (e), shall after the said date stay on as members of the council or board referred to in paragraphs (i) to (v), respectively, until their membership of such council, committee or board shall lapse or until their membership is terminated by the Minister. 20
- (2) All assets and liabilities of a council, committee or board referred to in paragraphs (a) to (e) of subsection (1) shall, as from the fixed date, vest in the corresponding council or board referred to in paragraphs (i) to (v) of that subsection.” 25

Amendment of section 29 of Act 70 of 1988

6. Section 29 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 30
- “(1) In order to ensure the provision or the continued provision of specialized education at an educational institution other than a public school, the Minister may, by notice in the *Gazette*, declare such an institution to be a state-aided school for specialized education with effect from a date mentioned in the notice.”; 35
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) No educational institution shall be declared to be a state-aided school under subsection (1), except with the concurrence of the owner of that institution and the Minister of the Budget **[and Works]**.”;
- (c) by the insertion after subsection (2) of the following subsection: 40
- “(2A) The Minister may, after a management council of a public school (excluding a pre-primary school, a school for specialized education, an industrial school and a reform school) has, on such conditions as the Minister may determine, conducted an opinion poll among the parents of the pupils of that public school, with due consideration of the factors determined by the Minister, by notice in the *Gazette* declare the public school concerned to be a state-aided school with effect from a date mentioned in the notice.”; and 45
- (d) by the substitution for subsection (4) of the following subsection: 50
- “(4) An institution or part of an institution declared or deemed to have been declared to be a subsidized school or a state-aided training centre under any law repealed by this Act, and which existed immediately prior to the fixed date, shall with effect from that date be deemed to be declared a state-aided school for specialized education under **[this section]** subsection (1).” 55

Insertion of section 31A in Act 70 of 1988

7. The following section is hereby inserted in the principal Act after section 31:

“Consequences of declaration of public school as state-aided school

31A. (1) As from the date on which a public school is declared to be a state-aided school under section 29(2A)—

- (a) the ownership and control of movable and immovable property and all rights which immediately prior to that date vested in the State or the management council concerned and which relates to the school concerned, shall devolve upon the state-aided school concerned on such terms and conditions as the Minister with the concurrence of the Minister of the Budget may determine: Provided that the ownership of such property shall without payment of compensation by the State revert to the State if the property in the opinion of the Minister is not being utilized in the interest of education;
- (b) the liabilities and obligations which immediately prior to that date vested in the State or the management council, shall devolve upon the state-aided school concerned;
- (c) the administrative records and other documents relating to the public school concerned and which the Minister may determine shall be transferred to such state-aided school; and
- (d) the management, control and executive power of the state-aided school concerned shall vest in its governing body constituted in accordance with the provisions of this Act.

(2) Immovable property devolving upon the state-aided school or reverting to the State in terms of subsection (1)(a), shall be transferred to the state-aided school or the State, as the case may be, without payment of transfer duty, stamp duty or other moneys or costs, but subject to any term or condition contemplated in subsection (1)(a) and any existing right, encumbrance, duty or trust on or over that property.

(3) The officer in charge of a deeds office or other office where the immovable property referred to in subsection (2) is registered, shall, on submission to him of the title deed concerned, make such endorsements on that title deed and such entries in his register as may be required to effect the transfer concerned.

(4) The declaration of a public school as a state-aided school, shall not affect anything legally done by the State or the management council prior to the declaration.”.

Substitution of section 41 of Act 70 of 1988

8. The following section is hereby substituted for section 41 of the principal Act:

“Age requirements in respect of specialized education

- 41.** Except with the approval of the Head of Education—
- (a) a child shall not be admitted to a school for specialized education or state-aided school for specialized education before he has reached the age of six years;
 - (b) a person shall not be admitted to a school for specialized education or state-aided school for specialized education after he has reached the age of 19 years; and
 - (c) a person shall not attend a school for specialized education or state-aided school for specialized education after the end of the year in which he has reached the age of 21 years.”.

Amendment of section 42 of Act 70 of 1988

9. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of section 49, the Head of Education may, at the request of the parent of a child, approve that the child be admitted to a school for specialized education or a state-aided school for specialized education.” 5

Amendment of section 43 of Act 70 of 1988

10. Section 43 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) The Head of Education may cause a child who is subject to compulsory school attendance but is not attending a school for specialized education, state-aided school for specialized education or private school for specialized education, and whom he suspects to be a handicapped child, to be examined in order to determine whether he is a handicapped child.”. 15

Amendment of section 45 of Act 70 of 1988

11. Section 45 of the principal Act is hereby amended—

(a) by the substitution for the words following paragraph (b) of subsection (1) of the following words:

“the Head of Education may after consultation with the parent designate a school for specialized education or state-aided school for specialized education to which the child shall be sent.”; and 20

(b) by the substitution for subsection (2) of the following subsection:

“(2) If the Head of Education has designated a school for specialized education or state-aided school for specialized education under subsection (1) and the parent concerned fails to send the child to that school within the period determined by the Head of Education, the Head of Education may cause the child to be taken to the school concerned.”. 25

Amendment of section 46 of Act 70 of 1988

12. Section 46 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) If the Head of Education finds that a child referred to him under subsection (1) is a handicapped child, the Head of Education may approve that the child be admitted to a school for specialized education or state-aided school for specialized education for the periods during which specialized education is provided thereat.”. 35

Substitution of section 47 of Act 70 of 1988

13. The following section is hereby substituted for section 47 of the principal Act:

“Transfer of handicapped children” 40

47. The Head of Education may, after consultation with the parent of a child attending a school for specialized education or state-aided school for specialized education, transfer that child to another school for specialized education or state-aided school for specialized education.”. 45

Amendment of section 48 of Act 70 of 1988

14. Section 48 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a), of the following words:

“The Head of Education may exempt a child from the attendance of a

school for specialized education or state-aided school for specialized education if he is of the opinion that the child—”.

Amendment of section 96 of Act 70 of 1988

15. Section 96 of the principal Act is hereby amended by the substitution for the first proviso to paragraph (e) of subsection (1), of the following proviso: 5

“Provided that such permission shall be granted only if the Head of Education is of the opinion that the duties to be performed by the person concerned as a member of the institution, council or body concerned, will not interfere with the performance of his duties or work at the departmental institution or state-aided school:”.

Insertion of section 96A in Act 70 of 1988

16. The following section is hereby inserted in the principal Act after section 96:

“Conditions of service of persons appointed at state-aided schools under repealed laws

96A. (1) A person appointed in terms of any law repealed by this Act and who immediately prior to the fixed date was employed at a state-aided school, shall from that date be deemed to have been appointed in terms of this Act to a subsidized post at a state-aided school. 15

(2) (a) The conditions of service subject to which a person referred to in subsection (1) was serving immediately prior to the fixed date, shall not be affected to his detriment, and no such condition of service shall after that date be construed or applied in a way that is less favourable to the person concerned than the way in which it was construed or applied immediately prior to that date. 20

(b) Any disciplinary proceedings instituted or to be instituted against such person in terms of a law repealed by this Act in respect of misconduct which he allegedly committed prior to the fixed date, shall be disposed of or instituted, as the case may be, as if the repeal had not taken place.”. 25 30

Amendment of section 97 of Act 70 of 1988

17. Section 97 of the principal Act is hereby amended—

(a) by the deletion of the word “and” at the end of subparagraph (i) of paragraph (a) of subsection (2);

(b) by the addition to paragraph (a) of subsection (2) of the following subparagraph: 35

“(iii) the provisions of sections 71, 72 and 73 shall *mutatis mutandis* apply to any person referred to in subsection (1).”; and

(c) by the insertion after paragraph (a) of subsection (2) of the following paragraph: 40

“(aA) For the purposes of the sections referred to in paragraph (a) (iii)—

(i) a reference in the said sections to a departmental institution or the Department shall be construed as a reference to a state-aided school; 45

(ii) a reference in the said sections to the Minister shall be construed as a reference to the governing body concerned; and

(iii) a reference in the said sections to the Head of Education shall be construed as a reference to the chairman of the governing body concerned.”. 50

Insertion of section 97A in Act 70 of 1988

18. The following section is hereby inserted in the principal Act after section 97:

“Transfer of persons employed at public schools to state-aided schools

97A. (1) A person who immediately prior to the date contemplated in section 29(2A) was employed at the public school concerned, shall with his consent be transferred to and appointed in the service of the state-aided school concerned with effect from that date. 5

(2) A person transferred and appointed under subsection (1), shall be appointed on the conditions of service applicable to persons in the service of state-aided schools: Provided that—

(a) his salary shall not without his consent be reduced as a result of such transfer and appointment; 10

(b) for the purposes of the said conditions of service, his service in the Department shall be deemed to be service at the state-aided school;

(c) sick or vacation leave credit obtained by him as a result of his continuous service in the Department, shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him as a result of his service at the state-aided school; and 15

(d) any disciplinary proceedings instituted or to be instituted against him in respect of misconduct or unseemly behaviour which he allegedly committed prior to the said date, shall be disposed of or instituted, as the case may be, as if the public school had not been declared to be a state-aided school.”. 20

Substitution of section 107 of Act 70 of 1988

19. The following section is hereby substituted for section 107 of the principal Act: 25

“Delegation of powers

107. (1) The Minister may, subject to such conditions as he may determine, delegate any of his powers under this Act, except the power to make regulations, and assign any of his duties in terms of this Act, to the Head of Education or a person employed by the Department whether under this Act or any other law. 30

(2) The Head of Education may, subject to such conditions as he may determine, delegate any of his powers under this Act or delegated to him in terms of subsection (1), or assign any of his duties in terms of this Act or assigned to him in terms of subsection (1), to a person employed by the Department whether under this Act or any other law. 35

(3) **[A]** An Executive Director of Education may delegate any of the powers delegated to him in terms of subsection (1) or (2), and assign any of the duties assigned to him in terms of subsection (1) or (2), to a person employed by the Department whether under this Act or any other law. 40

(4) A delegation under subsection (1), (2) or (3) shall not prevent the Minister, Head of Education or Executive Director of Education, as the case may be, from exercising such power or performing such duty, as the case may be, himself.”. 45

Substitution of section 111 of Act 70 of 1988

20. The following section is hereby substituted for section 111 of the principal Act:

“Proclamations, notices and regulations in force on fixed date 50

111. All regulations **[made and all]**, proclamations, notices and

instructions made, promulgated or issued under any law repealed by this Act, and which are in force immediately prior to the fixed date, shall, notwithstanding such repeal, remain in force, except in so far as they are incompatible or in conflict with this Act, until they are repealed, withdrawn or amended by the Minister by regulation, notice or instruction, as the case may be, made or issued under this Act.” 5

Amendment of section 112 of Act 70 of 1988

21. Section 112 of the principal Act is hereby amended by the insertion after paragraph (f) of subsection (1) of the following paragraph:

- “(fA) (i) the compulsory medical, psychological or dental examinations of pupils and persons employed at schools and hostels; 10
(ii) the health inspections of school and hostel buildings and grounds;
(iii) the right of admission to school and hostel buildings and grounds for the purposes of examinations and inspections referred to in subparagraphs (i) and (ii); and 15
(iv) the exclusion of any pupil or any person employed at a school or hostel from any school or hostel on medical grounds or on the grounds of his failure or refusal to subject himself to a compulsory medical examination.”.

Substitution of expression in Act 70 of 1988 20

22. The principal Act is hereby amended by the substitution for the expression “Minister of the Budget and Works”, wherever it occurs, of the expression “Minister of the Budget”.

Short title and commencement

23. (1) This Act shall be called the Education Affairs Amendment Act (House of Assembly), 1991. 25

(2) The provisions of sections 6 and 17 shall be deemed to have come into operation on 1 April 1990.