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## GENERAL NOTICE

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### NOTICE 311 OF 2008

### DEPARTMENT OF LABOUR


### SKILLS DEVELOPMENT ACT, 1998 (ACT NO.97 OF 1998)

### CALL FOR COMMENTS ON THE PROPOSED SKILLS DEVELOPMENT AMENDMENT BILL 2008

I, Bryce Mathemba Ngconde Balfour, Acting Minister of Labour hereby publish the Skills Development Amendment Bill 2008 for public comment.

All interested parties are invited to submit written comments on the proposed amendments within 30 days after publication of this notice by:

- (a) Posting comments to: Director-General  
Department of Labour  
Attention: Mr. S Morotoba  
Private Bag X117  
Pretoria  
0001
- (b) Fax comments to: Mr S Morotoba  
DDG: ESDS&HRD  
(012) 320-0792
- (c) Delivering comments to: Laboria House Building  
215 Schoeman Street, PRETORIA  
Attention: Millicent Mokwena  
Room 562
- (d) E-mail to: millicent.mokwena@labour.gov.za



**BMN Balfour, MP**  
**Acting Minister of Labour**

**Date: 28 February 2008**

## SKILLS DEVELOPMENT AMENDMENT BILL, 2008

[       ]       **Words in bold type indicate omissions from existing enactments**

\_\_\_\_\_       Words underlined indicate insertions in existing enactments

### Amendment of section 1 of Act 97 of 1998

1. Section 1 of the principal Act is amended by the insertion of the following definitions -

“**apprenticeship**” means a learnership in respect of a listed trade and which includes a trade-test in respect of that trade;

“**artisan**” means a person that has been certified as competent to perform a listed trade after undergoing a trade-test and is registered on the register of artisans for that trade;

“**community of expert practice**” means a group of expert practitioners appointed by the Department to develop occupational standards, qualifications and curricula the quality assurance criteria for those standards, qualifications and curricula;

“**entrepreneur artisan**” means a self-employed artisan who offers services in relation to the trade in which they are qualified;

“**foundational learning**” means the appropriate level of communication and mathematical literacy as required by a learner in order to engage and cope with the demands of occupational learning;

“internship” means a learning programme that is undertaken at a workplace by a person for the purposes of gaining workplace experience to complete or to complement a qualification;

“lead artisan” means an artisan, whether employed or self-employed, who is qualified above level 5 on the National Qualifications Framework to transfer artisan skills to artisan learners and advise on business processes related to their trade;

“learning” includes education and training;

“learning programme” means a programme of occupationally directed learning and includes a learnership, an apprenticeship, an internship, a skills programme, a programme of foundational learning and any other prescribed learning programme which includes a structured work experience component;

“National Qualifications Framework” means the National Qualifications Framework approved by the Minister of Education in terms of the South African Qualifications Authority Act;

“occupational qualification” means a qualification associated with a trade or occupation resulting from work based learning and consisting of knowledge unit standards, practical unit standards and work experience unit standards;

“Occupational Qualifications Framework” means the register of occupational qualifications which articulates with the National Qualifications Framework;

“Organising Framework for Occupations” means a skill-based coding classification system used to classify occupations for the purposes of supporting skills development in South Africa;

“placement” means placing an individual in a placement opportunity;

“placement opportunity” means any opportunity for work or learning that could be offered to an individual and includes a vacancy for employment, an opportunity for self-employment, a learning programme and community service;

“QCTO” means the Quality Council for Trades and Occupations established in terms of section 26F;

“repealed Act” means –

(i) the Manpower Training Act, 1981 (Act 56 of 1981);

(ii) any law repealed by the Manpower Training Act, 1981 (Act 56 of 1981)  
and any law repealed by such an Act;

(iii) any law listed in Schedule 1 to the Integration of Labour Laws Act, 1994  
(Act 49 of 1994) dealing with training or skills development;

“trade” means an occupation for which an artisan qualification is required in terms of section 26B;

#### **Amendment of section 2 of Act 97 of 1998**

2. The following section is substituted for section 2 of the principal Act -

#### **“2 Purposes of Act**

(1) The purposes of this Act are-

(a) to develop the skills of the South African workforce-

- (i) to improve the quality of life of workers, their prospects of work and labour mobility;
  - (ii) to improve productivity in the workplace and the competitiveness of employers;
  - (iii) to promote self-employment; and
  - (iv) to improve the delivery of social services;
- (b) to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
- (c) to encourage employers-
  - (i) to use the workplace as an active learning environment;
  - (ii) to provide employees with the opportunities to acquire new skills;
  - (iii) to provide opportunities for new entrants to the labour market to gain work experience; and
  - (iv) to employ persons who find it difficult to be employed;
- (d) to encourage workers to participate in **[learnership and other training]** learning programmes;
- (e) to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education;

- (f) to ensure the quality of [**education and training**] learning in and for the workplace;
  - (g) to assist-
    - (i) work-seekers to find work;
    - (ii) retrenched workers to re-enter the labour market;
    - (iii) employers to find qualified employees; and
  - (h) to provide and regulate employment services.
- (2) Those purposes are to be achieved [**by**] through
- (a) [**establishing**] an institutional and financial framework comprising-
    - (i) the National Skills Authority;
    - (ii) the National Skills Fund;
    - (iii) a skills development levy-financing scheme as contemplated in the Skills Development Levies Act;
    - (iv) SETAs;
    - (v) Department of labour provincial offices;
    - (vi) labour centres;
    - (vii) Artisan development and or Institutes of Sectoral Occupational Excellence;



- (viii) **[the Skills Development Planning Unit]** the Quality Council for Trades and Occupations;
- (ix) a skills development forum in each province and
- (x) a national artisan moderation body
- (b) encouraging partnerships between the public and private sectors of the economy to provide **[education and training]** learning in and for the workplace; and
- (c) co-operating with the South African Qualifications Authority.'

#### **Amendment of section 5 of Act 97 of 1998**

2. Section 5 of the principal Act is amended by –

- (a) the substitution for sub-section (1) of the following sub-section -

#### **“5 Functions of National Skills Authority**

(1) The functions of the National Skills Authority are-

- (a) to advise the Minister on-
  - (i) a national skills development policy;
  - (ii) a national skills development strategy;
  - (iii) guidelines on the implementation of the national skills development strategy; and

**[(iv) the allocation of subsidies from the National Skills Fund;  
and]**

(iv) any regulations to be made;

(b) to liaise with SETAs on-

(i) the national skills development policy;

(ii) the national skills development strategy; and

(iii) sector skills plans;

(c) to report to the Minister **[in the prescribed manner]** on the progress made in the implementation of the national skills development strategy;

(d) to conduct investigations on any matter arising out of the application of this Act; **[and]**

(e) to liaise with the QCTO on occupational standards and qualifications;

(f) liaise with the National Skills Fund Board on the strategic framework;  
and

(g) to exercise any other powers and perform any other duties conferred or imposed on the Authority by this Act.”

(b) the insertion of the following sub-section –

“(4) Sub-section 1(a)(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO.”

**Amendment of section 6 of Act 97 of 1998**

4. The following section is substituted for section 6 of the Principal Act -

**“6 Composition of National Skills Authority and term and vacation of office**

(1) The National Skills Authority consists of-

- (a) a voting chairperson appointed by the Minister;
- (b) 24 voting and five non-voting members appointed by the Minister; and
- (c) its non-voting executive officer appointed in terms of section 8 (2) (a).

(2) The members referred to in subsection (1) (b) are-

- (a) five voting members nominated by NEDLAC and appointed by the Minister to represent organised labour;
- (b) five voting members nominated by NEDLAC and appointed by the Minister to represent organised business;
- (c) five voting members nominated by NEDLAC and appointed by the Minister to represent organisations of community and development interests, which must include-
  - (i) a woman who represents the interests of women;
  - (ii) a person who represents the interests of the youth; and
  - (iii) a[disabled] person with a disability who represents their interests. **[of people with disabilities];**

- (d) five voting members appointed by the Minister to represent the interests of the State;
  - (e) four voting members appointed by the Minister to represent the interests of education and training providers;
  - (eA) two non-voting members, who have expertise in skills development, appointed by the Minister after consultation with the National Skills Authority;
  - (f) two non-voting members, who have expertise in the provision of employment services, appointed by the Minister; **[and]**
  - (g) a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister **[to represent that Authority.]**
  - (h) a non-voting member nominated by the Quality Council for Trades and Occupations and appointed by the Minister; and
  - (i) a non-voting member nominated by the National Skills Fund Board and appointed by the Minister
- (3) The Minister must designate**[four]** five members as deputy chairpersons, one deputy chairperson each from the members to be appointed to represent-
- (a) organised labour;
  - (b) organised business;

- (c) organisations of community and development interests; **[and]**
  - (d) the interests of the State; and
  - (e) education and training providers.
- (4) A member of the Authority holds office for a period of **[three]** up to five years and is eligible for re-appointment.
- (5) A member of the Authority vacates office if that member-
- (a) is removed from office by the Minister as contemplated in subsection (6); or
  - (b) resigns by written notice addressed to the Minister.
- (6) The Minister may remove a member of the Authority-
- (a) on the written request of the body that nominated that member in terms of subsection (2);
  - (b) for serious misconduct;
  - (c) for permanent incapacity;
  - (d) for absence from three consecutive meetings of the Authority-
    - (i) without the prior permission of the Authority; or
    - (ii) unless the member shows good cause; or
  - (e) for engaging in any activity that may undermine the functions of the Authority.

- (7) If the chairperson or a member of the Authority vacates office before the expiry of the period of office, the Minister must, in terms of subsection 1(a) or (2) respectively, appoint a new chairperson or member as the case may be for the unexpired portion of that period.

**Amendment of section 10 of Act 97 of 1998**

5. The following sub-section is substituted for sub-section (1) of section 10 of the principal Act-

- (1) A SETA must, in accordance with any requirements that may be prescribed-
- (a) develop a sector skills plan within the framework of the national skills development strategy;
  - (b) implement its sector skills plan by-
    - (i) establishing [**learnerships**]learning programmes;
    - (ii) approving workplace skills plans and annual training reports;
    - (iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and training providers and workers; and
    - (iv) monitoring education and training provision in the sector as prescribed by the QCTO
  - (c) promote [**learnerships**]learning programmes by-
    - (i) identifying workplaces for practical work experience;

- (ii) supporting the development of learning materials;
  - (iii) improving the facilitation of learning; and
  - (iv) assisting in the conclusion of **[learnership] agreements for learning programmes, to the extent that it is required;**
- (d) register **[learnership]agreements for learning programmes, to the extent that it is required;**
- (e) **[within a week from its establishment, apply to the South African Qualifications Authority for accreditation as a body contemplated in section 5 (1) (a) (ii) (bb) and must, within 18 months from the date of that application, be so accredited]; perform any functions delegated to it by the QCTO in terms of section 26I;<sup>1</sup>**
- (f) when required to do so as contemplated in section 7 (1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8 (3) (b) and 9 (b), in its sector;
- (g) liaise with the National Skills Authority on-
- (i) the national skills development policy;
  - (ii) the national skills development strategy; and
  - (iii) its sector skills plan;

<sup>1</sup> Item 6(a) of Schedule 2 to the Bill provides that a SETA will remain accredited by SAQA and perform ETQA functions in terms of that accreditation until it is delegated powers and functions by the QCTO in terms of section 26H.

- (h) submit to the Director-General-
  - (i) any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and
  - (ii) strategic plans and reports on the implementation of its [sector skills plan and]service level agreement;
- (i) liaise with the provincial offices and labour centres**[employment services]** of the Department and any education body established under any law regulating education in the Republic to improve information-
  - (i) about placement**[employment]** opportunities; and
  - (ii) between education and training providers and the labour market;
- (iA) liaise with the skills development forums established in each province in such manner and on such issues as may be prescribed;
- (j) subject to section 14, appoint staff necessary for the performance of its functions;
- (jA) promote the national standard established in terms of section 30B;  
**[and]**
- (jB) liaise with the QCTO regarding occupational qualifications and the Organising Framework for Occupations in its sector; and



- (k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.

#### **Amendment of section 16 of Act 97 of 1998**

6. The following section is substituted for section 16 of the principal Act -

#### **“16        Learnerships**

(1)        A SETA may establish a learnership if-

- (a)        the learnership [**consists of**] includes a structured learning component;
- (b)        the learnership includes [**practical** a structured work experience component **[of a specified nature and duration]**];
- (c)        the learnership would lead to a qualification registered by the South African Qualifications Authority associated with a trade or [**and related to**] an occupation; and
- (d)        the intended learnership is registered with the Director-General in the prescribed manner.

(2)        Any reference to a learnership in this Act includes an apprenticeship and any reference to a learner in this Act includes an apprentice.”

#### **Amendment of section 17 of Act 97 of 1998**

7.        Section 17 of the principal Act is amended –

- (a)        by substituting for sub-section (1) the following sub-section -

“(1) For the purposes of this Chapter, a “learnership agreement” means an agreement entered into for a specified period between—

- (a) a learner;
- (b) an employer or a group of employers (in this section referred to as “the employer”); and
- (c) a training provider accredited by the QCTO [a body contemplated in **section 5(1)(a)(ii)(bb) of the South African Qualifications Authority Act**] or group of such training providers;<sup>2</sup> “

(b) by substituting for sub-section (7) the following sub-section -

“(7) The Minister may make regulations-

- (a) permitting an employer to enter into an agreement with an agency to perform the employer's obligations and exercise the employer's rights in respect of a learnership agreement or, in respect of a learner contemplated in section 18 (2), a contract of employment; [and]
- (b) prescribing the relationship between the employer and the agency contemplated in paragraph (a);
- (c) prescribing the requirements for registering an agency contemplated in paragraph (a); and
- (d) making it an offence to operate an agency contemplated in paragraph (a) except in accordance with such regulations.”

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<sup>2</sup> Item 6(b) of Schedule 2 to the Act provides that the coming into effect of the Amendment Act does not effect the accreditation of any education and training provider by an ETQA.

**Amendment of heading of Chapter 6 of Act 97 of 1998**

8. The principal Act is amended by substituting the following heading for the heading of Chapter 6 -

**“INSTITUTIONS IN DEPARTMENT OF LABOUR AND [REGULATION OF PRIVATE] EMPLOYMENT SERVICES [AGENCIES]”**

**Amendment of section 22 of Act 97 of 1998**

9. The following section is substituted for section 22 of the principal Act -

**“22 [Skills Development Planning Unit]Administration of Act by Department**

- (1) Subject to the laws governing the public service, the Director-General must[-]

**[(a) establish a Skills Development Planning Unit in the Department;  
and]**

**[(b) provide the Unit with]ensure that the Department, including its provincial offices and labour centres, has the personnel and financial resources necessary for the performance of its functions in terms of this Act.**

- (2) The functions of the **[Skills Development Planning Unit]Department in terms of this Act** are-

(a) to research and analyse the labour market in order to determine skills development needs for-

(i) South Africa as a whole;

- (ii) each sector of the economy; and
  - (iii) organs of the state;
- (b) to assist in the formulation of-
  - (i) the national skills development strategy; and
  - (ii) sector skills development plans; and
- (c) to provide information on skills to-
  - (i) the Minister;
  - (ii) the National Skills Authority;
  - (iii) SETAs;
  - (iv) education and training providers;
  - (v) organs of the state;
  - (vi) the skills development forums in each province;
  - (vii) the QCTO; and;
  - (viii) any other interested party; and
- (d) to perform any other function assigned or delegated to the Department in terms of this Act.”

**Amendment of section 23 of Act 97 of 1998**

**10.** The following section is substituted for section 23 of the principal Act -

**“23 Employment services**

- (1) The functions of Department of Labour provincial offices in respect of employment services are
- (a) to plan , coordinate, support, monitor and report on all activities occurring at all labour centres;
- (b) to establish a skills development forum as prescribed;
- (c) to establish and or register skills development providers and or institute of occupational excellence as prescribed;
- (d) to contract and disburse funding as prescribed and
- (e) to perform any other prescribed function related to the implementation of this Act

**[Subject to the laws governing the public service, the Director-General must—**

- (a) **establish a labour centres in the Department; and**
- (b) **appoint such number of persons in the public service at each centre as is necessary to perform the functions of that centre.]**
- (2) The functions of **[those]** labour centres in respect of employment services are—
- (a) to provide **[employment services]** information to [for] workers, employers and training providers, including improvement of such services to rural communities;

- (b) to register work-seekers;
- (c) to register placement [**vacancies and work**] opportunities;
- (d) to assist workers and other prescribed categories of persons—
  - (i) to enter [**special education and training**]learning programmes;
  - (ii) to find placement opportunities[**employment**];
  - (iii) to start income-generating projects; [**and**]
  - (iv) to participate in [**special employment**] placement programmes;and
- (v) to process project claims
- (e) to perform any other prescribed function related to the functions referred to in paragraphs (a) to (d).

(3) The Minister may, after consulting the National Skills Authority, by notice in the *Gazette*, require each employer to notify a labour centre in the prescribed manner of—

- (a) any placement opportunity[**vacancy**] that employer has; and
- (b) the placing[**employment**] of any[**work-seeker**] worker referred by that labour centre in any placement opportunity with that employer.”

#### **Insertion of sections 26A to 26K in Act 97 of 1998**

**11** The principal Act is amended by the insertion of the following Chapters-

## **CHAPTER 6A**

### **ARTISAN DEVELOPMENT**

#### **26A National Artisan Moderation Body**

(1) The Director-General must establish a national artisan moderation body in the Department and provide the body with personnel and financial resources that are necessary to coordinate artisan development in South Africa, including –

(a) the monitoring of the performance of accredited artisan trade-test centres;

(b) the moderation of artisan trade tests;

(c) development, maintenance and application of a national data-bank of instruments for assessment and moderation of artisan trade tests;

(d) the development and maintenance of a national data-base of registered artisan trade assessors and moderators;

(e) artisan trade learner achievements, appeals and recommendations for certification; and

(f) registration and de-registration of artisans in terms of Section 26C;

#### **26B Listing of trades**

The Minister, on application by one or more SETAs in the prescribed form, may by notice in the Gazette –

- (a) list any occupation contained in the Organising Framework for Occupations as a trade for which an artisan qualification is required;
- (b) remove any trade from the list contemplated in sub-paragraph (a) if an artisan qualification is no longer required for that trade.

**26C National register of artisans**

(1) The Director General must maintain a register of persons –

- (a) who have obtained an artisan qualification in terms of this Act or any repealed Act; and
- (b) who are practicing that trade.

(2) (a) No person, whether employed or self-employed, may hold themselves out to be qualified as an artisan in a listed trade unless that person is registered as an artisan in terms of sub-section (1).

(b) Paragraph (a) does not affect any requirement that any professional or regulatory body regulating any listed trade may require for the practice of that trade.

(3) For the purposes of this section, a person qualified to be an artisan in terms of any repealed Act includes any person who completed a contract of apprenticeship in terms of a time-based apprenticeship system in terms of any conditions of apprenticeship published in terms of any repealed Act.

(4) The Minister may publish a notice in the Gazette specifying:–



- (a) the criteria and procedure for the name of any person to be included on, or removed from, the register of artisans;
- (b) any other matter necessary for maintaining the register of artisans.

#### **26D Trade tests**

- (1) Subject to any regulation made in terms of sub-section 6(f), no person may obtain an artisan qualification in terms of this Act unless they have successfully undergone a trade-test administered by an accredited trade test centre.
- (2) A person may apply to undergo a trade test in respect of a trade in respect of which –
  - (a) they have completed a learnership relevant to that trade; or
  - (b) they have satisfied the relevant requirements of an apprenticeship in respect of that trade; or
  - (c) an accredited trade- test centre has certified that they have acquired sufficient prior learning related to that trade; and
  - (d) they have completed any other learning programme resulting in an occupational or vocational qualification inclusive of prescribed work experience that entitles them to undergo the relevant trade-test.
- (3) An accredited trade test centre may require any person who applies to undergo a trade-test to undergo a preliminary evaluation to determine

whether they have sufficient experience and knowledge in respect of the trade in question to undergo the trade-test.

(4) The QCTO must issue any person who successfully completes a trade test with a trade certificate in the prescribed form stating that that person is qualified to perform the trade specified in the certificate.

(5) The Minister, after consulting the QCTO, may make regulations concerning –

- (a) the procedure for applying to undergo a trade-test;
- (b) the criteria for determining whether a learner should be required to undergo a preliminary trade test evaluation;
- (c) the payment of fees for undergoing a trade test;
- (d) the contents of a preliminary evaluation or trade- test in respect of any trade;
- (e) any matter related to conducting or moderating of trade tests;
- (f) the criteria for granting exemptions from all or some of the requirements in respect of a trade test before being registered as an artisan;
- (g) the form of certificate issued to artisans who successfully undergo a trade-test;
- (h) any other matter necessary for the conducting or moderating of trade tests.

**26E Artisan Development Institutes and or Institutes of Sectoral Occupational Excellence**

(1) The Minister may establish artisan development institutes and or institutes of sectoral occupational excellence as prescribed and may contribute resources that are necessary to implement artisan development and other learning programmes in South Africa, including –

(a) the provision of advisory services on the training, mentoring, recognition of prior learning, assessment artisan and other learning programmes;

(b) the provision of training and professional development for artisans, entrepreneur artisans and lead artisans and other learning programmes;

(c) the conducting of trade tests in terms of section 26D and

(d) any other function necessary to promote the development of artisans and other learning programmes

(2) The Minister may, by notice in the Gazette publish details of any artisan development institutes or institutes of sectoral occupational excellence specifying:

(a) the date on which the institution is established;

(b) the name of the institute and

(c) the physical location and the official address of the institute.

(3) All artisan development institutes or institutes of sectoral occupational excellence must –

(a) be a juristic person registered in terms of the relevant legislation

(b) apply to the Minister for establishment in the prescribed manner;

## **CHAPTER 6B**

### **QUALITY COUNCIL FOR TRADES AND OCCUPATIONS**

#### **26F Policy on occupational standards and qualifications**

- (1) The Minister, after consulting the QCTO, may by notice in the *Gazette* determine policy on –
- (a) the Occupational Qualifications Framework as an integral part of the National Qualifications Framework;
  - (b) the framework for quality assurance for occupational qualifications; and
  - (c) any other matter concerning occupational standards or occupational qualifications.

#### **26G Establishment of QCTO**

- (1) The Quality Council for Trades and Occupations is hereby established as a juristic person.
- (2) The QCTO must be managed in accordance with the provisions of the Public Finance Management Act.
- (3) The QCTO consists of 16 members appointed by the Minister in accordance with Schedule 3.

- (4) The Minister must approve a constitution for the QCTO, which subject to this Act, complies with the requirements set out in Schedule 3.
- (5) The Minister appoint the executive officer of the QCTO
- (5) The Director General must-
  - (a) provide the QCTO with the personnel and financial resources necessary for the performance of its functions.

## **26H Functions of QCTO**

- (1) The QCTO must advise the Minister on all matters of policy concerning occupational standards and qualifications.
- (2) Subject to any policy issued by the Minister in terms of Section 26E, the QCTO is responsible for –
  - (a) establishing and maintaining occupational standards and qualifications;
  - (b) the quality assurance of occupational standards and qualifications and learning in and for the workplace;
  - (c) designing and developing occupational standards and qualifications and submitting them to the South African Qualifications Authority for registration on the National Qualifications Framework;
  - (d) ensuring the quality of occupational standards and qualifications and learning in and for the workplace;
  - (e) promoting the objectives of the National Qualifications Framework;

- (f) liaising with the National Skills Authority on the suitability and adequacy of occupational standards and qualifications and on the quality of learning in and for the workplace;
  - (g) liaising with the South African Qualifications Authority, other Quality Councils and professional bodies responsible for establishing standards and qualifications or the quality assurance of standards and qualifications; and
  - (h) performing any other prescribed function.
- (3) The QCTO has all such powers as are necessary to enable it to perform its functions in terms of this section.
- (4) The Minister may issue written instructions, which are not inconsistent with any policy made by the Minister in terms of section 26E, to the QCTO regarding the performance of its functions in terms of sub-section (2) under this Act.
- (5) The QCTO must comply with –
- (a) any policy determined by the Minister in terms of section 26E; and
  - (b) any written instruction issued by the Minister in terms of subsection (4).

## **26I Delegation of powers and functions**

- (1) The QCTO may, in writing and subject to such conditions as it may determine, delegate any of its powers or functions to –
- (a) the executive officer of the QCTO;
  - (b) a committee of the QCTO;

(c) the national artisan moderation body established in terms of section 26A;

(d) a SETA; or

(e) a community of expert practice.

(2) A delegation under subsection (1)-

(a) does not divest the QCTO of the power or function delegated and the QCTO may at any time amend or set aside any decision made under the delegation;

(b) does not prevent the exercise of the power or the performance of the function by the QCTO itself; and

(c) may be revoked by the QCTO at any time.

## **26J Regulations regarding occupational standards and qualifications**

The Minister may, after consulting the QCTO, by notice in the *Gazette*, make regulations regarding-

(a) the setting of occupational standards and qualifications;

(b) the recognition and registration of occupational curricula;

(c) the accreditation of occupational education and training providers;

(d) the approval of occupational learning programmes;

(e) the registration of occupational assessors and moderators;

(f) the certification for occupational standards and qualifications;

- (g) the accreditation of occupational assessment centres;
- (h) the approval of workplaces for occupational training and the monitoring of workplaces for occupational training;
- (i) the provision of occupational foundational learning;
- (j) the appointment of occupational communities of expert practice; and
- (k) any other matter concerning occupational standards and qualifications or which it is necessary or expedient to prescribe in order to enable the QCTO to perform its functions under this Act.”

#### **Amendment of section 28 of Act 97 of 1998**

**12.** The following section is substituted for section 28 of the principal Act -

##### **“28 Use of money in Fund**

- (1) The money in the Fund may be used only for the projects identified in the national skills development strategy as national priorities or for such other projects related to the achievement of the purposes of this Act as the Director-General determines.
- (2) **[A maximum of two per cent of the m]** Money allocated to the Fund in terms of section **[8 (3)(a)]** 27 (2) **[of the Skills Development Levies Act]** may be used to administer the Fund within the limit as prescribed by the Director General;”

#### **Amendment of section 29 of Act 97 of 1998**

**13.** The following section is substituted for section 29 of the principal Act -



**“29 Control and administration of Fund**

(1) The Director-General is the accounting **[officer]** authority of the Fund as contemplated by section 49(2)(b) of the Public Finance Management Act**[in terms of the Exchequer Act, 1975 (Act 66 of 1975)]** and must-

- (a) control the Fund;
- (b) keep a proper record of all financial transactions, assets and liabilities of the Fund; and
- (c) **[as soon as possible after the end of each financial year, ending on the prescribed date,]** prepare annual financial statements for the Fund in the prescribed form **[accounts of the income and expenditure of the Fund for the year and a balance sheet of its assets and liabilities as at the end of that year];**
- (d) subject to the laws governing the public service appoint the executive officer of the NSF who will, upon such appointment, be in the employ of the public service

**(1A)** The Fund must be managed in accordance with the Public Finance Management Act.

(2) Any money in the Fund not required for immediate use may be invested in accordance with an investment policy approved by the Director-General that complies with the requirements of the Public Finance Management Act **[the Public Investment Commissioner or with a financial institution approved by the Minister]** and may be withdrawn when required.

(3) Any unexpended balance in the Fund at the end of the financial year must be carried forward to the next financial year as a credit to the Fund.

(4) The annual financial statements [accounts and balance sheet] contemplated in subsection (1)(c) must be submitted by the Director-General to the National Skills Authority for information as soon as possible after they have been prepared.”

(5) Composition and Constitution of the National Skills Fund Board

(a) The National Skills Fund Board consists of 9 members appointed by the Minister in accordance with Schedule 4.

(b) The Minister must approve a constitution for the National Skills Fund Board, which subject to this Act, complies with the requirements set out in Schedule 4.

(6) Functions of the National Skills Fund Board are

(a) to oversee the development of a strategic framework aligned to the National Skills Strategy; ,

(b) Monitor, review and evaluate the overall performance delivery of the National Skills Fund in line with its’ business plan;

(c) Oversee the financial management, good governance, sustainability and risk assessment of the National Skills Fund and

(d) to report on the activities of the National Skills Fund

(7) Guidelines regarding National Skills Fund

The Director General may, after consulting the National Skills Fund Board publish guidelines regarding-

- (a) the governance, administration, operation, functioning and obligations of the National Skills Fund; and
- (b) any other matter which it is necessary or expedient to prescribe in order to achieve the purposes of this Act

**Amendment of section 36 of Act 97 of 1998**

13. The following section is substituted for section 36 of the principal Act –36 Regulations

The Minister may, after consultation with the National Skills Authority, by notice in the *Gazette*, make regulations regarding-

- (a) any matter which may or must be prescribed under this Act;
- (b) any procedure, period, criterion or standard for SETAs to perform any function in terms of section 10 (1);
- (c) categories and amounts of grants that may be allocated in terms of section 10 (1) (b) (iii);
- (d) the criteria or conditions that may be attached to grants allocated in terms of section 10 (1) (b) (iii);
- (e) the evaluation of applications for grants in terms of section 10 (1) (b) (iii);

- (f) the manner in which grants may be allocated in terms of section 10 (1) (b) (iii);
- (g) the exercise by a SETA of any power contemplated in section 10 (2);
- (h) the content, format and timeframe for submitting any report or plan that SETAs are required to submit in terms of this Act;
- (i) the services in respect of which a SETA may earn income in terms of section 14 (1) (e) and the fees, including maximum fees, that may be charged in respect of such services;
- (j) the financial systems that SETAs are required to utilise;
- (k) the submission by employers to SETAs of workplace skills plans and reports and the form and contents of such reports;
- (l) the appointment by employers of workplace skills facilitators and the obligations of employers in respect of workplace skills facilitators;
- (m) the rights and functions of workplace skills facilitators;
- (n) the rights of registered trade unions, or other employee representatives, to consult with their employer over developing, implementing and reporting on workplace skills plans and on other matters dealt with in this Act;
- (o) circumstances specified in the regulations under which a private employment services agency may charge fees in respect of any services provided by private employment services agencies and the maximum fees that may be charged;

- (p) services for which private employment services agencies may not charge work-seekers fees;
- (q) a form for registering private employment services agencies;
- [(r) the administration, operation, functioning and obligations of the National Skills Fund; and]**
- (rs) any matter concerning the administration of apprenticeships or other qualifications in terms of any repealed Act including, but not limited to, issuing duplicate certificates;
- (st) providing for the establishment of skills development forums in each province and specifying the operation, composition and functions of the forums;
- (tu) any other matter which it is necessary or expedient to prescribe in order to achieve the purposes of this Act.”

#### **Amendment to Schedule 2 to Act 97 of 1998**

15. The following Schedule is substituted for Schedule 2 of the principal Act -

#### **“SCHEDULE 2**

#### **TRANSITIONAL PROVISIONS:**

#### **SKILLS DEVELOPMENT AMENDMENT ACT, 2008**

#### **1 Definitions**

In this Schedule –

“Amendment Act” means the “Skills Development Amendment Act, 2008;

“ETQA” means an Education and Training Quality Assurance Body accredited in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of that Act;

“Manpower Training Act” means the Manpower Training Act, 1981 (Act No 56 of 1981);

“SAQA” means the South African Qualifications Authority;

“the Act” means the “Skills Development Act, 1998 (Act No 97 of 1998).

**2. Contracts of apprenticeship in force immediately prior to commencement of Amendment Act**

(1) Subject to the provisions of this Schedule, all sections of the Manpower Training Act, including any regulations and conditions of apprenticeship, that concern apprentices remain in force insofar as they apply to any contract of apprenticeship in force immediately prior to the commencement of the Amendment Act, as if the Manpower Training Act had not been repealed.

(2) For the purposes of this item -

- (a) any function of the registrar must be performed by an official of the Department of Labour designated by the Minister for that purpose in writing;
  - (b) any function of a training board must be performed by the SETA to whom the assets, rights, liabilities and obligations of the training board were transferred;
  - (c) any function of the National Training Board must be dealt with by the National Skills Authority.
- (3) Any dispute about a contract of apprenticeship or any conditions of apprenticeship applicable to that contract is deemed to be a dispute contemplated by section 19(1) of the Act and must be dealt with in terms of section 19 of the Act, read with the changes required by the context.
- (4) Any outstanding matter concerning a contract of apprenticeship that had been completed prior to the commencement of the Amendment Act must be dealt with in terms of the prevailing law immediately prior to the commencement of the Amendment Act.

### **3. Conversion of contracts of apprenticeship in force at commencement of Act**

- (1) Despite item 2, an employer and an apprentice who are party to a contract of apprenticeship in force at the commencement of this Act may conclude a learnership agreement in accordance with the form prescribed in terms of section 17(3) of the Act, subject to the following –

- (a) The training provider must be a party to the learnership agreement, unless the training element of the apprenticeship has been completed;
- (b) The learnership agreement may only be terminated in terms of section 17(4);
- (c) the employer and apprentice must, in addition, conclude a written contract of employment;
- (d) the apprentice is deemed to be a learner contemplated by section 18(2) of the Act and must be employed on terms and conditions of employment that are no less favourable than those that are applicable in terms of section 18(1) of the Act;
- (e) paragraphs (c) and (d) do not apply to an apprentice who was already employed by the employer prior to the commencement of the contract of apprenticeship.

#### **4. Trades deemed to be listed**

Any trade which immediately prior to the commencement of this Act was designated, or deemed to have been designated, in terms of section 13 (1) of the Manpower Training Act is deemed to have been listed in terms of section 26 of the Amendment Act.



## **5. Coming into operation of QCTO**

The QCTO shall come into operation on a date determined by the Minister in the Gazette.

## **6. SAQA accreditation of SETA ETQAs**

Until such time as the QCTO delegates powers and functions to a SETA in terms of Chapter 6B of the Act -

(b) a SETA ETQA will –

(i) remain accredited by SAQA;

(ii) continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act; and

(iii) any matter concerning the performance of ETQA functions by a SETA must be dealt with in terms of South African Qualifications Authority Act;

(b) subject to sub-item (a), any accreditation of any education and training provider remains in effect.”

## **Insertion of Schedule 3 to Act 97 of 1998**

16. The following Schedule is inserted as Schedule 2 to the principal Act –

### **“SCHEDULE 3**

### **COMPOSITION AND CONSTITUTION OF QCTO**

#### **1. Composition of QCTO**

(1) The QCTO consists of 16 members appointed by the Minister as follows:

- (a) the chairperson ;
- (b) the executive officer of the South African Qualifications Authority;
- (c) the executive officer of the National Skills Authority;
- (d) the executive officer of the QCTO;
- (e) the executive director of the Higher Education Quality Committee  
established in terms of section 7 of the Higher Education Act 101 of 1997;
- (f) the chief executive officer of Umalusi established in terms of section 4 of  
the General and Further Education and Training Quality Assurance Act 58  
of 2001;
- (g) two members nominated by NEDLAC to represent organised labour;
- (h) two members nominated by NEDLAC to represent organised business;
- (i) two members nominated by NEDLAC to represent organisations of  
community and development interests;
- (j) one members nominated by the Minister of Education to represent the  
interests of public education and training providers;
- (k) one member nominated by the private providers of education and training  
to represent the interests of private education and training providers; and
- (l) two additional members to represent the interests of the State.

- (2) Members of the QCTO contemplated by sub-item (1) (a) and (g) – (l) hold office for a period of up to 5 years from the date of their appointment by the Minister and are eligible for reappointment upon expiry of their term of office, but may not serve more than two consecutive terms of office.

## **2. Constitution of QCTO**

The Minister must approve the constitution of the QCTO, which subject to this Act -

(a) must provide for-

- (i) the establishment and functioning of committees, including an executive committee;
- (ii) rules for convening and conducting of meetings of the QCTO and its committees, including the quorum required for and the minutes to be kept of those meetings;
- (iii) the voting rights of the different members and the manner in which decisions are to be taken by the QCTO and its committees;
- (iv) the circumstances and manner in which a member of the QCTO may be removed from office;
- (v) the procedure for the filling of vacancies on the QCTO;
- (vi) a code of conduct for the members of the QCTO;
- (vii) the circumstances and manner in which the Minister may dissolve the QCTO and appoint an administrator on a temporary basis to perform its functions;

- (viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;
  - (ix) the procedure for amending the constitution;
  - (x) the procedure for advising the Minister on regulations to be made in terms of section 26; and
- (b) may provide for any other matter necessary for the performance of the functions of the QCTO.”

#### **“SCHEDULE 4**

### **COMPOSITION AND CONSTITUTION OF NATIONAL SKILLS FUND BOARD**

#### **1. Composition of National Skills Fund Board**

- (1) The National Skills Fund Board consists of 9 members appointed by the Director General as follows:
- (a) the chairperson ;
  - (b) two members nominated by NEDLAC to represent organised labour;
  - (c) two members nominated by NEDLAC to represent organised business;
  - (d) two members nominated by NEDLAC to represent organisations of community and development interests;
  - (e) two members nominated by NEDLAC to represent the State.

- (2) Members of the National Skills Fund Board contemplated by sub-item (1) hold office for a period of up to 5 years from the date of their appointment by the Director General and are eligible for reappointment upon expiry of their term of office, but may not serve more than two consecutive terms of office.

## **2. Constitution of National Skills Fund Board**

The Director General must approve the constitution of the National Skills Fund Board, which subject to this Act -

(a) must provide for-

- (i) the establishment and functioning of committees, including an executive committee;
- (ii) rules for convening and conducting of meetings of the National Skills Fund Board and its committees, including the quorum required for and the minutes to be kept of those meetings;
- (iii) the voting rights of the different members and the manner in which decisions are to be taken by the National Skills Fund Board and its committees;
- (iv) the circumstances and manner in which a member of the National Skills Fund Board may be removed from office;
- (v) the procedure for the filling of vacancies on the National Skills Fund Board;

- (vi) a code of conduct for the members of the National Skills Fund Board ;
- (vii) the circumstances and manner in which the Director General may dissolve the National Skills Fund Board.
- (viii) the resolution of disputes;
- (ix) the amending of the constitution;
- (x) the procedure for advising the Director General on guidelines to be made in terms of section 29 (7); and
- (b) may provide for any other matter necessary for the performance of the functions of the National Skills Fund Board.”

**Amendment of section 65 of the Basic Conditions of Employment Act, 75 of 1997**

17 The following sub-section is substituted for sub-section (1) of Act 75 of 1997 -

**“65. Powers of entry**

- (1) In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter-
  - (a) any workplace or any other place where an employer carries on business or keeps employment records, that is not a home;

- (b) any premises used for education or training in terms of the Skills Development Act, 1998 (Act No 97 of 1998)[**Manpower Training Act, 1981 (Act 56 of 1981)**]; or
- (c) any place at which any person provides or purports to provide any employment services as defined in terms of the Skills Development Act, 1998 (Act No 97 of 1998). [**private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act 62 of 1981)**]"

**Short title and date of commencement**

- 18** This Act is called the Skills Development Amendment Act, 2008 and comes into operation on a date determined by the Minister of Labour by notice in the *Gazette*.
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