

DEPARTMENT OF BASIC EDUCATION

NO. 1101

13 OCTOBER 2017

Invitation to comment on the draft Basic Education Laws Amendment Bill

The Department of Basic Education invites all interested parties to submit written comments on the draft Basic Education Laws Amendment Bill (the draft Bill) published in the Schedule hereto.

Comments should be directed to –

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Adv. TD Rudman, tel. 012 357 3856, email rudman.d@dbe.gov.za, fax 012 323 9430.

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

The comments must reach the Department by 10 November 2017.


Background notes

- (a) The draft Bill has been approved by Cabinet for publication thereof in the *Government Gazette* for public comment.
- (b) The draft Bill proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (the SASA and the EEA, respectively), so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996.

Certain technical and substantive adjustments are also made to the SASA and the EEA to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.

- (c) All the provincial education departments were consulted on the draft Bill, which was also presented to the Heads of Education Departments Committee and the Council of Education Ministers. All of these approved the draft Bill for publication in the *Government Gazette* for public comment. The Department also briefed numerous organisations, such as school governing body associations and unions involved in the education sector, on the content of the draft Bill. Some of the organisations and provincial education departments provided the Department with written comments. As indicated above, Cabinet has granted approval for the draft Bill to be published for public comment. It was decided that all the comments received thus far would be considered together with the comments that the Department expects to receive after the publication of the draft Bill for public comment. However, any person who, or organisation that, has already submitted comments is at liberty to submit further comments.
- (d) The draft Bill and the Memorandum on the Objects of the Bill, which provides the motivation for the various amendments contained in the draft Bill, appear in the Schedule.

For any further enquiries, please feel free to contact Adv. TD Rudman at tel. 012 357 3856 or rudman.d@dbe.gov.za.


ANGELINA MATSIE MOTSHEKGA, MP
MINISTER OF BASIC EDUCATION
DATE: 02. 10. 2017

MEMORANDUM ON THE OBJECTS OF THE BASIC EDUCATION LAWS AMENDMENT BILL, 2015

1. BACKGROUND

- 1.1 The Minister of Basic Education has identified the review of all basic education legislation as a strategic priority for the Department of Basic Education.
- 1.2 The Draft Basic Education Laws Amendment Bill, 2014 (the Draft Amendment Bill), proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (the SASA and the EEA, respectively), so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996. The Draft Amendment Bill seeks to amend the SASA and the EEA so as to make certain technical and substantive adjustments, to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.

2. CLAUSE-BY-CLAUSE ANALYSIS

South African Schools Act (paragraphs 2.1 to 2.28 – clauses 1 to 28)

- 2.1 **Clause 1** provides for the insertion of a number of definitions and seeks to amend certain other definitions.
- 2.1.1 Definitions of “benefit in kind” (clause 1(a)) and “other financial benefit” (clause 1(h)) are included in the Bill in order to create clarity regarding the provisions of section 38A of the SASA. Section 38A of the SASA prohibits the payment of unauthorised remuneration and the giving of financial benefit or benefit in kind to certain employees.
- 2.1.2 It proposes the inclusion of definitions of “competent assessor” (clause 1(b)) and “home education” (clause 1(e)) in order to provide more certainty in the home education environment. (See clause 25.)
- 2.1.3 The definition of “Constitution” is amended (clause 1(c)) to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005).
- 2.1.4 A definition of “Department of Basic Education” is included (clause 1(d)) in order to reflect the new education dispensation.
- 2.1.5 Definitions of “liquor” (clause 1(f)) and “prohibited substance” (clause 1(i)) are included in support of the proposed amendment to section 8A of the SASA. (See clause 7.)

2.1.6 Clause 1 also proposes the insertion of an amended definition of “loan” (clause 1(g)) to allow public schools to deal with the day-to-day business of the school without obtaining the written approval of the Member of the Executive Council. See also clause 19 of the Bill.

2.2 **Clause 2** of the Bill seeks to amend section 3(6) of the SASA to increase the penalty provision from six months to six years in the case where the parent of a learner, or any other person, prevents a learner who is subject to compulsory school attendance from attending school. The clause also makes it an offence for any person to wilfully interrupt or disrupt any school activity or to wilfully hinder or obstruct any school in the performance of the school's activities, and a penalty clause is provided for.

This is necessitated by recent incidents, in several provinces, in which communities, or portions of communities, prevented learners from attending school in an attempt at making a political or other point.

2.3 **Clause 3** of the Bill seeks to amend section 5 of the SASA. It provides that the Head of Department has the final authority to admit a learner to a public school. It provides that the governing body of a public school must submit the admission policy of the school, and any amendment thereof, to the Head of Department for approval. The Head of Department must take into account certain prescribed factors when considering the policy or any amendment thereof. In the event that the Head of Department does not approve the policy, or any amendment thereof, he or she must return it to the governing body with such recommendations as may be deemed necessary. The policy needs to be reviewed every three years or whenever the prescribed factors have changed, when circumstances so require, or at the request of the Head of Department. Furthermore, it provides for time periods within which a learner, or the parent of a learner, who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council and within which the Member of the Executive Council must respond.

These amendments have become necessary as a result of the confusion that arose as to where the locus of authority lies in respect of admissions to public schools. In terms of section 5(5) of the SASA, the admission policy of a public school is determined by the governing body of such a school. Section 5(7) of the SASA states that an application for admission of a learner to a public school must be made to the education department in the manner determined by the Head of Department. These two provisions create confusion as to who has the final say on admissions. This issue was the subject of litigation in the case of *MEC For Education Gauteng Province and Another v Governing Body of Rivonia Primary School and Others* 2013(6) SA 582(CC). The finding of the Court was that the Department maintains ultimate control over the implementation of the admissions decision (paragraph 52 of the judgment). The Head of Department is not rigidly bound by a school's admission policy when

exercising the authority to admit learners. The policy serves as a guide that cannot bind the Head of Department inflexibly (see paragraph 54). The general position is that admission policies must be applied in a flexible manner (see paragraph 56). This amendment, therefore, confirms the decision of the Court.

Furthermore, the admission policy of the Department of Basic Education provides that the admission policy of a school must be consistent with the former, and therefore, the Head of Department should have an opportunity to study the admission policy of a school to ensure that it is in fact consistent with the national policy.

- 2.4 Clause 4** of the Bill seeks to amend section 6 of the SASA to provide for the governing body to submit the language policy of a public school, and any amendment thereof, to the Head of Department for approval. The Head of Department may approve the policy, or any amendment thereof, or he or she may return it to the governing body with recommendations. The Head of Department must take into account certain prescribed factors when considering the policy or any amendment thereof. The governing body must review the language policy every three years, or whenever the prescribed factors have changed, when circumstances so require, or at the request of the Head of Department. The clause also seeks to empower the Head of Department to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account, and after the prescribed procedures have been followed. The Head of Department must inform the governing body of the public school of his or her intention so to act and his or her reasons therefor, grant the governing body a reasonable opportunity to make representations, conduct a public hearing to enable the community to make representations, and give due consideration to the representations received. In deciding the matter, the Head of Department must take into account, inter alia, the best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity; the dwindling number of learners who speak the language of learning and teaching at the public school; the need for effective utilisation of resources; and the language needs, in general, of the broader community in which the public school is located. The Head of Department must inform the governing body of his or her decision and must make his or her decision known to the community in a suitable manner.

This amendment is necessitated by, amongst others, the need for fair and equitable administrative processes as provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the need for effective utilisation of classroom space and resources. In the case of *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another* 2010(2) SA 415(CC) (the Ermelo judgment), paragraph 57 provided guidance in regard to the approval of a school's language policy.

Determining a school's language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA. However, even though it is a devolved function, it is not the exclusive preserve of the school governing body – paragraph 58 of the Ermelo judgment makes this clear. The devolution of power does not mean that the school governing body's right to decide the language policy is absolute. This power is subject to the Constitution, the SASA and any applicable provincial law. As stated in paragraph 81 of the judgment, the governing body's extensive powers and duties do not mean that the Head of Department is precluded from intervening, on reasonable grounds, to ensure that the admission and language policy of a school pays adequate heed to section 29(2) of the Constitution.

Moreover, paragraph 77 of the Ermelo judgment, and the judgments in the Harmony and Welkom matters*, made it necessary to build into the draft Bill checks and balances above and beyond those that are currently in the Act. (**Head of Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another* (CCT 103/12) [2013] ZACC 25; 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) (10 July 2013))

As stated in paragraph 80 of the Ermelo judgment, cognisance has to be taken of the interest of the broader community in which the school is located. It is not only the interests of the learners and governing body at the school in question that have to be taken into account, but also the interests of the broader community.

- 2.5 Clause 5** seeks to amend section 6A of the SASA to empower the Minister to appoint outside agencies or persons to advise the Minister on matters relating to a national curriculum statement and a national process and procedures for the assessment of learner achievement. This allows the Minister to obtain inputs from a broader spectrum of people.
- 2.6 Clause 6** seeks to amend section 8 of the SASA by providing that the code of conduct of a public school must take into account the diverse cultural beliefs and religious observances of the learners at the school and makes provision for an exemption clause, making it possible to exempt learners, upon application, from complying with the code of conduct or certain provisions thereof, on just cause shown. If an application for exemption is refused, the learner or the parent of the learner may appeal to the Head of Department against the decision of the governing body. The clause also provides for an informal process when dealing with disciplinary matters, and stipulates that the proceedings should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution.

This amendment is informed by the Convention on the Rights of the Child and the judgment in the Pillay case*. The need for this amendment has arisen as a result of the latest jurisprudence on this issue, as expressed in the Pillay case and other cases. The amendment seeks to bring the SASA in line with such jurisprudence. (**MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007) [100%] (From South Africa: Constitutional Court; 5 October 2007; 328 KB)*)

- 2.7 Clause 7** seeks to extend the provisions of section 8A of the SASA by providing for the prohibition of liquor and prohibited substances (see paragraph 2.1.5 above) on school premises, and to make consequential amendments to the section. It also makes it clear that a school has the right to search, not only a group of learners, but also an individual learner; and consequential amendments in this regard are made to the section. This amendment is necessitated by the fact that learners have increasingly been found in possession of, or abusing, liquor and performance-enhancing substances, and there are many cases of learners being expelled because of such abuses.
- 2.8 Clause 8** seeks to amend section 12A of the SASA to provide that, in instances where two or more schools are merged, a new public school shall be established. The date of the establishment, the name and the physical location and official address of the new school are to be determined by the Member of the Executive Council after consultation with the governing bodies concerned. The interim governing body must elect office bearers; decide on contractual obligations and the utilisation and disposal of movable assets; and make recommendations to the Head of Department on personnel matters. The clause furthermore seeks to provide for transitional arrangements in regard to the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence, the rationalisation of the workforce of the new public school, the academic programmes, and governance arrangements. This amendment is proposed for the sake of clarity and uniformity in the way in which this matter is dealt with.
- 2.9 Clause 9** seeks to amend section 17 of the SASA to empower the Member of the Executive Council who is responsible for education in that province to reverse or suspend a decision regarding a determination that the governance of two or more public schools must vest in a single governing body. This is a technical amendment, which merely gives the Member of the Executive Council the option to reverse his or her decision, should circumstances so require.
- 2.10 Clause 10** seeks to amend section 20 of the SASA by limiting the powers of a governing body in regard to recommending candidates for appointment. If the amendment is accepted, a governing body will be

able to recommend to the Head of Department the appointment of post level 1 educators only, which will have the effect that the selection and appointment of educators on post levels 2 to 4 will be the sole responsibility of the Head of Department. The clause also allows the reasonable use, under fair conditions determined by the Head of Department, of facilities of a public school for education-related activities, without the charging of a fee or tariff.

This proposed amendment is necessitated by the requirements of transformation and by the realisation of how important the leadership and management team is for turning a school around and making it successful. The National Development Plan also played a role in the decision to propose the amendment. At page 309, it emphasises the importance of attracting competent persons to become school principals.

The current system of appointment of educators, as set out in section 6 of the EEA, relies to a large extent on the existence of a functional governing body at a public school, with governing body members who have the necessary skills or who have access to persons with the necessary skills that can conduct the interviewing process.

There are more than 24 000 public schools in the country. There could, therefore, theoretically be the same number of interview committees. Many public schools, especially in deep rural areas, do not have functional governing bodies and persons with the necessary skills to conduct interview processes. The interview process requires persons with knowledge of curriculum statements and management processes, and content knowledge of subjects. In many instances, the interview committees do not have the necessary knowledge to know what is required of a principal, a deputy principal or a head of department.

Another weakness in the current system of appointment of educators on post levels 2 to 4 is that the Head of Department is restricted in terms of whom he or she may appoint. Although section 6 of the EEA grants the Head of Department a discretion in regard to whom to appoint, such appointment can be challenged by governing bodies, especially if the Head of Department does not appoint the preferred candidate of the governing body. The Head of Department will have to justify his or her decision to deviate from the recommendation of the governing body and will have to provide very good reasons that could stand up to legal scrutiny in the courts.

The reason for this is that the appointment process is seen as an administrative action in terms of the Promotion of Administrative Justice Act, 2000. In terms of that Act, the person exercising the discretion or taking the administrative action would have to do so in terms of the

principles as set out in that Act. Administrative action can be taken on review if it is viewed as unjust or unreasonable.

Cases where the decision of the Head of Department to appoint a candidate that was not the governing body's preferred candidate was challenged include *Head of the Western Cape Education Department and others v Governing Body of the Point High School and Others 2008 (5) SA 18 (SCA)* (Point High School case) and *Jan Kriel School v Minister of Education Western Cape 21132/2008 (unreported judgment)* (Jan Kriel case). In the Point High School case, the Head of Department appointed the second candidate on the governing body's preferred list of candidates on the basis that the appointment of this candidate would advance employment equity. This candidate was a white male, who happened to be the Deputy Principal of Point High School. This candidate had received a lower score than the first candidate and was not the governing body's preferred candidate. The Head of Department's rationale for appointing this person was that, if he were promoted to the principal's post, it would open up other posts lower in the ranking order that could be filled by historically disadvantaged individuals. The court found the Head of Department's reasoning to be irrational and set aside his decision to appoint the second candidate. In the Jan Kriel case, the Head of Department also appointed the second candidate (a brown male) on the governing body's list and justified the decision on the basis of employment equity. This candidate had received a lower score than the first candidate. The decision of the Head of Department was set aside as irrational.

Another weakness in the current system is that educators, as members of the governing body (see chapter B paragraph 3.3 of the Personnel Administrative Measures), form part of the interview committee of a governing body. It is therefore conceivable that an educator would be in a position to recommend the appointment of his or her supervisor.

Furthermore, the Head of Department, as the employer of educators, does not have a say in the shortlisting of his or her employees.

- 2.11 Clause 11** seeks to amend section 21 of the SASA to empower the Head of Department to centrally procure identified learning support material for public schools, after consultation with the governing body and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.

This amendment is proposed in order to bring about economies of scale.

- 2.12 Clause 12** amends section 22 of the SASA to empower the Head of Department to withdraw "one or more functions" of a governing body and not only "a function", as the section currently reads.

This is a technical amendment.

- 2.13 Clause 13** seeks to amend section 25 of the SASA to empower the Head of Department to dissolve a governing body that has ceased to perform functions allocated to it in terms of the Act, if the Head of Department has reasonable grounds to do so. It also provides that persons must be appointed to perform the functions of the governing body, with exclusive voting rights and decision-making powers on any function that they have been appointed to perform. The Bill contains similar provisions where a governing body has failed to perform one or more of its functions. This amendment is proposed in order to create legal certainty.
- 2.14 Clause 14** expands on the provisions of section 26 of the SASA to provide for the declaration of a direct or indirect personal interest that a governing body member or any of his or her family members has and, under such circumstances, the recusal of governing body members in the procurement of goods and services on behalf of the public school. It provides that a governing body may not take a decision on a matter if it has knowledge that a member who is present has a personal interest in that matter, until that member has withdrawn. It also provides for the imposition of a sanction, after due process, where a governing body member contravenes the provisions of the section. The amendment also applies to a committee of a governing body and to committee members. A definition of "family member" has also been inserted into the clause. This amendment is proposed in order to prevent corruption and promote good governance.
- 2.15 Clause 15** seeks to clarify section 27 of the SASA, which provides that governing body members are not entitled to be remunerated for the performance of their duties by adding the words "or attendance of meetings and any school activity". This amendment is proposed merely to clarify the matter of remuneration (vs reimbursement for legitimate expenses).
- 2.16 Clause 16** amends section 29 of the SASA to provide that only a parent member of a governing body who is not employed at the school may serve as the chairperson of the finance committee of that public school. This amendment seeks to promote good governance.
- 2.17 Clause 17** amends section 32 of the SASA to provide for technical amendments that are required as a result of the provisions of the Children's Act, 2005 (Act No. 38 of 2005), that amended the age of majority from 21 to 18 years. This will ensure that learners 18 years and older are not a party to litigation by virtue of their membership of the governing body. This is merely a technical amendment.
- 2.18 Clause 18** seeks to amend section 33 of the SASA, which deals with the closure of public schools, to provide that a governing body and a community must receive feedback on the outcome of their

representations when a public school is to be closed. The amendment also empowers the Member of the Executive Council to close a public school in his or her sole discretion if there are no learners registered at that public school, and to close a public school if there are 135 or fewer than 135 learners registered at that school. In the latter case, he or she may do so only after written notice has been given to the school and the parents, after a notice of his or her intention to close the school has been published in a local newspaper (or notice of the intended closure has been communicated to the affected community by any other acceptable means), after he or she has consulted with the parents of the learners of the school and afforded them an opportunity to make representations, after he or she has considered such representations and, where applicable, made arrangements for the learners to attend another school, and after he or she has made arrangements for the transport of the learners to that school, where appropriate. This clause also brings about technical amendments.

The purpose of this amendment is to simplify the procedure and to make the process of dealing with the closure of a small school less onerous.

- 2.19 Clause 19** seeks to amend section 36 of the SASA to provide that the governing body must also seek the approval of the Member of the Executive Council to enter into lease agreements, for any purpose, including loans and overdrafts which are already provided for in the said section.

In regard to lease agreements, the amendment seeks to ensure good governance, economies of scale, wise spending of money, and a reduction in the risk that the State will be held responsible for acts or omissions on the part of schools.

See also paragraph 2.1.6 above.

- 2.20 Clause 20** contains a correction to section 37 of the SASA. This is a technical amendment.

- 2.21 Clause 21** seeks to amend section 38 of the SASA to provide for the presentation of any significant or substantial deviation to the initial approved budget to a general meeting of parents for consideration. The changed budget must be made available for inspection and approved by a quorum of 15% of the parents. The proposed new section provides that, if a quorum cannot be achieved at the first meeting, a second meeting must be arranged, at which no quorum would be required. A copy of the notice of the second meeting must be distributed to every learner at the school with an instruction to hand the notice to the parents. This amendment relates to governance issues and fairness.

- 2.22 Clause 22** seeks to amend section 41 of the SASA to clarify what documentation the governing body may or should consider when deciding on an application by the parent of a learner for exemption from the payment of school fees. It also provides for the submission of

additional documentary evidence in the form of an affidavit by a parent in instances where information cannot be obtained from the other parent of the learner.

This amendment also deals with governance issues, and seeks to create clarity in regard to the documentation that has to accompany an application for school-fee exemption. It aims to relieve the administrative burden that some schools have been placing on parents by setting application conditions that are too stringent and demanding unnecessary documentation (such as bank statements, or title deeds of homes) in support of the application.

2.23 Clause 23 seeks to amend section 43 of the SASA to empower the Head of Department to –

(a) authorise officers (as defined in the SASA) to conduct an investigation into the financial affairs of a public school and, where necessary, to access documents relevant to the investigation, after consultation with the governing body;

(b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or

(c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.

It also places a responsibility on the governing body to provide the Head of Department with quarterly reports on all income and expenditure in accordance with directives issued by the Head of Department. The provision that the governing body must submit a copy of the annual financial statements within six months after the end of each financial year to the Head of Department remains unchanged.

This amendment expands on the existing provision by creating more options for the Head of Department if he or she needs to have the financial matters of a school investigated after, for example, receiving allegations of corruption, fraud and the like.

The new section 43(5) seeks to create certainty in regard to reporting and to promote open and transparent accounting and financial accountability, bearing in mind that public funds and parents' money are at stake.

2.24 Clause 24 seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the Member of the Executive Council. The amendment also provides that an independent school must submit quarterly reports to the Head of Department on all income and expenditure relating to the subsidy, and a copy of the audited financial statements relating to the subsidy, within six months after the end of each financial year.

- This amendment seeks to create certainty in regard to reporting and to promote open and transparent accounting for the sake of financial accountability when dealing with public funds.

2.25 Clause 25 seeks to substitute section 51 of the SASA to provide for the application and process for registration of learners for home education. Home education is a relatively new form of education in South Africa and does have a number of benefits for learners —

- (a) with specific learning difficulties, physical or mental;
- (b) whose parents, through their work, have to travel extensively;
- (c) who are professional athletes;
- (d) far away from suitable schools; or
- (e) whose parents believe in the philosophy of home schooling, to name but a few.

The amendments create clarity in regard to the powers and responsibilities of the Head of Department as well as the responsibilities of the parents of the learner. Currently, the legislation is silent on what is required of parents where they wish to home school learners in Grades 10 to 12. The amendment makes provision for the parent of a learner who wishes to continue with home education after completing Grade 9 by making use of the services of a private or independent service provider to register for the National Senior Certificate with an independent or private assessment body.

The private or independent accredited service provider will ensure that the study material used for education at home will be of the required standard and at the correct level. It is the intention of this amendment to guide and assist parents and learners to prepare for the National Senior Certificate – a process that begins at the start of Grade 10.

The effect of the amendment is that such private or independent accredited service providers will be required to provide written proof that the qualification for which the learner will register is registered with the National Qualifications Framework. The private or independent accredited service provider will be registered with the provincial education department to offer specific national qualifications and will have approval or accreditation from Umalusi to offer the qualification. The examination that the learner will write through these providers at the end of Grade 12 will be set by the Department of Basic Education or the Independent Examination Board, and will be certified by Umalusi.

These steps will protect parents who want to educate their children at home in the Further Education and Training Phase (Grade 10 to 12), will ensure that the final qualification obtained is registered, and will allow the learner opportunities of further study at institutions of higher education locally or in other countries, as the case may be. The steps will also protect learners.

Furthermore, the Head of Department is authorised to cancel the learner's registration for home education under certain circumstances and after due process has been followed. A learner or the parent of a learner may appeal to the Member of the Executive Council against the decision of the Head of Department. The Minister is also empowered to make regulations relating to the registration and administration of home education.

- 2.26 Clause 26** seeks to amend section 59 of the SASA to create an offence where the parent of a learner submits false or misleading information, or submits a forged document or one which purports to be a true copy of the original but is not, in the application for admission to a public school or for exemption from the payment of school fees.
This amendment seeks to eliminate the risks associated with the provision of false information.

- 2.27 Clause 27** inserts a new provision in the SASA to provide for dispute resolution mechanisms in the event of any dispute between the Head of Department and a governing body. It provides that the parties must meaningfully engage each other to resolve the dispute. If the dispute cannot be resolved through the initial engagement, each party must nominate a representative who must meet with a view to resolving the dispute. If the parties cannot reach agreement, the dispute may be referred for mediation to a person agreed upon by the parties.
It is hoped that this amendment will save costs for all concerned and will enable the parties involved to resolve disputes amicably.

- 2.28 Clause 28** seeks to amend section 60 of the SASA. This section deals with the liability of the State for any delictual or contractual damages caused as a result of any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with. (See paragraph 2.19 above.)
This amendment seeks to protect the interests of the State in the case where a school does not comply with the provisions of the Act.

- 2.29 Clause 29** seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy, on the admission of learners to public schools, on the prohibition of the payment of unauthorised remuneration or the giving of financial benefit or payment in kind to employees, on minimum norms and standards for provincial teacher development institutes and district teacher development centres, on the organisation, roles and responsibilities of education districts, and on a national education information system. The clause also provides for the possibility of creating offences in the regulations made by Minister.

- Although there are a variety of policies that deal with education-related matters, policies do not have any legal force and effect. This amendment will empower the Minister to make regulations that will be enforceable in a court of law.

Employment of Educators Act (paragraphs 2.29 to 2.39 – clauses 29 to 39)

- 2.30 Clause 30** amends section 1 of the EEA to delete obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the reference to “adult basic education centre” and “further education and training Institution”.
- 2.31 Clause 31** seeks to amend section 5 of the EEA to delete obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the reference to “further education and training institution”, “adult basic education centre”, “institution” and “centre”.
- 2.32 Clause 32** seeks to amend section 6 of the EEA to provide for a limitation on the post levels for which the governing body may recommend candidates to the Head of Department. Any appointment, promotion or transfer to any promotional post on post levels 2 to 4 on the educator establishment of a public school is to be made from amongst candidates identified by the Head of Department, and educators on these post levels will be appointed directly by the Head of Department. (See paragraph 2.10 above.) However, this will be done in the manner prescribed by regulation by the Minister.
- 2.33 Clause 33** contains consequential amendments to section 6A of the EEA. (See paragraphs 2.10 and 2.32 above.)
- 2.34 Clause 34** seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility of the appointment to a promotional post to be made on probation.
- 2.35 Clause 35** seeks to amend section 8 of the EEA to support the amendments proposed to section 20 of the SASA (clause 10) and section 6 of the EEA (clause 32). (See paragraphs 2.10 and 2.32 above.) The clause also deletes the obsolete references to “council” and “adult education and training centre”.
- 2.36 Clause 36** seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.
- 2.37 Clause 37** seeks to delete obsolete references to “institutions” and “centres” in section 11 of the EEA.

- 2.38 Clause 38** seeks to extend the provisions of section 14 of the EEA, which deals with circumstances under which an educator is deemed to be discharged, to include all educators employed in terms of the EEA – that is, those appointed in a permanent capacity as well as temporary and substitute educators.
- 2.39 Clause 39** seeks to delete the obsolete references to “adult learning centre” in section 18 (dealing with issues of misconduct) of the EEA and includes a provincial department of education within the ambit of the section.
- 2.40 Clause 40** inserts a new provision in the EEA, prohibiting educators from conducting business with the State or from being a director of a public or private company conducting business with the State, and creates an offence should the educator contravene the above-mentioned provision. Such contravention will also constitute serious misconduct, which may result in the termination of the educator's employment by the employer. This amendment aims to promote good governance, to protect the financial interests of the State, and to prevent corruption.
- 2.41 Clause 41** inserts a new provision in the EEA, requiring educators to disclose to the Head of Department their financial interests as well as the financial interests of their spouses or of persons living with such educators as if they were married to each other. Failure by an educator to do so constitutes misconduct. This amendment aims to promote good governance and to prevent corruption.
- 2.42 Clause 42** seeks to amend section 35 of the EEA to extend the powers of the Minister to make regulations on norms and standards for district staffing, which will have the force of law.
- 2.43 Clause 43** repeals section 38 of the EEA, which has become obsolete.
- 2.44 Clause 44** seeks to delete the obsolete references to “public further education and training institution or public adult learning centre” in Schedule 1 of the EEA.
- 2.45 Clause 45** seeks to delete the obsolete references to “public further education and training institution or public adult learning centre” in Schedule 2 of the EEA.
- 2.46 Clause 46** contains the short title and provides that the Act comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.