

REPUBLIC OF SOUTH AFRICA

NATIONAL MINIMUM WAGE BILL

*(As amended by the Portfolio Committee on Labour (National Assembly))
(The English text is the official text of the Bill.)*

(MINISTER OF LABOUR)

[B 31B—2017]

ISBN 978-1-4850-0468-4

No. of copies printed 800

BILL

To provide for a national minimum wage; to establish the National Minimum Wage Commission; to provide for the composition and functions of the National Minimum Wage Commission; to provide for the review and annual adjustment of the national minimum wage; to provide for exemption from paying the national minimum wage; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the Republic of South Africa is one of the most unequal societies in the world and that there are huge disparities in income in the national labour market;

NOTING the need to eradicate poverty and inequality;

ACKNOWLEDGING the need to promote fair and effective competition in the labour market and labour market stability;

NOTING the constitutional obligation on the State and employers to promote and fulfil the right to fair labour practices;

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

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CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- “**Cabinet**” means the cabinet referred to in section 91 of the Constitution of the Republic of South Africa, 1996;
- “**Commission**” means the National Minimum Wage Commission established in terms of section 8;
- “**employer**” means any person who is obliged to pay a worker for the work that that worker performs for that person;
- “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “**Minister**” means the Minister of Labour;
- “**national minimum wage**” means the national minimum wage determined in Schedule 1 and adjusted annually in terms of section 6;
- “**NEDLAC**” means the National Economic Development and Labour Council established in terms of section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “**ordinary hours of work**” means the hours of work permitted in terms of section 9 of the Basic Conditions of Employment Act or in terms of any agreement in terms of section 11 or 12 of the Basic Conditions of Employment Act;
- “**organised business**” means organised business as defined in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “**organised community**” means those non-governmental organisations contemplated in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “**organised labour**” means organised labour as defined in the National Economic Development and Labour Council Act;
- “**prescribed**” means prescribed by regulation under this Act;
- “**this Act**” includes the regulations made under this Act;
- “**wage**” means the amount of money paid or payable to a worker in respect of ordinary hours of work or, if they are shorter, the hours a worker ordinarily works in a day or a week; and
- “**worker**” means any person who works for another and who receives, or is entitled to receive, any payment for that work whether in money or in kind.

Purpose of Act

2. The purpose of this Act is to advance economic development and social justice by—
- (a) improving the wages of lowest paid workers;
 - (b) protecting workers from unreasonably low wages;
 - (c) preserving the value of the national minimum wage;
 - (d) promoting collective bargaining; and
 - (e) supporting economic policy.

Application of Act

3. (1) This Act applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.
- (2) This Act does not apply to a volunteer, who is a person who performs work for another person and who does not receive or is not entitled to receive, any remuneration for his or her services.

CHAPTER 2

NATIONAL MINIMUM WAGE

National minimum wage

4. (1) Subject to subsections (2) and (3), the national minimum wage is the amount stated in Schedule 1 as adjusted annually in terms of section 6. 5

(2) (a) The Commission must, within 18 months of the commencement of this Act, conduct a review of the national minimum wage contemplated in item 2(a) and (b) of schedule 1—

- (i) in accordance with the process contemplated in section 6; and
- (ii) taking into account the goals contemplated in section 7(a) and the factors listed in section 7(b), 10

make recommendations to the Minister on the adjustment of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1, which recommendations must, subject to the findings of the review contemplated in this paragraph, reflect an adjustment that is equivalent to the national minimum wage contemplated in item 1 of Schedule 1, or as close to that amount as the Commission's findings allow. 15

(b) The Minister must, within two years of the commencement of this Act, and taking the recommendations of the Commission into account, determine an adjustment of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1 in accordance with the process contemplated in section 6. 20

(3) The national minimum wage in respect of workers in the extended public works programme as contemplated in item 2(c) of Schedule 1 must be increased proportionately to any adjustment of the national minimum wage as contemplated in section 6.

(4) Every worker is entitled to payment of a wage in an amount no less than the national minimum wage. 25

(5) Every employer must pay wages to its workers that is no less than the national minimum wage.

(6) The payment of a national minimum wage cannot be waived and the national minimum wage takes precedence over any contrary provision in any contract, collective agreement, sectoral determination or law, except a law amending this Act. 30

(7) The national minimum wage must constitute a term of the worker's contract except to the extent that the contract, collective agreement or law provides a wage that is more favourable to the worker.

(8) It is an unfair labour practice for an employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage and sections 191, 193, 194(4) and 195 of the Labour Relations Act apply, unless the context indicates otherwise. 35

(9) Sections 32, 33 and 34 of the Basic Conditions of Employment Act apply to the payment of the national minimum wage to workers.

Calculation of wage 40

5. (1) Despite any contract or law to the contrary, the calculation of a wage for the purposes of this Act is the amount payable in money for ordinary hours of work excluding—

- (a) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a sectoral determination; 45
- (b) any payment in kind including board or accommodation, unless specified otherwise in a sectoral determination;
- (c) gratuities including bonuses, tips or gifts; and
- (d) any other prescribed category of payment. 50

(2) Subject to section 9A of the Basic Conditions of Employment Act, a worker is entitled to receive the national minimum wage for the number of hours that the worker works on any day.

(3) Subject to subsection (2), if the worker is paid on a basis other than the number of hours worked, the worker may not be paid less than the national minimum wage for the ordinary hours of work. 55

(4) Any deduction made from the remuneration of a worker must be in accordance with section 34 of the Basic Conditions of Employment Act, provided that a deduction

made in terms of section 34(1)(a) of the Basic Conditions of Employment Act does not exceed one quarter of a worker's remuneration.

Annual review

6. (1) The Commission must review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage, which minimum wage must commence on a date fixed by the President by proclamation in the *Gazette*. 5

(2) The review report to the Minister must reflect any alternative views, including those of the public, in respect of any recommendations made in terms of subsection (1).

(3) The Commission must forward the report on its review and its recommendations for the next year to the Minister on a date fixed by the President by proclamation in the *Gazette*. 10

(4) If the Minister does not agree with, or requires clarity in respect of, the report and recommendations, the Minister may, in the prescribed manner, refer the report and recommendations back to the Commission to clarify or reconsider its recommendations. 15

(5) The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2.

(6) The Minister must, within 7 days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament and publish the final report of the Commission in a prescribed manner. 20

Conduct of annual review

7. For the purposes of conducting an annual review and recommending adjustments, the Commission must—

- (a) promote— 25
 - (i) the medium term targets referred to in section 11(d);
 - (ii) the alleviation of poverty; and
 - (iii) the reduction of wage differentials and inequality; and
- (b) consider—
 - (i) inflation, the cost of living and the need to retain the value of the minimum wage; 30
 - (ii) wage levels and collective bargaining outcomes;
 - (iii) gross domestic product;
 - (iv) productivity;
 - (v) ability of employers to carry on their businesses successfully; 35
 - (vi) the operation of small, medium or micro-enterprises and new enterprises;
 - (vii) the likely impact of the recommended adjustment on employment or the creation of employment; and
 - (viii) any other relevant factor.

CHAPTER 3 40

NATIONAL MINIMUM WAGE COMMISSION

Establishment of Commission

8. The National Minimum Wage Commission is hereby established.

Composition of Commission

9. (1) The Commission comprises of the following members: 45

- (a) A chairperson appointed by the Minister;
- (b) three members nominated by organised business;
- (c) three members nominated by organised community;
- (d) three members nominated by organised labour; and
- (e) three independent experts, who are knowledgeable about the labour market and conditions of employment, appointed by the Minister. 50

(2) The members of the Commission must be citizens or permanent residents of the Republic.

Appointment and termination of appointment of members of Commission

- 10.** (1) The Minister, after consultation with NEDLAC, appoints—
- (a) the chairperson and the three independent experts; and
 - (b) the members nominated by organised business, organised community and organised labour. 5
- (2) The term of office for the members of the Commission is for a maximum period of five years but members may be re-appointed.
- (3) The members of the Commission are appointed on a part-time basis and on terms and conditions prescribed by the Minister in consultation with the Minister of Finance.
- (4) Termination of appointment may be effected in the following manner: 10
- (a) The member's death;
 - (b) the resignation of a member giving three months' notice to the Minister; and
 - (c) subject to due process of law, the removal of a member from office by the Minister for the following reasons: 15
 - (i) Serious misconduct;
 - (ii) permanent incapacity;
 - (iii) failure to attend three successive meetings without a reasonable explanation; or
 - (iv) engaging in any activity that undermines the integrity of the Commission. 20
- (5) The chairperson and members of the Commission—
- (a) must act impartially when performing any function of the Commission;
 - (b) may not engage in any activity that may undermine the integrity of the Commission; and
 - (c) must recuse themselves from advising the Minister on any matter in respect of which they have a direct or indirect financial interest or any other conflict of interest. 25
- (6) The Commission must appoint a member to act as chairperson whenever the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson. 30

Functions of Commission

- 11.** The functions of the Commission are to—
- (a) review the national minimum wage and recommend adjustments;
 - (b) investigate and report annually to the Minister on the impact of the national minimum wage on the economy, collective bargaining and the reduction in income differentials and make such information available to the public; 35
 - (c) investigate income differentials and recommend benchmarks for proportionate income differentials;
 - (d) set medium term targets for the national minimum wage within three years of the commencement of this Act; and 40
 - (e) advise the Minister on measures to reduce income differentials or any other matter on which the Minister requests the Commission's advice;
 - (f) advise the Minister on sectoral determinations;
 - (g) advise the Minister on any matter concerning basic conditions of employment; and 45
 - (h) perform any such function as may be required of the Commission in terms of any other employment law.".

Conduct of meetings of Commission

- 12.** The Commission must determine its own rules on the conduct of meetings, provided that those rules— 50
- (a) require the Chairperson to act impartially; and
 - (b) provide that the chairperson has no deliberative vote or casting vote.

Secretariat of Commission

- 13.** Subject to the laws governing the public service, the Minister must provide the Commission with a secretariat and the necessary resources to perform the following functions: 55

- (a) The administration of the Commission;
- (b) the conduct and procurement of research for the Commission; and
- (c) the monitoring and evaluation of the impact of the national minimum wage on the economy and the reduction of income differentials.

Funds of Commission 5

14. The funds of the Commission consist of money defrayed from the budget vote of the Department.

CHAPTER 4

GENERAL

Exemptions 10

15. (1) An employer or an employers' organisation registered in terms of section 96 of the Labour Relations Act, or any other law, acting on behalf of a member, may, in the prescribed form and manner, apply for an exemption from paying the national minimum wage.

(2) An exemption granted in terms of this section— 15

- (a) must specify the period for which it is granted, which may not be longer than one year;
- (b) must specify the wage that the employer is required to pay workers; and
- (c) may contain any other relevant condition.

(3) The Minister may delegate or assign powers or duties arising out of the application of this section, excluding the power to make regulations, in accordance with the provisions of section 85 of the Basic Conditions of Employment Act. 20

Regulations

16. (1) The Minister must, after consulting NEDLAC and where appropriate after consulting the Commission, make regulations relating to— 25

- (a) the form and manner in which exemptions must be made in terms of section 15(1), which include the—
 - (i) procedure for applying for an exemption;
 - (ii) information to be submitted with an exemption application;
 - (iii) obligations on employers to consult with employees or trade unions concerning an exemption application; 30
 - (iv) criteria that must be applied when evaluating exemption applications;
 - (v) period within which an application must be made; and
 - (vi) period within which a decision on an exemption application must be made; and 35
- (b) the publication of data on exemptions.

(2) The Minister may make regulations which the Minister considers necessary or expedient to be prescribed in order to achieve the primary objects of this Act.

(3) The Minister must publish the draft of any regulations that the Minister proposes to publish in terms of this Act in the *Gazette* and allow interested parties at least 21 days to comment in writing on the draft regulations. 40

(4) If the Minister alters the draft regulations based on the comments received from interested parties, it shall not be necessary to publish those alterations before making the final regulations.

(5) The Minister must table the regulations in Parliament. 45

Short title and commencement

17. (1) This Act is called the National Minimum Wage Act, 2018.

(2) Subject to subsections (3) and (4), the Act comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(3) Schedule 1 comes into effect on a date fixed by the President by proclamation in the *Gazette*. 50

(4) Section 4(6) takes retrospective effect from 1 May 2017.

SCHEDULE 1

NATIONAL MINIMUM WAGE

(Section 6(6))

1. Subject to item 2, the national minimum wage is R20 for each ordinary hour worked.

2. Despite item 1—

- (a) farm workers are entitled to a minimum wage of R18 per hour from a date fixed by the President by proclamation in the *Gazette*;
- (b) domestic workers are entitled to a minimum wage of R15 per hour from a date fixed by the President by proclamation in the *Gazette*;
- (c) workers employed on an expanded public works programme are entitled to a minimum wage of R11 per hour from a date fixed by the President by proclamation in the *Gazette*; and
- (d) workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, 1998 (Act No. 97 of 1998), are entitled to the allowances contained in Schedule 2.

3. For the purposes of item 2—

“**farm worker**” means a worker who is employed mainly or wholly in connection with farming or forestry activities, and includes a domestic worker employed in a home on a farm or forestry environment and a security guard on a farm or other agricultural premises, excluding a security guard employed in the private security industry in terms of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

“**domestic worker**” means a worker who performs domestic work in a private household and who receives, or is entitled to receive, a wage and includes—

- (a) a gardener;
- (b) a person employed by a household as a driver of a motor vehicle;
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled; and
- (d) domestic workers employed or supplied by employment services; and

“**expanded public works programme**” means a programme to provide public or community services through a labour intensive programme determined by the Minister in terms of section 50 of the Basic Conditions of Employment Act and funded from public resources.

SCHEDULE 2

LEARNERSHIP ALLOWANCES

(Section 6(6))

1. For the purposes of this Schedule—

“**allowance**” means the amount of money paid or payable to a learner in terms of regulation 3 of the Sectoral Determination 5: Learnership made under the Basic Conditions of Employment Act, published in Government Notice 519 of 15 June 2001 as amended by Government Notice R.234 of 15 March 2011;

“**credit**” means a credit earned as defined in the Regulations made under the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), Government Notice R.452, published in Government *Gazette* 18787 of 28 March 1998;

“**learner**”—

(a) means a learner who has concluded a learnership agreement in terms of section 17 of Skills Development Act, 1998 (Act No. 97 of 1998); and

(b) includes an apprentice;

“**NQF level**” means a level on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).

2. The learnership allowances are as follows:

NQF level	Credits already earned by learner	Minimum allowance per week
Levels 1 to 2	0-120	R301.01
	121-240	R601.99
Level 3	0-120	R301.01
	121-240	R566.93
	241-360	R928.11
Level 4	0-120	R301.01
	121-240	R602.05
	241-360	R928.11
	361-480	R1354.51
Levels 5 to 8	0-120	R301.01
	121-240	R652.15
	241-360	R975.75
	361-480	R1374.61
	481-600	R1755.84

MEMORANDUM ON THE OBJECTS OF THE NATIONAL MINIMUM WAGE BILL, 2017

1. BACKGROUND

- 1.1 Section 7(2) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), imposes an obligation on the State to respect, protect, promote and fulfil the rights in the Bill of Rights, which include the right to fair labour practices. In this respect, the proposed National Minimum Wage Bill, 2017 (“the Bill”), seeks to provide for a national minimum wage and establish the National Minimum Wage Commission (“the Commission”), which will amongst other things, implement the provisions relating to the national minimum wage.
- 1.2 The South African labour market is characterised by high levels of inequality, unemployment and poverty. One of the measures to reduce these levels is a national minimum wage.
- 1.3 Such a measure respects and promotes the right to dignity and fair labour practices.
- 1.4 To this end, the business, labour, community and government representatives at the National Economic, Development and Labour Council (“NEDLAC”) commissioned a task force to investigate and make recommendations on a national minimum wage and a legislative mechanism for the annual adjustment of the national minimum wage.
- 1.5 On the basis of the report from this task force, NEDLAC engaged in an extensive process of consultation resulting in agreement in respect of the national minimum wage and the mechanism for annual adjustment. The resulting agreement constituted the basis for the drafting of this Bill, in order to enact the envisaged National Minimum Wage Act, 2018 (“the Act”).

2. OBJECT OF BILL

The main object of the Bill is to provide for a national minimum wage in order to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages and promoting collective bargaining and supporting economic policy.

3. CLAUSE-BY-CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 of the Bill provides for the definitions which will assist in the interpretation of the Bill.

3.2 Clause 2

Clause 2 of the Bill provides for the purpose of the Act which is to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages, promoting collective bargaining and supporting economic policy.

3.3 Clause 3

Clause 3 outlines the application of the Act, which applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

3.4 Clause 4

- 3.4.1 Clause 4 of the Bill specifies the national minimum wage that was agreed to at NEDLAC, and set out in Schedule 1 to the Bill. In terms of Schedule 1 to the Bill the national minimum wage is R20 for each ordinary hour worked, and is due to come into force on 1 May 2018. The reason for placing it in a Schedule is that it is to be adjusted on an annual basis.
- 3.4.2 In terms of clause 4 every worker is entitled to at least the national minimum wage. An employer may not pay wages that are below the national minimum wage and the national minimum wage cannot be varied by contract, collective agreement or law, except a law amending the Act.
- 3.4.3 The national minimum wage constitutes a term of the worker's contract except to the extent that the contract provides for a more favourable wage.
- 3.4.4 In terms of the Bill it is an unfair labour practice for an employer to unilaterally alter hours of work or other conditions of employment in implementing the national minimum wage.

3.5 Clause 5

- 3.5.1 Clause 5 of the Bill provides for the calculation of the national minimum wage. The national minimum wage is the amount payable for the ordinary hours of work. This means that a worker is entitled to receive the minimum wage for the number of hours that the worker works in a day. This does not include the payment of allowances such as transport, tool, food or accommodation allowances, payments in kind (board or lodging), tips, bonuses and gifts. Provision is also made for the exclusion of other forms of payment by regulation.
- 3.5.2 Clause 5 also provides that any deduction made from the remuneration of a worker must be in accordance with section 34 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) ("Basic Conditions of Employment Act"), provided that a deduction made in terms of section 34(1)(a) of the Basic Conditions of Employment Act does not exceed one quarter of a worker's remuneration.

3.6 Clause 6

- 3.6.1 Clause 6 of the Bill provides for the annual review and adjustment of the national minimum wage by the Commission, which must annually review the existing national minimum wage, and make recommendations to the Minister, and the minimum wage must commence on a date fixed by the President by proclamation in the *Gazette*. The Commission must prepare a report with recommendations for the Minister by a date fixed by the President by proclamation in the *Gazette*, and if the Minister does not agree with the recommendations of the Commission, the Minister may refer the report back to the Commission to reconsider.
- 3.6.2 The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2.
- 3.6.3 The Minister must, within 7 days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament.

3.7 Clause 7

In terms of clause 7 of the Bill the Commission must conduct an annual review of the national minimum wage by promoting medium term targets, alleviation of poverty, the reduction of wage inequality, and in this regard take into account factors such as inflation, cost of living and the need to retain the value of the national minimum wage.

3.8 Clauses 8, 9 and 10

3.8.1 Clauses 8, 9 and 10 of the Bill provide for the establishment, the composition and appointment of members of the Commission. According to clause 9, the Commission consists of—

- an independent chairperson appointed by the Minister;
- three members nominated by organised business;
- three members nominated by organised community;
- three members nominated by organised labour; and
- three independent experts appointed by the Minister.

3.8.2 In terms of clause 10 the members of the Commission are appointed by the Minister from members nominated by organised business, organised labour and the organised community, in other words through nomination by these three constituencies as they are constituted in NEDLAC. The Minister also appoints the chairperson and three independent experts after consultation with NEDLAC.

3.9 Clause 11

Clause 11 of the Bill provides for the functions of the Commission, which are to review the national minimum wage and to make recommendations annually for its adjustments. The Commission has ancillary functions such as investigating the impact of the national minimum wage on the economy, collective bargaining and income differentials. (read with the amendments to the Basic Conditions of Employment Act, the Commission will take over the functions of the disestablished Employment Conditions Commission).

3.10 Clause 12

Clause 12 of the Bill provides that the Commission must determine its own rules in respect of the conduct of its meeting.

3.11 Clause 13

Clause 13 of the Bill provides for a secretariat of the Commission, which will support the Commission with the responsibility of administering the Commission, procurement of research and also monitor the impact and evaluation of the national minimum wage on the economy and income differentials.

3.12 Clause 14

Clause 14 of the Bill provides for the funds of the Commission which must consist of money defrayed from the budget vote of the Department.

3.13 Clause 15

Clause 15 of the Bill empowers the Minister, on application by any relevant employer, to grant exemptions from the national minimum wage, and provides that the applications must be made in the prescribed form and manner.

3.14 Clause 16

- 3.14.1 Clause 16 of the Bill empowers the Minister to make regulations in the form and manner in which exemptions must be made in terms of clause 15, including the—
- procedure for applying for an exemption;
 - information to be submitted with an exemption application;
 - obligations on employers to consult with employees or trade unions concerning an exemption application;
 - criteria that must be applied when evaluating exemption applications;
 - period within which an application must be made; and
 - period within which a decision on an exemption must be made.
- 3.14.2 Clause 16 of the Bill also gives the Minister the power to make regulations on any matter required or necessary to be prescribed. It sets out a standard publication and comment procedure in respect of interested parties.

3.15 Clause 17

Clause 17 provides for the short title and commencement of the various provisions of the Bill.

3.16 Schedules 1 and 2

- 3.16.1 Schedule 1 to the Bill provides that the national minimum wage will be R20 for each ordinary hour worked. Schedule 1 also provides for temporary exceptions to the national minimum wage for the first year, which is 1 May 2018, as follows:
- The minimum wage for farm workers will be R18 per hour;
 - the minimum wage for domestic workers will be R15 per hour; and
 - the minimum wage for workers in expanded public works programme will be R11 per hour.
- 3.16.2 Schedule 2 specifies the learnership allowances in respect of workers who conclude learnership agreements in terms of the Skills Development Act, 1998 (Act No. 97 of 1998).

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Economic Development, Small Business Development, Trade and Industry and the National Treasury were consulted on a regular basis during the process of engagement in the National Economic Development and Labour Council on the National Minimum Wage Bill. Organised business, organised labour and the organised community sector were consulted during the engagement in the National Economic Development and Labour Council.

5. FINANCIAL IMPLICATIONS

The National Minimum Wage Bill will require the Department of Labour to establish a Secretariat to support the work of the National Minimum Wage Commission. Provision has been made within the Medium Term Expenditure Framework for this cost.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 6.2 The Office of the Chief State Law Adviser considered the Bill against the provisions, of the Constitution relating to the tagging of Bills and against the

functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

- 6.3 The established test for classification of a Bill is that any Bill whose provisions, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 6.4 The issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.
- 6.5 The Bill seeks to provide for a national minimum wage, to establish the Commission (and its composition and functions) in order to advance economic development and social justice by improving the wages of lowest paid workers, protecting workers from unreasonably low wages, promoting collective bargaining and supporting economic policy. The functions of the Commission, amongst others, are to review the national minimum wage and to make recommendations annually for its adjustment. The Commission may also investigate the impact of the national minimum wage on the economy, collective bargaining and income differentials.
- 6.6 The Bill provides for the annual review and adjustment of the national minimum wage by the Commission and the final determination thereof by the Minister. The Commission has to take a number of factors into consideration in conducting its review of the national minimum wage and its recommended adjustment. These factors include the increase in inflation, the cost of living, wage levels, wage differentials, productivity, the ability of businesses to carry on successfully and the impact on small businesses and employment.
- 6.7 The Bill empowers the Minister, on application by any relevant employer, to grant exemptions from the national minimum wage, the exercise of which is to be regulated by regulations.
- 6.8 The Bill gives the Minister the power to make regulations regarding the procedure for exemption, the obligation on employers to consult with employees or their trade unions and the criteria for evaluating exemptions. The Minister may also make regulations on any matter required or necessary to be prescribed. It sets out a standard publication and comment procedure in respect of interested parties.
- 6.9 Schedule 1 of the Bill provides for the national minimum wage of R20 for each ordinary hour worked and also provides for temporary exceptions to the national minimum wage for the first year, from 1 May 2018 i.e the national minimum wage for farm workers will be R18 per hour, the national minimum wage for domestic workers will be R16 per hour and R11 per hour for workers in expanded public works programmes.
- 6.10 The provisions of the Bill as reflected above have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 6.11 In the view of the Office of the Chief State Law Adviser, the subject matter of the provisions of the Bill does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

- 6.12 The Office of the Chief State Law Adviser is therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 6.13 The Office of the Chief State Law Adviser is also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.