

REPUBLIC OF SOUTH AFRICA

NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL

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

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 20B—2018]

ISBN 978-1-4850-0555-1

No. of copies printed 800

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the National Qualifications Framework Act, 2008, so as to amend and insert certain definitions; to provide for the verification of all qualifications or part-qualifications by the SAQA; to provide for the formulation of criteria for evaluating foreign qualifications; to provide for the establishment and maintenance of separate registers of misrepresented or fraudulent qualifications or part-qualifications; to provide for a separate register for professional designations; to provide for the referral of qualifications or part-qualifications to the SAQA for verification and evaluation; to provide for offences and penalties which have a bearing on fraudulent qualifications; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 67 of 2008, as amended by section 8 of Act 26 of 2010

1. Section 1 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of “board” of the following definition:

“**‘authenticity’**—

(a) in relation to a qualification or part-qualification, includes a qualification or part-qualification that is—

- (i) registered on the NQF;
- (ii) offered by a registered, established, declared or merged and accredited education institution or skills development provider in terms of this Act or any other applicable law; and
- (iii) lawfully obtained; and

(b) in relation to a foreign qualification, means a qualification or part-qualification that is lawfully obtained from a foreign country and is evaluated by the SAQA in terms of this Act, and authentic has a corresponding meaning;” 10 15

(b) by the insertion after the definition of “board” of the following definitions:

“**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;

‘Continuing Education and Training Act’ means the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);” 20

- (c) by the insertion after the definition of “education institution” of the following definitions:
- “**‘evaluate’** means the process followed by the SAQA to verify the authenticity of a foreign qualification and compare it with a South African qualification for placement within the South African NQF, and evaluation has a corresponding meaning; 5
- ‘foreign institution’** means a foreign juristic person offering or issuing an authentic qualification or part-qualification; 10
- ‘fraudulent qualification or part-qualification’** is a verified qualification or part-qualification registered on the NQF or an evaluated foreign qualification or part-qualification, which is found to be forged, fraudulently obtained or awarded in contravention of this Act, and has been declared as such by a court of law;”.
- (d) by the substitution for the definition of “Gazette” of the following definition: 15
- “**‘Gazette’** means the *Government Gazette*;
- (e) by the insertion after the definition of “learning” of the following definition: 20
- “**‘learner achievements’** means a qualification or part-qualification contemplated by this Act;”;
- (f) by the insertion after the definition of “Minister” of the following definitions: 25
- “**‘misrepresented qualification or part-qualification’** is a qualification or part-qualification—
- (a) which is not authentic; or
- (b) where the certificate of award or the SAQA Certificate of Evaluation was erroneously issued or altered in any way; 30
- ‘national learners’ records database’** means the electronic management information system as contemplated in section 13(1)(l);
- (g) by the insertion after the definition of “SAQA Act” of the following definition: 35
- “**‘SAQA Certificate of Evaluation’** means a certificate issued by the SAQA indicating the authenticity of the foreign qualification and its placement within the NQF;”;
- (h) by the substitution for the definition of “skills development provider” of the following definition: 40
- “**‘skills development provider’** means a provider that is registered with the Department in terms of the Continuing Education and Training Act, and is accredited by the QC for Trades and Occupations to offer occupational qualifications;”; and
- (i) by the insertion after the definition of “Umalusi” of the following definition: 45
- “**‘verification’** means the process followed by the SAQA to determine the authenticity of a qualification or part-qualification in terms of the relevant SAQA policy and procedures.”.

Substitution of section 2 of Act 67 of 2008

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

“Object of Act

2. The object of this Act is to provide for the further development, 45
organisation and governance of the NQF and related matters.”.

Amendment of section 3 of Act 67 of 2008, as amended by section 9 of Act 26 of 2010

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 50
- “(2) Every qualification or part-qualification contemplated in subsection (1)(a) must be registered on the National Qualifications Framework in accordance with this Act.”; and
- (b) by the addition of the following subsection: 55
- “(3) Every private education institution or skills development provider offering education and training programme or any component thereof towards a qualification or part-qualification, must be registered by the relevant Department as a private education institution or skills

development provider and accredited by the relevant QC to offer such qualification or part-qualification.”.

Amendment of section 13 of Act 67 of 2008, as amended by section 12 of Act 26 of 2010 and section 12 of Act 23 of 2012

4. Section 13 of the principal Act is hereby amended— 5
- (a) by the addition in subsection (1)(h) of the following subparagraph:
 “(iv) verify all qualifications or part-qualifications referred to it in terms of section 32A and make a decision on the status thereof;”;
- (b) by the substitution in subsection (1) for paragraph (l) of the following paragraph: 10
 “(l) with respect to records of education and training, maintain a national learners’ records database comprising registers of—
 (i) **[national]** qualifications [,] ;
 (ii) part-qualifications [,] ;
 (iii) qualification and part-qualification requirements and other related information; 15
 (iv) learner achievements [,] ;
 (v) details of the education institution or QC that awarded the qualification or part-qualification;
 (vi) recognised professional bodies [**professional designations**] ; 20
 and
 (vii) associated information relating to registration, verification and accreditation;”;
- (c) by the insertion in subsection (1) after paragraph (l) of the following paragraph: 25
 “(lA) (i) maintain a separate register of professional designations;
 (ii) establish and maintain a register of misrepresented qualifications or part-qualifications with respect to records of education and training; and
 (iii) establish and maintain a register of fraudulent qualifications or part-qualifications with respect to records of education and training;”;
- (d) by the substitution in subsection (1) for paragraph (m) of the following paragraph: 30
 “(m) with respect to foreign qualifications [,]— 35
 (i) provide a verification or an evaluation and advisory service consistent with this Act; [and]
 (ii) evaluate all foreign qualifications referred to it in terms of this Act against the South African NQF in accordance with SAQA policy and procedures and, where appropriate, issue a SAQA Certificate of Evaluation; and 40
 (iii) formulate and publish criteria for evaluating foreign qualifications;”;
- (e) by the insertion of the following subsections after subsection (1): 45
 “(1A) When verifying or evaluating a qualification or part-qualification in terms of this Act, the SAQA must, amongst other things, consider whether the education institution, skills development provider or foreign institution is registered by law and whether the qualification or part-qualification is authentic and complies with the policy and criteria contemplated in section 13(1)(h). 50
 (1B) If after verification or evaluation, a qualification or part-qualification is found to be inauthentic or is found to be a misrepresented qualification or part-qualification or is declared by a court of law to be a fraudulent qualification or part qualification, the SAQA must refer such a finding or information to the relevant professional body, as may be prescribed, and subject to subsection (1C): 55
 (a) must inform the requester and the holder of the qualification or part-qualification of the finding;
 (b) must record such finding in the register of misrepresented qualifications and part-qualifications or fraudulent qualifications and part-qualifications; and 60

(c) the requester must provide the SAQA with all particulars of the holder to enable the SAQA before recording such finding in the relevant register, to give notice and comply with section (1C).

(1C) The verification and evaluation processes referred to in subsection (1)(h) must conform to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”

Amendment of section 27 of Act 67 of 2008, as amended by section 14 of Act 26 of 2010

5. Section 27 of the principal Act is hereby amended—

(a) by the substitution for paragraph (f) of the following paragraph: 10

“(f) in consultation with the SAQA, advise the Minister on matters relating to its sub-framework;”;

(b) by the addition in paragraph (i) of the following subparagraph:

“(iv) accredit the education institution or skills development provider that complies with all the requirements to offer a qualification or part-qualification registered on the NQF;” and 15

(c) by the substitution in paragraph (j) for subparagraph (ii) of the following subparagraph:

“(ii) submit at no charge to the SAQA and within 30 days after complying with all the requirements applicable to quality assurance relating to the qualification or part-qualification such data in a format determined in consultation with the SAQA for recording on the national learners’ records database contemplated in section 13(1)(l);”.

Substitution of section 30 of Act 67 of 2008 25

6. The following section is hereby substituted for section 30 of the principal Act:

“Registration of professional designation

30. A professional body that is recognised in terms of section 29 must—

(a) apply to the SAQA, in the manner determined by the SAQA in terms of section 13(1)(i)(ii) [,]; and 30

(b) [to register a professional designation on the NQF] ensure that its professional designation is registered on a separate designated register.”.

Insertion of sections 32A and 32B in Act 67 of 2008

7. The following sections are inserted in the principal Act after section 32: 35

Referral of a qualification or part-qualification to the SAQA for verification and evaluation

32A. (1) (a) All organs of state, employers, education institutions, skills development providers and QCs must authenticate, prior to appointment or registration, if the qualification or part-qualification which is presented to them for the purposes of appointment, study or for any other related purpose, is registered on the national learners’ records database. 40

(b) If not registered on the national learners’ records database, such qualification or part-qualification must be referred to the SAQA for verification and evaluation. 45

(c) The Minister may in consultation with the SAQA exempt any category of persons, or entity contemplated in paragraph (a) from the provisions of this section by notice in the *Gazette*.

(2) If after verification or evaluation of the qualification or part-qualification— 50

(a) the SAQA establishes that the qualification or part-qualification is an authentic qualification or part-qualification, but is not on the national

learners' records database, the SAQA must record such a qualification or part-qualification on the national learners' records database; or
 (b) the SAQA must comply with section 13 (1B)(a) and (b) and shall refer such a finding or information to the relevant body.

(3) The SAQA must perform its functions in terms of subsection (1) and (2) within 30 days so as to not prejudice the holder of the qualification or part-qualification.

Offences and penalties

32B. (1) A person is guilty of an offence if the person—

- (a) makes or causes to be made a false entry in the national learners' records database or the misrepresented or fraudulent register;
- (b) is a party to the falsification and dissemination or publication of a qualification or part-qualification of any person or the records of the national learners' records database or the misrepresented or fraudulent register; or
- (c) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person.

(2) A person, an education institution or skills development provider is guilty of an offence if a person, the education institution or skills development provider claims to be offering a qualification or part-qualification registered on the NQF whereas that qualification or part-qualification is not so registered.

(3) A person is guilty of an offence, if such a person falsely or fraudulently claims to be holding a qualification or part-qualification registered on the NQF or awarded by an education institution, skills development provider, QC or obtained from a lawfully recognised foreign institution.

(4) Any person, education institution, skills development provider, foreign institution is guilty of an offence if it falsely claims to be registered and accredited as an education institution, skills development provider or foreign institution in terms of the laws of the Republic or foreign law.

(5) If a person, education institution its directors or board, a foreign institution its agents or directors or board, or a skills development provider is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the offence was—

- (a) committed with the intent to gain financially, or to receive any favour, benefit, reward, compensation or any other advantage; or
- (b) gained financially, or received any favour, benefit, reward, compensation or any other advantage.

(6) Any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of sections 32B(1), 32B(2), 32B(3) or 32B(4) to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(7) Any person, education institution, director or a board member of an education institution, foreign institution or its agents, or skills development provider in contravention of section 32B(4) may be ordered to close its business and declared unfit to apply and register any education institution, skills development provider or become an agent of any foreign institution in the Republic offering a qualification or part-qualification on the NQF or foreign qualification or part-qualification for a period not exceeding 10 years.”.

Substitution of the Long Title of Act 67 of 2008

8. The following long title is hereby substituted for the long title of the principal Act: **“To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Higher Education and Training; to provide for the South African Qualifications Authority and its functions; to provide for Quality Councils and their functions; to provide for the referral of qualifica-**

tions or part-qualifications to the SAQA for verification and evaluation; to provide for offences and penalties; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith”.

Short title and commencement

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9. (1) This Act is called the National Qualifications Framework Amendment Act, 2018, and comes into operation on the date determined by the President by proclamation in the *Gazette*.

(2) Different dates of commencement may be so determined for different sections of the Act.

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MEMORANDUM ON THE OBJECTS OF NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL, 2018

1. BACKGROUND

The National Qualifications Framework Amendment Bill, 2018, (“the Bill”), seeks to amend the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) (“the principal Act”), in order to strengthen the principal Act in various respects by *inter alia*, rectifying inconsistencies and closing gaps currently in the principal Act.

2. OBJECTS OF BILL

2.1 The Bill seeks to create an enabling mechanism for the South African Qualifications Authority (“SAQA”) and the three Quality Councils (“QCs”) to have legislative competence to address challenges with regard to fraudulent or misrepresented qualifications or part-qualifications. In this regard, a provision is made for the referral of all qualifications or part-qualifications presented for study, employment or appointment to the SAQA for verification or evaluation. Furthermore, a provision is also made for the referral of fraudulent qualifications or part-qualifications to the relevant professional body. A provision has also been made for offences in respect of fraudulent qualifications or part-qualifications.

2.2 The SAQA is also empowered to establish and maintain separate registers for professional designations, misrepresented qualifications and part-qualifications, and fraudulent qualifications and part-qualifications. The SAQA is also empowered to evaluate foreign qualifications or part-qualifications and to formulate and publish criteria for evaluating foreign qualifications or part-qualifications.

2.3 A provision has also been made to allow the SAQA, as the body with overall responsibility for the National Qualifications Framework (“NQF”) and for the coordination of the sub-frameworks, to be consulted when the QCs advise the Minister on matters relating to their sub-frameworks. The rationale for this amendment is to mitigate the current situation where QCs do not consult with the SAQA about issues pertaining to the development and management of their sub-frameworks, and other matters related to their quality assurance role. This situation creates a risk for the enduring public credibility of the NQF and the quality assurance regime.

3. BODIES/PERSONS/STAKEHOLDERS CONSULTED

3.1 Consultative process on the Bill started early in 2016 with the SAQA, Umalusi, Council for Higher Education and Training and the Quality Council for Trades and Occupations. Various inputs were received from the Council for Higher Education and Training, Umalusi and senior officials within the Department of Higher Education and Training. Some of the inputs were incorporated in the Bill. On 19 May 2016, the Bill together with the inputs received, was discussed in a meeting of the Inter-departmental NQF Steering Committee (IDNQFSC) subsequent to which a further request was made to members of the Committee and entities which had not yet provided their comments to do so by 23 May 2016.

3.2 The Bill was published in the *Government Gazette* No. 40430 of 18 November 2016, calling for public comments thereon. Due to the interest that the Bill attracted from the general public and various groups, a request was made to the Minister to extend the deadline for the submission of public comments, which the Minister duly granted until 20 January 2017. A total of 40 comments were received from various individuals and interested organisations. These were duly considered and some of the comments that had merit have been incorporated into the Bill.

- 3.3 The Social Economic Impact Assessment System (SEIAS) evaluation process on the Bill is currently being undertaken. Public hearings will also take place during the Parliamentary legislative process.

4. FINANCIAL IMPLICATIONS FOR STATE

Proposed funding for the implementation of the Bill has been budgeted for. The Department of Higher Education and Training will bear the costs for the publication of the Bill for public comments.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Department of Higher Education and Training and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies. In other words, the Bill does not deal with any matters listed in Schedule 4 to the Constitution (functional areas of concurrent national and provincial legislative competence) wherein the procedure set out in section 76 of the Constitution would apply.
- 5.2 The Constitutional Court, in *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* CCT 100/09 [2010] ZACC 10 (11 May 2010), paragraph 72, stated that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces. It stated that whether a Bill is a section 76 Bill is determined in two ways. Firstly by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution, and secondly by whether the provisions of a Bill in substantial measure, fall within a concurrent provincial legislative competence.
- 5.3 The State Law Advisers are 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.

Printed by Creda Communications

ISBN 978-1-4850-0555-1