

REPUBLIC OF SOUTH AFRICA

**SKILLS DEVELOPMENT
AMENDMENT 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 49B—2008]

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- (c) the insertion after the definition of “Minister” of the following definition:
 “**‘National Qualifications Framework’** means the National Qualifications Framework contemplated by the National Qualifications Framework Act, 2008;”;
- (d) the insertion after the definition of “NEDLAC” of the following definitions: 5
 “**‘occupational qualification’** means a qualification associated with a trade, occupation or profession resulting from work-based learning and consisting of knowledge unit standards, practical unit standards and work experience unit standards;
‘Occupational Qualifications Framework’ means the sub-framework for occupational qualifications which forms an integral part of the National Qualifications Framework;”;
- (e) the insertion before the definition of “**prescribed**” of the following definitions: 10
 “**‘placement’** means placing an individual in a placement opportunity, with due regard to the Code of Good Practice on the Integration of Employment Equity in Human Resources Policies and Practices in terms of the Employment Equity Act, 1998 (Act No. 55 of 1998);”.
‘placement opportunity’ means any opportunity for work or learning that could be offered to an individual and includes a vacancy for employment, an opportunity for self-employment, a learning programme and community service;”;
- (f) the insertion after the definition of “**Public Finance Management Act**” of the following definition: 15
 “**‘QCTO’** means the Quality Council for Trades and Occupations established in terms of section 26G;”;
- (g) the insertion after the definition of “**regulation**” of the following definition: 20
 “**‘repealed Act’** means—
 (i) the Manpower Training Act, 1981 (Act No. 56 of 1981);
 (ii) any law repealed by the Manpower Training Act, 1981, and any law repealed by such an Act; and
 (iii) any law listed in Schedule 1 to the Integration of Labour Laws Act, 1994 (Act No. 49 of 1994), dealing with training or skills development;”;
- (h) the insertion after the definition of “**skills development levies**” of the following definition: 25
 “**‘skills development provider’** means a provider of an occupational learning; and”;
- (i) the insertion after the definition of “**this Act**” of the following definition: 30
 “**‘trade’** means an occupation for which an artisan qualification is required in terms of section 26B;”.

Amendment of section 2 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999

2. Section 2 of the principal Act is hereby amended by—
- (a) the substitution in subsection (1) for paragraphs (d) and (f) of the following paragraphs: 35
 “(d) to encourage workers to participate in [**learnership and other training**] learning programmes;
 (f) to ensure the quality of [**education and training**] learning in and for the workplace;”;
 - (b) the substitution for subsection (2) of the following subsection: 40
 “(2) Those purposes are to be achieved [**by**] through—
 (a) [**establishing**] an institutional and financial framework comprising—
 (i) the National Skills Authority;
 (ii) the National Skills Fund; 55
 (iii) a skills development levy-financing scheme as contemplated in the Skills Development Levies Act;
 (iv) SETAs;
 (v) [**labour centres; and**] provincial offices of the Department;
 (vi) [**the Skills Development Planning Unit;**] labour centres of the Department; 60

- (vii) accredited trade test centres;
- (viii) skills development institutes;
- (ix) the Quality Council for Trades and Occupations;
- (x) a skills development forum for each province;
- (xi) a national artisan moderation body; and 5
- (xii) Productivity South Africa;
- (b) encouraging partnerships between the public and private sectors of the economy to provide **[education and training]** learning in and for the workplace; and
- (c) co-operating with the South African Qualifications Authority.”. 10

Amendment of section 5 of Act 97 of 1998, as substituted by section 2 of Act 31 of 2003

3. Section 5 of the principal Act is hereby amended by—
- (a) the substitution for subsection (1) of the following subsection: 15
 - “(1) The functions of the National Skills Authority are—
 - (a) to advise the Minister on—
 - (i) a national skills development policy;
 - (ii) a national skills development strategy;
 - (iii) guidelines on the implementation of the national skills development strategy; 20
 - (iv) the strategic framework and criteria for allocation of **[subsidies]** funds from the National Skills Fund; and
 - (v) any regulations to be made;
 - (b) to liaise with SETAs on—
 - (i) the national skills development policy; 25
 - (ii) the national skills development strategy; and
 - (iii) sector skills plans;
 - (c) to report to the Minister **[in the prescribed manner]** on the progress made in the implementation of the national skills development strategy; 30
 - (d) to conduct investigations on any matter arising out of the application of this Act; **[and]**
 - (dA) to liaise with the QCTO on occupational standards and qualifications; and
 - (e) to exercise any other powers and perform any other duties conferred or imposed on the Authority by this Act.”; and 35
 - (b) the addition of the following subsection: 40
 - “(4) Subsection (1)(a)(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO or Productivity South Africa.”.

Amendment of section 6 of Act 97 of 1998, as substituted by section 3 of Act 31 of 2003

4. Section 6 of the principal Act is hereby amended by—
- (a) the substitution in subsection (1) for paragraph (b) of the following paragraph: 45
 - “(b) 24 voting and **[five]** six non-voting members appointed by the Minister”;
 - (b) the substitution in subsection (2) for paragraph (e) of the following paragraph:
 - “(e) four voting members appointed by the Minister to represent the interests of education and **[training]** skills development;”.
 - (c) the substitution in subsection (2) for paragraphs (f) and (g) of the following paragraphs: 50
 - “(f) two non-voting members, who have expertise in the provision of employment services, appointed by the Minister; **[and]**
 - (g) a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister **[to represent that Authority.]**”; 55
 - (d) the addition to subsection (2) of the following paragraph:
 - “(h) a non-voting member nominated by the QCTO and appointed by the Minister.”;

- (e) the substitution for subsection (3) of the following subsection:
 - “(3) The Minister must designate **[four]** five members as deputy chairpersons, one deputy chairperson each from the members to be appointed to represent—
 - (a) organised labour; 5
 - (b) organised business;
 - (c) organisations of community and development interests; **[and]**
 - (d) the interests of the State; and
 - (e) education and skills development providers.”;
- (f) the substitution for subsection (4) of the following subsection: 10
 - “(4) A member of the Authority holds office for a period of **[three]** five years and is eligible for re-appointment on expiry of his or her term of office, but may not serve more than two consecutive terms of office.”;
 - and
- (g) the substitution for subsection (7) of the following subsection: 15
 - “(7) If the chairperson or a member of the Authority vacates office before the expiry of the period of office, the Minister must, in terms of subsection 1(a) or (2), respectively, appoint a new chairperson or member, as the case may be, for the unexpired portion of that period within 90 days.” 20

Amendment of section 10 of Act 97 of 1998

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

- “(1) A SETA must, in accordance with any requirements that may be prescribed— 25
- (a) develop a sector skills plan within the framework of the national skills development strategy;
- (b) implement its sector skills plan by— 30
 - (i) establishing **[learnerships]** learning programmes;
 - (ii) approving workplace skills plans and annual training reports;
 - (iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and **[training]** skills development providers and workers; and
 - (iv) monitoring education and **[training]** skills development provision in the sector; 35
- (c) promote **[learnerships]** learning programmes by— 40
 - (i) identifying workplaces for practical work experience;
 - (ii) supporting the development of learning materials;
 - (iii) improving the facilitation of learning; and
 - (iv) assisting in the conclusion of **[learnership]** agreements for learning programmes, to the extent that it is required;
- (d) register **[learnership]** agreements for learning programmes, to the extent that it is required;
- (e) **[within a week from its establishment, apply to the South African Qualifications Authority for accreditation as a body contemplated in section 5(1)(a)(ii)(bb) and must, within 18 months from the date of that application, be so accredited]** perform any functions delegated to it by the QCTO in terms of section 26I; 45
- (f) when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b), in its sector; 50
- (g) liaise with the National Skills Authority on— 55
 - (i) the national skills development policy;
 - (ii) the national skills development strategy; and
 - (iii) its sector skills plan;
- (h) submit to the Director-General— 60
 - (i) any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and

- (ii) strategic plans and reports on the implementation of its **[sector skills plan and]** service level agreement;
- (i) liaise with the **[employment services]** provincial offices and labour centres of the Department and any education body established under any law regulating education in the Republic to improve information— 5
 - (i) about **[employment]** placement opportunities; and
 - (ii) between education and **[training]** skills development providers and the labour market;
- (iA) liaise with the skills development forums established in each province in such manner and on such issues as may be prescribed; 10
- (j) subject to section 14, appoint staff necessary for the performance of its functions;
- (jA) promote the national standard established in terms of section 30B; **[and]**
- (jB) liaise with the QCTO regarding occupational qualifications; and
- (k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.”. 15

Substitution of section 16 of Act 97 of 1998

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

“Learnerships

- 16.** A SETA may establish a learnership if— 20
- (a) the learnership **[consists of]** includes a structured learning component;
 - (b) the learnership includes **[practical]** a structured work experience **[of a specified nature and duration]** component;
 - (c) the learnership would lead to a qualification registered by the South African Qualifications Authority **[and related to an]** associated with a trade, occupation or profession; and
 - (d) the intended learnership is registered with the Director-General in the prescribed manner.”. 25

Amendment of section 17 of Act 97 of 1998

7. Section 17 of the principal Act is hereby amended— 30
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) For the purposes of this Chapter, a ‘learnership agreement’ means an agreement entered into for a specified period between—
 - (a) a learner;
 - (b) an employer or a group of employers (in this section referred to as ‘the employer’); and
 - (c) a **[training]** skills development provider accredited by **[a body contemplated in section 5(1)(a)(ii)(bb) of the South African Qualifications Authority Act]** the QCTO or group of such **[training]** skills development providers;” 35
 - (b) by replacing the words **“training provider”** with **“skills development provider”**, where they appear in subsections (2)(c) and (5);
 - (c) by the deletion in subsection (7) of the word “and” at the end of paragraph (a);
 - (d) by the addition to subsection (7) of the following paragraphs: 40
 - “(c) prescribing the requirements for registering an agency contemplated in paragraph (a); and 45
 - (d) making it an offence to operate an agency contemplated in paragraph (a) except in accordance with such regulations.”.

Substitution of heading to Chapter 6 of Act 97 of 1998

8. The following heading is hereby substituted for the heading to Chapter 6: 50
- “INSTITUTIONS IN DEPARTMENT OF LABOUR AND [REGULATION OF PRIVATE] EMPLOYMENT SERVICES [AGENCIES]”.**

Substitution of section 22 of Act 97 of 1998

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

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

22. (1) Subject to the laws governing the public service, the Director-General must[— 5

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

(b) **provide the Unit with] ensure that the Department, including its provincial offices and labour centres, has the personnel and financial resources necessary for the performance of its functions in terms of this Act.** 10

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

(a) to research and analyse the labour market in order to determine skills development needs for— 15

- (i) South Africa as a whole;
- (ii) each sector of the economy; and
- (iii) organs of state;

(b) to assist in the formulation of— 20

- (i) the national skills development strategy; and
- (ii) sector skills development plans; and

(c) to provide information on skills to—

- (i) the Minister;
- (ii) the National Skills Authority; 25
- (iii) SETAs;
- (iv) education and **[training] skills development providers;****[and]**
- (v) organs of the state;
- (vi) the skills development forums in each province;
- (vii) the QCTO; and 30
- (viii) any other interested party; and

(d) **to perform any other function assigned or delegated to the Department in terms of this Act.”.**

Amendment of section 23 of Act 97 of 1998

10. Section 23 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 35

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

(a) **establish labour centres in the Department; and**

(b) **appoint such number of persons in the public service at each centre as is necessary to perform the functions of that centre.]** The functions of 40

provincial offices of the Department in respect of employment services are—

(a) to plan, coordinate, support, monitor and report on all activities occurring at all labour centres; 45

(b) to establish a skills development forum as prescribed;

(c) to maintain a data-base of skills development providers within their jurisdiction; and

(d) to perform any other prescribed or delegated function.

(2) The functions of **[those] the labour centres of the Department in respect of employment services** are— 50

(a) to provide **[employment services for] information to workers, employers and [training] skills development providers, including [improvement of such services to rural communities] the unemployed;**

(b) to register work-seekers;

(c) to register **[vacancies and work] placement opportunities;** 55

(d) to assist workers and other prescribed categories of persons—

- (i) to enter **[special education and training] learning programmes;**
- (ii) to find **[employment] placement opportunities;**

- (iii) to start income-generating projects; and
- (iv) to participate in [special employment] placement programmes; [and]
- (e) [to perform any other prescribed function related to the functions referred to in paragraph (a) to (d)] to develop plans, programmes and coherent strategies to extend services to rural communities; and 5
- (f) to perform any other prescribed function related to the functions referred to in paragraphs (a) to (e).”.

Insertion of sections 26A to 26M in Act 97 of 1998

11. The following sections are hereby inserted in the principal Act after section 26:

“CHAPTER 6A 10

ARTISAN DEVELOPMENT

National artisan moderation body

26A. (1) The Director-General must—

- (a) establish a national artisan moderation body in the Department; and 15
- (b) provide the body contemplated in paragraph (a) with the personnel and financial resources that are necessary to coordinate artisan development in the Republic.
- (2) The functions of the national artisan moderation body are to—
- (a) monitor the performance of accredited artisan trade test centres; 20
- (b) moderate artisan trade tests;
- (c) develop, maintain and apply a national data-bank of instruments for assessment and moderation of artisan trade tests;
- (d) develop and maintain a national data-base of registered artisan trade assessors and moderators;
- (e) record artisan achievements; 25
- (f) determine appeals against assessment decisions;
- (g) recommend the certification of artisans to the QCTO; and
- (h) perform any other prescribed function.

Listing of trades

26B. The Minister may, on application by one or more SETAs in the prescribed form, by notice in the *Gazette*— 30

- (a) list any occupation as a trade for which an artisan qualification is required; 35
- (b) remove any trade from the list contemplated in subparagraph (a) if an artisan qualification is no longer required for that trade.

National register of artisans

26C. (1) The Director-General must maintain a register of persons—

- (a) who have obtained an artisan qualification in terms of this Act or any repealed Act; and 40
- (b) who are practicing that trade.
- (2) (a) No person, whether employed or self-employed, may hold themselves out to be qualified as an artisan in a listed trade unless that person is registered as an artisan in terms of subsection (1).
- (b) Paragraph (a) does not affect any requirement that any professional or regulatory body regulating any listed trade may require for the practice of that trade. 45
- (3) For the purpose of this section, a person qualified to be an artisan in terms of any repealed Act includes any person who completed a contract of apprenticeship under a time-based apprenticeship system in terms of any conditions of apprenticeship published in terms of any repealed Act. 50
- (4) The Minister may make regulations concerning—
- (a) the criteria and procedure for the name of any person to be included on, or removed from, the register of artisans;
- (b) any other matter necessary for maintaining the register of artisans.

Trade tests

- 26D.** (1) Subject to any regulation made in terms of subsection (5), no person may obtain an artisan qualification in terms of this Act unless they have successfully undergone a trade test administered by an accredited trade test centre. 5
- (2) A person may apply to undergo a trade test in respect of a trade if—
- (a) that person has completed a learnership relevant to that trade; or
 - (b) that person has satisfied the relevant requirements of an apprenticeship in respect of that trade; or
 - (c) an accredited trade test centre has certified that the person has acquired sufficient prior learning related to that trade; and 10
 - (d) that person has completed any other learning programme resulting in an occupational or vocational qualification inclusive of prescribed work experience that entitles such person to undergo the relevant trade test. 15
- (3) An accredited trade test centre may require any person who applies to undergo a trade test to undergo a preliminary evaluation to determine whether that person has sufficient experience and knowledge in respect of the trade in question to undergo the trade test.
- (4) The QCTO must issue a person who successfully completed a trade test with a trade certificate in the prescribed form, stating that that person is qualified to perform the trade specified in the certificate. 20
- (5) The Minister, after consulting the QCTO, may make regulations concerning—
- (a) the procedure for applying to undergo a trade test; 25
 - (b) the criteria for determining whether a learner should be required to undergo a preliminary trade test evaluation;
 - (c) the payment of fees for undergoing a trade test;
 - (d) the contents of a preliminary evaluation or trade test in respect of any trade; 30
 - (e) any matter related to conducting or moderating of trade tests;
 - (f) the criteria for granting exemptions from all or some of the requirements in respect of a trade test before being registered as an artisan;
 - (g) the form of certificate issued to artisans who successfully undergo a trade test; 35
 - (h) any other matter necessary for the conducting or moderating of trade tests.

CHAPTER 6B

SKILLS DEVELOPMENT INSTITUTES 40

Skills development institutes

- 26E.** (1) The Minister may, by notice in the *Gazette*, establish skills development institutes in accordance with the prescribed requirements and may contribute the resources that are necessary for the effective performance of their functions. 45
- (2) A skills development institute may—
- (a) provide advisory services on skills development, mentoring and the recognition of prior learning;
 - (b) provide learning programmes; and
 - (c) perform any other prescribed function necessary to promote skills development. 50
- (3) The Minister may make regulations concerning—
- (a) the establishment, functions, operation, legal status, governance and funding of skills development institutes;
 - (b) any other matter that it is necessary or expedient to prescribe in order to enable skills development institutes to perform their functions. 55
- (4) The Minister may make different regulations under subsection (2) with respect to different skills development institutes.

CHAPTER 6C

QUALITY COUNCIL FOR TRADES AND OCCUPATIONS

Policy on occupational standards and qualifications

26F. (1) The Minister, after consulting the QCTO, may by notice in the *Gazette* determine policy on—

- (a) an occupational qualifications sub-framework as an integral part of the National Qualifications Framework;
- (b) the sub-framework for quality assurance for occupational qualifications; and
- (c) any other matter concerning occupational standards or occupational qualifications.

Establishment of QCTO

26G. (1) The Quality Council for Trades and Occupations is hereby established as a juristic person.

(2) The QCTO must be managed in accordance with the Public Finance Management Act.

(3) The QCTO consists of 16 members appointed by the Minister in accordance with Schedule 3.

(4) The Minister must approve a constitution for the QCTO which, subject to this Act, complies with the requirements set out in Schedule 3.

(5) The Minister must appoint the executive officer of the QCTO.

(6) The QCTO is financed from—

- (a) money voted by Parliament for this purpose;
- (b) income earned from services rendered by it;
- (c) grants or donations made to it; and
- (d) money received from any other source.”

Functions of QCTO

26H. (1) The QCTO must advise the Minister on all matters of policy concerning occupational standards and qualifications.

(2) The QCTO must perform its functions in terms of this Act and the National Qualifications Framework Act, 2008.

(3) Subject to any policy issued by the Minister in terms of section 26F, the QCTO is responsible for—

- (a) establishing and maintaining occupational standards and qualifications;
- (b) the quality assurance of occupational standards and qualifications and learning in and for the workplace;
- (c) designing and developing occupational standards and qualifications and submitting them to the South African Qualifications Authority for registration on the National Qualifications Framework;
- (d) ensuring the quality of occupational standards and qualifications and learning in and for the workplace;
- (e) promoting the objectives of the National Qualifications Framework;
- (f) liaising with the National Skills Authority on the suitability and adequacy of occupational standards and qualifications and on the quality of learning in and for the workplace;
- (g) liaising with the South African Qualifications Authority, other Quality Councils and professional bodies responsible for establishing standards and qualifications or the quality assurance of standards and qualifications; and
- (h) performing any other prescribed function.

(4) The QCTO has all such powers as are necessary to enable it to perform its functions in terms of this section.

(5) The Minister may issue written instructions, which are not inconsistent with any policy made by the Minister in terms of section 26F, to the QCTO regarding the performance of its functions in terms of subsection (3).

- (6) The QCTO must comply with—
 - (a) any policy determined by the Minister in terms of section 26F; and
 - (b) any written instruction issued by the Minister in terms of subsection (5).

Delegation of functions

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26I. (1) The QCTO may, in writing and subject to such conditions as it may determine, delegate any of its functions to—

- (a) the executive officer of the QCTO;
- (b) a committee of the QCTO;
- (c) the national artisan moderation body established in terms of section 26A;
- (d) a SETA; or
- (e) any other suitable body.

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(2) A delegation under subsection (1)—

- (a) does not divest the QCTO of the function delegated and the QCTO may at any time review, amend or set aside any decision made under the delegation;
- (b) does not prevent the performance of the function by the QCTO itself; and
- (c) may be revoked by the QCTO at any time.

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Regulations regarding occupational standards and qualifications

26J. The Minister may, after consulting the QCTO, by notice in the *Gazette* make regulations regarding—

- (a) the setting of occupational standards and qualifications;
- (b) the recognition and registration of occupational curricula;
- (c) the accreditation of occupational skills development providers;
- (d) the approval of occupational learning programmes;
- (e) the registration of occupational assessors and moderators;
- (f) the certification for occupational standards and qualifications;
- (g) the accreditation of occupational assessment centres;
- (h) the approval of workplaces for occupational training and the monitoring of workplaces for occupational training;
- (i) the provision of occupational foundational learning;
- (j) the provision of internships;
- (k) the appointment of occupational communities of expert practice;
- (l) the organising framework for occupations;
- (m) the recognition of prior learning in respect of occupational qualifications; and
- (n) any other matter concerning occupational standards and qualifications or which it is necessary or expedient to prescribe in order to enable the QCTO to perform its functions under this Act.

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CHAPTER 6D

WORKPLACE PRODUCTIVITY AND COMPETITIVENESS

Establishment of Productivity South Africa

26K. (1) Productivity South Africa is hereby established as a juristic person.

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(2) Productivity South Africa must be managed in accordance with the Public Finance Management Act.

(3) The Board of Productivity South Africa consists of seven members appointed by the Minister in accordance with Schedule 4.

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(4) The Minister must approve a constitution for Productivity South Africa which, subject to this Act, complies with the requirements set out in Schedule 4.

Functions of Productivity South Africa

- 26L.** The functions of Productivity South Africa are—
- (a) to promote a culture of productivity in workplaces;
 - (b) to develop relevant productivity competencies;
 - (c) to facilitate and evaluate productivity improvement and competitiveness in workplaces;
 - (d) to measure and evaluating productivity in the workplace;
 - (e) to maintain a data-base of productivity and competitiveness systems and publicising these systems;
 - (f) to undertake productivity-related research;
 - (g) to support initiatives aimed at preventing job losses; and
 - (h) to perform any other prescribed function.

Finances of Productivity South Africa

- 26M.** Productivity South Africa is financed from—
- (a) money voted by Parliament for this purpose;
 - (b) income earned from services rendered by it;
 - (c) grants or donations made to it; and
 - (d) money received from any other source.

Regulations regarding workplace productivity and competitiveness

26N. The Minister may, after consulting Productivity South Africa, by notice in the *Gazette* make regulations regarding any improvements in workplace productivity and competitiveness which it is necessary or expedient to prescribe in order to enable Productivity South Africa to perform its functions under this Act.”

Substitution of section 28 of Act 97 of 1998 25

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

“Use of money in Fund

- 28.** (1) The money in the Fund may be used only for the projects identified in the national skills development strategy as national priorities or for such other projects related to the achievement of the purposes of this Act as the Director-General determines. 30
- (2) [A maximum of two per cent of the] The money allocated to the Fund in terms of section 8(3)(a) of the Skills Development Levies Act may be used to administer the Fund within a prescribed limit.”

Substitution of section 29 of Act 97 of 1998 35

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

“Control and administration of Fund

- 29.** (1) The Director-General is the accounting [**officer**] authority of the Fund [**in terms of the Exchequer Act, 1975 (Act 66 of 1975)] as contemplated by section 49(2)(b) of the Public Finance Management Act and must—**
- (a) control the Fund;
 - (b) keep a proper record of all financial transactions, assets and liabilities of the Fund; [**and**]
 - (c) [**as soon as possible after the end of each financial year, ending on the prescribed date,**] prepare [**accounts of the income and expenditure of the Fund for the year and a balance sheet of its assets and liabilities as at the end of that year**] annual financial statements for the Fund in the prescribed form; and 45

(d) subject to the laws governing the public service, appoint the executive officer of the Fund who will, upon such appointment, be in the employ of the public service.

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

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

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

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

Amendment of section 36 of Act 97 of 1998

14. Section 36 of the principal Act is hereby amended by the insertion after paragraph (r) of the following paragraphs:

“(rA) any matter concerning the administration of apprenticeships or other qualifications in terms of any repealed Act, including, but not limited to, issuing duplicate certificates;

(rB) providing for the establishment of skills development forums in respect of each provincial office and specifying the operation, composition and functions of the forums;”.

Amendment of section 37 of Act 97 of 1998

15. Section 37 is amended by the addition of the following subsection:

“(3) Schedule 2 to the principal Act is hereby repealed, except for item 4A.”.

Insertion of Schedules 2A, 3 and 4 in Act 97 of 1998

16. The following Schedule is hereby inserted in the principal Act after Schedule 2:

“SCHEDULE 2A

**TRANSITIONAL PROVISIONS:
SKILLS DEVELOPMENT AMENDMENT ACT, 2008**

Definitions

1. In this Schedule—

‘Amendment Act’ means the Skills Development Amendment Act, 2008;

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

‘Manpower Training Act’ means the Manpower Training Act, 1981 (Act No. 56 of 1981);

‘SAQA’ means the South African Qualifications Authority;

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

Contracts of apprenticeship in force immediately prior to commencement of Amendment Act

2. (1) Subject to the provisions of this Schedule, all sections of the Manpower Training Act, including any regulations and conditions of apprenticeship, that concern apprentices remain in force insofar as they apply to any contract of apprenticeship in force immediately prior to the commencement of the Amendment Act, as if the Manpower Training Act had not been repealed. 5

(2) For the purposes of this item—

(a) any function of the registrar must be performed by an official of the Department of Labour designated by the Minister for that purpose in writing; 10

(b) any function of a training board must be performed by the SETA to whom the assets, rights, liabilities and obligations of the training board were transferred; 15

(c) any function of the National Training Board must be dealt with by the National Skills Authority.

(3) Any dispute about a contract of apprenticeship or any conditions of apprenticeship applicable to that contract is deemed to be a dispute contemplated in section 19(1) of the Act and must be dealt with in terms of section 19 of the Act, read with the changes required by the context. 20

(4) Any outstanding matter concerning a contract of apprenticeship that had been completed prior to the commencement of the Amendment Act must be dealt with in terms of the prevailing law immediately prior to the commencement of the Amendment Act. 25

Conversion of contracts of apprenticeship in force at commencement of Act

3. (1) Despite item 2, an employer and an apprentice who are party to a contract of apprenticeship in force at the commencement of this Act may conclude a learnership agreement in accordance with the form prescribed in terms of section 17(3) of the Act, subject to the following: 30

(a) The training provider must be a party to the learnership agreement, unless the training element of the apprenticeship has been completed;

(b) the learnership agreement may only be terminated in terms of section 17(4); 35

(c) the employer and apprentice must, in addition, conclude a written contract of employment;

(d) the apprentice is deemed to be a learner contemplated in section 18(2) of the Act and must be employed on terms and conditions of employment that are no less favourable than those that are applicable in terms of section 18(1) of the Act; 40

(e) paragraphs (c) and (d) do not apply to an apprentice who was already employed by the employer prior to the commencement of the contract of apprenticeship.

Trades deemed to be listed 45

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

Coming into operation of QCTO 50

5. The QCTO comes into operation on a date determined by the Minister in the *Gazette*.

SAQA accreditation of SETA ETQAs

6. (1) Until such time as the QCTO delegates powers and functions to a SETA in terms of Chapter 6B of the Act, a SETA ETQA will—
- (a) remain accredited by SAQA;
 - (b) continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act; and
 - (c) have any matter concerning the performance of ETQA functions by a SETA dealt with in terms of the South African Qualifications Authority Act.
- (2) The accreditation of any education and skills development provider by a SETA ETQA remains in effect until the accreditation—
- (a) lapses;
 - (b) is withdrawn by the SETA ETQA; or
 - (c) is withdrawn in terms of regulations made under section 26J of the Act.

National Productivity Institute

7. (1) On a date determined by the Minister by notice in the *Gazette*, all the assets, rights, liabilities and obligations of the National Productivity Institute, a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), registration number 75/04742/08, are transferred to Productivity South Africa.
- (2) The National Productivity Institute must thereafter be wound up in accordance with its articles of association.

SCHEDULE 3

COMPOSITION AND CONSTITUTION OF QCTO 25

Composition of QCTO

1. (1) The QCTO consists of 16 members appointed by the Minister, as follows:
- (a) The chairperson;
 - (b) the executive officer of the SAQA;
 - (c) the executive officer of the National Skills Authority;
 - (d) the executive officer of the QCTO;
 - (e) the executive director of the Higher Education Quality Committee established in terms of section 7 of the Higher Education Act, 1997 (Act No. 101 of 1997);
 - (f) the chief executive officer of Umalusi established in terms of section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);
 - (g) two members nominated by NEDLAC to represent organised labour;
 - (h) two members nominated by NEDLAC to represent organised business;
 - (i) two members nominated by NEDLAC to represent organisations of community and development interests;
 - (j) one members nominated by the Minister of Education to represent the interests of public education and training providers;
 - (k) one member nominated by the private providers of education and training to represent the interests of private education and training providers; and
 - (l) two additional members to represent the interests of the State.
- (2) Members of the QCTO contemplated by sub-items (1) (a) and (g) to (l) hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office.

Constitution of QCTO

- 2.** The Minister must approve the constitution of the QCTO, which subject to this Act—
- (a) must provide for—
 - (i) the establishment and functioning of committees, including an executive committee; 5
 - (ii) rules for convening and conducting of meetings of the QCTO and its committees, including the quorum required for and the minutes to be kept of such meetings;
 - (iii) the voting rights of the different members and the manner in which decisions are to be taken by the QCTO and its committees; 10
 - (iv) the circumstances and manner in which a member of the QCTO may be removed from office;
 - (v) the procedure for the filling of vacancies on the QCTO; 15
 - (vi) a code of conduct for the members of the QCTO;
 - (vii) the circumstances and manner in which the Minister may dissolve the QCTO and appoint an administrator on a temporary basis to perform its functions;
 - (viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; 20
 - (ix) the procedure for amending the constitution;
 - (x) the procedure for advising the Minister on regulations to be made in terms of section 26; and
 - (b) may provide for any other matter necessary for the performance of the functions of the QCTO. 25

SCHEDULE 4

COMPOSITION AND CONSTITUTION OF PRODUCTIVITY SOUTH AFRICA

Composition of Productivity South Africa 30

- 1.** (1) Productivity South Africa consists of seven members appointed by the Minister, as follows:
- (a) The chairperson;
 - (b) two members nominated by NEDLAC to represent organised labour;
 - (c) two members nominated by NEDLAC to represent organised business; and
 - (d) two members to represent the government.
- (2) Members of Productivity South Africa hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office. 40

Constitution of Productivity South Africa

- 2.** The Minister must approve the constitution of Productivity South Africa, which subject to this Act—
- (a) must provide for—
 - (i) the establishment and functioning of committees, including an executive committee; 45
 - (ii) rules for convening and conducting of meetings of Productivity South Africa and its committees, including the quorum required for and the minutes to be kept of those meetings;
 - (iii) the voting rights of the different members and the manner in which decisions are to be taken by Productivity South Africa and its committees; 50
 - (iv) the circumstances and manner in which a member of Productivity South Africa may be removed from office;
 - (v) the procedure for the filling of vacancies on Productivity South Africa; 55

- (vi) a code of conduct for the members of Productivity South Africa;
 - (vii) the circumstances and manner in which the Minister may dissolve Productivity South Africa and appoint an administrator on a temporary basis to perform its functions;
 - (viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;
 - (ix) the procedure for amending the constitution;
 - (x) financial arrangements, including bank accounts, investment of surplus money, annual budgets, annual reports, financial statements and annual audits;
 - (xi) the appointment of an executive officer and such other employees necessary for the effective performance of the functions of Productivity South Africa by its members, including the determination of their terms and conditions of employment; and
- (b) may provide for any other matter necessary for the performance of the functions of Productivity South Africa.”.

Amendment of section 65 of Act 75 of 1997

17. Section 65 of the Basic Conditions of Employment Act, 1997, is hereby amended 20
by the substitution for subsection (1) of the following subsection:

- “(1) In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter—
- (a) any workplace or any other place where an employer carries on business or keeps employment records, that is not a home;
 - (b) any premises used for [or training] skills development in terms of the [Manpower Training Act, 1981 (Act No. 56 of 1981)] Skills Development Act, 1998 (Act No 97 of 1998); or
 - (c) any [private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act No. 62 of 1981)] place at which any person provides or purports to provide any employment services as defined in terms of the Skills Development Act, 1998 (Act No 97 of 1998).”.

Amendment of Arrangement of Sections of Act 97 of 1998

18. The Arrangement of Sections after the Long title of the principal Act is hereby 35
amended—

- (a) by the substitution for “**CHAPTER 6 INSTITUTION IN DEPARTMENT OF LABOUR AND REGULATION OF PRIVATE EMPLOYMENT SERVICES AGENCIES**” of the following:

“CHAPTER 6 40

INSTITUTION IN DEPARTMENT OF LABOUR AND EMPLOYMENT SERVICES”;

- (b) by the insertion after “**Chapter 6**” of the following Chapters:

“CHAPTER 6A

ARTISAN DEVELOPMENT

- 26A. National artisan moderation body
- 26B. Listing of trades
- 26C. National register of artisans
- 26D. Trade tests

CHAPTER 6B

SKILLS DEVELOPMENT INSTITUTES

- 26E. Skills development institutes

CHAPTER 6C

QUALITY COUNCIL FOR TRADES OCCUPATIONS

- 26F. Policy on occupational standards and qualifications
- 26G. Establishment of QCTO
- 26H. Functions of QCTO
- 26I. Delegation of functions
- 26J. Regulations regarding occupational standards and qualifications

CHAPTER 6D

WORKPLACE PRODUCTIVITY AND COMPETITIVENESS

- 26K. Establishment of Productivity South Africa
- 26L. Functions of Productivity South Africa
- 26M. Finances of Productivity South Africa
- 26N. Regulations regarding workplace productivity and competitive-
ness”.

Short title and date of commencement

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

MEMORANDUM OF OBJECTS OF THE SKILLS DEVELOPMENT AMENDMENT BILL, 2008

1. PURPOSE OF BILL

The Bill seeks—

- to remove uncertainties said to have been caused by the Skills Development Act Transitional Provisions on the future of artisans or perceptions that artisan development has been discontinued.
- to support accelerated delivery of quality and quantity of scarce skills artisans in the country.
- to strengthen the institutional capacity of the Department of Labour in relation to artisan assessment, moderation and registration.
- to provide a legal basis in respect of the establishment of the Quality Council for Trades and Occupations (QCTO) as proposed in the Joint Policy Statement on the Review of the National Qualifications Framework issued by the Ministers of Labour and Education during August 2007.

The QCTO is envisaged to—

- support improvement in the quality assurance for learning in and for the workplace;
- be a centralised body for the development, monitoring and quality assurance of occupationally related learning and will function closely with the Further and Higher Education Quality Councils under the Department of Education, as proposed in the National Qualifications Framework Bill 2008.

The legal status of the National Skills Fund and Productivity South Africa is further clarified.

2. MAIN ELEMENTS OF BILL

CHAPTER 1: DEFINITIONS, PURPOSE AND INTERPRETATION OF ACT

Section 1: Contains additional definitions being proposed

Section 2: Purpose of Act

The clause provides for additional bodies and institutions through which the purposes of the Act can be achieved. This includes provincial offices of the Department, accredited training centres, skills development institutes, Quality Council for Trades and Occupations, a skills development forum in each province, a national artisan moderation body and Productivity South Africa.

CHAPTER 2: NATIONAL SKILLS AUTHORITY

Section 5: Functions of National Skills Authority

The role of the National Skills Authority (NSA) in advising the Minister in relation to the National Skills Fund is being amended to that of advising on the strategic framework and criteria for allocation of subsidies from the National Skills Fund. The NSA is being inserted to provide for the relationship between the NSA and the proposed QCTO.

The Bill seeks to avoid unnecessary tension and confirms that the Minister does not have to consult with the NSA on regulations relating to the QCTO and Productivity SA, as they have their respective Boards.

Section 6: Composition of National Skills Authority and term and vacation of office

The NSA's composition is being increased by the addition of a non-voting member to represent the QCTO.

The number of Deputy Chairpersons is being increased to five to accommodate education and skills development providers.

The clause extends the current term of office from three to five years to align with the National Skills Development Strategy and period of establishment of SETAs. A further proposal is to preclude any member to serve more than two terms.

CHAPTER 3: SECTOR EDUCATION AND TRAINING AUTHORITIES

Section 10: Functions of SETA

Clause 5 provides for the SETA to perform other delegated functions by the new QCTO to be established. Transitional arrangements are provided for ensuring that the SETAs remain accredited by the South African Qualifications Authority until the QCTO is established.

The clause provides for SETAs to liaise with the new skills development forums to be established in each province and the QCTO in terms of occupational qualifications.

CHAPTER 4: LEARNERSHIPS

Section 16: Learnerships

Clause 6 provides for a much clearer definition of what a learnership constitutes, and its relationship with an apprenticeship system. The chapter dealing with learnerships is adjusted to clarify the manner in which learnership agreements apply to artisan training. In particular, the chapter indicates that learnerships will include apprenticeships for trade qualifications. Learnerships and apprenticeships can thus be used for artisan development in future years.

Section 17: Learnership agreements

Clause 7 provides for the Minister to prescribe requirements for registering agencies that will perform employer obligations, especially amongst SMMEs that do not have the necessary skills development infrastructure.

CHAPTER 6: INSTITUTIONS IN DEPARTMENT OF LABOUR AND EMPLOYMENT SERVICES

(The heading of the Chapter is being amended to accommodate employment services functions)

Section 22: Administration of Act by Department

The clause clarifies responsibilities of the Department in administering the Skills Development Act.

Section 23: Employment services

Subsection (1) provides for those employment services functions to be performed at a Department of Labour provincial office level.

Subsection (2) amends, and adds new, employment services functions to be performed at the Department's labour centres.

NEW CHAPTER 6A: ARTISAN DEVELOPMENT

The Bill seeks to integrate all learning programmes related to the workplace into a single piece of legislation by repealing the remaining provision of the current Manpower Training Act, 1981, and its related inconsistency with individual industry-based regulations. The apprenticeship is redefined as a form of learnership and there is a shift of emphasis to the attainment of artisan status as opposed to the current routes followed. Alignment of conditions of employment of apprentices with other labour legislation such as the Labour Relations and Basic Conditions of Employment Act is also ensured.

Section 26A: National artisan moderation body

The clause provides for the establishment of an artisan national moderation body and outlines what the related functions of this body is going to be. It is envisaged that a section of the current INDLELA in Olifantsfontein will continue to perform this function until such time as the QCTO is in place.

Section 26B: Listing of trades

The clause provides for the listing of occupations as a trade and how such a trade can be removed if it is no longer required.

Section 26C: National register of artisans

The clause provides for the DG to maintain a register of all artisans who are still practising, excluding professionals registered in terms of other legislation, and includes deregistering those who are in breach of the set codes of conduct.

Section 26D: Trade tests

The clause outlines how a trade test must be undertaken by any learner that has completed a learnership, apprenticeship or internship or has acquired prior learning experience in order to attain artisan status and the certification thereof. The accreditation of trade test centres is also outlined.

Schedule 2A: Transitional provisions

The clause provides for transitional provisions that will remain in place for contracts of apprenticeship that were in force immediately prior to the commencement of the Amendment Act. It allows for the Registrar, the SETA and the National Skills Authority to continue performing prescribed functions. The conversion of contracts of apprenticeships in force at the commencement of the Act is also addressed.

NEW CHAPTER 6B: SKILLS DEVELOPMENT INSTITUTES

Section 26E: Skills development institutes

The clause provides for the establishment of various forms of skills development institutes, their legal status, governance, functions and the regulation thereof. The provision will allow for the establishment of industry and government established skills development institutes to be massively used in meeting the country's skills requirements.

NEW CHAPTER 6C: QUALITY COUNCIL FOR TRADES AND OCCUPATIONS

In support of an improvement in the quality assurance for learning in and for the workplace, the Bill establishes the Quality Council for Trades and Occupations

(QCTO) as a centralised body for the development, monitoring and quality assurance of occupationally related learning, excluding professional learning that falls under other pieces of legislation. The functions and powers of the QCTO are outlined.

Section 26F: Policy on occupational standards and qualifications

The clause outlines how the Minister may determine policy after consultation with the QCTO on matters relating to an occupational qualifications framework, quality assurance and other matters concerning standards or occupational qualifications.

Section 26G: Establishment of QCTO

The clause provides for the establishment of the QCTO as outlined in the Joint Policy Statement on the Review of the National Qualifications Review. The QCTO is established as a juristic person with 16 Board members appointed by the Minister. The CEO and the constitution of the Board is approved by the Minister in accordance with Schedule 3

Section 26H: Functions of QCTO

The clause describes the functions of the QCTO that are consistent with other Quality Assurance Councils that are to operate in Further and Higher Education systems, contained in the National Qualification Framework Bill.

Section 26I: Delegation of powers

The clause provides for the delegation of powers and functions by the QCTO to the CEO, its committees, SETAs or any other suitable body.

Section 26J: Regulations regarding occupational standards and qualifications

The clause provides for regulations regarding occupational standards.

Schedule 3: Composition and constitution of QCTO

The schedule provides for the appointment of the 16 QCTO members of the Board and indicates the constituencies they represent. The term of office is five years and members are eligible for re-appointment but may not hold office for more than two terms. The schedule also makes provision for the QCTO constitution to govern its operations and to be approved by the Minister.

NEW CHAPTER 6D: WORKPLACE PRODUCTIVITY AND COMPETITIVENESS**Section 26K: Establishment of Productivity SA**

The clause provides for the legal basis for Productivity South Africa (formerly National Productivity Institute), established since 1975 through a Cabinet Memorandum. Productivity South Africa is a public entity that has seven board members.

Section 26L: Functions of Productivity South Africa

The clause outlines the functions of Productivity South Africa in relation to the promotion of productivity in the workplace, the evaluation, measurement and data maintenance, research and supporting of initiatives aimed at preventing job losses.

Section 26M: Finances of Productivity South Africa

The clause provides for how Productivity South Africa can be funded.

Section 26N: Regulations regarding workplace productivity and competitiveness

This makes provision for Productivity South Africa to recommend productivity-related regulations to the Minister.

Schedule 2A: Transitional provisions

Clause 7 provides for transitional arrangements regarding the transfer of all assets, rights, obligations and liabilities from the section 21 National Productivity Institute to Productivity South Africa.

Schedule 4: Composition and constitution of Productivity South Africa

The clause provides for the composition of Productivity South Africa, i.e. the Chairperson, four members nominated by organised labour and business through NEDLAC and two representing government. The term of office is five years and all members are eligible for re-appointment but cannot serve more than two terms.

CHAPTER 7: FINANCING SKILLS DEVELOPMENT**Section 28: Use of money in Fund**

The section is amended to remove a limit of 2% of the NSF income to be used towards administration and to allow for the Minister on advice of the NSA to determine a limit that can be used from time to time.

Section 29: Control and administration of Fund

Is being amended to make the Director-General an accounting authority of the Fund as contemplated by section 49(2)(b) of the PFMA. Provision is made for the appointment of the Executive Officer, who may be delegated any powers as the DG deems fit to manage the fund in accordance with the PFMA.

AMENDMENT OF SECTION 65 OF BASIC CONDITIONS OF EMPLOYMENT ACT, 1997 (ACT NO. 75 OF 1997)

The section is being amended to provide further in respect of the powers to enter any premises used for skills development or any place where any person provides employment services in terms of the Skills Development Act to conduct inspections.

3. DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

The Bill was published for 30 days for public comment, on 28 February 2008. The amended draft Bill incorporating public comments was tabled at NEDLAC for stakeholder negotiations on 2 March 2008. The Bill is a product of the NEDLAC negotiations and was signed off by the social partner convenors.

The Bill was tabled for discussion in the government's Economic Cluster Skills Focus Group Committee responsible for education and skills development. The Cluster representatives are from The Presidency, the Department of Trade and Industry, the Department of Education, the Department of Public Service and Administration, the Department of Home Affairs, the Department of Science and Technology, the Department of Public Enterprises, the Department of Public Works and the Department of Environmental Affairs and Tourism.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Labour are of the opinion that this Bill must be dealt with in accordance with the procedure established by

section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 4.2 The State Law Advisers are 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.

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