

REPUBLIC OF SOUTH AFRICA

**DRAFT NATIONAL
QUALIFICATIONS
FRAMEWORK AMENDMENT
BILL, 2016**

(MINISTER OF HIGHER EDUCATION AND TRAINING)

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.
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BILL

“To amend the National Qualifications Framework Act, 2008 so as to provide for the substitution of the Long Title; to provide for the insertion of new definitions; to provide for the accreditation of private education institutions or private providers to offer qualifications or part-qualifications or any component thereof as contemplated in the principal Act; to provide for a separate register for professional designations; to provide for the formulation of evaluation criteria of foreign qualifications; to provide for the establishment of a register of fraudulent qualifications; to provide for the adherence of education institutions, employers and courts of law to the legal obligations to report fraudulent qualifications; to provide for the establishment by SAQA of a register of misrepresented qualifications; to provide for employers to be obliged to refer qualifications of employees to SAQA for validation and verification; to provide for transitional arrangements and 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 1 of the Higher Education Laws Amendment Act 26 of 2010

1. Section 1 of the National Qualifications Framework Act, 2008 (Act 67 of 2008) (herein referred to as the principal Act) is hereby amended —
 - (a) by the insertion after the definition of “board” of the following definition:
““Constitution” means the Constitution of the Republic of South Africa, 1996.”;
 - (b) by the insertion after the definition of “education institution” of the following definition:
““foreign juristic person” means a person that:-

- (a) has the legal authority to provide higher education in its country of origin;
 - (b) is registered or established as a juristic person in terms of the laws of a foreign country;
 - (c) is eligible to be registered as an external company in terms of the Companies Act, 2008 (Act No. 71 of 2008); and
 - (d) is eligible to be recognised as an education institution as contemplated in section 29 of the Constitution;”;
- (c) by the insertion before the definition of “**Gazette**” of the following definition:

“**fraudulent qualification and part-qualification**” means a degree, diploma or certificate that purports to be an authentic and/or valid qualification or part-qualification which was fraudulently obtained or awarded and presented in contravention of GENFETQA Act, Higher Education Act, 1997, Skills Development Act, this Act or any other applicable foreign law.”

- (d) by the substitution for the definition of ‘Gazette’ of the following definition:

“**Gazette**” means the Government Gazette of the Republic of South Africa;”

- (e) by the insertion after the definition of ‘Minister’ of the following definition:

“**misrepresented qualification and part-qualification**” means –

- (i) any invalid qualification or part-qualification presented in good faith either innocently or negligently by a person to another, believing such qualification or part-qualification to be an authentic and valid qualification or part-qualification; or
- (ii) any qualification or part qualification awarded by an education institution, private provider or awarding body that is not registered and or accredited by a recognised appropriate qualifications Authority; or
- (iii) any qualification or part-qualification that is not registered on the National Qualifications Framework in terms of this Act or

recognised by SAQA or by a similar appropriate foreign qualifications body or Authority; or

- (iv) any qualification or part-qualification which has been erroneously awarded by an education institution or private provider to the holder thereof, which can be revoked or withdrawn by the education institution or awarding body that issued it; or
- (v) any qualification or part-qualification purported to be validated by SAQA Certificate of Evaluation that was improperly obtained;”;

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

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

Amendment of section 3 of Act 67 of 2008, as amended by section 9 of the Higher Education Laws Amendment Act 26 of 2010

Amendment of section 3 of Act 67 of 2008

3. Section 3 of the principal Act is hereby amended by the substitution of subsection (2) of the following subsection (2):

“Every qualification or part-qualification contemplated in subsection (1)(a), must be registered on the National Qualifications Framework in accordance with this Act.”

Section 3 of the principal Act is hereby further amended by insertion after subsection (2) of the following subsection (3):

“(3) Every private education institution or private provider must be registered and accredited to offer qualifications or part-qualifications contemplated in subsection (2) or any component thereof.”.

Amendment of section 8 of Act 67 of 2008, as amended by section 10 of the Higher Education Laws Amendment Act 26 of 2010

Amendment of section 8 of Act 67 of 2008

4. Section 8 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph (a):

“(a) consider advice from SAQA, after SAQA has consulted with the relevant [or a] QC in terms of this Act;”.

Amendment of section 13 of Act 67 of 2008, as amended by the Higher Education Laws Amendment Act 26 of 2010 and the Higher Education and Training Laws Amendment Act 23 of 2012

5. Section 13 of the principal Act is hereby amended—

- (a) by the insertion after subparagraph (iii) of paragraph (h) of subsection (1) of the following subparagraphs:

“(iv) verify all qualifications and part-qualifications referred to it in terms of section 32B and must make a finding that the qualification or part-qualification is either authentic and valid or a fraudulent or misrepresented qualification or part-qualification and provide reasons thereof; and

(v) if after verification by SAQA it is established that the qualification or part-qualification is invalid, SAQA must enter into a register the following:

- (a) the name of the holder of the particular invalid qualification or part-qualification;
- (b) description of the document concerned;
- (c) status or reclassification of the document to be recognised as a qualification at a lower level on the NQF; and
- (d) outcome of the verification by SAQA must be published on SAQA website.”.

- (b) by the substitution for paragraph l of subsection (1) of the following paragraph:

“(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) learner achievements;
 - (iv) recognised professional bodies; [**professional designations and**]
 - (v) associated information;
 - (vi) qualifications' and part-qualifications' requirements and related information; and
 - (vii) details of individuals that an institution awarded qualifications and or part-qualification to, as well as the supporting source documents.
- (c) by the insertion after paragraph l of subsection (1) of the following paragraphs:
- “(IA) maintain a separate professional designation register.”
 - “(IB) establish a register for fraudulent qualifications with respect to records of education and training.”
 - “(IC) establish a register for misrepresented qualifications and part-qualifications with respect to records of education and training.”
- (d) by the substitution for paragraph (n) of subsection (1) with the following paragraph:
- “(m) with respect to foreign qualifications[.]-
 - (i) provide an evaluation and advisory service consistent with this Act; and
 - (ii) formulate the evaluation criteria of foreign qualifications.”

Amendment of section 27 of Act 67 of 2008, as amended by section 14 of the Higher Education Laws Amendment Act 26 of 2010

Amendment of section 27 of Act 67 of 2008

6. Section 27 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph (f):

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

Amendment of section 27 of Act 67 of 2008

7. Section 27 of the principal Act is hereby amended by the insertion after subparagraph (iii) of paragraph (j) of the following subparagraph (iv):

“(iv) accredit the institution or private provider complying with all the requirements to offer qualifications or part-qualifications registered on the NQF .;”;

Amendment of section 30 of Act 67 of 2008

8. Section 30 of the principal Act is hereby amended by the substitution for section 30 of the following section:

“A professional body that is recognised in terms of section 29 must -

- (a) apply to SAQA, in the manner determined by SAQA in terms of section 13(l)(j)(ii); and
- (b) assist to ensure that the professional designation is registered on a separate register.”.

Amendment of section 32 of Act 67 of 2008 by the insertion of section 32A and a heading in Act 67 of 2008

9. The following heading and section 32A is inserted after section 32 in chapter 7 of the principal Act:

“32A Obligations to report fraudulent qualifications”

All education institutions and employers have a legal obligation to report fraudulent qualifications to SAQA.”.

Amendment of section 32 of Act 67 of 2008 by the insertion of section 32B and a heading in Act 67 of 2008

Insertion of heading and section 32B in Act 67 of 2008

10. The following heading and section 32B is inserted after section 32A of the principal Act:

“32B Obligations to refer qualifications of employees to the SAQA”

- (1) All employers must refer qualifications of employees to SAQA for validation and verifications; and
- (2) The employer must include an acknowledgement form signed by the purported holder of the qualification to publish the outcome of SAQA verification in the public domain in the event of invalid qualifications presented to the employer.”.

Amendment of the Long Title of Act 67 of 2008

11. The Long Title of the principal Act is hereby amended by the substitution for the Long Title of the following:

“To provide for the substitution of the Long Title; to provide for the insertion of new definitions; to provide for a separate register for professional designations; to provide for the accreditation of private education institutions or private providers to offer qualifications or part qualifications or any component thereof as contemplated in the principal Act to provide for the reformulation of evaluation criteria of foreign qualifications; to provide for the establishment of a register for fraudulent qualifications by SAQA; to provide for the adherence to the legal obligations by education institutions and employers to report fraudulent qualifications; to provide for the establishment of a register by SAQA for misrepresented qualifications; to provide for the for the obligations of employers to refer qualifications of employees to SAQA for validation and verification to provide for transitional arrangements and for matters connected therewith.”

Substitution of section 38 of Act 67 of 2008

12. The following section is hereby substituted for section 38 of the principal Act:

Short title and commencement

38. (1) This Act is called the National Qualifications Framework Amendment Act, 2016 and comes into operation on a date fixed by notice in the Gazette.

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