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**0610 2020**

**MEMORANDUM ON THE OBJECTS OF THE BASIC EDUCATION LAWS AMENDMENT BILL**

**1. BACKGROUND**

**1.1** In 2013, the Minister of Basic Education instructed a task team to review the basic education legislation as a strategic priority for the Department of Basic Education. The task team identified the South African Schools Act, 1996 (Act No. 84 of 1996)(SASA), and the Employment of Educators Act, 1998 (Act No. 76 of 1998)(EEA), as needing amendments.

**1.2** The Draft Basic Education Laws Amendment Bill (the Bill), which was published for public comment under Government Notice No. 1101 in *Government Gazette* No. 41178 on 13 October 2017, proposed to amend the SASA and the EEA so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996. Another aim of the Bill was to bring about certain technical and substantive adjustments in the SASA and the EEA, to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.

One of the developments in the education landscape came about in 2009, when the then Department of Education was split into two new departments – those of Basic Education and of Higher Education and Training. (Proclamation No. 44 of 2009, signed by the President on 20 June 2009 and published in *Government Gazette* No. 32367 on 1 July 2009.)

**1.3** The general public and education stakeholders submitted just under4 000 comments. There were also 144 petitions, containing a total of 195 695 names, objecting to certain clauses of the Bill.

On 19 February 2018, a task team consisting of representatives from the Department of Basic Education (the DBE) and three of the provincial education departments (Gauteng, Limpopo and the Western Cape) started with the process of perusing the submissions and amending the Bill by incorporating constructive comments into the Bill. During the period from 19 February 2018 until 14 February 2020, the task team had 31 meetings (57 days altogether), held extensive discussions with other DBE officials in order to clarify issues raised by some of the commentators, and, where necessary, sought advice and inputs from persons outside the DBE as well.

Late in January 2020, the Minister met with representatives of school governing body associations, teacher unions, and home education associations to further discuss pertinent matters with them. Further comments submitted by those stakeholders in relation to that meeting were also considered. A series of meetings with the National Economic Development and Labour Council (Nedlac) also took place between February 2020 and September 2020, and the inputs made by Nedlac were also taken into consideration.

The version of the Bill that is currently under discussion is the result of the incorporation of many of the commentators' inputs, many hours of discussions at task team meetings, countless hours of individual work put in by task team members, and inputs from a variety of officials and other persons who were consulted.

**2. CLAUSE-BY-CLAUSE ANALYSIS**

**South African Schools Act (paragraphs 2.1 to 2.39 – clauses 1 to 39)**

**2.1** **Clause 1** provides for the insertion of a phrase into the Preamble of the SASAin order to further entrench the right to basic education.

**2.2 Clause 2**provides for the insertion of a number of new definitions and seeks to amend certain existingdefinitions.

**2.2.1** Adefinition of “basic education” has been inserted (clause 2(a)(i)) to clarify that basic education refers to grades R – 12, as evidenced in the *National Curriculum Statement Grades R – 12*. This was necessary in order to clarify the fact thatbasic education continues until the end of grade 12 even though a learner who has completed grade 9 is no longer subject to compulsory school attendance.

**2.2.2** Definitions of “benefit in kind” (clause 2(a)(ii)) and “other financial benefit” (clause 2(i)) have been inserted in order to create clarity regarding the provisions of section 38A of the SASA, which prohibits the payment of unauthorised remuneration and the giving of financial benefit or benefit in kind to certain employees.

**2.2.3** Definitions of “competent assessor” (clause 2(a)(iii)) and “home education” (clause 2(e))are included in order to provide more certainty in the home education environment. (See clause 35.)

**2.2.4** The definition of “Constitution” is amended (clause 2(b)) to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005).

**2.2.5** A definition of“Department of Basic Education” is included (clause 2(c)) in order to reflect the new education dispensation.

**2.2.6** A definition of“drug” is inserted (clause 2(c)(ii)) in order to better accommodate the kinds of issues with which schools struggle in relation to drugs and, by means of referencing applicable drug-related legislation, to make provision for recent legislative changes in regard to cannabis. As a result of the insertion of this new definition, the definition of "illegal drug" is deleted(clause 2(f)).

**2.2.7** A definition of“education district” is included(clause 2(d)) to facilitate matters relating to a school's admission and language policies.

**2.2.8** A definition of ‘‘liquor’’ (clause 2(g)) is included in support of the proposed amendment to section 8A of the SASA. (See clause 8of the Bill.)

**2.2.9** Clause 2 also proposes the insertion of an amended definition of ‘‘loan’’ (clause 2(h)) to allow public schools to deal with the day-to-day business of the school without obtaining the written approval of the Member of the Executive Council (MEC). (See clause 26 of the Bill.)

**2.2.10** Finally, the definition of "parent" is amended slightly (clause 2(j)) in order to align it with the changes in the provisions relating to home education.

**2.3** **Clause 3** of the Bill seeks to amend section 3(1) of the SASA to provide that school attendance is compulsory from grade R and no longer only from grade 1; and to increase the penalty provisionin section 3(6) of the SASA from six months to 12months in the case where the parent of a learner, without just cause, fails to ensure that a learner who is subject to compulsory attendance attends school, or where any other person,without just cause, prevents such a learner from attending school. The clause also creates an offence in the case where any person unlawfully and intentionally interrupts, disturbs or hinders any school activity, or hinders or obstructs any school in the performance of the school's activities, and a penalty clause is provided for.

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

**2.4 Clause 4** of the Bill seeks to amend section 5 of the SASA. It provides that, despite the age at whichschool attendance is compulsory, as stipulated in section 3(1), a parent may, if he or she so wishes and subject to a few conditions,enrol a child at a school to start attending grade R at a younger age. The clause also provides that the Head of Department (HoD), after consultation with the governingbody (SGB)of the school, has the final authority to admit a learner to a public school. It provides that the SGB of a public school must submit the admission policy of the school,and any amendment thereof, to the HoD for approval. The HoD must take into account certain prescribed factors when considering the policy or any amendment thereof. In the event that the HoD does not approve the policy, or any amendment thereof, he or she must return it to the SGB with such recommendations as he or she may deem necessary. The clause provides for an appeal to the MEC if the SGB is not satisfied with the decision of the HoD. The SGB must review the policy at certain intervals or under certain conditions. The clause also provides for a transitional arrangement and furthermore states that, if the HoD does not respond to the SGB within 60 days after receiving the policy for approval, the policy will be regarded as having been approved. A similar provision has been inserted for the case where an SGB submits to the HoD an amendment to its admission policy; in this case, the period is 30 days. Furthermore, the clause provides for time periods within which a learner who has been refused admission to a public school, or the parent of such a learner, may appeal to the MEC against the decision, and within which the MEC must respond.

These amendments have become necessary as a result of confusion created by sections 5(5) and 5(7) in regard to where the locus of authority lies in respect of admission to public schools, and as to who has the final say on admissions. When exercising the authority to admit learners, the HoD is not rigidly bound by a school’s admission policy. The general position is that admission policies must be applied in a flexible manner and that the right of a learner to be admitted to a school takes precedence over the right of a school to enforce the criteria set out in its admission policy.

Furthermore, the admission policy of the DBE provides that the admission policy of a school must be consistent with the DBE's policy.Therefore, the HoDmust have an opportunity to study the admission policy of a school to ensure that it is in fact consistent with the national policy.

**2.5 Clause 5** of the Bill seeks to amend section 6 of the SASA to provide that South African Sign Language has the status of an official language for purposes of learning at a public school.

The clause also providesthat the SGBmust submit the language policy of a public school,and any amendment thereof, to the HoD for approval. The process that an HoDmust follow in this regard, and factors that he or she must take into account when considering a policy or an amendment thereof, are also set out. As is the case with the admission policy, the SGB must review the language policy at certain intervals or under certain conditions.

The clause also provides for a transitional arrangement in regard to the submission of language policies, and a time period within which the HoD must respond to the school, and matters relating thereto.

The clause also seeks to empower the HoD to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account, and after the prescribed procedures have been followed. The factors to be taken into account, and the manner in which the HoD must act before he or she directs a public school to adopt more than one language of instruction, are also set out.

In a case where a school has been so directed, the HoD must, before his or her directive is implemented,take all the necessary steps to ensure that the public school receives the necessary resources to enable that public school to provide adequate tuition in the additional language of instruction.

Provision is also made for an appeal in the case where the SGB is not satisfied with a decision of the HoD in terms of this clause, and for time periods within which the SGB and the MEC must act in regard to the appeal.

This amendment is necessitated by, amongst others, the need for fair and equitable administrative processes as provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the need for effective utilisation of classroom space and resources.

It should be noted that the judgment in the case *of Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another 2010(2) SA 415(CC)* (the Ermelo judgment) provided guidance in regard to the approval of a school's language policy.

Paragraph 58 of that judgment made it clear that, even though the function of determining a school's language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA, it is not the exclusive preserve of the SGB. The devolution of power does not mean that the SGB's right to decide the language policy is absolute. This power is subject to the Constitution, the SASA and any applicable provincial law. As stated in paragraph 81 of the judgment, the SGB’s extensive powers and duties do not mean that the HoD is precluded from intervening, on reasonable grounds, to ensure that the admission and language policies of a school pay adequate heed to section 29(2) of the Constitution.

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

Paragraph 80 of the Ermelo judgment made it clear that the interests of the learners and SGB at the school in question *as well as* the interests of the broader community in the education district in which the school is locatedhave to be taken into account.

For the above reasons, it is also necessary to empower the HoD to direct a public school to adopt more than one language of instruction, where it is practicable to do so. A number of checks and balances have been included in the clause to guide the HoD's decision in this regard. Furthermore, a comprehensive consultation process is provided for to ensure that the views of all interested parties are obtained and are given proper consideration.

**2.6 Clause 6**seeks to amend section 6A of the SASA to empower the Minister to appoint outside agencies or persons to advise the Minister on matters relating to a national curriculum statement and a national process and procedures for the assessment of learner achievement.

This allows the Minister to obtain inputs from a broader spectrum of people.

**2.7 Clause 7** seeks to amend section 8 of the SASA by providing, in clause 7(a), thatnot only any applicable provincial law, but also the Constitution and the SASA must be taken into account when a public school adopts a code of conduct.

Clause 7(b) extends the provisions of subsection (2). It provides that the code of conduct of a public school must also take into account the diverse cultural beliefs,religious observances and medical circumstances of the learners at the school.The clause makes provision for an exemption clause, making it possible to exempt learners, upon application and on just cause shown, from complying with certain provisions ofthe code of conduct. If an application for exemption is refused, the learner or the parent of the learner may appeal to the HoD against the decision of the SGB; and time periods within which these actions must take place are provided for.

The clause also provides that disciplinary proceedings must be age appropriate, should be conducted in the best interest of the learner, and should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution.

This amendment is informed by the Convention on the Rights of the Child and the latest jurisprudence on this issue, as expressed in the Pillay\* case and other cases. The amendment seeks to bring the SASA in line with such jurisprudence. (\*[*MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007)*](http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACC/2007/21.html&query=%20pillay%20nose%20ring)

**2.8 Clause 8**seeks to extend the provisions of section 8A of the SASA by providing for conditions under which liquor (see paragraph 2.2.8) may be possessed, consumed orsold on school premises or during school activities, and to make consequential amendments to the section in this regard and in regard to the new definition of "drug" (see paragraph 2.2.6). Provision is made for certain exceptions to the prohibition to allowthe SGB, on application from any person and after consultation with the principal,to permit the possession, consumption or saleof liquor in certain cases, on certain conditions, and subject to certain restrictions.

This amendment was informed by the fact that alcohol has aplace in our society, if it is consumed responsibly, by adults; and by the fact that events at which alcohol is present form an important part of the fundraising activities of most schools. A further factor that was taken into account is the fact that many schools rent out their halls or sports fields for religious services, weddings and other private events and that, if alcohol were completely forbidden on school premises, schools would lose the income that they currently receive from those events.

The clause also makes it clear that a school has the right to search, not only a group of learners, but also an individual learner; and consequential amendments in this regard are made to the section.

This amendment is necessitated by the fact that learners have increasingly been found in possession of, or abusing, liquor and a variety of drugs,dependence-producing substances, performance-enhancing substances and the like, and that there are many cases of learners being expelled because of such abuses.

**2.9 Clause 9**insertsinto section9 of the SASAa detailed definition of serious misconduct by a learner in order to provide greater clarity in this regard. In particular, the insertion is an attempt at addressing the growing incidence of violence at schools.

**2.10 Clause 10**extends theprohibition, in section 10 of the SASA,on the administering of corporal punishment so that it now includes"during a school activity or in a hostel accommodating learners of a school". This amendment is necessary to close a gap that existed before

**2.11 Clause 11**extends theprohibition, in section 10A of the SASA, in regard toinitiation practices so that it now includes"during a school activity". As withcorporal punishment, the amendment is aimed at closing a gap in the legislation.

**2.12 Clause 12**seeks to amend section 12 of the SASA. It provides thattheSGB of a public school may apply to the MEC to be designated as a public school with a specialised focus on talent. The HoDmay also identify a public school to be so designated and may make a recommendation to the MEC in this regard, and the MECmayso designate a public school if it is in the best interest of education in the province and if the school complies with the norms and standards determined by the Minister.

The process to be followed before a school can be so designated is also set out.

This amendment is necessary to close a gapin the current legislation and to clarify the process that a school needs to follow to be designated as a public school with a specialised focus on talent It also clarifies whose responsibility it is to designate such schools and the criteria that will be applied in the case of such a designation.

**2.13 Clause 13** seeks to amend section 12A of the SASA to provide that, ininstances where two or more schools are merged, a new public school will be established. Methods of communicating with interested parties in regard to such a merger are also clarified, and timeframes within whichthe MEC must act are set out. Provision is made for the case where the MEC fails to act within the stipulated periods, and further details of the process to be followed by the MECand the SGBs concerned are set out. The clause furthermore seeks to provide for transitional arrangements in regard to the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence; the rationalisationand/or redeployment of the workforce of the new public school; the academic programmesof the new public school; and governance arrangementsrelating to the new public school.

This amendment is proposed for the sake of clarity and uniformity in the way in which this matter is dealt with.

**2.14 Clause 14**seeks to amend section 20 of the SASA to allow the reasonable use, under fair conditions determined by the HoD, of facilities of a public school for education-related activities, without the charging of a fee or tariff. However, in determining the conditions, the HoD must consult with the SGB of the school, which consultation must include the matter of the payment of necessary and reasonable expenses arising from the use of the facilities.

The proposed amendment must be seen in the context of the fact that public schools are assets of the State. Flowing from this,provincial education departments should be allowed to use the facilities of public schools free of charge, if such use is for educational purposes, is reasonable, and takes place under fair conditions so that the schools in question will not suffer financially as a result of expenses arising from the use of the facilities. In many towns and villages, the public school is the only venue that a provincial education department can use for educational purposes.

**2.15 Clause 15**seeks to amend section 21 of the SASA to empowerthe HoD to centrally procure identified learning and teaching support material for public schools, inconsultation with the SGBand on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.

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

**2.16 Clause 16**amends section 22 of the SASA to empower the HoD to withdraw, on reasonable grounds and after complying with prescribed requirements, “one or more functions” of anSGB and not only “a function”, as the section currently reads. It also provides that, in cases of urgency, the HoD may withdraw functions without prior communication with such SGB. In such a case, the HoD must immediately thereafter furnish the SGB with written reasons for his or her actions, grant the SGB a reasonable opportunity to make representations, duly consider such representations, and inform the SGB of his or her final decision. Further provision is made for steps that the HoD must take if he or she acts in terms of this section – including the appointment of sufficient qualified persons to perform the withdrawn function or functions for a specified period. The appointed persons must build capacity to ensure that the SGB will in future perform the functions that it failed to perform. The clause also deals with the voting rights of such persons and provides for an appeal process.

This amendment creates clarity regarding the powers of the HoD to withdraw functions of SGBs and clearly indicates the processes that need to be followed when functions are withdrawn. (See also clause 18of the Bill.)

**2.17 Clause 17**amends section 24 of the SASA by substituting "Minister" for "Member of the Executive Council" and "*Government Gazette*" for"*Provincial Gazette*" in regard to arrangements for the election of members of anSGB of a public school for learners with special education needs.

 Currently, each province deals with these matters in its own preferred way, and this amendment will bring about uniformity across the provinces.

**2.18 Clause 18**of the Bill inserts section 24A into the SASA to provide thattheprovisions of section 23 of the SASA (excluding subsection (5)), which deal with the membership of SGBs of ordinary public schools, will apply to a public school with a specialised focus on talent, and that the authority to co-opt members includes the authority to co-opt relevant experts in the specialised focus of the public school, whether from inside or outside the community.

This amendment is necessary to address a lacuna in the SASA and to ensure uniformity in the establishment of the governance structures for public schools with a specialised focus on talent.

**2.19 Clause 19**seeks to amend section 25 of the SASAto empower the HoD to dissolve anSGB that has ceased to perform functions allocated to it in terms of the Act, if the HoD has reasonable grounds to do so. As is the case with clause15, provision is made for steps that the HoD must take if he or she acts in terms of this section – including the appointment of sufficient qualified persons to perform the functions of the SGB for a specified period. The clause also deals with the voting rights of such persons and provides that the HoD may act in terms of this section only after following certain prescribed procedures. The clause also provides that the HoD must ensure that a new SGB is elected within one year, and provides for an appeal process.

This amendment creates clarity regarding the powers of the HoD to dissolve an SGB and clearly indicates the processes that need to be followed when an SGB is dissolved. (See also clause 15of the Bill.)

**2.20 Clause 20**expands on the provisions ofsection 26 of the SASA to provide for the declaration of a direct or indirect personal interest that anSGB member or any of his or her family members or close friends or business partnershas and, under such circumstances, the recusal of SGB members when it comes to the recruitment or employment of staff or the procurement of goods and services for the public school. It provides that, if anSGB has knowledge that a member who is present has a personal interest in a matter under discussion, the SGB may not take a decision on the matter until such member has withdrawn from the meeting. It also provides for the imposition of a sanction, after due process, where anSGB member contravenes the provisions of the section. The amendment also applies to a committee of anSGB and to committee members. A definition of “family member” has also been inserted into the clause.

This amendment is proposed in order to prevent corruption and promote good governance.

**2.21 Clause 21**seeks to clarify section 27 of the SASA, which provides that SGB members are not entitled to be remunerated for the performance of their duties, by adding the words “or for the attendance of meetings and school activities”.

This amendment is proposed merely to clarify the matter of remuneration (vs reimbursement for legitimate expenses).

**2.22 Clause 22**amends section 28 of the SASAby substituting "Minister" for "Member of the Executive Council" and "*Government Gazette*" for"*Provincial Gazette*"in regard to arrangements for the election of members of anSGB of a public school, and by deleting a reference to "any applicable provincial law”.

Currently, each province deals with these matters in its own preferred way, and this amendment will bring about uniformity across the provinces.

**2.23 Clause 23**amends section 29 of the SASA to provide that,where reasonably practicable, only a parent member of anSGB who is not employed at the school may serve as the chairperson of the finance committee of that public school.

This amendment seeks to promote good governance.

**2.24 Clause 24**amends section 32 of the SASA to provide for a technical amendment that is required as a result of the provisions of the Children’s Act, 2005 (Act No. 38 of 2005), whichchanged the age of majority from 21 to 18 years.This will ensure that learners 18 years and older are not a party to litigation by virtue of their membership of the SGB. A new provision is also inserted to ensure that learners who are SGB members are not involved in the appointment of educators.

**2.25 Clause 25**seeks to amend section 33 of the SASA, which deals with the closure of public schools. The MEC must embark on a comprehensive consultation process before closing a school. The amendment also empowers the MEC to close a public school in his or her sole discretion if there are no learners registered at that public school. However, the MEC must first verify, by means of a site inspection by an official nominated by him or her, that there are no learners registered at that school. The amendment also empowers the MEC to close a public school after following a prescribed consultation process if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and, in the case of a secondary school,200 or fewer than 200 learners are registered at the school. The MEC must inform interested parties of his or her decision in the above regard and, if the decision is to close a public school, must make arrangements for the learners of the school to attend another school and, where appropriate, make arrangements for the transport of qualifying learners to that school. The MEC must, furthermore, take certain prescribed factors into account before acting under this section.

The purpose of this amendment is to provide for a proper consultation process and to simplify the procedure when dealing with the closure of a small school.

**2.26 Clause 26**seeks to amend section 36 of the SASAto provide that the SGB must also seek the approval of the MEC to enter into lease agreements, for any purpose, including loans and overdrafts which are already provided for in the said section. The clause also provides that the approval of the MEC is not required in regard to the leaseof immovable property of the schoolif the lease isfor a period not exceeding12 months.

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

(See also paragraph 2.2.9.) The further amendment reduces the burden on schools to apply for permission when entering into small lease agreements in regard to immovable property.

**2.27 Clause 27**contains a correction to section 37 of the SASA: the word "directives" is substituted for the word "directions".

This is a technical amendment.

**2.28 Clause 28**seeks to amend section 38 of the SASA to provide that a document explaining the budget of a school, together with the budget itself, must be made available to parents before the budget is presented to a general meeting of parents for consideration. It also sets out the procedure that an SGB must follow if it proposes to deviate from the initial budget, by 10% or more of the initial approved budget, or if it proposes to reallocate funds for a purpose that is different from the purpose set out in the budget originally approved by a general meeting of parents. Reasons for the deviation or reallocation must also be made available to the parents prior to the meeting, and parents must be informed that this information will be available for inspection at the school at least 14 days prior to the meeting. A quorum of 10% of the parents is required for the general meetings referred to above. If a quorum cannot be achieved at the first meeting, a second meeting must be arranged, at which no quorum is required. A copy of the notice of the second meeting must also be distributed to every learner at the school with an instruction to hand the notice to the parents.

This amendment relates to governance issues and fairness.

**2.29 Clause 29**of the Bill seeks to amend section 38A of the SASA to extend its application to a state employee who is paid any additional remuneration or any other financial benefit or benefit in kind. It requires SGBs to provide full details of the nature and extent of the remuneration or benefit; the reasons for the remuneration or benefit; if practicable, the monetary value of the remuneration or benefit; and details of the process that will be followed and the resources that will be used to compensate or remunerate the employee.

This amendment is necessary to provide clarity and to reduce the financial burden on parents who pay high school fees at fee-paying schools.

**2.30 Clause 30**seeks to amend section 41 of the SASA by inserting a new subsection (2A) to provide that, when a parent applies for exemption from the payment of school fees, such parent may submit additional documentary evidence in the form of an affidavit in instances where information cannot be obtained from the other parent of the learner.

 This amendment aims to lessen the burden on single parents whose ex-partners are untraceable or unwilling to provide information ontheir financial situation.

**2.31 Clause 31**seeks to substitute section 42 of the SASA to provide that the SGB of a public school must keep detailed records on prescribed aspects of its financial affairs; draw up annual financial statements within a specified time and in a specified manner; and present the financial records and statements to a general meeting of parents.

This amendment expands the existing provision contained in section 42 to ensure transparent accounting and good governance.

**2.32 Clause 32**seeks to amend section 43 of the SASA to empower the HoD, if he or she deems it necessary, on just cause shown, toauthorisean investigation into the financial affairs of a public school; to request the Auditor-General to undertake an audit of the records and financial statements of a public school; orappoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school. All of these steps must be taken in accordance with specified requirements.

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

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

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

**2.33 Clause 33**amends section 46 of the SASA by increasingthe penalty provision from six months to 12months in the case wherea person establishes or maintains an independent school that is not registered by the HoD.

**2.34 Clause 34** seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the MEC. The amendment also provides that an independent school must submit quarterly reports to the HoD on all income and expenditure relating to the subsidy, and must, within six months after the end of each financial year, provide the HoD with a copy of the audited financial statements relating to the subsidy.

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

**2.35 Clause 35**seeks to substitute section 51 of the SASA to provide clarity in regard to home education.

The amendment (read with the amendments to section 3 of the SASA) makes it clear that learners may be educated at home only if they are registered for such education. A parent must, at the end ofeach of the three school phases, notify the HoD if he or she intendsto continue educating the learner at home. The criteria that the HoD must consider when deciding whether or not to approve an application are also set out.

The amendment provides that the HoD may, when considering an application, require a delegated official to conduct a pre-registration site visit and consultation with the parents and learner to verify the information supplied in the application documentation and to provide support, where necessary, with the application process. It also sets out the main responsibilities of a parent who wishes to educate his or her child at home.

The amendment stipulates that, in the case of learners who are not yet registered for home education, application must be made within 30 days after the section comes into operation. Provision is also made for a time limit within which the HoD must respond to an application for registration for home education.

The amendment also stipulates that home-educated learners must be assessed annually by a competent assessor.

Furthermore, the amendment sets out the options for a home-educated learner after reaching the age of 15 or after completion of grade 9.

Clarity is also provided to ensure that a learner who is educated at home after the age of 15 or after completion of grade 9 will not be at a disadvantage. In the case of a learner who will be writing the NSC, the parent must, before the learner embarks on any studies following grade 9, ensure that the learner complies with the requirements, stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination, for a learner receiving home education.

The amendment provides that the HoD mustdecline to register a learner for home education if the HoDis satisfied that the parent does not meet certain requirements or that home education is not in the best interests of the learner; and that the HoD maycancel a learner's registration for home education if, after investigation, the HoD is satisfied that home education is no longer in the best interests of the learner.Before so cancelling a learner's registration, the HoD must satisfy certain requirements. Provision is also made forappeal process.

The amendment provides that the Minister may make regulations relating to the registration and administration of home education.

The proposed amendment creates clarity on the powers and responsibilities of officials and of the parents of a learner who is educated at home.

The amendment proposes steps to protect parents who want to educate their children at home in the Further Education and Training Phase (grades 10 – 12) and will ensure that the final qualification obtained will give the learner opportunities for further study at institutions of higher education.

**2.36 Clause 36**seeks to amend section 59 of the SASA to provide for a technical amendment and to create an offence where aparent who is applying for admission of a learner to a public school or for exemption from the payment of school fees submits false or misleading information, or submits a forged document or one which purports to be a true copy of the original but is not.

This amendment seeks to eliminate the risks associated with the provision of false information.

**2.37 Clause 37** inserts a new section 59A into the SASA to provide for dispute resolution mechanisms in the event of any dispute between anSGB and the HoD or the MEC.

It is anticipated that this amendment will save costs for all concerned and will enable the parties involved to resolve disputes amicably.

**2.38 Clause 38**seeks to amend section 60 of the SASA. This section deals with the liability of the State for any delictual or contractual damages caused as a result of any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with.

This amendment seeks to protect the interests of the State in the case where a school does not comply with the provisions of the Act.

**2.39 Clause 39** seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy; on the admission of learners to publicschools*;*onthe prohibition of the payment of unauthorised remuneration or the giving of other financial benefit or benefit in kind to employees;on minimum norms and standards for provincial teacher development institutes and district teacher development centres; on the organisation, roles and responsibilities of education districts; and on a national education information system. The clause also provides for the possibility of creating offences in the regulations made by Minister.

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

**Employment of Educators Act (paragraphs 2.40 to 2.52 – clauses 40 to 51)**

**2.40 Clause 40**amends section 1 of the EEA by deleting obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the references to “adult basic education centre” and “further education and training Institution”.

**2.41 Clause 41** seeks to amend section 5 of the EEA by deleting obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the references to “further education and training institution”, “adult basic education centre”, “institution” and “centre”.

**2.42 Clause 42**seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility thatan appointment to a promotional post can be made on probation. The intention is to close the gap and extend the provision to promotional posts in addition to appointments. The clause also provides for a technical amendment with regard to how the Constitution of the Republic of South Africa is referenced, in line with the Citation of Constitutional Laws Act, 2005(Act No. 5 of 2005).

**2.43 Clause 43**deletes the obsolete references to “council” and “adult education and training centre” in section 8 of the EEA.

**2.44 Clause 44** seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.

**2.45 Clause 45** seeks to delete obsolete references to “institutions” and “centres” in section 11 of the EEA.

**2.46 Clause 46**amends section 17 of the EEA by inserting a phrase that expands the list of acts of serious misconduct. This is necessary because "conducting business with the state" is a new act of serious misconduct that is introduced in the Bill, and the current section 17 is no longer adequate. The new phrase is worded in such a way that it will cover any acts of misconduct that may be identified in future legislation.

**2.47 Clause 47**seeks to delete the obsolete references to “adult learning centre” in section 18 (dealing with issues of misconduct) of the EEA and includes a provincial department of education within the ambit of the section.

**2.48 Clause 48** inserts a new section 19 into the EEA, prohibiting educators from conducting business with the State or from being a director of a public or private company conducting business with the State, and creates an offence should aneducator contravene the abovementioned provision. Such contravention will also constitute serious misconduct, which shallresult in the termination of the educator's employment by the employer.

This amendment aims to promote good governance, to protect the financial interests of the State, and to prevent corruption.

**2.49 Clause 49**seeks to amend section 35 of the EEA to extend the powers of the Minister to make regulations on norms and standards for district staffing, which will have the force of law.

**2.50 Clause 50**repeals section 38 of the EEA, which has become obsolete.

**2.51 Clause 51**seeks to delete the obsolete references to “public further education and training institution or public adult learning centre” in Schedule 1 of the EEA.

**2.52 Clause 52**seeks to delete the obsolete references to “public further education and training institution or public adult learning centre” in Schedule 2 of the EEA. It also provides for a timeframe within which an appeal contemplated in Schedule 2 must be considered.

**Short Title (paragraph 2.53– clause 53)**

**2.53 Clause 53**contains the short title and provides that the Act comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.