

REPUBLIC OF SOUTH AFRICA

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**HIGHER EDUCATION AND  
TRAINING LAWS AMENDMENT  
BILL**

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

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(MINISTER OF HIGHER EDUCATION AND TRAINING)

**[B 26B—2010]**

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## 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 Adult Basic Education and Training Act, 2000, so as to amend certain definitions; to make provision for the employment of educators at public centres by inserting provisions in the said Act with regard to employers of educators, salaries and other conditions of service of educators, the educator establishment, powers of employers, appointments and the filling of posts, the transfer of educators, the secondment of educators, the retirement of educators, the discharge of educators, incapacity and misconduct and the performance of other work by educators; to provide for transitional arrangements with regard to public centres; to make provision for the determination of national education policy for public centres, for directive principles of national education policy, for consultation on policy and legislation, for the publication of national education policy and for the monitoring and evaluation of adult education and training; and to provide for quality assurance in respect of the qualifications offered by public and private centres; and
- the Further Education and Training Colleges Act, 2006, so as to amend certain definitions; to make provision for the determination of national education policy for colleges, for directive principles of national education policy, for consultation on policy and legislation, for the publication of national education policy and for the monitoring and evaluation of further education and training; to make provision for the Council of Education Ministers and the Heads of Education Departments Committee and for their administrative functions; to provide for transitional arrangements with regard to colleges; and to provide for quality assurance in respect of the qualifications offered by colleges;

and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Amendment of section 1 of Act 52 of 2000

1. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by—

- (a) the substitution for the definition of “**adult basic education and training**” of the following definition:

“**‘adult [basic] education and training’** means all learning and training programmes for adults [from] on level 1 [to 4 where level 4 is equivalent to—

(a) **grade 9 in public schools; or**

(b) registered on the national qualifications framework [level 1 as] contemplated in the [South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)] National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;

(b) the substitution for the definition of “**Council of Education Ministers**” of the following definition: 10

“**‘Council of Education Ministers’** means the Council established [under section 9 of the National Education Policy Act, 1996 (Act No. 27 of 1996)] by section 41H of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);”;

(c) the substitution for the definition of “**Department**” of the following definition: 15

“**‘Department’** means the [government department responsible for education at national level] Department of Higher Education and Training;”;

(d) the substitution for the definition of “**educator**” of the following definition: 20

“**‘educator’** means any person who teaches, educates or trains [a learner] another person, or provides professional educational services, including professional therapy and education psychological services, at [a] any public centre and who is appointed in a post on any educator establishment contemplated in section 20F;”;

(e) the insertion after the definition of “**educator**” of the following definition: 25

“**‘employer’**, in relation to any provision of Chapter 4, 5 or 7 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), which applies to, or is connected with, an educator in the service of—

(a) the Department of Higher Education and Training, means the Director-General; and

(b) a provincial education department, means the Head of Department;”;

(f) the insertion after the definition of “**Head of the Department**” of the following definition: 35

“**‘Labour Relations Act’** means the Labour Relations Act, 1995 (Act No. 66 of 1995);”;

(g) the substitution for the definition of “**Minister**” of the following definition:

“**‘Minister’** means the Minister of Higher Education and Training;”;

(h) the substitution for the definition of “**NABABET**” of the following definition: 40

“**‘[NABABET] NABAET’** means the National Advisory Board for Adult [Basic] Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);”;

(i) the insertion after the definition of “**policy**” of the following definition: 45

“**‘prescribed’** means prescribed by regulation made in terms of section 41;”.

#### **Amendment of section 11 of Act 52 of 2000**

2. Section 11 of the Adult Basic Education and Training Act, 2000, is hereby amended by— 50

(a) the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of [section 5 of the Employment of Educators Act] Chapter 3A; and”;

(b) the substitution for subsection (7) of the following subsection: 55

“(7) [After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996, the] The Minister may, by notice in the *Government Gazette*, determine norms

and standards [by notice in the *Government Gazette*] regarding the funds used for the employment of staff referred to in subsection (2), but such norms and standards may not be interpreted [so] as [to make] making the State a joint employer of such staff.”.

### Repeal of section 12 of Act 52 of 2000

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3. Section 12 of the Adult Basic Education and Training Act, 2000, is hereby repealed.

### Insertion of Chapter 3A in Act 52 of 2000

4. The following Chapter is hereby inserted in the Adult Basic Education and Training Act, 2000, after Chapter 3:

#### “CHAPTER 3A

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##### Application of Chapter

20B. This Chapter applies to the employment of educators at public centres in the Republic.

##### Employers of educators and other persons

20C. (1) Save as is otherwise provided in this section, the Head of Department shall be the employer of educators in the service of the provincial education department in posts on the educator establishment of public centres for all purposes of employment. 15

(2) For the purposes of determining the salaries and other conditions of service of educators, the Minister shall be the employer of all educators contemplated in subsection (1). 20

(3) For the purposes of creating posts on the educator establishment of public centres in a provincial education department, the Member of the Executive Council shall be the employer of educators in the service of that department. 25

##### Salaries and other conditions of service of educators

20D. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators. 30

(2) Different salaries and conditions of service contemplated in subsection (1) may be determined in respect of different ranks and grades of educators.

(3) A determination by the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance. 35

##### Educator establishment

20E. (1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts, the educator establishment of a provincial education department shall consist of the posts created by the Member of the Executive Council. 40

(2) The educator establishment of any public centre under the control of a provincial education department shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said public centre or office by the Head of Department from the educator establishment of that department. 45

- (3) For the purposes of this Chapter—
- (a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to re-designate, to convert or to abolish the post; and
  - (b) the power to allocate a post under this section shall include the power to re-allocate the post.
- (4) The non-educator establishment of a public centre is determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

### **Powers of employers**

**20F.** (1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator, in the service of a provincial education department shall be made, or effected, by the Head of Department.

(2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.

### **Appointments and filling of posts**

**20G.** (1) In the making of any appointment or the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996, and which include—

- (a) the ability of the candidate; and
- (b) the need to redress the imbalances of the past in order to achieve broad representation.

(2) A person may be appointed under this Chapter—

- (a) in a permanent capacity, whether on probation or not;
- (b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or
- (c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

### **Transfer of educators**

**20H.** (1) Subject to the provisions of this Chapter, the Head of Department may transfer any educator in the service of—

- (a) the relevant department to any post or position in any other department of state with the prior approval of the person in that other department of state having the power to appoint or to transfer and with the consent of that educator; and
- (b) the provincial education department to any other post in that department.

(2) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the written consent of that educator.

### **Secondment of educators**

**20I.** (1) Any educator in the service of any provincial education department may, with the written consent of that educator, be placed at the disposal of—

- (a) another department of education;
- (b) another government; or

(c) any other body or person,  
for a particular service or for a stated period on such conditions, in addition  
to the conditions prescribed by or under any law, as may be determined by  
the Head of Department.

(2) While so placed at such disposal, the educator shall remain subject to  
the provisions of this Act. 5

### Retirement

**20J.** (1) Subject to the provisions of this section—

- (a) an educator shall have the right to retire, and shall be so retired, on the  
day on which the educator attains the age of 65 years; and 10  
(b) an educator who attains the said age after the first day of a month shall  
be deemed to have attained that age on the first day of the following  
month.

(2) Notwithstanding the provisions of subsection (1), an educator who  
was in employment immediately before 2 September 1994 in terms of a law 15  
repealed by the Educators' Employment Act, 1994 (promulgated under  
Proclamation No. 138 of 1994), shall have the right to retire on or after  
attaining the retirement age applicable to the educator immediately before  
the said date.

(3) Notwithstanding— 20

- (a) the provisions of subsections (1) and (2), an educator shall have the  
right to retire on or after attaining the age of 55 years; and  
(b) the absence of any reason for discharge in terms of section 20K, the  
employer may, at the request of an educator, allow the educator to  
retire before attaining the age of 55 years, if the employer is of the  
opinion— 25  
(i) that a sufficient reason exists therefor; and  
(ii) that the retirement will be to the advantage of the State.

(4) Notwithstanding the provisions of this section, an educator— 30

- (a) who was in employment immediately before 1 May 1996;  
(b) who, without interruption of service, has completed a period of 10  
years' continuous pensionable service in terms of the pension law  
applicable to the educator; and  
(c) who has attained the age of 50 years,  
shall have the right to retire. 35

### Discharge of educators

**20K.** (1) The employer may, having due regard to the applicable  
provisions of the Labour Relations Act, discharge an educator from  
service—

- (a) on account of continuous ill-health; 40  
(b) on account of the abolition of the educator's post or any reduction in,  
or reorganisation or re-adjustment of, the post establishments of  
departments or public centres;  
(c) if, for reasons other than the educator's own unfitness or incapacity,  
the educator's discharge will promote efficiency or economy in the 45  
department or public centre in which the educator is employed, or will  
otherwise be in the interest of the State;  
(d) on account of unfitness for the duties attached to the educator's post or  
incapacity to carry out those duties efficiently;  
(e) on account of misconduct; 50  
(f) if the educator was appointed in the post in question on the grounds of  
a misrepresentation made by the educator relating to any condition of  
appointment; and  
(g) if, in the case of an educator appointed on probation, the educator's  
appointment is not confirmed. 55

(2) If an educator is discharged from service in terms of subsection (1)(f),  
that educator shall be deemed to have been discharged on account of  
misconduct.

### Discharge on account of ill-health

20L. An educator may be discharged on account of ill-health in the circumstances referred to in Schedule 1 to the Employment of Educators Act.

### Discharge of educators appointed on probation

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20M. (1) If it is not desirable to confirm the appointment, transfer or promotion of an educator on probation, the employer may, notwithstanding anything to the contrary contained in this Act but subject to this section—  
 (a) extend the period of probation of the educator; or  
 (b) after reasonable notice to the educator, discharge the educator from service upon the expiry of the period of probation or any extension thereof.

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(2) No appointment, transfer or promotion on probation may be extended, and no educator who is serving on probation may be discharged from service, if—

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(a) the educator has been diligent;  
 (b) the educator's conduct has been uniformly satisfactory;  
 (c) the educator is in all respects suitable for the post which the educator holds; and  
 (d) the educator has complied with all the conditions applicable to the educator's appointment, transfer or promotion.

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(3) An educator whose transfer or promotion on probation is not confirmed and who immediately before such transfer or promotion was an educator, other than an educator on probation, shall be transferred to the post formerly held by that educator, or to a post of equivalent grading.

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### Resignation

20N. (1) An educator may resign by giving 90 days' notice in writing or such shorter notice as the employer may approve at the request of the educator.

(2) If the name of an educator is struck off the register of educators kept by the South African Council for Educators, the educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the day following immediately after the day on which the educator's name was so struck off.

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### Incapacity and misconduct

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20O. The incapacity and misconduct of educators are dealt with in accordance with the procedure contemplated in Chapter 5 read with Schedules 1 and 2 to the Employment of Educators Act.

### Performance of other work by educators

20P. (1) Unless an educator's conditions of service provide otherwise—  
 (a) an educator shall place such time as the Minister may determine at the disposal of the employer;  
 (b) no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work; and  
 (c) no educator may claim additional remuneration in respect of any official duty or work which the educator—  
     (i) performs voluntarily; or  
     (ii) has been ordered to perform by a competent authority.

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(2) The employer may order an educator to perform, on a temporary basis, duties other than those ordinarily assigned to the educator, if such temporary duties are appropriate to the grade, designation or classification of the educator's post.

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### Transitional arrangements in respect of public centres

**20Q.** (1) For the purposes of this Chapter and with regard to employment and related matters, an educator employed at a public centre under the Employment of Educators Act prior to 31 December 2010, will continue to be employed on the post establishment of that public centre, and the post occupied by that educator shall be deemed to be a post created by the Member of the Executive Council in terms of this Chapter.

(2) The post establishment of the public centre existing immediately before 31 December 2010 shall be deemed to be the educator establishment of that public centre for the purposes of section 20E.

(3) The employment and related matters contemplated in subsection (1), such as salary and other conditions of service applicable to an educator, shall continue to be applicable to that educator for the purposes of this Act and shall be deemed to have been determined by the Minister in terms of section 20D.”.

### Insertion of Chapter 4A in Act 52 of 2000

5. The following Chapter is hereby inserted in the Adult Basic Education and Training Act, 2000, after Chapter 4:

#### “CHAPTER 4A

##### Objectives of Chapter

**25A.** The objectives of this Chapter are to provide for—

- (a) the determination of national education policy by the Minister in accordance with certain principles;
- (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purposes of consultation;
- (c) the publication and implementation of national education policy; and
- (d) the monitoring and evaluation of adult education and training.

##### Determination of national education policy for centres

**25B.** (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) In determining national policy for adult education and training at centres, the Minister shall take into account the competence of the provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to adult education and training.

(3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on adult education and training if there is a conflict between the national and provincial policies.

(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the adult education and training system and, without derogating from the generality of this section, may determine national policy for—

- (a) adult education and training management information systems, including the provision of data in accordance with the international obligations of the government;
- (b) the organisation, management and governance of the national adult education and training system;
- (c) facilities, finance and development plans for adult education and training, including advice to the Financial and Fiscal Commission;
- (d) innovation, research and development in adult education and training;
- (e) the organisation, management, governance, funding, establishment and registration of centres;



- (f) curriculum frameworks, core syllabuses and adult education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body; 5
- (g) co-operation between the Department and—  
 (i) other state departments;  
 (ii) provincial education departments;  
 (iii) local government; and  
 (iv) non-government organisations,  
 with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme; 10
- (h) international relations in the field of adult education and training; and  
 (i) executive functions required to implement national education policy determined in terms of this Chapter, including the implementation of measures to address past discriminatory practices. 15

### Directive principles of national education policy

**25C.** The policy contemplated in section 25B shall be directed toward—

- (a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution and in terms of international conventions approved by Parliament, in particular the right—  
 (i) of every person to be protected against unfair discrimination within or by the Department or centres on any ground whatsoever; 25  
 (ii) of every person to receive adult education and training and to have equal access to public centres;  
 (iii) of every person to gain access to adult education and training;  
 (iv) of every learner to be instructed in the language of his or her choice where this is reasonably practicable; 30  
 (v) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at centres;  
 (vi) of every person to establish, where practicable, centres based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and 35  
 (vii) of every person to use the language and participate in the cultural life of his or her choice at centres;
- (b) enabling the adult education and training system to contribute to the full personal development of each learner, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes; 40
- (c) achieving equitable education opportunities and the redress of past inequality in adult education and training provision, including the promotion of gender equality and the advancement of the status of women; 45
- (d) endeavouring to ensure that no person, as a result of physical disability, is denied the opportunity to receive adult education and training to the maximum of his or her ability;
- (e) providing opportunities for and encouraging lifelong learning; 50
- (f) achieving an integrated approach to adult education and training within a national qualifications framework;
- (g) cultivating skills, disciplines and capacities necessary for reconstruction and development;
- (h) recognising the aptitudes, abilities, interests, prior knowledge and experience of learners; 55
- (i) encouraging independent and critical thought;
- (j) promoting a culture of respect for teaching and learning at centres;
- (k) promoting enquiry, research and the advancement of knowledge;
- (l) enhancing the quality of adult education and training and educational innovation— 60

- (i) through systematic research and development in respect of adult education and training;
  - (ii) through monitoring and evaluation of adult education and training provision and performance; and
  - (iii) through the training of educators and adult education and training managers;
- (m) ensuring broad public participation in the development of adult education and training policy and the representation of stakeholders in the governance of all aspects of the adult education and training system;
- (n) achieving the cost-effective use of adult education and training resources and sustainable implementation of adult education and training services;
- (o) achieving close co-operation between the national and provincial governments on matters relating to adult education and training, including the development of capacity in the Department and the effective management of the national adult education and training system.

### Consultation on national education policy

**25D.** (1) Policy contemplated in section 25B shall be determined by the Minister after consultation with the Council of Education Ministers.

(2) The policy contemplated in section 25B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

### Consultation on legislation

**25E.** Legislation on a matter contemplated in section 25B shall be introduced in Parliament or, in the case of regulations, be published in the *Gazette* only after consultation between the Minister and—

- (a) the Council of Education Ministers, in respect of adult education and training at centres; and
- (b) all the parties in the Education Labour Relations Council established by section 40 of the Labour Relations Act, in respect of any matter falling within the objectives of that Act.

### Publication of national education policy

**25F.** The Minister shall within 21 days after determining policy in terms of section 25B—

- (a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument with regard to which the notice was issued may be obtained; and
- (b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

### Monitoring and evaluation of adult education and training

**25G.** (1) The Minister shall direct that the standards of adult education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national adult education and training policy, particularly as determined in terms of section 25B.

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the Council of Education Ministers.

(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of adult education and training management information systems, or by other suitable means, in co-operation with provincial departments of education.

(4) The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of adult education and training provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the relevant provincial education department to comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of adult education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 25B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned, in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

#### **Functions of Council of Education Ministers in respect of adult education and training**

**25H.** The Council of Education Ministers must—

- (a) promote a national adult education and training policy which takes full account of the policies of the government;
- (b) share information and views on all aspects of adult education and training in the Republic; and
- (c) co-ordinate action on matters of mutual interest to the national and provincial governments.

#### **Functions of Heads of Education Departments Committee in respect of adult education and training**

**25I.** The Heads of Education Departments Committee established by section 41I of the Further Education and Training Act, 2006 (Act No. 16 of 2006), must—

- (a) facilitate the development of a national adult education and training system in accordance with the objectives and principles provided for in this Act;
- (b) share information and views on national adult education and training;
- (c) co-ordinate administrative action on matters of mutual interest to the Department and the provincial education departments; and
- (d) advise the Department on any matter contemplated in sections 25B to 25G and 25J in respect of adult education and training or on any other matter relating to the proper functioning of the national adult education and training system.

### Transitional arrangements regarding policy

25J. Any policy determined in terms of the National Education Framework Act, 1996 (Act No. 27 of 1996), up to 31 December 2010 and applicable to Adult Basic Education and Training Centres remains in force and effect until amended or repealed by the Minister in terms of this Act.” 5

### Substitution of section 32 of Act 52 of 2000, as substituted by section 29 of Act 50 of 2002

6. The following section is hereby substituted for section 32 of the Adult Basic Education and Training Act, 2000:

#### “Quality assurance of public and private centres 10

**32.** (1) Umalusi must, in accordance with the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), read with the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), perform the functions relating to a Quality Council in respect of all qualifications offered by a public or private centre. 15

(2) For the purposes of this section, “Umalusi” means the council established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).”

### Substitution of section 44 of Act 52 of 2000

7. The following section is hereby substituted for section 44 of the Adult Basic Education and Training Act, 2000: 20

#### “Short title

**44.** This Act is called the Adult [**Basic**] Education and Training Act, 2000.”

### Substitution of certain expressions in Act 52 of 2000 25

8. The Adult Basic Education and Training Act, 2000, is hereby amended by—
- (a) the substitution for the expression “NABABET”, wherever it occurs, of the expression “NABAET”;
  - (b) the substitution for the expression “adult basic education and training”, wherever it occurs, of the expression “adult education and training”; and 30
  - (c) the substitution for the expression “provincial department of education”, wherever it occurs, of the expression “provincial education department”.

### Amendment of section 1 of Act 16 of 2006

9. Section 1 of the Further Education and Training Colleges Act, 2006, is hereby amended by— 35

- (a) the substitution for paragraph (b) of the definition of “college” of the following paragraph:
  - “(b) a college under the authority of a government department other than the Department [**of Education**]”;;
- (b) the substitution for the definition of “**Department**” of the following definition: 40
  - “**‘Department’** means the [**government department responsible for education at national level**] Department of Higher Education and Training;”; and
- (c) the substitution for the definition of “**Minister**” of the following definition: 45
  - “**‘Minister’** means the Minister of Higher Education and Training;”.

**Insertion of Chapter 6A in Act 16 of 2006**

10. The following Chapter is hereby inserted in the Further Education and Training Colleges Act, 2006, after Chapter 6:

**“CHAPTER 6A****Objectives of Chapter**

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**41A.** The objectives of this Chapter are to provide for—

- (a) the determination of national education policy by the Minister in accordance with certain principles;
- (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purposes of consultation;
- (c) the publication and implementation of national education policy; and
- (d) the monitoring and evaluation of education and training within the scope of qualifications offered by a further education and training college.

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**Determination of national education policy for colleges**

**41B.** (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) In determining national policy for education and training at colleges, the Minister shall take into account the competence of the provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to education.

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(3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on further education and training if there is a conflict between the national and provincial policies.

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(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the further education and training system and, without derogating from the generality of this section, may determine national policy for—

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- (a) further education and training management information systems, including the provision of data in accordance with the international obligations of the government;
- (b) the organisation, management and governance of the national further education and training system;
- (c) facilities, finance and development plans for further education and training, including advice to the Financial and Fiscal Commission;
- (d) innovation, research and development in further education and training;
- (e) the organisation, management, governance, funding, establishment and registration of colleges;
- (f) curriculum frameworks, core syllabuses and further education and training programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;
- (g) co-operation between the Department and—
  - (i) other state departments;
  - (ii) provincial education departments;
  - (iii) local government; and
  - (iv) non-government organisations,
 with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;
- (h) international relations in the field of further education and training;

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- (i) executive functions required to implement national education policy determined in terms of this Chapter, including the implementation of measures to address past discriminatory practices.

### **Directive principles of national education policy**

- 41C.** The policy contemplated in section 41B shall be directed toward— 5
- (a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution and in terms of international conventions approved by Parliament, in particular the right—
- (i) of every person to be protected against unfair discrimination within or by the Department or colleges on any ground whatsoever; 10
  - (ii) of every person to receive further education and to have training and equal access to public colleges;
  - (iii) of a parent or guardian in respect of the further education and training of his or her child or ward; 15
  - (iv) of every child in respect of his or her further education and training;
  - (v) of every student to be instructed in the language of his or her choice where this is reasonably practicable; 20
  - (vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association at colleges;
  - (vii) of every person to establish, where practicable, colleges based on a common language, culture or religion, as long as there is no discrimination on the ground of race; and 25
  - (viii) of every person to use the language and participate in the cultural life of his or her choice at colleges;
- (b) enabling the further education and training system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes; 30
- (c) achieving equitable education opportunities and the redress of past inequality in further education and training provision, including the promotion of gender equality and the advancement of the status of women; 35
- (d) endeavouring to ensure that no person, as a result of physical disability, is denied the opportunity to receive further education and training to the maximum of his or her ability; 40
- (e) providing opportunities for and encouraging lifelong learning;
- (f) achieving an integrated approach to adult education and training within a national qualifications framework;
- (g) cultivating skills, disciplines and capacities necessary for reconstruction and development; 45
- (h) recognising the aptitudes, abilities, interests, prior knowledge and experience of students;
- (i) encouraging independent and critical thought;
- (j) promoting a culture of respect for teaching and learning at colleges;
- (k) promoting enquiry, research and the advancement of knowledge; 50
- (l) enhancing the quality of further education and training and educational innovation—
- (i) through systematic research and development on further education and training;
  - (ii) through monitoring and evaluating the further education and training provision and performance; and 55
  - (iii) through the training of educators and further education and training managers;

- (m) ensuring broad public participation in the development of further education and training policy and the representation of stakeholders in the governance of all aspects of the further education and training system;
- (n) achieving the cost-effective use of further education and training resources and sustainable implementation of further education and training services; 5
- (o) achieving close co-operation between the national and provincial governments on matters relating to further education and training, including the development of capacity in the Department, and the effective management of the national further education and training system. 10

#### **Consultation on national education policy**

**41D.** (1) Policy contemplated in section 41B shall be determined by the Minister after consultation with the Council of Education Ministers established by section 41H. 15

(2) The policy contemplated in section 41B shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy. 20

#### **Consultation on legislation**

**41E.** Legislation on a matter contemplated in section 41B shall be introduced in Parliament or, in the case of regulations, be published in the *Gazette* only after consultation between the Minister and— 25

- (a) the Council of Education Ministers established by section 41H in respect of further education and training at colleges; and
- (b) all the parties in the Education Labour Relations Council referred to in section 54(3) in respect of any matter falling within the functions of the bargaining council. 30

#### **Publication of national education policy**

**41F.** The Minister shall within 21 days after determining policy in terms of section 41B—

- (a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument issued with regard thereto may be obtained; 35
- (b) table the policy instrument contemplated in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament. 40

#### **Monitoring and evaluation of further education and training**

**41G.** (1) The Minister shall direct that the standards of further education and training provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national further education and training policy, particularly as determined in terms of section 41B. 45

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the Council of Education Ministers referred to in section 41D(1). 50

(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of 55

further education and training management information systems, or by other suitable means, in co-operation with provincial education departments.

(4) The Department shall fulfil its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of further education and training provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the provincial education department concerned to comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of further education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 41B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned, in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.

#### **Council of Education Ministers**

**41H.** (1) There is hereby established a council, called the Council of Education Ministers, consisting of—

- (a) the Minister, who is the chairperson; and
- (b) every provincial political head of education.

(2) The Director-General shall attend meetings of the Council of Education Ministers in order to report on the proceedings of the Heads of Education Departments Committee established by section 41I, and to advise on any other matter relating to the responsibilities of the Department.

(3) The chairpersons of the Portfolio Committee on Higher Education and Training of the National Assembly and of the Select Committee on Education and Recreation of the National Council of Provinces may attend meetings of the Council of Education Ministers.

(4) The functions of the Council of Education Ministers shall be to—

- (a) promote national further education and training which take full account of the policies of the government;
- (b) share information and views on all aspects of further education and training in the Republic; and
- (c) co-ordinate action on matters of mutual interest to the national and provincial governments.

(5) The Council of Education Ministers may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other administrative or procedural matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.

(6) The proceedings of the Council of Education Ministers shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.

#### **Heads of Education Departments Committee**

**41I.** (1) There is hereby established a committee, called the Heads of Education Departments Committee (in this section referred to as the Committee), consisting of—

- (a) the Director-General, who shall be the chairperson;



- (b) the Deputy Directors-General of the Department; and  
 (c) the Heads of the provincial education departments.
- (2) The functions of the Committee shall be to—
- (a) facilitate the development of a national further education and training system in accordance with the objectives and principles provided for in this Act; 5
- (b) share information and views on national further education and training;
- (c) co-ordinate administrative action on matters of mutual interest to the higher education and training departments; and 10
- (d) advise the Department on any matter contemplated in sections 41B to 41G and 41J in respect of further education and training, or on any other matter relating to the proper functioning of the national further education and training system.
- (3) The Committee may establish subcommittees to assist it in the performance of its functions, and— 15
- (a) may appoint persons who are not members of the Committee to be members of a subcommittee: Provided that the organised teaching profession shall be invited to nominate representatives as members of each subcommittee; 20
- (b) designate the chairperson of a subcommittee or direct that the chairperson be appointed by the subcommittee from among its members.
- (4) (a) Meetings of the Committee shall be held at such times and places as the chairperson of the Committee may determine. 25
- (b) The proceedings of the Committee shall not be invalid merely by virtue of the fact that there is a vacancy in the Committee.
- (c) If the chairperson of the Committee is absent from a meeting of the Committee, one of the Deputy Directors-General designated for this purpose by the chairperson shall take the chair at that meeting. 30
- (5) The Committee may draw up rules regarding the convening of meetings, the frequency of meetings, the procedure at meetings, including the quorum for meetings, and any other administrative or procedural matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers: Provided that the Committee shall not hold less than four meetings per year. 35

#### **Allowances and remuneration of members of subcommittees**

**41J.** A member of a subcommittee who is not in the full-time employment of the State may, in respect of the services rendered by that member in connection with the affairs of the subcommittee and from money appropriated for that purpose by Parliament, be paid such travelling and subsistence and other allowances as the Minister, with the concurrence of the Minister of Finance, may determine. 40

#### **Administrative functions of Council and Committee**

**41K.** (1) The administrative functions of the Council established by section 41H and the Committee established by section 41I shall be performed by officials of the Department who are designated by the Director-General for that purpose. 45

(2) The Director-General shall in respect of the Council and the Committee contemplated in subsection (1) designate a Secretary under whose direction the other officials shall perform their functions. 50

#### **Consultative bodies**

**41L.** (1) The Minister may by regulation establish a body to be known as the National Education and Training Council and other bodies to advise him or her on any matter contemplated in section 41B or any matter identified by the Minister. 55

(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation.

#### **Transitional arrangements regarding policy**

**41M.** Any policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), up to 31 December 2010 and applicable to Further Education and Training Colleges remains in force and effect until amended or repealed by the Minister in terms of this Act.” 5

#### **Amendment of section 42 of Act 16 of 2006**

**11.** Section 42 of the Further Education and Training Colleges Act, 2006, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10

“Subject to the norms and standards set by the Minister in terms of [section 3 of the National Education Policy Act, 1996 (Act 27 of 1996), and by SAQA,] section 41B, the Director-General must—” 15

#### **Amendment of section 43 of Act 16 of 2006**

**12.** Section 43 of the Further Education and Training Colleges Act, 2006, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection: 20  
 “(1) The Minister may prescribe minimum norms and standards for further education and training programmes, leading to qualifications within the sub-framework for general and further education and training contemplated in section 7(a) read with section 13(1)(h) of the National Qualifications Framework Act, that are offered at colleges.”; and

(b) the addition of the following subsection: 25  
 “(5) A college may apply to the Quality Council for Trades and Occupations established in terms of section 26G of the Skills Development Act, 1998 (Act No. 97 of 1998), for accreditation as a Skills Development Provider in order to offer qualifications registered on the sub-framework for Trades and Occupations contemplated in section 7(c) of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).” 30

#### **Short title**

**13.** This Act is the Higher Education and Training Laws Amendment Act, 2010.

## **MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL, 2010**

### **1. MAIN OBJECT OF BILL**

1.1 The main object of the Bill is to align the laws listed in subparagraph 1.2 with the new education dispensation that came about during 2009 when the former Department of Education was split into the Department of Basic Education and the Department of Higher Education and Training as a result of the transfer of the administration and powers and functions entrusted by those laws in terms of section 97 of the Constitution of the Republic of South Africa, 1996, to certain Cabinet members by Proclamation No. 44 of 2009, published in *Government Gazette* No. 32367 of 1 July 2009.

1.2 The laws that the Bill seeks to align are—

- the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000) (the ABET Act); and
- the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006) (the FETC Act).

1.3 Even though the Bill seeks to introduce new sections in the ABET Act and the FETC Act these sections are in fact incorporations of existing statutory provisions applicable to these institutions before the transferral referred to in paragraph 1.1. These existing statutory provisions, currently contained in the National Education Policy Act, 1996 (Act No. 27 of 1996), and in the Employment of Educators Act, 1998 (Act No. 76 of 1998), are laws that have been primarily transferred to the Minister of Basic Education and that are relevant to adult education and training centres and further education and training colleges only in so far as the laws relate to those institutions. The application of these laws becomes quite complex because two ministers must share the administration of the same laws. In order to make the complex situation more user friendly, it is proposed that the relevant provisions of the aforementioned laws be incorporated into the ABET Act and the FETC Act, respectively. This approach does not change any legal framework, but consolidates various pieces of legislation into one Act and makes the implementation of the legal framework easier. If this approach is not followed, the implementation of the current legal framework can only be accommodated through complex rules of legal interpretation, which rules are not necessarily easily understood by the lay person in law that mostly manage these institutions.

### **2. MAIN FEATURES OF BILL**

#### **2.1 ABET Act (clauses 1 to 8)**

2.1.1 The Bill seeks to amend the definitions of “adult basic education and training”, “Council of Education Ministers”, “Department”, “educator”, “employer”, “Minister” and “NABABET” in section 1 of the ABET Act in order to bring them line with the creation of the Ministry and Department of Higher Education and Training. For the same reason the Bill seeks to remove references to the National Education Policy Act, 1996, and the Employment of Educators Act, 1998, in section 11 of the ABET Act. As a result of certain of the proposed amendments to the ABET Act it is also necessary to define certain words and expressions used in the new proposed provisions.

2.1.2 The Bill seeks to insert a new Chapter 3A in the ABET Act in order to make provision for the employment of educators at public centres by inserting provisions in the ABET Act with regard to employers of educators, salaries and other conditions of service of educators, the educator establishment of public centres, powers of employers, appointments and filling of posts at public centres, the transfer of educators, the secondment of educators, the retirement of educators, the discharge of educators, incapacity and misconduct of educators, the performance of other work by educators and transitional arrangements with regard to public centres.

2.1.3 The Bill seeks to insert a new Chapter 4A in the ABET Act in order to make provision for the determination of national education policy for adult education and training centres, for directive principles of national education policy and for consultation on policy and legislation, for the publication of national education policy, for the monitoring and evaluation of adult education and training, for the functions of the Council of Education Ministers in respect of adult education and training, for the functions of the Heads of Education Departments Committee in respect of adult education and training and for transitional arrangements with regard to current policy.

2.1.4 The Bill proposes that Umalusi must carry out quality assurance in respect of the qualifications offered by public and private centres.

2.15 The Bill seeks to change the name of the ABET Act to the Adult Education and Training Act, 2000.

## **2.2 FETC Act (clauses 9 to 12)**

2.2.1 The Bill seeks to amend the definitions of “college”, “Department” and “Minister” in section 1 of the FETC Act in order to bring them line with the creation of the Ministry and Department of Higher Education and Training.

2.2.2 The Bill seeks to insert a new Chapter 6A in the FETC Act in order to make provision for the determination of national education policy for adult education and training centres, for directive principles of national education policy and for consultation on policy and legislation, for the publication of national education policy, for the monitoring and evaluation of adult education and training, for the Council of Education Ministers, for the Heads of Education Departments Committee, for consultative bodies and for transitional arrangements with regard to current policy. The amendments proposed to sections 42 and 43 of the FETC Act are consequences of the insertion of the new Chapter 6A in that the amendments provide that the promotion of quality in further education and training must be done subject to the norms and standards set by the Minister in terms of section 41B (in the new Chapter 6A).

## **3. CONSULTATION**

As the amendments proposed by the Bill are necessitated by the creation of the new Ministry, the Bill was not published for public comment in the *Gazette*.

## **4. FINANCIAL IMPLICATIONS**

There will be no financial implications.

## **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution, since it falls within a functional area listed in Schedule 4 of the Constitution, namely “Education at all levels, excluding tertiary education”.

5.2 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 any provisions pertaining to customary law or to the customs of traditional communities.