PRESIDENT'S OFFICE

No. 1867. 15 November 1996

NO. 84 OF 1996: SOUTH AFRICAN SCHOOLS ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

ACT

To provide for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and

WHEREAS this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State; and

WHEREAS it is necessary to set uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa;

(English text signed by the President.)

(Assented to 6 November 1996.)

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

CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise-

(i) "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

(ii) "Council of Education Ministers" means the Council of Education Ministers established by the National Education Policy Act, 1996 (Act No. 27 of 1996); (xix)

(iii) "education department" means the department established by section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a province; (xi)

(iv) "educator" means an educator as defined in the Educators Employment Act, 1994 (Proclamation No. 138 of 1994); (xiii)

(v) "governing body" means a governing body contemplated in section 16(1); (ii)

(vi) "grade" means that part of an educational programme which a learner may complete in one school year, or any other education programme which the Member of the Executive Council may deem to be equivalent thereto; (iv)

(vii) "Head of Department" means the head of an education department; (iii)

(viii) "independent school" means a school registered or deemed to be registered in terms of section 46; (x)

(ix) "learner" means any person receiving education or obliged to receive education in terms of this Act; (vii)

(x) "member of staff" means a person employed at a school; (xiv)

(xi) "Member of the Executive Council" means the Member of the Executive Council of a province who is responsible for education in that province; (viii)

(xii) "Minister" means the Minister of Education; (ix)

(xiii) "officer" means an employee of an education department appointed in terms of the Educators Employment Act, 1994 (Proclamation No. 138 of 1994), or the Public Service Act, 1994 (Proclamation No. 103 of 1994); (i)

(xiv) "parent" means-

(a) the parent or guardian of a learner;

(b) the person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school; (xiv)

(xv) "principal" means an educator appointed or acting as the head of a school; (xvi)

(xvi) "province" means a province established by section 124 of the Constitution; (xviii)

(xvii) "provincial legislature" means a provincial legislature contemplated in section 125 of the Constitution; (xvii)

(xviii) "public school" means a school contemplated in Chapter 3; (xii)

(xix) "school" means a public school or an independent school which enrols learners in one or more grades between grade zero and grade twelve; (xx)

(xx) "this Act" means this Act and all regulations promulgated under this Act. (vi)

Application of Act

2. (1) This Act applies to school education in the Republic of South Africa.

(2) A Member of the Executive Council and a Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

(3) Nothing in this Act prevents a provincial legislature from enacting legislation for school education in a province in accordance with the Constitution.

CHAPTER 2

LEARNERS

Compulsory attendance

3. (1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.

(2) The Minister must, by notice in the Government Gazette, determine the ages of compulsory attendance at school for learners with special education needs.

(3) Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsections (1) and (2).

(4) If a Member of the Executive Council cannot comply with subsection (3) because of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.

(5) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may-

(a) investigate the circumstances of the learner's absence from school;

(b) take appropriate measures to remedy the situation; and

(c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).

(6) Subject to this Act and any other applicable law-

(a) any parent who, without just cause and after a written notice from the Head of Department, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or

(b) any other person who, without just cause, prevents a learner who is subject to compulsory attendance from attending a school, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Exemption from compulsory attendance

4. (1) A Head of Department may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.

(2) Every Head of Department must maintain a register of all learners exempted from compulsory school attendance.

Admission to public schools

5. (1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

(2) The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorise the principal of the school or any other person to administer such test.

(3) No learner may be refused admission to a public school on the grounds that his or her parent-

(a) is unable to pay or has not paid the school fees determined by the governing body under section 39;

(b) does not subscribe to the mission statement of the school; or

(c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.

(4) The Minister may by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine age requirements for the admission of learners to a school or different grades at a school.

(5) Subject to this Act and any applicable provincial law, the admission policy of a public school is determined by the governing body of such school.

(6) In determining the placement of a learner with special education needs, the Head of Department and principal must take into account the fights and wishes of the parents of such learner.

(7) An application for the admission of a learner to a public school must be made to the education department in a manner determined by the Head of Department.

(8) If an application in terms of subsection (7) is refused, the Head of Department must inform the parent in writing of such refusal and the reason therefor.

(9) Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council.

Language policy of public schools

6. (1) Subject to the Constitution and this Act, the Minister may, by notice in the Government Gazette, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.

(2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.

(3) No form of racial discrimination may be practised in implementing policy determined under this section.

(4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.

Freedom of conscience and religion at public schools

7. Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.

Code of conduct

8. (1) Subject to any applicable provincial law, a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.

(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.

(3) The Minister may, after consultation with the Council of Education Ministers, determine guidelines for the consideration of governing bodies in adopting a code of conduct for learners.

(4) Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner.

(5) A code of conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

Suspension and expulsion from public school

9. (1) Subject to this Act and any applicable provincial law, the governing body of a public school may, after a fair hearing, suspend a learner from attending the school-

(a) as a correctional measure for a period not longer than one week; or

(b) pending a decision as to whether the learner is to be expelled from the school by the Head of Department.

(2) Subject to any applicable provincial law, a learner at a public school may be expelled only-

(a) by the Head of Department; and

(b) if found guilty of serious misconduct after a fair hearing.

(3) The Member of the Executive Council must determine by notice in the Provincial Gazette-

(a) the behaviour by a learner at a public school which may constitute serious misconduct;

(b) disciplinary proceedings to be followed in such cases;

(c) provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

(4) A learner or the parent of a learner who has been expelled from a public school may appeal against the decision of the Head of Department to the Member of the Executive Council.

(5) If a learner who is subject to compulsory attendance in terms of section 3(1) is expelled from a public school, the Head of Department must make an alternative arrangement for his or her placement at a public school.

Prohibition of corporal punishment

10. (1) No person may administer corporal punishment at a school to a learner.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

Representative council of learners

11. (1) A representative council of learners at the school must be established at every public school enrolling learners in the eighth grade and higher.

(2) A Member of the Executive Council may, by notice in the Provincial Gazette, determine guidelines for the establishment, election and functions of representative councils of learners.

(3) The Member of the Executive Council may, by notice in the Provincial Gazette, exempt a public school for learners with special education needs from complying with subsection (1) if it is not practically possible for a representative council of learners to be established at the school.

CHAPTER 3

PUBLIC SCHOOLS

Provision of public schools

12. (1) The Member of the Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature.

(2) The provision of public schools referred to in subsection (1) may include the provision of hostels for the residential accommodation of learners.

(3) A public school may be an ordinary public school or a public school for learners with special education needs.

(4) The Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners.

(5) The Member of the Executive Council must take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.

(6) Nothing in this Act prohibits the provision of gender-specific public schools.

Public schools on State property

13. (1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(2) Subject to section 20(1)(k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.

(3) The right referred to in subsection (2) may only be restricted-

(a) by the Member of the Executive Council; and

(b) if the immovable property is not utilised by the school in the interests of education.

(4) The Member of the Executive Council may not act under subsection (3) unless he or she has-

(a) informed the governing body of the school of his or her intention so to act and the reasons therefor;

(b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;

(c) duly considered any such representations received.

(5) The right contemplated in subsection (2) is enforceable against any successor in title to the owner of the immovable property in question.

(6) No immovable property owned by the State and occupied by a public school may be alienated unless an agreement contemplated in section 14 has been concluded between the Member of the Executive Council and the prospective owner of the immovable property.

(7) The registrar of any deeds registry may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the registrar with proof of the agreement contemplated in subsection (6).

(8) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to the right contemplated in subsection (2).

Public schools on private property

14. (1) Subject to the Constitution and this Act, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.

(2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for-

(a) the provision of education and the performance of the normal functions of a public school;

(b) governance of the school, including the relationship between the governing body of the school and the owner;

(c) access by all interested parties to the property on which the school stands;

(d) security of occupation and use of the property by the school;

(e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services;

(f) protection of the owner's rights in respect of the property occupied, affected or used by the school.

(3) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.

(4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

(5) Despite subsection (3), a registrar of a deeds registry must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the registrar receives-

(a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and

(b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.

(6) The Minister must, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs.

Status of public schools

15. Every public school is a juristic person, with legal capacity to perform its functions in terms of this Act.

Governance and professional management of public schools

16. (1) Subject to this Act, the governance of every public school is vested in its governing body.

(2) A governing body stands in a position of trust towards the school.

(3) Subject to this Act and any applicable provincial law, the professional management of a public school must be undertaken by the principal under the authority of the Head of Department.

Governing body serving two or more schools

17. (1) The Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the best interests of education at the schools in question.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

(a) given notice in the Provincial Gazette of his or her intention so to act;

(b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and

(c) considered all such submissions.

Constitution of governing body

18. (1) Subject to this Act and any applicable provincial law, the governing body of a public school must function in terms of a constitution which complies with minimum requirements determined by the Member of the Executive Council by notice in the Provincial Gazette.

(2) A constitution contemplated in subsection (1) must provide for-

(a) a meeting of the governing body at least once every school term;

(b) meetings of the governing body with parents, learners, educators and other staff at the school, respectively, at least once a year;

(c) recording and keeping of minutes of governing body meetings;

(d) making available such minutes for inspection by the Head of Department; and

(e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.

(3) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.

Enhancement of capacity of governing bodies

19. (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to-

(a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and

(b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

Functions of all governing bodies

20. (1) Subject to this Act, the governing body of a public school must-

(a) promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school;

(b) adopt a constitution;

(c) develop the mission statement of the school;

(d) adopt a code of conduct for learners at the school;

(e) support the principal, educators and other staff of the school in the performance of their professional functions;

(f) determine times of the school day consistent with any applicable conditions of employment of staff at the school;

(g) administer and control the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;

(h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;

(i) recommend to the Head of Department the appointment of educators at the school, subject to the Educators Employment Act, 1994 (Proclamation No. 138 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);

(j) recommend to the Head of Department the appointment of non-educator staff at the school, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);

(k) at the request of the Head of Department, allow the reasonable use under fair conditions of the facilities of the school for educational programmes not conducted by the school;

(l) discharge all other functions imposed upon the governing body by or under this Act; and

(m) discharge other functions consistent with this Act as determined by the Minister by notice in the Government Gazette, or by the Member of the Executive Council by notice in the Provincial Gazette.

(2) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school.

(3) The governing body may join a voluntary association representing governing bodies of public schools.

Allocated functions of governing bodies

21. (1) Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:

(a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;

(b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;

(c) to purchase textbooks, educational materials or equipment for the school;

(d) to pay for services to the school; or

(e) other functions consistent with this Act and any applicable provincial law.

(2) The Head of Department may refuse an application contemplated in subsection (1) only if the governing body concerned does not have the capacity to perform such function effectively.

(3) The Head of Department may approve such application unconditionally or subject to conditions.

(4) The decision of the Head of Department on such application must be conveyed in writing to the governing body concerned, giving reasons.

(5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal to the Member of the Executive Council.

(6) The Member of the Executive Council may, by notice in the Provincial Gazette, determine that some governing bodies may exercise one or more functions without making an application contemplated in subsection (1), if-

(a) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and

(b) there is a reasonable and equitable basis for doing so.

Withdrawal of functions from governing bodies

22. (1) The Head of Department May, on reasonable grounds, withdraw a function of a governing body.

(2) The Head of Department may not take action under subsection (1) unless he or she has-

(a) informed the governing body of his or her intention so to act and the reasons therefor;

(b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and

(c) given due consideration to any such representations received.

(3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter-

(a) furnishes the governing body with reasons for his or her actions;

(b) gives the governing body a reasonable opportunity to make representations relating to such actions; and

(c) duly considers any such representations received.

4. The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).

5. Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.

Membership of governing body of ordinary public school

23. (1) Subject to this Act, the membership of the governing body of an ordinary public school comprises-

(a) elected members;

(b) the principal, in his or her official capacity;

(c) co-opted members.

(2) Elected members of the governing body shall comprise a member or members of each of the following categories:

(a) Parents of learners at the school;

(b) educators at the school;

(c) members of staff at the school who are not educators; and

(d) learners in the eighth grade or higher at the school.

(3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2)(a).

(4) The representative council of learners referred to in section II (1) must elect the learner or learners referred to in subsection (2)(d).

(5) The governing body of an ordinary public school which provides education to learners with special needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.

(6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.

(7) The governing body of a public school contemplated in section 14 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.

(8) Co-opted members do not have voting rights on the governing body.

(9) The number of parent members must comprise one more than the combined total of other members of a governing body who have voting rights.

Membership of governing body of public school for learners with special education needs

24. (1) The following categories of persons must be represented on a governing body of a public school for learners with special education needs, in each case by a member or members of the respective category:

(a) Parents of learners at the school, if reasonably practicable;

(b) educators at the school;

(c) members of staff at the school who are not educators;

(d) learners attending the eighth grade or higher, if reasonably practicable;

(e) representatives of sponsoring bodies, if applicable;

(f) representatives of organisations of parents of learners with special education needs, if applicable;

(g) representatives of organisations of disabled persons, if applicable;

(h) disabled persons, if applicable; and

(i) experts in appropriate fields of special needs education.

(2) Subject to this Act, the Member of the Executive Council must, by notice in the Provincial Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every public school for learners with special education needs within his or her province.

(3) A notice contemplated in subsection (2) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.

(4) The Member of the Executive Council must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

Failure by governing body to perform functions

25. (1) If a governing body has ceased to perform its functions, the Head of Department must appoint sufficient persons to perform those functions for a period not exceeding three months.

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

Recusal by members of governing body

26. A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

Reimbursement of members of governing body

27. (1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

Election of members of governing body

28. Subject to this Act and any applicable provincial law, the Member of the Executive Council must, by notice in the Provincial Gazette, determine-

(a) the term of office of members and office-bearers of a governing body;

(b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;

(c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;

(d) the procedure for the filling of a vacancy on the governing body;

(e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;

(f) a formula or formulae for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 23(2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public schools; and

(g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

Office-bearers of governing bodies

29. (1) A governing body must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.

(2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body.

Committees of governing body

30. (1) A governing body may-

(a) establish committees, including an executive committee; and

(b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) A governing body of an ordinary public school which provides education to learners with special education needs must establish a committee on special education needs.

Term of office of members and office-bearers of governing bodies

31. (1) The term of office of a member of a governing body other than a learner may not exceed three years.

(2) The term of office of a member of a governing body who is a learner may not exceed one year.

(3) The term of office of an office-bearer of a governing body may not exceed one year.

(4) A member or office-bearer of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

Status of minors on governing bodies of public schools

32. (1) A member of a governing body who is a minor may not contract on behalf of a public school.

(2) A member of a governing body who is a minor may not vote on resolutions of a governing body which impose liabilities on third parties or on the school.

(3) A member of a governing body who is a minor incurs no personal liability for any consequence of his or her membership of the governing body.

Closure of public schools

33. (1) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public school.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

(a) informed the governing body of the school of his or her intention so to act and his or her reasons therefor;

(b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;

(c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and

(d) given due consideration to any such representations received.

(3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

CHAPTER 4

FUNDING OF PUBLIC SCHOOLS

Responsibility of State

34. (1) The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.

(2) The State must, on an annual basis, provide sufficient information to public schools regarding the funding referred to in subsection (1) to enable public schools to prepare their budgets for the next financial year.

Norms and standards for funding of public schools

35. Subject to the Constitution and this Act, the Minister must determine norms and minimum standards for the funding of public schools after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance.

Responsibility of governing body

36. A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.

School funds and assets of public schools

37. (1) The governing body of a public school must establish a school fund and administer it in accordance with directions issued by the Head of Department.

(2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.

(3) The governing body of a public school must open and maintain a banking account.

(4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.

(5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.

(6) The school fund, all proceeds thereof and any other assets of the public school must be used only for-

(a) educational purposes, at or in connection with such school;

(b) educational purposes, at or in connection with another public school, by agreement with such other public school and with the consent of the Head of Department;

(c) the performance of the functions of the governing body; or

(d) another educational purpose agreed between the governing body and the Head of Department.

Annual budget of public school

38. (1) A governing body of a public school must prepare a budget each year, according to guidelines determined by the Member of the Executive Council, which shows the estimated income and expenditure of the school for the following financial year.

(2) Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days' notice, for consideration and approval by a majority of parents present and voting.

School fees at public schools

39. (1) Subject to this Act, school fees may be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the meeting referred to in section 38(2).

(2) A resolution contemplated in subsection (1) must provide for-

(a) the amount of fees to be charged; and

(b) equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay school fees.

(3) The governing body must implement a resolution adopted at the meeting contemplated in subsection (1).

(4) The Minister must, after consultation with the Council of Education Ministers and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in subsection (2)(b).

Parent's liability for payment of school fees

40. (1) A parent is liable to pay the school fees determined in terms of section 39 unless or to the extent that he or she has been exempted from payment in terms of this Act.

(2) A parent may appeal to the Head of Department against a decision of a governing body regarding the exemption of such parent from payment of school fees.

(3) In deciding an appeal referred to in subsection (2), the Head of Department must follow due process which safeguards the interests of the parent and the governing body.

Enforcement of payment of school fees

41. The governing body of a public school may by process of law enforce the payment of school fees by parents who are liable to pay in terms of section 40.

Financial records and statements of public schools

42. The governing body of a public school must-

(a) keep records of funds received and spent by the public school and of its assets, liabilities and financial transactions; and

(b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the guidelines determined by the Member of the Executive Council.

Audit or examination of financial records and statements

43. (1) The governing body of a public school must appoint a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), to audit the records and financial statements referred to in section 42.

(2) If the audit referred to in subsection (1) is not reasonably practicable, the governing body of a public school must appoint a person to examine and report on the records and financial statements referred to in section 42, who-

(a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

(b) is approved by the Member of the Executive Council for this purpose.

(3) No person who has a financial interest in the affairs of the public school may be appointed under this section.

(4) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public school.

(5) A governing body must submit to the Head of Department, within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.

(6) At the request of an interested person, the governing body must make the records referred to in section 42, and the audited or examined financial statements referred to in this section, available for inspection.

Financial year of public school

44. The financial year of a public school commences on the first day of January and ends on the last day of December of each year.

CHAPTER 5

INDEPENDENT SCHOOLS

Establishment of independent school

45. Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an independent school.

Registration of independent school

46. (1) No person may establish or maintain an independent school unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department.

(3) A Head of Department must register an independent school if he or she is satisfied that-

(a) the standards to be maintained by such school will not be inferior to the standards in comparable public schools;

(b) the admission policy of the school does not discriminate on the grounds of race; and

(c) the school complies with the grounds for registration contemplated in subsection (2).

(4) Any person who contravenes subsection (1) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

Withdrawal of registration of independent school

47. (1) No withdrawal of the registration of an independent school is valid unless-

(a) the owner of such independent school has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;

(b) the owner of such independent school has been granted an opportunity to make written representations to the Head of Department as to why the registration of the independent school should not be withdrawn; and

(c) any such representations received have been duly considered.

(2) The owner of an independent school may appeal to the Member of the Executive Council against the withdrawal of the registration of such independent school.

Subsidies to registered independent schools

48. (1) The Minister may, by notice in the Government Gazette, determine norms and minimum standards for the granting of subsidies to independent schools after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless-

(a) the owner of such independent school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;

(b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and

(c) any such representations received have been duly considered.

(5) The owner of an independent school may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such independent school.

Declaration of independent school as public school

49. (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an independent school in terms whereof such independent school is declared to be a public school.

(2) Notice of the change of status contemplated in subsection (1) must be published in the Provincial Gazette.

Duties of Member of Executive Council relating to independent schools

50. (1) The Member of the Executive Council must, by notice in the Provincial Gazette, determine requirements for-

(a) the admission of learners of an independent school to examinations conducted by or under the supervision of the education department;

(b) the keeping of registers and other documents by an independent school;

(c) criteria of eligibility, conditions and manner of payment of any subsidy to an independent school; and

(d) any other matter relating to an independent school which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different independent schools.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

Registration of learner for education at home

51. (1) A parent may apply to the Head of Department for the registration of a learner to receive education at the learner's home.

(2) The Head of Department must register a learner as contemplated in subsection (1) if he or she is satisfied that-

(a) the registration is in the interests of the learner;

(b) the education likely to be received by the learner at home-

(i) will meet the minimum requirements of the curriculum at public schools; and

(ii) will be of a standard not inferior to the standard of education provided at public schools; and

(c) the parent will comply with any other reasonable conditions set by the Head of Department.

(3) The Head of Department may, subject to subsection (4), withdraw the registration referred to in subsection (1).

(4) The Head of Department may not withdraw the registration until he or she-

(a) has informed the parent of his or her intention so to act and the reasons therefor;

(b) has granted the parent an opportunity to make representations to him or her in relation to such action; and

(c) has duly considered any such representations received.

(5) A parent may appeal to the Member of the Executive Council against the withdrawal of a registration or a refusal to register a learner in terms of this Act.

CHAPTER 6

TRANSITIONAL PROVISIONS

Transitional provisions relating to schools other than private schools

52. (1) Any school which was established or was deemed to have been established in terms of any law governing school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, other than a private school referred to in section 53 is deemed to be a public school.

(2) The assets and liabilities which vested in a school contemplated in subsection (1) immediately prior to the commencement of this Act, vest in the public school in question.

(3) Funds and other moveable assets used by, or held for or on behalf of, a public school contemplated in subsection (1) and which in law are the property of the State, remain at the disposal of the school, and devolve on the school on a date and subject to conditions determined by the Minister by notice in the Government Gazette, after consultation with the Council of Education Ministers.

(4) Any transaction entered into prior to the commencement of this Act by a school contemplated in subsection (1), which had the effect of transferring funds or other assets of such school to another person or body without value, is invalid.

Transitional provisions relating to private schools

53. A private school which was registered or deemed to have been registered under the provisions of a law regulating school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, is deemed to be an independent school.

Transitional provisions relating to governing bodies

54. (1) The Minister must, after consultation with the Member of the Executive Council and by notice in the Government Gazette, determine dates-

(a) by which the election of members of governing bodies at all public schools in a province must be finalised in terms of this Act; and

(b) from which the governing bodies referred to in subsection (1)(a) must function in terms of this Act.

(2) Different dates may be determined in terms of subsection (1)(b) in respect of governing bodies in the different provinces.

(3) Any governing body, management council or similar authority of a public school, which existed immediately prior to the commencement of this Act, continues to function until the day before the date on which the relevant governing body is elected and must perform all the functions it performed prior to the commencement of this Act which a governing body can lawfully perform in terms of this Act.

(4) Until a governing body begins to function in terms of subsection 1(b), such governing body of a school deemed to be a public school in terms of section 52(1) must perform the functions lawfully performed by its predecessor which are capable of being performed by a governing body in terms of this Act.

Transitional provisions relating to immovable property of certain schools

55. (1) The immovable property of a school which was declared to be a state-aided school under section 29(2A) of the Education Affairs Act, 1988 (House of Assembly) (Act No. 70 of 1988), devolves upon the State on a date determined by the Minister by notice in the Government Gazette.

(2) The Minister may determine different dates in respect of different schools under subsection (1).

(3) Any notice determining a date or dates referred to in subsection (1) or (2) must grant all interested parties a period of not less than 30 days in which to make written submissions.

(4) The Minister must consider all such submissions received, and thereafter may alter any notice referred to in subsection (1).

(5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in subsection (1) must be paid in full or in part from funds appropriated by Parliament for that purpose.

(6) The Minister may, with the concurrence of the Minister of Finance, direct that no transfer duty, stamp duty, other fees or costs contemplated in subsection (5) be paid in respect of a particular transfer under this section.

(7) The rights of third parties with claims against the school in respect of the immovable property affected by the transfer contemplated in this section are not extinguished by the transfer and-

(a) a third party acquires no right of execution against the immovable property as a result of such transfer alone;

(b) a third party is obliged to excuss the school in question if the school fails to meet its commitments to the third party; and

(c) the State indemnifies such a third party in its claims against the school which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the school prior to the transfer.

(8) The fact that compensation for any land and real rights in or over land expropriated in terms of subsection (1) has not been finalised or paid, does not impede the transfer of such land and real rights in or over land to the State.

(9) Until the date contemplated in subsection (1), a public school referred to in that subsection may not let, sell or otherwise alienate its immovable property, or grant to any person any real right thereon or servitude thereon without the written consent of the Member of the Executive Council.

(10) Any claim for compensation arising from subsection (1) must be determined as contemplated in the Constitution.

Transitional provisions relating to public schools on private property

56. If an agreement contemplated in section 14 does not exist at the commencement of this Act in respect of a school, standing on private property and which is deemed to be a public school in terms of section 52(1), the Member of the Executive Council must take reasonable measures to conclude such an agreement within six months of the commencement of this Act.

Transitional provisions relating to private property owned by religious organisation

57. If the owner of the private property referred to in section 56 is a religious organisation, such owner may require that the agreement contemplated in section 14 must recognise, in an appropriate manner consistent with this Act, the distinctive religious character of the school.

CHAPTER 7

GENERAL PROVISIONS

Expropriation

58. (1) The Member of the Executive Council may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to school education in a province.

(2) The Member of the Executive Council must give notice in the Provincial Gazette of his or her intention to expropriate in terms of subsection (1).

(3) A notice contemplated in subsection (2) must-

(a) identify the land or any real right in or over the land;

(b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and

(c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Member of the Executive Council in that regard, and draw attention to the provisions of subsection (5).

(4) The Member of the Executive Council may, after considering all such written submissions, expropriate the land or any real right in or over the land referred to in subsection (3) by notice in the Provincial Gazette.

(5) Any expropriation contemplated in subsection (4) takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

(6) If the Member of the Executive Council and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.

(7) The arbitrator determines the time, venue and procedures which apply in the arbitration.

(8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.

(9) The arbitrator may not make an award of costs.

(10) The arbitrator is paid, out of moneys appropriated for this purpose by the provincial legislature, such fees and allowances as the Member of the Executive Council may determine, with the concurrence of the Member of the Executive Council responsible for finance.

(11) Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right contemplated in subsection (1) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

(12) Any claim to compensation arising from the expropriation contemplated in subsection (4) must be determined as contemplated in the Constitution and this section.

Duty of schools to provide information

59. (1) A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights.

(2) Every school must provide such information about the school as is reasonably required by the Head of Department.

Liability of State

60. (1) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

(2) The provisions of the State Liability Act, 1957 (Act No. 20 of 1957), apply to any claim under subsection (1).

Regulations

61. The Minister may make regulations on any matter which must or may be prescribed by regulation under this Act and any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

Delegation of powers

62. (1) The Member of the Executive Council may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to the Head of Department or an officer, except the power to publish a notice and the power to decide an appeal lodged with him or her in terms of this Act.

(2) The Head of Department may, subject to such conditions as he or she may determine, delegate to an officer any of his or her powers in terms of this Act or delegated to him or her in terms of subsection (1).

(3) A delegation under subsection (1) or (2) does not prevent the Member of the Executive Council or Head of Department, as the case may be, from exercising such power or performing such duty.

Repeal and amendment of laws

63. (1) The laws listed in the first column of Schedule I are hereby repealed to the extent set out in the third column of that Schedule.

(2) The Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), is hereby amended to the extent set out in Schedule 2.

Short title and commencement

64. This Act is the *South African Schools Act, 1996*, and comes into operation on a date fixed by the President by proclamation in the Government Gazette.

SCHEDULE 1

No. and year of Act - Short title - Extent of repeal

Act No. 47 of 1963 Coloured Persons Education Act, 1963 *Sections 1A, 8 to 20, 26 and 28 to 31*

Act No. 61 of 1965 Indians Education Act, 1965 *Sections 1B, 8 to 20, 26, 28, 29, 31 and 33(1)(g)*

Act No. 90 of 1979 Education and Training Act, 1979 *Sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44(1)(h)*

Act No. 104 of 1986 Private Schools Act (House of Assembly), 1986 *Section 1A*

Act No. 70 of 1988 Education Affairs Act (House of Assembly), 1988 *Sections 3 and 65 and Chapter 7*

SCHEDULE 2 (Amendment of Educators' Employment Act, 1994, by section 63)

1. Amendment of section I by-

(a) the insertion of the following definitions:

" 'Department' means a department contemplated in section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for education in the national government;

'educational institution' means a public school, college of education, technical college, other college or an office controlling such a school or college or rendering a support service to such a school or college where educators are employed, in regard to which the terms and conditions of employment of such educators are determined by this Act but excludes a university, technikon, independent school or independent college;

'Labour Relations Act' means the Labour Relations Act, 1995 (Act No. 66 of 1995);

'public educational institution' means an educational institution which is not a state-aided college;

'public school' means a public school as defined in section I of the South African Schools Act, 1996;

'state-aided college' means a college of education, technical college or other college which is wholly or partly funded by the State in respect of the remuneration and conditions of service of educators in posts on the establishment created in terms of section 3(1) and in regard to which the college is the employer of such educators;

'unsubsidised post' means a post at a state-aided college in respect of which no subsidy in terms of a law is paid by the State;";

(b) substitution for the definitions of "educator", "employee member" and "employer" of the following definitions, respectively-

" ' educator' means any person who teaches, educates or trains other persons or provides professional therapy educational services including professional therapy at any school, technical college or college of education educational institution or assists in rendering professional services or performs educational management services or educational auxiliary services provided by or in a department of education and whose employment appointment and terms and conditions of employment is are regulated by this Act; 'employee member' means an employee organisation that is a member of the Education Labour Relations Council established in terms of section 6 of the Education Labour Relations Act 37(3)(b) read with item 20 of Schedule 7 to the Labour Relations Act;

'employer' means-

(a) in the case of a departmental public educational institution or office, the head of a department; and

(b) in the case of a state-aided educational institution college, the body which employs an educator;

(c) for the purposes of section 5(1)(a) and (b) the Minister in respect of educators appointed to posts created in terms of sections 3(1) and (3); and

(d) in the case of an unsubsidised post at a public school referred to in section 3A, the body which employs the educator."; and

(c) the deletion of the following definitions, namely-

"departmental educational institution"

"subsidised post"

"state-aided educational institution"

"Executive Council"

"Education Labour Relations Act"

2. The substitution for section 3 of the following section:

"Educator Establishment of educational institutions and Department

3. (1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act and the National Policy for General Education Affairs on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), the educator establishment at an a state educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates.

(2) The employer A state-aided college may create unsubsidised posts additional to the educator establishment referred to in subsection (1).

(3) Educators may be appointed on a temporary basis additional to the establishment referred to in subsection (1) with the approval of the Member of the Executive Council or the Minister, as the case may be.

(4) A post referred to in subsection (1) may be regraded, redesignated, converted or abolished by the Member of the Executive Council or the Minister, as the case may be.".

3. By the insertion after section 3 of the following section:

"Transitional arrangement

3A. (1) The authority to create unsubsidised posts, to employ educators in such posts and all other matters incidental thereto which, in terms of section 3(2), vested in a state-aided school prior to the commencement of this Act, shall remain intact for such school until 31 December 1997, and thereafter such authority shall cease.

(2) Contracts of employment of educators appointed to posts referred to in subsection (1) entered into after the commencement of this Act, shall not be valid after 31 December 1997.".

4. The substitution for section 4 of the following section:

"Appointment and promotion of educators

4. (1) The qualifications for appointment and promotion as an educator shall be prescribed determined by the Minister.

(2) Subject to the provisions of the Constitution, the Labour Relations Act, 1995 (Act No. 66 of 1995), and agreements reached in terms thereof Posts posts shall be filled by appointment, transfer or promotion and the power to fill a post created under section 3 shall, subject to the provisions Of this Act, vest in the

employer, who shall exercise such power with regard to posts referred to in section 3(1) and (3) subject to the prior approval of the Member of the Executive Council or the Minister, as the case may be.

(3) The authority to fill a post referred to in section 3(1) and (3) at a public school in terms of subsection (2) is exercised on the recommendation of a public school, as represented by its governing body, and the employer may only deviate from such recommendation if:

(a) the candidate does not have the required qualifications;

(b) the candidate has been found guilty of misconduct; or

(c) sufficient proof exists that the recommendation made by the school was based on improper influence.

(3) (4) An educator may be appointed under subsection (2) this section-

(a) in a permanent capacity, which shall include an appointment to the permanent relief staff, whether on probation or not; or

(b) temporarily or on special contract, whether in a full-time or part-time capacity.

(4) (5) An appointment, transfer or promotion referred to in subsection (2) shall be effected in such manner and subject to such conditions as may be determined by the Minister.

(5) (6) An educator appointed in terms of any law repeated by this Act shall be deemed to have been appointed in terms of this Act to the appropriate post on the establishment of the state educational institution in question.

(7) An educator appointed in terms of the Public Service Act, 1994, shall be deemed to have been appointed in terms of this Act.

(8) An educator appointed at a public school shall not, by virtue of an amendment of this Act by the South African Schools Act, 1996, be regarded as having changed employers.".

5. The amendment of section 5-

(a) by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of the National Policy on the Salaries and Conditions of Employment of Educators Act for General Education Affairs, 1984 (Act No. 76 of 1984), and the Education Labour Relations Act and subsection (2)-

(a) the salaries, salary scales, and allowances and other terms and conditions of employment of educators appointed, transferred or promoted to posts referred to in section 3(1) and (3) shall be determined by the Minister;

(b) the other terms and conditions of employment and service benefits of educators referred to in paragraph (a) shall be prescribed by the Minister; and

(b)c the salaries, salary scales, allowances and other terms and conditions of employment referred to in paragraphs paragraph (a) and (b) with a financial implication shall be determined by the Minister with the concurrence of the Minister responsible for finance at national level; and

(c)d the salaries, salary scales, allowances and other terms and conditions of employment of educators at a state-aided college appointed, transferred or promoted to posts referred to in section 3(2)(3) shall be determined by the employer."; and

(b) by the deletion of subsection (2).

6. The substitution for section 6 of the following section:

"Transfer and secondment of educators

6. (1) Subject to the provisions of this section, section 4(3) and applicable terms and conditions of employment, an educator employed in an office or departmental a public educational institution may be transferred from the post in which he or she serves to any other post-

(a) at the same departmental educational institution or office or at another departmental educational institution or office a public educational institution under the control of the same provincial education department by the Member of the Executive Council; or

(b) at a departmental public educational institution or office in a different province or the Department at national level by the Member of the Executive Council, or the Minister, as the case may be, with the concurrence of the Member of the Executive Council of such other province or the Minister, as the case may be.

(2) Subject to the provisions of this section, an educator employed at a state-aided educational institution college may with his or her consent, be transferred from the post in which he or she serves to any other post at the same or to any other state-aided educational institution college or public departmental educational institution-

(a) in the same province by the Member of the Executive Council, with the concurrence of the employer or employers concerned; or

(b) in a different province by the Member of the Executive Council, with the concurrence of the Member of the Executive Council of such other province and the employers concerned; or

(c) at the Department at national level with the concurrence of the Minister.

(3) Subject to the provisions of this section, an educator at a departmental public educational institution or office may, with his or her consent, be transferred from the post in which he or she serves to any other post at a state-aided educational institution college, and in such a case the provisions of subsection (2) must apply mutatis mutandis.

(4) A transfer provided for in subsections (1), (2) and (3) may be effected irrespective of whether the post to which an educator is transferred is of the same, a lower or higher grade: Provided that-

(a) the salary and salary scale of an educator shall not be lowered without his or her consent; and

(b) paragraph (a) shall not apply in respect of an educator transferred in terms of section 19(1).

(5) An educator who is employed in a permanent capacity at a state public educational institution in a post of a lower or higher grading than that appropriate to his or her rank shall, subject to section 4(4) (5) and (6) be transferred to a post with a grading appropriate to his or her rank as soon as a suitable vacancy arises.".

7. The amendment of section 7 by the substitution for the expression "state educational institution", wherever it occurs, of the expression "public educational institution".

8. The amendment of section 8 by the substitution for the expression "state educational institution", wherever it occurs, of the expression "public educational institution".

9. The amendment of section 10 by the substitution for the expression "state educational institution", wherever it occurs, of the expression "public educational institution".

10. The amendment of section 11 by the substitution for subsection (3) of the following subsection:

"(3) If the name of an educator is struck off a register of educators kept by a body recognised by the Minister in terms of the National Policy for General Education Affairs Act, 1984 (Act No. 76 of 1984), the South African Council for Educators he or she shall notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the date following immediately upon the day on which his or her name was so struck off."

11. The substitution for section 22 of the following section:

"Transfer of educators on declaration of public educational institution to be state-aided college

22. (1) An educator who was employed at a departmental public educational institution immediately prior to the date of declaration of such institution to be a state-aided educational institution college shall with effect from that date with his or her consent be transferred to and appointed in the service of the state-aided educational institution college in question.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to persons in the service of a state-aided college educational institutions: Provided that-

(a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;

(b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the state-aided public educational institution shall be deemed to be a period in the service of the provincial government at the state-aided college concerned;

(c) sick leave or vacation leave credit obtained by him or her as a result of his or her continuous service in a departmental public educational institution shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her service at the state-aided educational institution college in question; and

(d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct which he or she allegedly committed prior to the date contemplated in subsection (1) shall be disposed of or instituted, as the case may be, in terms of this Act.".

12. The substitution for section 23 of the following section:

"Transfer of educators on declaration of state-aided college to be public educational institution

23. (1) An educator who was employed in a subsidised post at a state-aided educational institution college immediately prior to the date of declaration of such institution to be departmental a public educational institution shall with effect from that date with his or her consent be transferred to and appointed in the service of the provincial government concerned.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to educators in the service of the provincial government concerned: Provided that-

(a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;

(b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the state-aided educational institution college shall be deemed to be a period in the service of the provincial government concerned;

(c) sick or vacation leave credit obtained by him or her as a result of his or her continuous service at the state-aided educational institution college shall be deemed, subject to the conditions determined by the

Minister, to have been obtained by him or her as a result of his or her period in the service of the provincial government concerned; and

(d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct allegedly committed prior to the said date shall be disposed of or instituted, as the case may be, in terms of this Act.".