

HIGHER EDUCATION AMENDMENT BILL, 2008

BILL

To amend the Higher Education Act, 1997 (Act 101 of 1997) in order to make it consistent with the National Qualifications Framework Act, 2008 (Act of 2008), and to provide for matters connected therewith.

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

Amendment of section 1 of Act 101 of 1997

1. Section 1 of the Higher Education Act, 1997 (hereinafter referred to as "the Act"), is hereby amended –

(a) by the substitution for the definition of 'higher education' of the following definition:

"'higher education' means all learning programmes leading to **[qualifications] a qualification [higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), and includes tertiary education as contemplated in Schedule 4 of the Constitution] that meets the requirements of the Higher Education Qualifications Framework;**";

(b) by the substitution after the definition of 'higher education institution' of the following definition:

"'higher education institution' means any institution that provides higher education on a full-time, part-time or distance basis and which is –

- (a) established or deemed to be established as a public higher education institution under this Act;
- (b) declared as a public higher education institution under this Act; or
- (c) registered or **[conditionally] provisionally** registered as a private higher education institution under this Act;";

(c) by the addition after the definition of 'higher education institution' of the following definition:

"'HEQF' means the Higher Education Qualifications Framework;";

(d) by the addition after the definition of 'HEQF' of the following definition:

"'Higher Education Qualifications Framework' means the sub-framework for higher education of the National Qualifications Framework;";

(e) by the substitution for the definition of 'Higher Education Quality Committee' of the following definition:

"Higher Education Quality Committee' means the committee of the CHE established in terms of section 7[(1)];";

(f) by the addition after the definition of 'institutional statute' of the following definition:

"National Qualifications Framework' means the National Qualifications Framework envisaged in the National Qualifications Framework Act;";

(g) by the addition after the definition of 'National Qualifications Framework' of the following definition:

"National Qualifications Framework Act' means the National Qualifications Framework Act, 2008 (Act ... of 2008);";

(h) by the addition after the definition of 'organ of state' of the following definition:

"other QCs' means the Quality Council for General and Further Education and Training and the Quality Council for Trades and Occupations contemplated in the National Qualifications Framework Act;";

(i) by the addition after the definition of 'public higher education institution' of the following definition:

"QC' means quality council;";

(j) by the addition after the definition of 'QC' of the following definition:

"quality council' means a quality council contemplated in the National Qualifications Framework Act;";

(k) by the substitution for the definition of 'SAQA' of the following definition:

"SAQA' means the South African Qualifications Authority established by [section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)] the National Qualifications Framework Act;";

(l) by the addition after the definition of 'senate' of the following definition:

"South African Qualifications Authority' means the South African Qualifications Authority contemplated in the National Qualifications Framework Act;";

(m) by the substitution for subsection (a) of the definition of 'to provide higher education' of the following subsection:

"to provide higher education' means -

(a) the registering of students for [-

(i) **complete qualifications at or above level 5 of the National Qualifications Framework[as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995)]; or**

(ii) such part of a qualification which meets the requirements of a unit standard as [recognised] by the South African Qualifications Authority at or above the level referred to in subparagraph (i) higher education;”.

2. Section 5 of the Act is hereby amended –
- (a) by the substitution for subsection (1)(f)(i) of the following subsection:
- “(f) perform any other function –
- (i) conferred on or assigned to it in terms of this Act or the National Qualifications Framework Act;”;
- (b) by the substitution for subsection (2)(a) of the following subsection:
- “(a) **[quality promotion and quality assurance]**qualifications, quality promotion and quality assurance;”.

Amendment of section 7 of Act 101 of 1997

3. Section 7 of the Act is hereby amended by the substitution for section 7 of the following section:
- [“7 Quality promotion and quality assurance functions of CHE**
- (1) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality promotion and quality assurance functions of the CHE in terms of this Act.**
- (1A) The Higher Education Quality Committee is deemed to be accredited by SAQA as an Education and Training Quality Assurance body primarily responsible for higher education.**
[Sub-s. (1A) inserted by s. 1 of Act 23 of 2001.]
- (2) The CHE and the Higher Education Quality Committee must comply with the policies and criteria formulated by SAQA in terms of section 5 (1) (a) (ii) of the South African Qualifications Authority Act, 1995 (Act 58 of 1995).**
- (3) The Higher Education Quality Committee may, with the concurrence of the CHE, delegate any quality promotion and quality assurance functions to other appropriate bodies capable of performing such functions.**
- (4) The delegation under subsection (3)-**
- (a) must be in writing and published by notice in the Gazette;**

(b) is subject to such conditions as the Higher Education Quality Committee may determine; and

(c) does not prevent the performance of such functions by the Higher Education Quality Committee.

(5) The CHE may charge fees for any service rendered by the Higher Education Quality Committee to any person, institution or organ of state.

(6) The Minister must make regulations to give effect to quality promotion and quality assurance in terms of this Act.]

7 Qualifications, quality promotion and quality assurance

(1) The CHE is the Quality Council for Higher Education in terms of the National Qualifications Framework Act.

(2) The CHE must establish the Higher Education Quality Committee as a permanent committee to perform the quality assurance and quality promotion functions of the CHE in terms of this Act.

(3) The CHE may establish other permanent committees to perform its functions in terms of this Act and the National Qualifications Framework Act.

(4) The Committees established in section 7(2) and 7(3) may, with the concurrence of the CHE, delegate any of their functions to other appropriate bodies capable of performing such functions.

(5) The delegation under subsection (3) –

(a) must be in writing and published by notice in the Gazette;

(b) is subject to such conditions as the Higher Education Quality Committee may determine; and

(c) does not prevent the performance of such functions by the Higher Education Quality Committee.

(6) The CHE may charge fees for any service rendered by its Committees to any person, institution or organ of state.

(7) The CHE must perform its functions as a QC –

(a) subject to the National Qualifications Framework Act;

(b) in a co-operative, consultative, open and transparent manner;

(c) in collaboration with SAQA and the other QCs; and

(d) with due regard for the statutory rights, powers and functions of SAQA, other QCs, higher education institutions, professional bodies and workplace providers.

(8) The CHE must –

(a) develop and manage the HEQF in accordance with a multi-year rolling strategic plan, budget and implementation framework which must –

(i) be prepared after appropriate consultation within the higher education sector;

(ii) take into account the Minister's remit to the CHE and SAQA;

(iii) be co-ordinated with the annual state budget process; and

(iv) be submitted to the Minister for approval;

(b) with respect to levels on the HEQF –

(i) propose level descriptors to SAQA for consideration and recommendation to the Minister; and

(ii) keep level descriptors under review in order to ensure that they remain current and appropriate;

(c) with respect to higher education qualifications –

(i) propose a policy framework to SAQA for the development, registration and publication of qualifications, after consultations within the higher education sector;

(ii) propose a policy framework to SAQA for assessment, recognition of prior learning and credit accumulation and transfer, after consultations within the higher education sector;

(iii) ensure the development of such qualifications as are necessary for the higher education sector, which may include appropriate measures for the assessment of learning achievement; and

(iv) recommend qualifications to SAQA for registration;

(d) with respect to quality assurance within higher education –

(i) promote quality improvement within the higher education sector;

(ii) propose a policy framework to SAQA for quality assurance, after consultations within the higher education sector;

(iii) ensure the integrity and credibility of quality assurance;

(iv) make provision for the delegation of powers to undertake quality assurance;

(v) ensure that such quality assurance as is necessary for the sector is undertaken; and

(vi) publish reports on the outcomes of quality assurance processes.

(e) with respect to information matters –

(i) maintain a database of learner achievements and related matters for purposes of this Act; and

(ii) submit such data in a format determined in consultation with SAQA for recording on the national learners' records database.

(f) with respect to other matters –

(i) conduct or commission and publish research on issues of importance to the development and implementation of the HEQF;

(ii) inform the public about the HEQF;

(iii) perform any other function required by this Act; and

(iv) perform any function consistent with this Act that the Minister may determine.

(9) The Minister must make regulations to give effect to the provisions of this section."

Amendment of section 8 of Act 101 of 1997

4. Subsection 8(6) of the Act is hereby amended by the substitution of the following subsection:

"(6) The Minister must appoint **[five]** ~~eight~~ non-voting members of the CHE nominated respectively by the Director-General, the Provincial Heads of Education, **[the Director-General of the Department of Arts, Culture, Science and Technology]** ~~the Director-General of the Department of Science and Technology~~, the Director-General of the Department of Labour, the National Research Foundation established in terms of the National Research Foundation Act, 1998 (Act 23 of 1998), and the respective chief executive officers of SAQA and the other QCs in their official capacities."

[Sub-s. (6) substituted by s. 2 of Act 23 of 2001.]

Amendment of section 53 of Act 101 of 1997

6. Subsection 53(1)(b)(ii) of the Act is hereby amended by the substitution of the following subsection:
“(ii) will comply with the requirements of the **[appropriate quality assurance body accredited by SAQA in terms of the South African Qualifications Authority Act, 1995 (Act 58 of 1995)]**HEQC; and”;

Amendment of chapter 9 of Act 101 of 1997

7. Chapter 9 of the Act is hereby amended by the addition of a new section 75A after section 75:
“Regulations affecting HEQC

75A. Regulations made under this Act or the South African Qualifications Authority Act, 1995 (Act 58 of 1995) that affect the decisions and operations of the HEQC continue to exist to the extent that they are consistent with this Act until they are repealed by the Minister of Education by notice in the Gazette.”

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EXPLANATORY MEMORANDUM

1. This Bill reflects consequential amendments made to the Higher Education Act 101 of 1997 as a result of the introduction of the National Qualifications Framework Bill on the Legislative Programme of Parliament for 2008. This amendment Bill together with the NQF Bill and the General and Further Education and Training Quality Assurance Amendment Bill will be published as a package and must be read in conjunction with one another. The reasons and objects of this amendment Bill will be dealt with in the Explanatory Memorandum attached to the NQF Bill.

2. OTHER DEPARTMENTS OR BODIES CONSULTED

The Department of Labour was consulted. After publication for comment, the Bill will be referred to the National Treasury and the Department of Social Development. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

3. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill merely provides for amendments to existing legislation and therefore, no additional costs are foreseen.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Education's Legislative Services Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.