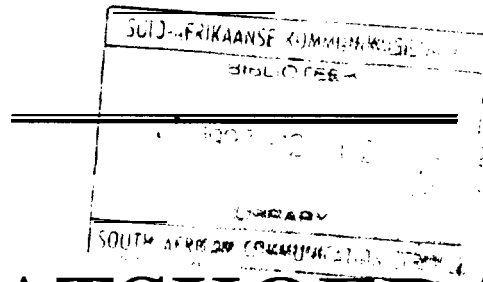




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GOVERNMENT GAZETTE



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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1604.

28 November 1997

No. 1604.

28 November 1997

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

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 100 of 1997: Education Laws Amendment Act, 1997.

No. 100 van 1997: Wysingswet op Onderwyswette, 1997

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.

ACT

To amend the South African Schools Act, 1996, so as to insert a definition and substitute others; to enable public schools to appoint educator and non-educator staff additional to the approved establishment; and to make certain technical adjustments; to amend the National Education Policy Act, 1996, so as to make certain technical adjustments; and to delete an obsolete provision; to amend the Educators' Employment Act, 1994, so as to enable the Minister to determine requirements for appointment, transfer and promotion of educators; to provide for a process to enable public schools to make recommendations for the appointment, transfer or promotion of educators as a result of operational requirements of the employer; to make certain technical adjustments; and to delete obsolete provisions; to repeal the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 26 November 1997.)

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

Amendment of section 1 of Act 84 of 1996

1. Section 1 of the South African Schools Act 1996, is hereby amended—
 - (a) by the insertion after the definition of "public school" of the following 5 definition:
"Registrar of deeds" means the *registrar of deeds* referred to in section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);"
 - (b) by the substitution for the definition of "Constitution" of the following 10 definition:
"Constitution" means the *Constitution* of the Republic of South Africa. [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);"
 - (c) by the substitution for the definition of "school" of the following definition:
"school" means a *public school* or an *independent school* which enrolls learners in one or more grades [between] from grade zero [and] to 15 grade twelve;".

Amendment of section 2 of Act 84 of 1996

2. Section 2 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (3) of the following words:
"and this Act." 20

Amendment of section 11 of Act 84 of 1996

3. Section 11 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A representative council of *learners* at the *school* must be established at every *public school* enrolling *learners* in the eighth grade [and] or higher.”. 5

Amendment of section 13 of Act 84 of 1996

4. Section 13 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

“(7) The [registrar of any deeds registry] *Registrar of deeds* 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] *Registrar of deeds* with proof of the agreement contemplated in subsection (6).”; 10

(b) by the substitution in the Afrikaans text for subsection (8) of the following subsection: 15

“(8) Die bepalings van die [Wet op die] Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), is nie van toepassing op die reg beoog in subartikel (2) nie.”;

(c) by the addition of the following subsection: 20

“(9) On application by the owner and on production of the owner's copy of the title deed, the *Registrar of deeds* must endorse on the title deed and in his or her records the fact that a *public school* has been established on the land in terms of *this Act*.”. 20

Amendment of section 14 of Act 84 of 1996

5. Section 14 of the South African Schools Act, 1996, is hereby amended— 25

(a) by the substitution in subsection (5). for the words preceding paragraph (a) of the following words:

“Despite subsection (3). a [registrar of a deeds registry] *Registrar of deeds* 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] *Registrar of deeds* receives—”; 30

(b) by the insertion after subsection (6) of the following subsection. the existing subsection (7) becoming subsection (8):

“(7) The *Registrar of deeds* may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the *Member of the Executive Council* of the province in which the *public school* is situated to the effect that such *public school* has been closed in terms of section 33. “”, 35

Amendment of section 20 of Act 84 of 1996

6. Section 20 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections: 40

“(4) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Member of the Executive Council* in terms of section 3(1) of the *Educators' Employment Act*, 1994, 45

(5) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the *Public Service Act*, 1994 (Proclamation No. 103 of 1994). 50

(6) An *educator* and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.

(7) A *public school* may only employ an *educator* in a post established in terms of subsection (4) if such *educator* is registered as an *educator* with the South African Council of Educators.

(8) The staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to—

(a) the ability of the candidate;

(b) the principle of equity;

(c) the need to redress past injustices: and

(d) the need for representivity.

(9) When presenting the annual budget contemplated in section 38, the *governing body* of a *public school* must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

(10) Despite section 60, the State is not liable for any act or omission by the *public school* relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).

(11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the *Minister* may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.”

Amendment of section 24 of Act 84 of 1996

7. Section 24 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (1) of the following paragraph:

“(j) the *principal* in his or her official capacity.”

Amendment of section 39 of Act 84 of 1996

8. Section 39 of the South African Schools Act, 1996, is hereby amended by the substitution in the Afrikaans text for paragraph (b) of subsection (2), of the following paragraph:

“(b) billike maatstawwe en procedures vir die algehele, gedeeltelike of voorwaardelike vrystelling [deur die beheerliggaam] van *ouers* wat nie in staat is om skoolgeld te betaal nie.”

Amendment of section 55 of Act 84 of 1996

9. Section 55 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(11) The *Registrar of deeds* in the office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.

(12) Any immovable property belonging to the State which was used by a school and not transferred or endorsed into the name of the *school* contemplated in subsection (1) remains the property of the State.

(13) Any immovable property which was transferred into the name of a school contemplated in subsection (1) must, if such school is subsequently closed in terms of this Act or any other applicable law, devolve upon the State.”

Amendment of section 59 of Act 84 of 1996

10. Section 59 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every school must provide such information about the *school* as is reasonably required by the *Head of Department* or the *Director-General of the national Department of Education* in consultation with the *Head of Department*.”

Amendment of section 3 of Act 27 of 1996

11. Section 3 of the National Education Policy Act, 1996, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) In determining national policy for education at education institutions, the Minister shall take into account the competence of the 5 provincial legislatures in terms of section [126] 146 of the Constitution, and the relevant provisions of any provincial law relating to education.”; and

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 10

“Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, [sting,] co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system and, without derogating from the generality of this section, may determine national 15 policy for—”.

Amendment of section 4 of Act 27 of 1996

12. Section 4 of the National Education Policy Act, 1996, is hereby amended by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words: 20

“(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter [3] 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right-”

Amendment of section 9 of Act 27 of 1996 25

13. Section 9 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of 30 Parliament and the provincial legislatures in terms of section [126] 146 of the Constitution;”.

Amendment of section 1 of Proclamation No. 138 of 1994, as amended by item 1 of Schedule 2 to Act 84 of 1996

14. Section 1 of the Educators' Employment Act, 1994, is hereby amended by the 35 deletion, in the definition of “employer”, of paragraph (d).

Amendment of section 3 of Proclamation 138 of 1994, as amended by item 2 of Schedule 2 to Act 84 of 1996

15. Section 3 of the Educators' Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act [and the National **Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No, 76 of 1984)**], the educator establishment at an educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment 45 of the Department of Education shall consist of the posts which the Minister creates.”.

Repeal of section 3A of Proclamation No. 138 of 1994, as amended by item 3 of Schedule 2 to Act 84 of 1996

16. Section 3A of the Educators' Employment Act, 1994, is hereby repealed. 5 0

Amendment of section 4 of Proclamation No. 138 of 1994, as amended by item 4 of Schedule 2 to Act 84 of 1996

17. Section 4 of the Educators' Employment Act, 1994, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The [qualifications] requirements for appointment, transfer and promotion [as an educator] shall be determined by the Minister.”;
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) The [authority to] employer shall fill a post referred to in section 3(I) and (3) at a public school [in terms of subsection] subject to subsections (2) and (4) [is exercised] on the recommendation of [a] that 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**] comply with the requirements referred to in subsection (1);
- (b) the candidate [**has been found guilty of misconduct**] is not registered or does not qualify for registration as an educator with the South African Council of Educators; or
- (c) sufficient proof exists that the recommendation made by the school was based on improper influence.”;
- (c) by the insertion after subsection (3) of the following subsection, the existing subsection (4) becoming subsection (5):
 “(4) The public school shall make its recommendations in terms of subsection (3) from candidates identified by the employer if the number of posts on the establishment contemplated in section 3(1) and (3) is reduced by the employer due to operational requirements as contemplated in the Labour Relations Act, 1995 (Act No. 66 of 1995).”;
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) The requirements contemplated in subsection (1) must comply with the basic values and principles referred to in section 195 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the factors to be taken into account in determining the requirements, include but are not limited to—
- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.”.

Amendment of section 5 of Proclamation 138 of 1994, as amended by item 5 of Schedule 2 to Act 84 of 1996

18. Section 5 of the Educators' Employment Act, 1994, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“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, 1984 (Act No. 76 of 1984), and**] the Labour Relations Act—”.

Amendment of section 15 of Proclamation No, 138 of 1994

19. Section 15 of the Educators' Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

“Hearing by disciplinary tribunal

15. (1) If an educator charged in terms of section 14(1) denies the charge or fails to comply with the notice contemplated in section 14(3), the employer shall appoint a disciplinary tribunal consisting of a chairperson and two other persons, one of whom shall be nominated by the educator or the employee member of which such an educator is a member, to inquire into the charge.”.

I certify that, with the exception of metered private calls within the local Ek sertifiseer dat, met uitsondering van getelde private oproepe binne die exchange system and the private calls as well as the expenditure for the usage plaaslike sentralestelsel en die private oproepe sowel as uitgawes vir die of telex and facsimile facilities detailed below, the calls and expenditure incurred gebruikmaking van teleks- en faksimileefasiliteite wat hieronder uiteengesit is. in respect of telex and facsimile facilities included in this account were made on die oproepe en uitgawes ten opsigte van teleks- en faksimileefasiliteite wat in urgent official business and that any less expensive means of communication hierdie rekening ingesluit is, vir dringende amptelike sake gemaak is. en dat would not have been efficient enough. Charges in respect of the following enige goedkoper kommunikasie-middel nie doeltreffend genoeg sou gewees het private calls, telexes and facsimiles have been paid for: nie. Koste ten opsigte van die volgende private oproepe, telekse en faksimilee is betaal:

Trunks calls marked X
Hooflynoproepewat X gemerk is R

Private trunk calls included in metered units
Private hooflynoproepe wat in getelde eenhede ingesluit is R

Telexes
Telekse R

Facsimiles
Faksimilee R

Total
Totaal R

.....
Signature of authorised officer
Handtekening van gemagtigde beampte

.....
Name in blockletters
Naam in drukskrif

Rank Rang
.....

Date Datum
.....

Amendment of section 18 of Proclamation No. 138 of 1994

20. Section 18 of the Educators' Employment Act, 1994, is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) one member nominated by the educator or employee member of which such educator is a member: Provided that if the educator or 5
employee member concerned fails to nominate such a member within a
reasonable time, the Member of the Executive “Council shall appoint the member.”.

Repeal of Act 76 of 1984

21. The National Policy on the Salaries and Conditions of Employment of Educators 10 Act, 1984 (Act No. 76 of 1984), is hereby repealed.

Transitional provision

22. Any educator who has been appointed in an unsubsidised post contemplated in section 3A of the Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), must, as long as his or her contractual arrangements are still in force, be regarded as 15 being employed in terms of section 20(4) of the South African Schools Act, 1996 (Act No. 84 of 1996).

Short title

23. This Act is the Education Laws Amendment Act. 1997.