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OFFICE OF THE PRESIDENCY

KANTOOR VAN DIE PRESIDENSIE

No. 1398.

19 November 1999

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

No. 48 of 1999: Education Laws Amendment Act, 1999.

No. 1398.

19 November 1999

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

No. 48 van 1999: Wysigingswet op Onderwyswette, 1999.

- (c) by the substitution for the definition Of 'education department' of the following definition:
 " 'education department' means a department [of State] responsible for [general or own] education [matters including a provincial education department] at national level or a department responsible for education in a province;";
- (d) by the substitution for the definition of "examining body" of the following definition:
 " 'examining body' means an education department or any other body registered with the council as a body responsible for conducting external examinations [at a point of withdrawal];";
- (e) by the insertion after the definition of "executive officer" of the following definition:
 " 'external examination' means an examination at a point of withdrawal taken by the candidates of an examining body;";
- (f) by the deletion of the definition of "formal education";
- (g) by the substitution for the definition of "Minister" of the following definition:
 " 'Minister' means the Minister of [National] Education;";
- (h) by the deletion of the definition of "non-formal education";
- (i) by the substitution for the definition of "point of withdrawal" of the following definition:
 " 'point of withdrawal' means a stage in [school or technical college education] general or [non-formal education] further education and training at which a candidate is required to sit for an examination with a view to obtaining documentary proof of proficiency;";
- (j) by the insertion after the definition of "prescribe" of the following definition:
 " 'raw marks' means the actual marks obtained by a candidate in a subject in an external examination before any adjustment of the marks is made by the council;" and
- (k) by the deletion of the definition of "school or technical college education".

Substitution of section 9 of Act 85 of 1986, as amended by section 2 of Act 89 of 1992

2. The following sections are hereby substituted for section 9 of the South African Certification Council Act, 1986:

"Functions of examining body with regard to external examination

9. In respect of an external examination to be conducted, an examining body, subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996)—
- (a) shall take adequate measures, including measures to combat irregularities in the examination venue and security measures for ensuring the confidentiality of examination papers, to ensure the integrity of the examinations;
 - (b) shall ensure that each paper is representative of the prescribed subject matter;
 - (c) shall ensure that each paper is moderated by at least one competent internal moderator;
 - (d) shall submit a paper and memorandum to an external moderator for confirmation that they conform to the required standards;
 - (e) shall ensure that a sample of the examination scripts is moderated by an external moderator;
 - (f) shall schedule a particular paper for a stipulated date and time on the examination time-table;
 - (g) shall supply the council on or before a date and in the form determined by the council, with a mark for each subject in which a candidate sat for examination;

- (h) shall without delay and in writing supply the council and the Director-General with full details of any irregularities that occurred in respect of such examination as well as the steps taken with regard to such irregularities;
- (i) shall publish the results of the examination after obtaining the approval of the council; and
- (j) may recommend to the council during the standardisation process that raw marks be adjusted.

Functions of Director-General with regard to external examination

9A. With regard to external examination the Director-General—

- (a) shall promote the integrity of the examination system;
- (b) shall monitor the conduct of the council and the examining body in upholding the minimum norms and standards set by the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or determined by policy; and
- (c) may institute an investigation into any irregularities which may occur.

Functions of council with regard to external examination

9B. (1) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the council, with regard to external examination—

- (a) shall perform the external moderation of examination papers, memoranda and samples of examination scripts of all examining bodies;
- (b) shall, in consultation with the Director-General and the examining body, approve the publication of the results of candidates if the council is satisfied that the examining body—
- (i) conducted the examination free from any irregularity;
 - (ii) complied with the requirements prescribed by the council for conducting examinations;
 - (iii) applied the norms and standards prescribed by the council and the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and with which a candidate is required to comply in those examinations in order to obtain a certificate; and
 - (iv) complied with every other condition determined by the council;
- (c) shall issue certificates in the form prescribed by the council to candidates who, in one or more subjects at a point of withdrawal—
- (i) have met the requirements set by the council for a certificate; and
 - (ii) have complied with every other condition determined by the council; and
- (d) may adjust raw marks during the standardisation process in consultation with the Director-General.

(2) Subject to the approval of the Minister, the council may register an examining body other than a department of education in accordance with criteria determined by the council.

(3) Subject to section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997), the council may with the approval of a body authorised to determine the requirements for admission to study at a higher education institution, endorse a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution according to

Fees payable to council

9C. The council may prescribe the fees payable to the council in respect of—

- (a) the issue of a certificate as contemplated in section 9B(1)(c) or of a duplicate certificate; and
- (b) the endorsement of a certificate as contemplated in section 9B(3) or of a duplicate certificate.

Substitution of long title of Act 85 of 1986

3. The South African Certification Council Act, 1986, is hereby amended by the substitution for the long title of the following long title:

“TO provide for control over the norms and standards of subject matter and examination, and for the issuing of certificates, at the different points of withdrawal in [school] general and [technical college education] further education and training [and non-formal education]: and for that purpose to establish the South African Certification Council; and to provide for the conducting of [common] examinations; and to provide for matters connected therewith.”.

Amendment of section 3 of Act 27 of 1996, as amended by section 11 of Act 100 of 1997

4. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) [Whenever the Minister wishes a particular] Subject to the Constitution, national policy [to prevail] shall prevail over the whole or a part of any provincial [law] policy on education [the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect] if there is a conflict between the national and provincial policies.”.

Amendment of section 5 of Act 27 of 1996

5. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs:

- “(b) such national organisations representing [college rectors] principals of institutions providing further education and training as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), as the Minister may recognise for this purpose;
- (c) the [organised teaching profession] trade unions represented in the Education Labour Relations Council referred to in section 37(3)(b) of the Labour Relations Act, 1995 (Act No. 66 of 1995), read with paragraph 3(2) of Schedule 1 to that Act;
- (d) such national organisations representing [parents] governing bodies of schools as the Minister may recognise for this purpose;”.

Amendment of section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997

6. Section 1 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for the definition of “educator” of the following definition:

“ ‘educator, means [an educator as defined in the Educators Employment Act, 1994 (Proclamation No. 138 of 1994)] any person, excluding a person who is appointed to exclusively perform extra-curricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school;” and
- (b) 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* from *grade [zero] R (Reception) to grade twelve;*”.

Amendment of section Y of Act 84 of 1996

7. Section 9 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) in consultation with the Head of Department, pending a decision as to whether the learner is to be expelled from the school by the *Head of Department*.”.5

Insertion of section 12A in Act 84 of 1996

8. The South African Schools Act, 1996, is hereby amended by the insertion after section 12 of the following section:

“Merger of public schools

12.4. (1) Subject to subsection (2), the Member of the Executive Council 10
may, by notice in the *Provincial Gazette*, merge two or more public schools into a single school.

(2) Before merging two or more public schools the Member of the Executive Council must—

(a) give written notice to the schools in question of the intention to merge them; 15

(b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;

(c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b); 20

(d) consider such representations; and

(e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law. 25

(3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also—

(a) notify the owner of the private property of his or her intention to merge the schools in question; 30

(b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;

(c) renegotiate his or her obligations in terms of the existing agreement if necessary; and 35

(d) negotiate a new agreement in terms of section 14 if the single school contemplated in subsection (1) is to be situated on private property.

(4) The single school contemplated in subsection (1) must be regarded as a public school.

(5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school. 40

(6) (a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned. 45

(b) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.

(7) The governing body of a public school to be merged, may appeal to the Minister against the decision as contemplated in subsection (1). 50

Amendment of section 16 of Act 84 of 1996

9. Section 16 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(4) The *Head of Department* may close a *public school* temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of *learners* and *staff* are endangered or that there is a real danger of bodily injury to them or of damage to property.

(5) When the *Head of Department* decides that the *school* should be reopened, he or she must inform the *governing body* and the *principal* of the date on which the *school* must reopen.

(6) The *principal* or a person designated by the *Head of Department* must inform the *educators* and *parents* of the date contemplated in subsection (5).’..

Amendment of section 21 of Act 84 of 1996

10. Section 21 of the South African Schools Act, 1996, is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (d); and

(b) by the insertion in subsection (1) after paragraph (d) of the following paragraph:

“(dA) to provide an adult basic education and training class or centre subject to any applicable law; or”.

Amendment of section 23 of Act 84 of 1996

11. Section 23 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (8) of the following subsection:

“(8) [Co-opted] Subject to subsection (10), co-opted members do not have voting rights on the *governing body*.’; and

(b) by the addition of the following subsections:

“(10) If the number of *parents* at any stage is not more than the combined total of other members with voting rights, the *governing body* must temporarily co-opt *parents* with voting rights.

(11) If a *parent* is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28(d) within 90 days after the vacancy has occurred.

(12) If a person elected as a member of a *governing body* as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the *governing body*.’.

Amendment of section 29 of Act 84 of 1996

12. Section 29 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

“(3) In the case of a *public school* for *learners* with special education needs any member of the *governing body* elected from the categories of persons referred to in section 24(1)(a), (e), (f), (g), (h) and (i) may serve as the chairperson of that *governing body*.’.

Amendment of section 55 of Act 84 of 1996, as amended by section 9 of Act 100 of 1997

13. Section 55 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) The [Registrar of deeds in the office] officer in charge of the deeds office or other 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

Amendment of section 60 of Act 84 of 1996

14. Section 60 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the *Member of the Executive Council* concerned.

(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a *public school* for purposes of supplementing the resources of the *school* as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business.

(5) Any legal proceedings against a *public school* for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in section 20(10), may only be instituted after written notice of the intention to institute proceedings against the school has been given to the *Head of Department* for his or her information.”.

Amendment of section 6 of Act 76 of 1998

15. Section 6 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (3)(a) for the word “Any” of the expression “Subject to paragraph (d), any”: and

(b) by the addition to subsection (3) of the following paragraph:

“(d) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make an appointment without such recommendation.”.

Amendment of section 8 of Act 76 of 1998

16. Section 8 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (2) for the word “No” of the expression “Subject to subsections (4) and (5), no”; and

(b) by the addition of the following subsections:

“(4) A recommendation contemplated in subsection (2) shall be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.

(5) The Head of Department may, without a recommendation contemplated in subsection (2), transfer an educator temporarily for a stated period from a post at a public school or public further education and training institution, to a post at another public school or public further education and training institution.

(6) An educator referred to in subsection (5) shall return to his or her previous post at the end of the period contemplated in that subsection.”.

Short title

17. This Act is the Education Laws Amendment Act, 1999.