

REPUBLIC OF SOUTH AFRICA

NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 40430 of 18 November 2016)
(The English text is the official text of the Bill)*

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 20—2018]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Qualifications Framework Act, 2008, so as to amend and insert certain definitions; to provide for the verification of all qualifications or part-qualifications by the SAQA; to provide for the formulation of criteria for evaluating foreign qualifications; to provide for the establishment and maintenance of separate registers of misrepresented or fraudulent qualifications; to provide for a separate register for professional designations; to provide for the referral of qualifications or part-qualifications to SAQA for verification and evaluation; to provide for offences and penalties which have a bearing on fraudulent qualifications; 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 67 of 2008, as amended by section 8 of Act 26 of 2010

1. Section 1 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of “board” of the following definition: “**‘authenticity’**—

- (a) in relation to a qualification or part-qualification, includes a qualification or part-qualification that is—
 - (i) registered on the NQF; 10
 - (ii) offered by a registered and accredited education institution or skills development provider in terms of this Act or any other applicable law; and
 - (iii) legally obtained; and

- (b) in relation to a foreign qualification, means a qualification or part-qualification that is obtained from a foreign country and is evaluated by the SAQA in terms of this Act, and authentic has a corresponding meaning;” 15

(b) by the insertion after the definition of “board” of the following definitions: “**‘Constitution’** means the Constitution of the Republic of South Africa, 1996; 20
‘Continuing Education and Training Act’ means the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);”

- (c) by the insertion after the definition of “education institution” of the following definitions:
- “**‘evaluate’** means the process followed by the SAQA to verify the authenticity of a foreign qualification and compare it with a South African qualification for ranking within the South African NQF, and evaluation has a corresponding meaning; 5
- ‘foreign institution’** means a foreign juristic person as defined in the Higher Education Act and the Continuing Education and Training Act; 10
- ‘fraudulent qualification or part-qualification’** includes a degree, diploma or certificate that is forged, fraudulently obtained or awarded in contravention of this Act, and has been declared as such by a court of law;”;
- (d) by the substitution for the definition of “*Gazette*” of the following definition: 15
- “**‘Gazette’** means the *Government Gazette*;”;
- (e) by the insertion after the definition of “Minister” of the following definitions: 15
- “**‘misrepresented qualification or part-qualification’** includes—
- (a) a qualification that purports to be authentic, but was erroneously issued to the holder by the registered and accredited or recognised education institution, skills development provider, foreign institution or its agent, as the case may be, and presented in good faith by the holder to another person for study, appointment or any other related purpose, believing such qualification or part-qualification to be authentic; or 20
- (b) any authentic qualification or part-qualification obtained or awarded by the registered and accredited or recognised education institution, foreign institution or skills development provider, as the case may be, to the holder, which by reason of standard has been reclassified by SAQA to be on a different lower level; 25
- ‘national learners’ records database’** means the electronic management information system that facilitates the management of the NQF, as contemplated in section 13(1)(l);”;
- (f) by the substitution for the definition of “skills development provider” of the following definition: 30
- “**‘skills development provider’** means a provider that is registered with the Department in terms of the Higher Education Act or Continuing Education and Training Act, and is accredited by the QC for Trades and Occupations to offer occupational qualifications;”;
- (g) by the insertion after the definition of “Umalusi” of the following definition: 35
- “**‘verification’** means the process followed by the SAQA to determine the authenticity of a qualification or part-qualification in terms of the relevant SAQA policy and procedures.”. 40

Substitution of section 2 of Act 67 of 2008

2. The following section is hereby substituted for section 2 of the principal Act:

“Object of Act

2. The object of this Act is to provide for the further development, 45
organisation and governance of the NQF and related matters.”.

Amendment of section 3 of Act 67 of 2008, as amended by section 9 of Act 26 of 2010

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 50
- “(2) Every qualification or part-qualification contemplated in subsection (1)(a) must be registered on the National Qualifications Framework in accordance with this Act.”; and
- (b) by the addition of the following subsection: 55
- “(3) Every private education institution or skills development provider offering education and training programme or any component thereof towards a qualification or part-qualification, must be registered by the Department as a private education institution or skills develop-

ment provider and accredited by the relevant QC to offer such qualification or part-qualification.”.

Amendment of section 13 of Act 67 of 2008, as amended by section 12 of Act 26 of 2010 and section 12 of Act 23 of 2012

4. Section 13 of the principal Act is hereby amended— 5
- (a) by the addition in subsection (1)(h) of the following subparagraph:
 “(iv) verify all qualifications or part-qualifications referred to it in terms of section 32A and make a decision on the status thereof;”;
- (b) by the substitution in subsection (1) for paragraph (l) of the following paragraph: 10
 “(l) with respect to records of education and training, maintain a national learners’ records database comprising registers of—
 (i) **[national]** qualifications [,] ;
 (ii) part-qualifications [,] ;
 (iii) qualification and part-qualification requirements and other related information; 15
 (iv) learner achievements [,] ;
 (v) details of the education institution that awarded the qualification or part-qualification;
 (vi) recognised professional bodies [**professional designations**] ; 20
 and
 (vii) associated information relating to registration, verification and accreditation;”;
- (c) by the insertion in subsection (1) after paragraph (l) of the following paragraph: 25
 “(lA) (i) maintain a separate register of professional designations;
 (ii) establish and maintain a register of misrepresented qualifications or part-qualifications with respect to records of education and training; and
 (iii) establish and maintain a register of fraudulent qualifications or part-qualifications with respect to records of education and training;”;
- (d) by the substitution in subsection (1) for paragraph (m) of the following paragraph: 30
 “(m) with respect to foreign qualifications [,]— 35
 (i) provide a verification or an evaluation and advisory service consistent with this Act; [and]
 (ii) evaluate all foreign qualifications referred to it in terms of this Act against the South African NQF in accordance with SAQA policy and procedures and, where appropriate, issue a SAQA Certificate of Evaluation; and 40
 (iii) formulate and publish criteria for evaluating foreign qualifications;”;
- (e) by the insertion of the following subsections after subsection (1): 45
 “(1A) When verifying or evaluating a qualification or part-qualification in terms of this Act, the SAQA must, amongst other things, consider whether the education institution, skills development provider or foreign institution exhibits one or more of the following characteristics, but not limited to:
 (a) Lack of legal authority to operate as an education institution; 50
 (b) little or no attendance of classes;
 (c) little coursework, if any, and few or no assignments;
 (d) lack of information about its location, incorporation, country of operation and origin, ownership or its governance structures;
 (e) publishing or exaggerating claims of quality review or accreditation; 55
 (f) issuing a qualification that is not recognised by a registered professional body;
 (g) a qualification is obtainable against payment of a fee; or
 (h) a qualification is obtainable within a very short period, in less than 60
 the prescribed national hours on an average qualification.

(1B) If after verification or evaluation, a qualification or part-qualification is found to be a misrepresented qualification or is declared by a court of law to be a fraudulent qualification, the SAQA must refer such a finding or information to the relevant professional body, as may be prescribed, and must record in the register of misrepresented qualifications or part-qualifications or fraudulent qualifications or part-qualifications, the following information: 5

- (a) Name of the holder of the qualification or part-qualification;
- (b) description of the document concerned;
- (c) status or reclassification of the document to be recognised as a qualification at a lower level on the NQF; 10
- (d) nature of the offence and sentence on receipt of details from the relevant clerk of the court;
- (e) name of the education institution, foreign institution or skills development provider who issued the qualification or part-qualification; 15
- (f) details of a degree, diploma or certificate mill;
- (g) date of confirmed misrepresentation by the SAQA or date of a finding by a court of law; or
- (h) any other relevant information. 20

(1C) The verification and evaluation processes referred to in subsection (1)(h) must conform to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”; and

(f) by the addition of the following subsection:

“(3) For the purpose of this section ‘SAQA Certificate of Evaluation’ means a certificate issued by the SAQA indicating the authenticity of the foreign qualification and its ranking on the NQF.”. 25

Amendment of section 27 of Act 67 of 2008, as amended by section 14 of Act 26 of 2010

5. Section 27 of the principal Act is hereby amended— 30

- (a) by the substitution for paragraph (f) of the following paragraph:
 - “(f) in consultation with the SAQA, advise the Minister on matters relating to its sub-framework;”;
- (b) by the addition in paragraph (i) of the following subparagraph:
 - “(iv) accredit the education institution or skills development providers that complies with all the requirements to offer a qualification or part-qualification registered on the NQF;”; and 35
- (c) by the substitution in paragraph (j) for subparagraph (ii) of the following subparagraph:
 - “(ii) submit at no cost to the SAQA such data in a format determined in consultation with the SAQA for recording on the national learners’ records database contemplated in section 13(1)(l);” 40

Substitution of section 30 of Act 67 of 2008

6. The following section is hereby substituted for section 30 of the principal Act:

“Registration of professional designation” 45

30. A professional body that is recognised in terms of section 29 must—

- (a) apply to the SAQA, in the manner determined by the SAQA in terms of section 13(1)(i)(ii) [,]; and
- (b) [to register a professional designation on the NQF] ensure that its professional designation is registered on a separate designated register.”. 50

Insertion of sections 32A and 32B in Act 67 of 2008

7. The following sections are inserted in the principal Act after section 32:

“Referral of qualification or part-qualification not on the national learners’ records database to SAQA for verification and evaluation

32A. (1) Except for those categories of employees who are specifically exempted from the provisions of this section by the Minister by notice in the *Gazette*, all employers, education institutions, skills development providers and QC’s must check if the qualification or part-qualification which is presented to them for purposes of study, employment, appointment or any other related purpose, is registered on the national learners’ records database and if not, refer such qualification or part-qualification to the SAQA for verification or evaluation. 5 10

(2) If after verification or evaluation of the qualification or part-qualification—

- (a) the SAQA is of the opinion that the qualification or part-qualification is in line with all the requirements and standards of the national learners’ records database, the SAQA must record such qualification or part-qualification on the national learners’ records database; or 15
- (b) the qualification or part-qualification is found to be a misrepresented qualification or part-qualification or is declared by a court of law to be a fraudulent qualification or part-qualification, the SAQA must record that information in the appropriate register and shall refer such a finding or information to the relevant professional body, as may be prescribed. 20

Offences

32B. (1) Any person who claims that a qualification or part-qualification has been awarded to him or her by an education institution, skills development provider or foreign institution whereas in fact no such qualification or part-qualification has been awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for an offence of fraud. 25

(2) Any person or education institution who claims that he or she or it is offering any qualification or part-qualification that is registered on the NQF whereas such qualification or part-qualification is not registered, is guilty of an offence and is liable on conviction to any sentence that may be imposed for the offence of fraud. 30

(3) Any person or education institution who claims that he or she or it is accredited by a legally recognised body to offer any qualification or part-qualification whereas no such accreditation was granted, is guilty of an offence and is liable on conviction to any sentence that may be imposed for the offence of fraud. 35

(4) Any person who reproduces a false data document, certificate, diploma, degree, computer printout or any falsified records in connection with a qualification or part-qualification, to the prejudice of another person, is guilty of the offence and is liable on conviction to any sentence that may be imposed for forgery. 40

(5) Any person who passes off a false data document, certificate, diploma, degree, computer printout or any falsified records in connection with a qualification or part-qualification, to the prejudice of another person, is guilty of the offence and is liable on conviction to any sentence that may be imposed for uttering. 45

(6) Any person who— 50

- (a) attempts;
- (b) conspires with any other person; or
- (c) aids, abets, induces, incites, instigates, instructs, commands or procures another person to commit an offence in terms of this Act, is guilty of an offence of aiding, abetting inciting, conspiring another person to commit an offence in terms of this Act and is liable on conviction to a fine or imprisonment not exceeding three years or to both such fine and imprisonment. 55

(7) A court which imposes any sentence in terms of this section must, without excluding any other relevant factors, consider as aggravating factors—

- (a) the extent of the prejudice and loss suffered by the complainant as the result of the commission of such an offence; and
- (b) the extent to which the person gained financially, or received any favour, benefit, reward, compensation or any other advantage from the commission of the offence."

5

Substitution of the Long Title of Act 67 of 2008

8. The following long title is hereby substituted for the long title of the principal Act: 10
"To provide for the National Qualifications Framework; to provide for the responsibilities of the Minister of Higher Education and Training; to provide for the South African Qualifications Authority and its functions; to provide for Quality Councils and its functions; to provide for the referral of qualifications or part-qualifications to the SAQA for verification and evaluation; to provide for offences and penalties; to provide for transitional arrangements; to repeal the South African Qualifications Authority Act, 1995; and to provide for matters connected therewith" 15

Short title and commencement

9. This Act is called the National Qualifications Framework Amendment Act, 2018, 20
 and comes into operation on the date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL, 2018

1. BACKGROUND

The National Qualifications Framework Amendment Bill, 2018, (“the Bill”), seeks to amend the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) (“the principal Act”), in order to strengthen the principal Act in various respects by *inter alia*, rectifying inconsistencies and closing gaps currently in the principal Act.

2. OBJECTS OF BILL

- 2.1 The Bill seeks to create an enabling mechanism for the South African Qualifications Authority (“SAQA”) and the three Quality Councils (“QC’s”) to have legislative competence to address challenges with regard to fraudulent or misrepresented qualifications. In this regard, a provision is made for the referral of all qualifications presented for study, employment or appointment to SAQA for verification or evaluation. Furthermore, a provision is also made for the referral of fraudulent qualifications to the relevant professional body. A provision has also been made for offences in respect of fraudulent qualifications.
- 2.2 SAQA is also empowered to establish and maintain registers for professional designations, misrepresented qualifications and fraudulent qualifications. SAQA is also empowered to evaluate foreign qualifications and to formulate and publish criteria for evaluating foreign qualifications.
- 2.3 A provision has also been made to allow SAQA, as the body with overall responsibility for the National Qualifications Framework (“NQF”) and for the coordination of the sub-frameworks, to be consulted when the QC’s advise the Minister on matters relating to their sub-frameworks. The rationale for this amendment is to mitigate the current situation where QC’s do not consult with SAQA about issues pertaining to the development and management of their sub-frameworks, and other matters related to their quality assurance role. This situation creates a risk for the enduring public credibility of the NQF and the quality assurance regime.

3. BODIES/PERSONS/STAKEHOLDERS CONSULTED

- 3.1 Consultative process on the Bill started early in 2016 with SAQA, Umalusi, Council for Higher Education and Training and the Quality Council for Trades and Occupations. Various inputs were received from the Council for Higher Education and Training, Umalusi and senior officials within the Department of Higher Education and Training. Some of the inputs were incorporated in the Bill. On 19 May 2016, the Bill together with the inputs received, was discussed in a meeting of the Inter-departmental NQF Steering Committee (IDNQFSC) subsequent to which a further request was made to members of the Committee and entities which had not yet provided their comments to do so by 23 May 2016.
- 3.2 The Bill was published in the *Government Gazette* No. 40430 of 18 November 2016, calling for public comments thereon. Due to the interest that the Bill attracted from the general public and various groups, a request was made to the Minister to extend the deadline for the submission of public comments, which the Minister duly granted until 20 January 2017. A total of 40 comments were received from various individuals and interested organisations. These were duly considered and some of the comments that had merit have been incorporated into the Bill.

- 3.3 The Social Economic Impact Assessment System (SEIAS) evaluation process on the Bill is currently being undertaken. Public hearings will also take place during the Parliamentary legislative process.

4. FINANCIAL IMPLICATIONS FOR STATE

Proposed funding for the implementation of the Bill has been budgeted for. The Department of Higher Education and Training will bear the costs for the publication of the Bill for public comments.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Department of Higher Education and Training and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies. In other words, the Bill does not deal with any matters listed in Schedule 4 to the Constitution (functional areas of concurrent national and provincial legislative competence) wherein the procedure set out in section 76 of the Constitution would apply.
- 5.2 The Constitutional Court, in *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* CCT 100/09 [2010] ZACC 10 (11 May 2010), paragraph 72, stated that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces. It stated that whether a Bill is a section 76 Bill is determined in two ways. Firstly by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution, and secondly by whether the provisions of a Bill in substantial measure, fall within a concurrent provincial legislative competence.
- 5.3 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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