

SKILLS DEVELOPMENT ACT

SKILLS DEVELOPMENT ACT 97 OF 1998

[Assented To: 20 October 1998]

[Commencement Date: 2 February 1999 - unless otherwise indicated]

as amended by:

Skills Development Levies Act 9 of 1999

[with effect from 1 September 1999]

Skills Development Amendment Act 31 of 2003

[with effect from 14 November 2003]

Skills Development Amendment Act 37 of 2008

[with effect from 6 April 2009]

Higher Education Laws Amendment Acts 26 of 2010

[with effect from 7 December 2010]

ACT

To provide an institutional framework to devise and implement national, sector and workplace strategies to develop and improve the skills of the South African workforce; to integrate those strategies within the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995; to provide for learnerships that lead to recognised occupational qualifications; to provide for the financing of skills development by means of a levy-financing scheme and a National

Skills Fund; to provide for and regulate employment services; and to provide for matters connected therewith.

[Long title amended by s. 23 of Act 9/99]

ARRANGEMENT OF SECTIONS

[Arrangement of sections amended by s. 18 of Act 37/2008]

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CHAPTER 1

DEFINITIONS, PURPOSE AND APPLICATION OF ACT

1. Definitions

In this Act, unless the context otherwise indicates -

“apprenticeship” means a learnership in respect of a listed trade, and includes a trade-test in respect of that trade;

[Definition of “apprenticeship” inserted by s. 1 of Act 37/2008]

“artisan” means a person that has been certified as competent to perform a listed trade in accordance with this Act;

[Definition of “artisan” inserted by s. 1 of Act 37/2008]

“Basic Conditions of Employment Act” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“Department” means the Department of Higher Education and Training, except in-

- (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and
 - (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to “employment services” defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(l)(b) and (c), where it means the Department of Labour;
- [Definition of “Department” substituted by s. 4 of Act 26/2010]

“designated groups” means black people, women and people with disabilities;

[Definition of “designated groups” inserted by s. 1 of Act 31/2003]

“Director-General” means the Director-General of Higher Education and Training;

[Definition of “Director-General” substituted by s. 4 of Act 26/2010]

“employee” means -

- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; or
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have corresponding meanings;

“employment services” means the provision of the service of -

- (a) advising or counselling of workers on career choices either by the provision of information or other approaches;
- (b) assessment of work-seekers for -
 - (i) entry or re-entry into the labour market; or
 - (ii) education and training;
- (c) the reference of work-seekers -
 - (i) to employers to apply for vacancies; or
 - (ii) to training providers for education and training;

(d) assistance of employers by -

- (i) providing recruitment and placement services;
- (ii) advising them on the availability of work-seekers with skills that match their needs;
- (iii) advising them on the retrenchment of employees and the development of social plans;

(dA) procuring for or providing to a client other persons to render services to or perform work for the client, irrespective of by whom those persons are remunerated; or

[Para. (dA) inserted by s. 1 of Act 31/2003]

(e) any other prescribed employment service;

“government department” means any department or organisational component referred to in Schedule 1 or 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“Labour Court” means the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

“learner” includes an apprentice;

[Definition of “learner” by s. 1 of Act 37/2008]

“learnership” includes an apprenticeship;

[Definition of “learnership” inserted by s. 1 of Act 37/2008]

“learning” means the acquisition of knowledge, understanding, values, skill, competence or experience;

[Definition of “learning” inserted by s. 1 of Act 37/2008]

“learning programme” includes a learnership, an apprenticeship,

a skills programme and any other prescribed learning programme which includes a structured work experience component;

[Definition of “learning programme” inserted by s. 1 of Act 37/2008]

“Minister” means the Minister of Higher Education and Training, except in-

- (a) sections 2(1)(g) and (h), 2(2)(a)(v), (vi) and (xii), 5(4) (only with respect to Productivity South Africa established by section 26K), 22(1), 23(1)(a) and (d), (2) and (3), 24, 25, 26, 26K, 26L, 26M, 26N, 32(2), 36(o), (p) and (q), item 7 of Schedule 2A and Schedule 4; and
- (b) sections 32(1), 33 and 36(a) and (s) and any other provision to the extent that these provisions apply to “employment services” defined in section 1 or to Productivity South Africa established by section 26K, but excluding section 23(1)(b) and (c), where it means the Minister of Labour;

[Definition of “Minister” substituted by s. 4 of Act 26/2010]

“National Qualifications Framework” means the National Qualifications Framework contemplated by the National Qualifications Framework Act, 2008;

[Definition of “National Qualifications Framework” inserted by s. 1 of Act 37/2008]

“National Skills Authority” means the National Skills Authority established by section 4;

“national skills development policy” means the national skills development policy referred to in section 5(1)(a)(i);

“national skills development strategy” means the national skills development strategy referred to in section 5(1)(a)(ii);

“National Skills Fund” means the National Skills Fund established by section 27;

“NEDLAC” means the National Economic Development and Labour Council established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);

“occupational qualification” means a qualification associated with a trade, occupation or profession resulting from work-based learning and consisting of knowledge unit standards, practical unit standards and work experience unit standards;

[Definition of “occupational qualification” inserted by s. 1 of Act 37/2008]

“Occupational Qualifications Framework” means the sub-framework for occupational qualifications which forms an integral part of the National Qualifications Framework;

[Definition of “Occupational Qualifications Framework” inserted by s. 1 of Act 37/2008]

“Placement” means placing an individual in a placement opportunity, with due regard to the Code of Good Practice on the Integration of Employment Equity in Human Resources Policies and Practices in terms of the Employment Equity Act, 1998 (Act No. 55 of 1998);

[Definition of “placement” inserted by s. 1 of Act 37/2008]

“placement opportunity” means any opportunity for work or learning that could be offered to an individual and includes a vacancy for employment, an opportunity for selfemployment, a learning programme and community service;

[Definition of “placement opportunity” inserted by s. 1 of Act 37/2008]

“prescribed” means prescribed by regulation;

“private employment services agency” means any person that provides employment services for gain;

[Definition of “private employment services agency” inserted by s. 1 of Act 31/2003]

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

[Definition of “Public Finance Management Act” inserted by s. 1 of Act 31/2003]

“QCTO” means the Quality Council for Trades and Occupations established in terms of section 26G;

[Definition of “QCTO” inserted by s. 1 of Act 37/2008]

“regulation” means a regulation made and in force in terms of this Act;

[Definition of “regulation” substituted by s. 1 of Act 31/2003]

“repealed Act” means-

- (i) the Manpower Training Act, 1981 (Act No. 56 of 1981);
- (ii) any law repealed by the Manpower Training Act, 1981, and any law repealed by such an Act; and
- (iii) any law listed in Schedule 1 to the Integration of Labour Laws Act, 1994 (Act No. 49 of 1994), dealing with training or skills development;

[Definition of “repealed Act” inserted by s. 1 of Act 37/2008]

“service level agreement” means a service level agreement concluded in terms of section 10A;

[Definition of “service level agreement” inserted by s. 1 of Act 31/2003]

“SETA” means a sector education and training authority established in terms of section 9(1);

“Skills Development Levies Act” means the Skills Development Levies Act, 1999;

[Definition of “Skills Development Levies Act” substituted by s. 23 of Act 9/99]

“skills development levies” means a levy as defined in section 1 of the Skills Development Levies Act;

[Definition of “skills development levies” substituted by s. 23 of Act 9/99]

“skills development provider” means a provider of an occupational learning; and

[Definition of “skills development provider” inserted by s. 1 of Act 37/2008]

“South African Qualifications Authority” means the South African Qualification Authority established by section 3 of the South African Qualifications Authority Act;

“South African Qualifications Authority Act” means the South Africa Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“this Act” includes any regulations but does not include the footnotes; and

“trade” means an occupation for which an artisan qualification is required in terms of section 26B;

[Definition of “trade” inserted by s. 1 of Act 37/2008]

“worker” includes an employee, an unemployed person and a work-seeker.

2. Purposes of Act

(1) The purposes of this Act are -

(a) to develop the skills of the South African workforce -

- (i) to improve the quality of life of workers, their prospects of work and labour mobility;
 - (ii) to improve productivity in the workplace and the competitiveness of employers;
 - (iii) to promote self-employment; and
 - (iv) to improve the delivery of social services;
- (b) to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
- (c) to encourage employers -
- (i) to use the workplace as an active learning environment;
 - (ii) to provide employees with the opportunities to acquire new skills;
 - (iii) to provide opportunities for new entrants to the labour market to gain work experience; and
 - (iv) to employ persons who find it difficult to be employed;
- (d) to encourage workers to participate in learning programmes;
[Para. (d) substituted by s. 2 of Act 37/2008]
- (e) to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to

redress those disadvantages through training and education;

- (f) to ensure the quality of learning in and for the workplace;

[Para. (f) substituted by s. 2 of Act 37/2008]

- (g) to assist -

- (i) work-seekers to find work;
- (ii) retrenched workers to re-enter the labour market;
- (iii) employers to find qualified employees; and

- (h) to provide and regulate employment services.

- (2) Those purposes are to be achieved through-

- (a) an institutional and financial framework comprising-

- (i) the National Skills Authority;
- (ii) the National Skills Fund;
- (iii) a skills development levy-financing scheme as contemplated in the Skills Development Levies Act;
- (iv) SETAs;
- (v) provincial offices of the Department;
- (vi) labour centres of the Department;

- (vii) accredited trade test centres;
 - (viii) skills development institutes;
 - (ix) the Quality Council for Trades and Occupations;
 - (x) a skills development forum for each province;
 - (xi) a national artisan moderation body; and
 - (xii) Productivity South Africa;
- (b) encouraging partnerships between the public and private sectors of the economy to provide learning in and for the workplace; and
 - (c) co-operating with the South African Qualifications Authority.

[Subs. (2) amended by s. 23 of Act 9/99 and substituted by s. 2 of Act 37/2008]

3. Interpretation

Any person applying this Act must interpret its provisions to give effect to -

- (a) its purposes; and
- (b) the objects of the South African Qualifications Authority Act.

CHAPTER 2

NATIONAL SKILLS AUTHORITY

4. Establishment of National Skills Authority

The National Skills Authority is hereby established.

5. Functions of National Skills Authority

(1) The functions of the National Skills Authority are-

- (a) to advise the Minister on-
 - (i) a national skills development policy;
 - (ii) a national skills development strategy;
 - (iii) guidelines on the implementation of the national skills development strategy;
 - (iv) the strategic framework and criteria for allocation of funds from the National Skills Fund; and
 - (v) any regulations to be made;
- (b) to liaise with SETAs on-
 - (i) the national skills development policy;
 - (ii) the national skills development strategy; and
 - (iii) sector skills plans;

- (c) to report to the Minister on the progress made in the implementation of the national skills development strategy;
- (d) to conduct investigations on any matter arising out of the application of this Act;
- (dA) to liaise with the QCTO on occupational standards and qualifications; and
- (e) to exercise any other powers and perform any other duties conferred or imposed on the Authority by this Act.

[Subs. (1) amended by s. 2 of Act 31/2003 and substituted by s. 3 of Act 37/2008]

- (2) For the purposes of investigations referred to in subsection (1)(d), the Authority has the prescribed powers of entry and to question and inspect.
- (3) The Authority must perform its functions in accordance with this Act and its constitution.
- (4) Subsection (1)(a)(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO or Productivity South Africa.

[Subs. (4) added by s. 3 of Act 37/2008]

6. Composition of National Skills Authority and term and vacation of office

- (1) The National Skills Authority consists of -
 - (a) a voting chairperson appointed by the Minister;

- (b) 24 voting and six non-voting members appointed by the Minister; and

[Para. (b) substituted by s. 3 of Act 31/2003 and s. 4 of Act 37/2008]

- (c) its non-voting executive officer appointed in terms of section 8(2)(a).

(2) The members referred to in subsection (1)(b) are -

- (a) five voting members nominated by NEDLAC and appointed by the Minister to represent organised labour;
- (b) five voting members nominated by NEDLAC and appointed by the Minister to represent organised business;
- (c) five voting members nominated by NEDLAC and appointed by the Minister to represent organisations of community and development interests, which must include -
 - (i) a woman who represents the interests of women;
 - (ii) a person who represents the interests of the youth; and
 - (iii) a disabled person who represents the interests of people with disabilities;
- (d) five voting members appointed by the Minister to represent the interests of the State;

- (e) four voting members appointed by the Minister to represent the interests of education and skills development providers;

[Para. (e) substituted by s. 4 of Act 37/2008]

- (eA) two non-voting members, who have expertise in skills development, appointed by the Minister after consultation with the National Skills Authority;

[Para. (eA) inserted by s. 3 of Act 31/2003]

- (f) two non-voting members, who have expertise in the provision of employment services, appointed by the Minister;

[Para. (f) substituted by s. 4 of Act 37/2008]

- (g) a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister;

[Para. (g) substituted by s. 4 of Act 37/2008]

- (h) a non-voting member nominated by the QCTO and appointed by the Minister.

[Para. (h) added by s. 4 of Act 37/2008]

- (3) The Minister must designate five members as deputy chairpersons, one deputy chairperson each from the members to be appointed to represent -

- (a) organised labour;
- (b) organised business;
- (c) organisations of community and development interests;
- (d) the interests of the State; and

(e) education and skills development providers.

[Subs. (3) substituted by s. 4 of Act 37/2008]

(4) A member of the Authority holds office for a period of five years and is eligible for re-appointment on expiry of his or her term of office, but may not serve more than two consecutive terms of office.

[Subs. (4) substituted by s. 4 of Act 37/2008]

(5) A member of the Authority vacates office if that member -

(a) is removed from office by the Minister as contemplated in subsection (6); or

(b) resigns by written notice addressed to the Minister.

(6) The Minister may remove a member of the Authority -

(a) on the written request of the body that nominated that member in terms of subsection (2);

(b) for serious misconduct;

(c) for permanent incapacity;

(d) for absence from three consecutive meetings of the Authority -

(i) without the prior permission of the Authority; or

(ii) unless the member shows good cause; or

(e) for engaging in any activity that may undermine the functions of the Authority.

- (7) If the chairperson or a member of the Authority vacates office before the expiry of the period of office, the Minister must, in terms of subsection (1)(a) or (2), respectively, appoint a new chairperson or member, as the case may be, for the unexpired portion of that period within 90 days.

[Subs. (7) substituted by s. 4 of Act 37/2008]

7. Constitution of National Skills Authority

- (1) The National Skills Authority must, as soon as possible after the appointment of its members, adopt its constitution.
- (2) Subject to this Act, the constitution of the Authority -
- (a) must provide for -
 - (i) procedures for the nominations of members of the Authority referred to in section 6(2)(a), (b), (c) and (g);
 - (ii) the establishment and functioning of committees, including an executive committee;
 - (iii) subject to subsection (3), the rules for convening and conducting of meetings of the Authority and its committees, including the quorum required for and the minutes to be kept of those meetings;
 - (iv) the voting rights of the different members and the manner in which decisions are to be taken by the Authority and its committees;
 - (v) a code of conduct for the members of the Authority;

(vi) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and

(vii) subject to subsections (4) and (5), a procedure for amending the constitution and advising the Minister on regulations to be made; and

(b) may provide for -

(i) the delegation of powers and duties of the Authority to its members, committees and employees, provided that the Authority may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the Authority.

(3) At least 30 days notice must be given for a meeting of the Authority at which an amendment of the constitution or a regulation to be made is to be considered.

(4) A supporting vote of at least two thirds of the Authority's members and the approval of the Minister is required for an amendment to its constitution.

(5) A supporting vote of at least two-thirds of the Authority's members is required for advising the Minister on regulations to be made.

- (6) Despite subsection (2)(a)(i), the Minister must determine the procedure for the nominations for the first appointment of members of the Authority referred to in section 6(2)(a), (b), (c) and (g).

8. Remuneration and administration of National Skills Authority

- (1) A member of the National Skills Authority who is not in the full-time employment of the State may be paid the remuneration and allowances determined by the Minister with the approval of the Minister of Finance.
- (2) Subject to the laws governing the public service, the Director-General must -
- (a) appoint a person to be the executive officer of the National Skills Authority who will, upon such appointment, be in the employ of the public service; and
 - (b) provide the Authority with the personnel and financial resources that the Minister considers necessary for the performance of its functions.

CHAPTER 3

SECTOR EDUCATION AND TRAINING AUTHORITIES

9. Establishment of SETA

- (1) The Minister may, in the prescribed manner, establish a sector education and training authority with a constitution for any national economic sector.

- (2) The Minister must determine a discrete sector for the purposes of subsection (1) by reference to categories of employers and for the purposes of that determination take into account -
- (a) the education and training needs of employers and employees that -
 - (i) use similar materials, processes and technologies;
 - (ii) make similar products; or
 - (iii) render similar services;
 - (b) the potential of the proposed sector for coherent occupational structures and career pathing;
 - (c) the scope of any national strategies for economic growth and development;
 - (d) the organisational structures of the trade unions, employer organisations and government in closely related sectors;
 - (e) any consensus that there may be between organised labour, organised employers and relevant government departments as to the definition of any sector; and
 - (f) the financial and organisational ability of the proposed sector to support a SETA.
- (3) On the establishment of a SETA, the Minister may provide assistance to the SETA to enable it to perform its functions.

- (4) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to subsection (2), change the sector of a SETA and must publish a notice in the *Gazette* reflecting such change.

[Subs. (4) added by s. 4 of Act 31/2003]

(Commencement date of s. 9: 10 September 1999)

9A. Amalgamation and dissolution of SETAs

- (1) The Minister may, after consulting the National Skills Authority and the SETAs in question and subject to section 9(2), amalgamate two or more SETAs.
- (2) The Minister must approve a constitution for the amalgamated SETA.
- (3) The Minister must publish a notice in the *Gazette* containing-
- (a) the date of the amalgamation;
 - (b) the sector for which the amalgamated SETA is established; and
 - (c) any other matter necessary to prescribe in order to establish the amalgamation.
- (4) On the establishment of the amalgamated SETA, all assets, rights, liabilities and obligations of the amalgamating SETAs devolve upon and vest in the amalgamated SETA.
- (5) The Minister may, after consulting the National Skills Authority and the SETA in question, dissolve a SETA if the SETA is unable to continue to perform its functions.

- (6) The Minister must publish a notice in the *Gazette*-
- (a) containing the date of the dissolution of the SETA;
 - (b) setting out the manner in which, and by whom, the SETA is to be wound-up;
 - (c) setting out how any assets remaining after the winding-up of the SETA must be distributed; and
 - (d) providing for any other matter necessary for the dissolution and winding-up of the SETA in question.
- (7) No transfer duty, stamp duty, fee or costs are payable in respect of the transfer of any assets, rights, liabilities or obligations between SETAs as contemplated in this section.
- (8) The Registrar of Deeds on presentation of proof of any transfer of immovable property contemplated in this section must endorse the title deeds accordingly and make the entries in the relevant register that are necessary to register the transfer.

[S. 9A inserted by s. 5 of Act 31/2003]

10. Functions of SETA

- (1) A SETA must, in accordance with any requirements that may be prescribed-
- (a) develop a sector skills plan within the framework of the national skills development strategy;
 - (b) implement its sector skills plan by-

- (i) establishing learning programmes;
- (ii) approving workplace skills plans and annual training reports;
- (iii) allocating grants in the prescribed manner and in accordance with any prescribed standards and criteria to employers, education and skills development providers and workers; and
- (iv) monitoring education and skills development provision in the sector;

(c) promote learning programmes by-

- (i) identifying workplaces for practical work experience;
- (ii) supporting the development of learning materials;
- (iii) improving the facilitation of learning; and
- (iv) assisting in the conclusion of agreements for learning programmes, to the extent that it is required;

(d) register agreements for learning programmes, to the extent that it is required;

(e) perform any functions delegated to it by the QCTO in terms of section 26I;

- (f) when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b), in its sector;
- (g) liaise with the National Skills Authority on-
 - (i) the national skills development policy;
 - (ii) the national skills development strategy; and
 - (iii) its sector skills plan;
- (h) submit to the Director-General-
 - (i) any budgets, reports and financial statements on its income and expenditure that it is required to prepare in terms of the Public Finance Management Act; and
 - (ii) strategic plans and reports on the implementation of its service level agreement;
- (i) liaise with the provincial offices and labour centres of the Department and any education body established under any law regulating education in the Republic to improve information-
 - (i) about placement opportunities; and
 - (ii) between education and skills development providers and the labour market;

- (iA) liaise with the skills development forums established in each province in such manner and on such issues as may be prescribed;
- (j) subject to section 14, appoint staff necessary for the performance of its functions;
- (jA) promote the national standard established in terms of section 30B;
- (jB) liaise with the QCTO regarding occupational qualifications; and
- (k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.

[Subs. (1) amended by s. 23 of Act 9/99 and s. 6 of Act 31/2003 and
Substituted by s. 5 of Act 37/2008]

(2) A SETA has -

- (a) all such powers as are necessary to enable it to perform its duties referred to in subsection (1); and
- (b) the other powers conferred on the SETA by this Act or the Skills Development Levies Act.

[Para. (b) substituted by s. 23 of Act 9/99]

(3) A SETA must perform its functions in accordance with this Act, the Skills Development Levies Act and its constitution.

[Subs. (3) substituted by s. 23 of Act 9/99]

(Commencement date of s. 10: 10 September 1999)

10A. SETAs to conclude service level agreements

- (1) For each financial year, every SETA must conclude with the Director-General a service level agreement concerning-
 - (a) the SETA's performance of its functions in terms of this Act and the national skills development strategy;
 - (b) the SETA's annual business plan; and
 - (c) any assistance that the Director-General is to provide to the SETA in order to enable it to perform its functions.
- (2) If the Director-General and a SETA cannot agree on the contents of a service level agreement within the prescribed period, the Minister must determine the contents of the service level agreement after consulting the National Skills Authority.
- (3) The determination by the Minister in respect of a service level agreement is final and binding.
- (4) The Minister must, after consultation with the National Skills Authority, make regulations concerning-
 - (a) the procedure for negotiating a service level agreement, including the periods within which negotiations must be conducted;
 - (b) the matters which may be dealt with in a service level agreement and which may include-

- (i) standards, criteria and targets for measuring and evaluating the SETA's performance of its functions in terms of the Act and its obligations in terms of the national skills development strategy; and
 - (ii) the timetable, number, format, contents and information requirements of plans and reports to be submitted to the Director-General.
- [S. 10A inserted by s. 7 of Act 31/2003]

11. Composition of SETA

A SETA may consist only of members representing -

- (a) organised labour;
 - (b) organised employers, including small business;
 - (c) relevant government departments; and
 - (d) if the Minister, after consultation with the members referred to in paragraph (a), (b) and (c), considers it appropriate for the sector -
 - (i) any interested professional body;
 - (ii) any bargaining council with jurisdiction in the sector.
- (Commencement date of s. 11: 10 September 1999)

12. Chambers of SETA

- (1) A SETA may, with the Minister's approval, establish in its sector chambers.

- (2) A chamber so established must consist of an equal number of members representing employees and employers and may include such additional members as the SETA determines.
 - (3) That chamber must perform those functions of the SETA as delegated to it in terms of the constitution of the SETA.
 - (4) A chamber of a SETA is entitled to such percentage of the skills development levies collected in its jurisdiction as the Minister after consultation with the SETA determines.
- (Commencement date of s. 12: 10 September 1999)

13. Constitution of SETA

- (1) For the purpose of the establishment of a SETA, the Minister must approve the constitution of the SETA.
- (2) The Minister may, after consultation with the SETA, amend its constitution in the prescribed manner.
- (3) Subject to this Act, the constitution of a SETA -
 - (a) must specify -
 - (i) the trade unions, employer organisations and relevant government departments in the sector;
 - (ii) the circumstances and manner in which a member of SETA may be replaced;
 - (iii) the number of members to be appointed to the SETA, provided that the SETA must consist of an

equal number of members representing employees and employers;

- (iv) the procedure for the replacement of a member of the SETA by the organisation that nominated that member;
- (v) the circumstances and manner in which a member may be replaced by the SETA;
- (vi) the election of office-bearers by the members of the SETA and of persons to act during their absence or incapacity, their term of office and functions and the circumstances and manner in which they may be replaced;
- (vii) the establishment and functioning of committees, including an executive committee;
- (viii) the rules for convening and conducting of meetings of the SETA and its chambers and committees, including the quorum required for and the minutes to be kept of those meetings;
- (ix) the voting rights of the different members and the manner in which decisions are to be taken by the SETA and its chambers and committees;
- (x) a code of conduct for members of the SETA and its chambers;
- (xi) the appointment of an executive officer, and such other employees necessary for the effective

performance of the functions of the SETA, by its members, including the determination of their terms and conditions of employment; and

(xii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution; and

(b) may provide for -

(i) the delegation of powers and duties of the SETA to its members, chambers, committees and employees, provided that the SETA may impose conditions for the delegation, may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the SETA.

(4) In order to ensure that its membership is representative of designated groups, every SETA must-

(a) provide in its constitution that each constituency contemplated in section 11 represented on the SETA in question is represented by members who are sufficiently representative of such designated groups; and

(b) take the necessary steps to ensure that the constituencies in question comply with the provision in the SETA's constitution contemplated in paragraph (a).

[Subs. (4) added by s. 8 of Act 31/2003]

(Commencement date of s. 13: 10 September 1999)

14. Finances of SETA

- (1) A SETA is financed from -
- (a) 80 per cent of the skills development levies, interest and penalties collected in respect of the SETA, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;
[Para. (a) substituted by s. 23 of Act 9/99]
 - (b) moneys paid to it from the National Skills Fund;
 - (c) grants, donations and bequests made to it;
 - (d) income earned on surplus moneys deposited or invested;
 - (e) income earned on services rendered in the prescribed manner; and
 - (f) money received from any other source.
- (2) The money received by a SETA must be paid into a banking account at any registered bank and may be invested only in -
- (a) savings accounts, permanent shares or fixed deposits in any registered bank or other financial institution;
 - (b) internal registered stock contemplated in section 21(1) of the Exchequer Act, 1975 (Act No. 66 of 1975);
 - (c)
- [Para. (c) deleted by s. 23 of Act 9/99]

(d) any other manner approved by the Minister.

(3) The moneys received by a SETA may be used only in the prescribed manner and in accordance with any prescribed standards or criteria to-

(a) fund the performance of its functions; and

(b) pay for its administration within the prescribed limit.

[Subs. (3) amended by s. 9 of Act 31/2003]

(3A) For the purposes of subsection (3)(b), the Minister-

(a) must prescribe the total expenditure that a SETA may make on its administration; and

(b) may prescribe-

(i) the amount that a SETA may spend on any aspect of its administration;

(ii) salary bands within which categories of employees must be remunerated;

(iii) the conditions under which employees may receive performance-related payments and the maximum payment that may be made to an employee in this regard;

(iv) the allowances that may be paid to members and office-bearers of SETAs or any other persons who serve on a committee or other structure of a SETA.

[Subs. (3A) inserted by s. 9 of Act 31/2003]

- (3B) For the purposes of subsections (3) and (3A), the administration of a SETA includes any aspect of the administration or management of a SETA, irrespective of who performs it.

[Subs. (3B) inserted by s. 9 of Act 31/2003]

- (4) A SETA must be managed in accordance with the Public Finance Management Act.

[Subs. (4) substituted by s. 9 of Act 31/2003]

- (5) Every SETA must-

- a) prepare annual budgets, annual reports and financial statements in accordance with Chapter 6 of the Public Finance Management Act; and
- b) furnish the Director-General with copies of all budgets, reports and statements contemplated in paragraph (a) and any other information that it is required to submit in terms of the Public Finance Management Act.

[Subs. (5) substituted by s. 9 of Act 31/2003]

- (6) The Auditor-General must -

- a) audit the accounts, financial statements and financial management of a SETA; and
- b) report on that audit to the SETA and to the Minister and in that report express an opinion as to whether the SETA has complied with the provisions of this Act, and its constitution, relating to financial matters.

(Commencement date of s. 14: 10 September 1999)

14A. Minister may issue written instructions to SETAs

- (1) The Minister may issue a written instruction to a SETA if-
 - (a) the SETA is not performing any of its functions or not complying with its service level agreement;
 - (b) the SETA is not managing its finances in accordance with this Act;
 - (c) the SETA's membership is not representative of the constituencies contemplated in section 11; or
 - (d) the SETA has not prepared and implemented an employment equity plan as contemplated in section 20 of the Employment Equity Act, 1998 (Act No. 55 of 1998).
- (2) An instruction issued under subsection (1) must set out-
 - (a) the reason for issuing the instruction;
 - (b) any provision of the Act that the SETA has not complied with; and
 - (c) the steps that the SETA is required to take and the period within which such steps must be taken.
- (3) At the request of a SETA, the Minister may-
 - (a) extend the period for complying with an instruction; or
 - (b) revise the terms of the instruction.

- (4) If a SETA has not complied with an instruction issued in terms of this section within the specified period, the Minister may-
- (a) direct the Director-General to withhold all or part of the allocation to the SETA in terms of section 8(3)(b) of the Skills Development Levies Act for such period and on such conditions as the Director-General may determine;
 - (b) invoke section 15 without further notice to the SETA;
 - (c) order an investigation into the management and administration of the SETA; or
 - (d) take any other steps necessary to ensure that the SETA performs its functions or manages its finances in accordance with this Act.
- (5) If a SETA has unreasonably failed to institute disciplinary proceedings for misconduct against any employee of the SETA, the Minister may direct the SETA to institute disciplinary proceedings against that employee.

[S. 14A inserted by s. 10 of Act 31/2003]

15. Taking over administration of SETA

- (1) The Minister may, after consultation with the National Skills Authority and the SETA in question, direct the Director-General to appoint an administrator to take over the administration of a SETA or to perform the functions of a SETA if -
- (a) the SETA fails to perform its functions;

- (b) there is mismanagement of its finances;
- (c) its membership no longer substantially represents the composition contemplated in section 11;
- (d) the SETA has failed to comply with its service level agreement; or
- (e) the SETA has failed to comply with an instruction issued by the Minister in terms of section 14A.

[Subs. (1) substituted by s. 11 of Act 31/2003]

- (2) The Director-General must publish a notice in the *Gazette* appointing an administrator and in that notice the Director-General -
 - (a) must determine the powers and duties of the administrator, which may include the performance by the administrator of the SETA's functions in terms of the Public Finance Management Act;
 - (b) may suspend or replace one or more members of the SETA for a reason contemplated in subsection (1)(a) to (e);
 - (c) may suspend the operation of the constitution of the SETA; and
 - (d) may direct the transfer of all or some of the funds in the SETA's bank account to the National Skills Fund.

[Subs. (2) substituted by s. 11 of Act 31/2003]

- (3) If a notice is published in terms of subsection (1), the Minister may, to ensure that the SETA resumes the performance of its functions -
- (a) amend its constitution;
 - (b) reinstate any of its members; and
 - (c) withdraw or amend any provision of the notice contemplated in subsection (2) on such conditions as the Minister considers appropriate.
- (4) The Minister may act in terms of subsection (1) without consulting the National Skills Authority and the SETA in question if there is financial mismanagement of the SETA and the delay caused by the consultation would be detrimental to the SETA's capacity to perform its functions.
- [Subs. (4) added by s. 11 of Act 31/2003]
- (Commencement date of s. 15: 10 September 1999)

CHAPTER 4

LEARNERSHIPS

16. Learnerships

A SETA may establish a learnership if-

- (a) the learnership includes a structured learning component;
- (b) the learnership includes a structured work experience component;
- (c) the learnership would lead to a qualification registered by

the South African Qualifications Authority associated with a trade, occupation or profession; and (d) the intended learnership is registered with the Director-General in the prescribed manner.

[S. 16 substituted by s. 6 of Act 37/2008]

(Commencement date of s. 16: 1 April 2001)

17. Learnership agreements

- (1) For the purposes of this Chapter, a 'learnership agreement' means an agreement entered into for a specified period between-
 - (a) a learner;
 - (b) an employer or a group of employers (in this section referred to as 'the employer'); and
 - (c) a skills development provider accredited by the QCTO or group of such skills development providers;
[Subs. (1) substituted by s. 7 of Act 37/2008]
- (2) The terms of a learnership agreement must oblige -
 - (a) the employer to -
 - (i) employ the learner for the period specified in the agreement;
 - (ii) provide the learner with the specified practical work experience; and
 - (iii) release the learner to attend the education and training specified in the agreement;

(b) the learner to -

(i) work for the employer; and

(ii) attend the specified education and training; and

(c) the skills development provider to provide -

(i) the education and training specified in the agreement; and

(ii) the learner support specified in the agreement.

[Para. (c) amended by s. 7 of Act 37/2008]

(3) A learnership agreement must be in the prescribed form and registered with a SETA in the prescribed manner.

(4) A learnership agreement may not be terminated before the expiry of the period of duration specified in the agreement unless -

(a) the learner meets the requirements for the successful completion of the learnership;

(b) the SETA which registered the agreement approves of such termination; or

(c) the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee.

(5) The employer or skills development provider that is party to a learnership agreement may be substituted with -

- (a) the consent of the learner; and
- (b) the approval of the SETA which registered the agreement.

[Subs. (5) amended by s. 7 of Act 37/2008]

- (6) A SETA must, in the prescribed manner, provide the Director-General with a record of learnership agreements registered by the SETA.

- (7) The Minister may make regulations -

- (a) permitting an employer to enter into an agreement with an agency to perform the employer's obligations and exercise the employer's rights in respect of a learnership agreement or, in respect of a learner contemplated in section 18(2), a contract of employment;

[Para. (a) amended by s. 7 of Act 37/2008]

- (b) prescribing the relationship between the employer and the agency contemplated in paragraph (a).

- (c) prescribing the requirements for registering an agency contemplated in paragraph (a); and

[Para. (c) added by s. 7 of Act 37/2008]

- (d) making it an offence to operate an agency contemplated in paragraph (a) except in accordance with such regulations.

[Para. (d) added by s. 7 of Act 37/2008]

[Subs. (7) added by s. 12 of Act 31/2003]

(Commencement date of s. 17: 1 April 2001)

18. Contract of employment with learner

- (1) If a learner was in the employment of the employer party to the learnership agreement concerned when the agreement was concluded, the learner's contract of employment is not affected by the agreement.
- (2) If the learner was not in the employment of the employer party to the learnership agreement concerned when the agreement was concluded, the employer and learner must enter into a contract of employment.
- (3) The contract of employment with a learner contemplated in subsection (2) is subject to any terms and conditions that may be determined by the Minister on the recommendation of the Employment Conditions Commission established by section 59(1) of the Basic Conditions of Employment Act.
- (4) Chapters Eight and Nine¹ of the Basic Conditions of Employment Act apply, with the changes required by the

¹ Chapters Eight and Nine of the Basic Conditions of Employment Act ("BCEA"), provide for the publication of sector determinations by the Minister on basic conditions of employment on the advice of the Employment Conditions Commission. Before the Commission advises the Minister on the publication of a determination:

- (a) the Department of Labour conducts an investigation and prepares a report;
- (b) the Commission then considers the report in the light of a number of factors set out in section 54(3) of the BCEA and in this process may hold public hearings, and then
- (c) gives its advice in a report to the Minister. The effect of this section is to allow for the setting of terms and conditions of employment for learners in a similar way to the setting of conditions of apprenticeship under the Manpower Training Act, 1981 (Act No. 56 of 1981), in so far as conditions of employment are concerned - see section 13(2)(c) and (k) to (p). The provisions of the BCEA are sufficiently flexible to allow for sector and crosssector determinations for learnerships.

context, to a determination made in terms of subsection (3) except that -

- (a) for the purposes of section 54(3) of that Act, the Employment Conditions Commission must also consider the likely impact that any proposed condition of employment may have on the employment of learners and the achievement of the purposes of this Act; and (b) section 55(7) of that Act does not apply.
- (5) The contract of employment of a learner may not be terminated before the expiry of the period of duration specified in the learnership agreement unless the learnership agreement is terminated in terms of section 17(4).
- (6) The contract of employment of a learner terminates at the expiry of the period of duration specified in the learnership agreement unless the agreement was concluded with a person who was already in the employment of the employer party to the agreement when the agreement was concluded. (Commencement date of s. 18: 1 April 2001)

19. Disputes about learnerships

- (1) For the purposes of this section a “dispute” means a dispute about -
 - (a) the interpretation or application of any provision of -
 - (i) a learnership agreement;

- (ii) a contract of employment of a learner contemplated in section 18(2); or

[Subpara. (ii) substituted by s. 13 of Act 31/2003]

- (iii) a determination made in terms of section 18(3);

- (b) this Chapter; or

- (c) the termination of -

- (i) a learnership agreement; or

- (ii) a contract of employment of a learner contemplated in section 18(2).

[Subpara. (ii) substituted by s. 13 of Act 31/2003]

- (2) Any party to a dispute may in writing refer the dispute to the Commission for Conciliation, Mediation and Arbitration established by section 112 of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (3) The party who so refers the dispute must satisfy that Commission that a copy of the referral has been served on all the other parties to the dispute.
- (4) The Commission must attempt to resolve the dispute through conciliation.
- (5) If the dispute remains unresolved, any party may request that the dispute be resolved through arbitration as soon as possible.

- (6) The law that applies to the lawfulness² and fairness³ of a dismissal for a reason related to an employee's capacity or conduct applies to a dispute contemplated in subsection (1)(c)(ii).
- (7) Notwithstanding section 210 of the Labour Relations Act, 1995 (Act No. 66 of 1995), this section must be regarded as expressly amending any contrary provision in that Act.
[Subs. (7) added by s. 13 of Act 31/2003]
(Commencement date of s. 19: 1 April 2001)

CHAPTER 5

SKILLS PROGRAMMES

20. Skills programmes

- (1) For the purposes of this Chapter, a “skills programme” means a skills programme that -
- (a) is occupationally based;
 - (b) when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act;

² The lawfulness of a dismissal is governed by the provisions of this Act, the Basic Conditions of Employment Act and the common law.

³ The fairness of a dismissal is governed by the Labour Relations Act, 1995 (Act No. 66 of 1995), the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the common law (administrative law in respect of public sector employees).

- (c) uses training providers referred to in section 17(1)(c);
and

[Para. (c) substituted by s. 14 of Act 31/2003]

- (d) complies with any requirements that may be prescribed.

[Para. (d) substituted by s. 14 of Act 31/2003]

- (2) Any person that has developed a skills programme may apply to -

- (a) a SETA with jurisdiction for a grant; or

- (b) the Director-General for a subsidy.

- (3) The SETA or the Director-General may fund the skills programme if -

- (a) it complies with -

- (i) subsection (1);

- (ii) any requirements imposed by the SETA or the Director-General; and

- (iii) any prescribed requirements; and

- (b) it is in accordance with -

- (i) the sector skills development plan of the SETA; or

- (ii) the national skills development strategy; and

- (c) there are funds available.

- (4) A SETA or the Director-General may set any terms and conditions for funding in terms of subsection (3) that the SETA or the Director-General, as the case may be, considers necessary.
- (5) The SETA or the Director-General must monitor the skills programmes funded by the SETA or the Director-General, as the case may be.
- (6) A SETA or the Director-General that has made funds available for a skills programme may withhold funds or recover any funds paid if the SETA or the Director-General, as the case may be, is of the opinion that -
- (a) the funds are not being used for the purpose for which they were made available;
 - (b) any term or condition of the funding is not complied with; or
 - (c) the SETA or the Director-General, as the case may be, is not satisfied that the training is up to standard.
- (Commencement date of s. 20: 10 September 1999)

21. Disputes

Any party to a dispute about the application or interpretation of -

- (a) any term or condition of funding referred to in section 20(4); or
- (b) any provision of this Chapter, may refer the dispute to the Labour Court for adjudication.

(Commencement date of s. 21: 10 September 1999)

CHAPTER 6

INSTITUTIONS IN DEPARTMENT OF LABOUR AND EMPLOYMENT SERVICES

[Heading substituted by s. 15 of Act 31/2003 and s. 8 of Act 37/2008]

22. Administration of Act by Department

- (1) Subject to the laws governing the public service, the Director-General must ensure that the Department, including its provincial offices and labour centres, has the personnel and financial resources necessary for the performance of its functions in terms of this Act.
- (2) The functions of the Department in terms of this Act are-
 - (a) to research and analyse the labour market in order to determine skills development needs for-
 - (i) South Africa as a whole;
 - (ii) each sector of the economy; and
 - (iii) organs of state;
 - (b) to assist in the formulation of-
 - (i) the national skills development strategy; and
 - (ii) sector skills development plans; and
 - (c) to provide information on skills to-
 - (i) the Minister;

- (ii) the National Skills Authority;
- (iii) SETAs;
- (iv) education and skills development providers;
- (v) organs of the state;
- (vi) the skills development forums in each province;
- (vii) the QCTO; and
- (viii) any other interested party; and

- (d) to perform any other function assigned or delegated to the Department in terms of this Act.

[S. 22 substituted by s. 9 of Act 37/2008]

(Commencement date of s. 22: 10 September 1999)

23. Employment services

- (1) The functions of provincial offices of the Department in respect of employment services are-
 - (a) to plan, coordinate, support, monitor and report on all activities occurring at all labour centres;
 - (b) to establish a skills development forum as prescribed;
 - (c) to maintain a data-base of skills development providers within their jurisdiction; and
 - (d) to perform any other prescribed or delegated function.

[Subs. (1) substituted by s. 10 of Act 37/2008]

- (2) The functions of the labour centres of the Department in respect of employment services are-
- (a) to provide information to workers, employers and skills development providers, including the unemployed;
 - (b) to register work-seekers;
 - (c) to register placement opportunities;
 - (d) to assist workers and other prescribed categories of persons-
 - (i) to enter learning programmes;
 - (ii) to find placement opportunities;
 - (iii) to start income-generating projects; and
 - (iv) to participate in placement programmes;
 - (e) to develop plans, programmes and coherent strategies to extend services to rural communities; and
 - (f) to perform any other prescribed function related to the functions referred to in paragraphs (a) to (e).
[Subs. (2) substituted by s. 10 of Act 37/2008]
- (3) The Minister may, after consulting the National Skills Authority, by notice in the *Gazette*, require each employer to notify a labour centre in the prescribed manner of -
- (a) any vacancy that employer has; and

- (b) the employment of any work-seeker referred by that labour centre.

(Commencement date of s. 23: 10 September 1999)

24. Registration of persons that provide employment services

- (1) Any person who wishes to provide employment services for gain must apply for registration as a private employment services agency to the Director-General in the prescribed manner.

[Subs. (1) substituted by s. 16 of Act 31/2003]

- (2) The Director-General must register the applicant if satisfied that the prescribed criteria have been met.

- (3) If the Director-General -

- (a) registers an applicant, the prescribed certificate must be issued to that person; or
- (b) refuses to register an applicant, the Director-General must give written notice of that decision to the applicant.

- (4) A registered private employment services agency must comply with the prescribed criteria.

[Subs. (4) substituted by s. 16 of Act 31/2003]

- (5) The Director-General may withdraw the registration of any private employment services agency that fails to comply with this Act or any prescribed requirements or criteria.

[Subs. (5) added by s. 16 of Act 31/2003]

(Commencement date of s. 24: 10 September 1999)

25. Cancellation of registration of private employment services agency

- (1) Subject to this section, the Director-General may cancel the registration of a private employment services agency if the private employment services agency is not complying with the prescribed criteria.
- (2) If the Director-General has reason to believe that a private employment services agency is not complying with the prescribed criteria and accordingly that its registration should be cancelled, the Director-General must, before cancelling its registration-
 - (a) notify the agency of the intention to cancel registration and the reasons for doing so;
 - (b) give the agency 30 days from the date of the notice to make representations on why its registration should not be cancelled; and
 - (c) take those representations into account in reaching a decision.
- (3) If the Director-General cancels the registration of a private employment services agency, the Director-General must give written notice of that decision to the private employment services agency.
[S. 25 substituted by s. 17 of Act 31/2003]
(Commencement date of s. 25: 10 September 1999)

26. Appeal against Director-General's decision

- (1) Any person aggrieved by a decision of the Director-General

in terms of section 24(3) (b) or 25(3) may, within 30 days of the written notice of that decision, in writing, request the Director-General to give that person written reasons for the decision.

- (2) The Director-General must give that person written reasons for the decision within 30 days of receiving that request.
- (3) Any person aggrieved by a decision of the Director-General in terms of section 24(3) (b) or 25(3) may appeal to the Labour Court against that decision within 60 days of -
 - (a) the date of the Director-General's decision; or
 - (b) if written reasons for the decision are requested, the date of those reasons.
- (4) The Labour Court may, on good cause shown, extend the period within which a person may note that appeal.
(Commencement date of s. 26: 10 September 1999)

CHAPTER 6A

ARTISAN DEVELOPMENT

26A. National artisan moderation body

- (1) The Director-General must-
 - (a) establish a national artisan moderation body in the Department; and

- (b) provide the body contemplated in paragraph (a) with the personnel and financial resources that are necessary to coordinate artisan development in the Republic.

(2) The functions of the national artisan moderation body are to-

- (a) monitor the performance of accredited artisan trade test centres;
- (b) moderate artisan trade tests;
- (c) develop, maintain and apply a national data-bank of instruments for assessment and moderation of artisan trade tests;
- (d) develop and maintain a national data-base of registered artisan trade assessors and moderators;
- (e) record artisan achievements;
- (f) determine appeals against assessment decisions;
- (g) recommend the certification of artisans to the QCTO; and
- (h) perform any other prescribed function.

[S. 26A inserted by s. 11 of Act 37/2008]

26B. Listing of trades

The Minister may, on application by one or more SETAs in the prescribed form, by notice in the *Gazette*-

- (a) list any occupation as a trade for which an artisan qualification is required;
- (b) remove any trade from the list contemplated in subparagraph (a) if an artisan qualification is no longer required for that trade.

[S. 26B inserted by s. 11 of Act 37/2008]

26C. National register of artisans

- (1) The Director-General must maintain a register of persons-
 - (a) who have obtained an artisan qualification in terms of this Act or any repealed Act; and
 - (b) who are practicing that trade.
- (2)
 - (a) No person, whether employed or self-employed, may hold themselves out to be qualified as an artisan in a listed trade unless that person is registered as an artisan in terms of subsection (1).
 - (b) Paragraph (a) does not affect any requirement that any professional or regulatory body regulating any listed trade may require for the practice of that trade.
- (3) For the purpose of this section, a person qualified to be an artisan in terms of any repealed Act includes any person who completed a contract of apprenticeship under a time-based apprenticeship system in terms of any conditions of apprenticeship published in terms of any repealed Act.

- (4) The Minister may make regulations concerning-
 - (a) the criteria and procedure for the name of any person to be included on, or removed from, the register of artisans;
 - (b) any other matter necessary for maintaining the register of artisans.
- [S. 26C inserted by s. 11 of Act 37/2008]

26D. Trade tests

- (1) Subject to any regulation made in terms of subsection (5), no person may obtain an artisan qualification in terms of this Act unless they have successfully undergone a trade test administered by an accredited trade test centre.
- (2) A person may apply to undergo a trade test in respect of a trade if-
 - (a) that person has completed a learnership relevant to that trade; or
 - (b) that person has satisfied the relevant requirements of an apprenticeship in respect of that trade; or
 - (c) an accredited trade test centre has certified that the person has acquired sufficient prior learning related to that trade; and
 - (d) that person has completed any other learning programme resulting in an occupational or vocational qualification inclusive of prescribed work experience

that entitles such person to undergo the relevant trade test.

- (3) An accredited trade test centre may require any person who applies to undergo a trade test to undergo a preliminary evaluation to determine whether that person has sufficient experience and knowledge in respect of the trade in question to undergo the trade test.
- (4) The QCTO must issue any person who successfully completed a trade test with a trade certificate in the prescribed form, stating that that person is qualified to perform the trade specified in the certificate.
- (5) The Minister, after consulting the QCTO, may make regulations concerning-
 - (a) the procedure for applying to undergo a trade test;
 - (b) the criteria for determining whether a learner should be required to undergo a preliminary trade test evaluation;
 - (c) the payment of fees for undergoing a trade test;
 - (d) the contents of a preliminary evaluation or trade test in respect of any trade;
 - (e) any matter related to conducting or moderating of trade tests;
 - (f) the criteria for granting exemptions from all or some of the requirements in respect of a trade test before being registered as an artisan;

- (g) the form of certificate issued to artisans who successfully undergo a trade test;
- (h) any other matter necessary for the conducting or moderating of trade tests.

[S. 26D inserted by s. 11 of Act 37/2008]

CHAPTER 6B

SKILLS DEVELOPMENT INSTITUTES

26E. Skills development institutes

- (1) The Minister may, by notice in the *Gazette*, establish skills development institutes in accordance with the prescribed requirements and may contribute the resources that are necessary for the effective performance of their functions.
- (2) A skills development institute may-
 - (a) provide advisory services on skills development, mentoring and the recognition of prior learning;
 - (b) provide learning programmes; and
 - (c) perform any other prescribed function necessary to promote skills development.
- (3) The Minister may make regulations concerning-
 - (a) the establishment, functions, operation, legal status, governance and funding of skills development institutes;

(b) any other matter that it is necessary or expedient to prescribe in order to enable skills development institutes to perform their functions.

(4) The Minister may make different regulations under subsection (2) with respect to different skills development institutes.

[S. 26E inserted by s. 11 of Act 37/2008]

CHAPTER 6C

QUALITY COUNCIL FOR TRADES AND OCCUPATIONS

26F. Policy on occupational standards and qualifications

(1) The Minister, after consulting the QCTO, may by notice in the Gazette determine policy on-

(a) an occupational qualifications sub-framework as an integral part of the National Qualifications Framework;

(b) the sub-framework for quality assurance for occupational qualifications; and

(c) any other matter concerning occupational standards or occupational qualifications.

[S. 26F inserted by s. 11 of Act 37/2008]

26G. Establishment of QCTO

(1) The Quality Council for Trades and Occupations is hereby established as a juristic person.

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- (2) The QCTO must be managed in accordance with the Public Finance Management Act.
 - (3) The QCTO consists of 16 members appointed by the Minister in accordance with Schedule 3.
 - (4) The Minister must approve a constitution for the QCTO which, subject to this Act, complies with the requirements set out in Schedule 3.
 - (5)
 - (a) The Minister must appoint the chief executive officer of the QCTO on the recommendation of the members of the QCTO.
 - (b) If the Minister does not agree with the recommendation of the members of the QCTO, they must make another recommendation for consideration by the Minister.
 - (c) The QCTO must appoint such number of employees to assist the QCTO in the performance of its functions as it may deem necessary.
 - (d) Despite paragraph (a), the QCTO is the employer of the executive officer and employees and must determine their remuneration, allowances, subsidies and other conditions of service.
 - (e) Staff identified in posts on the establishment of the Department who immediately before the commencement of the Higher Education Laws Amendment Act, 2010, performs functions relating to the administrative management of the QCTO may,

subject to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), be appointed or transferred to the QCTO.

[Subs. (5) substituted by s. 5 of Act 26/2010]

- (6) The QCTO is financed from-
- (a) money voted by Parliament for this purpose;
 - (b) income earned from services rendered by it;
 - (c) grants or donations made to it; and
 - (d) money received from any other source.

[S. 26G inserted by s. 11 of Act 37/2008]

26H. Functions of QCTO

- (1) The QCTO must advise the Minister on all matters of policy concerning occupational standards and qualifications.
- (2) The QCTO must perform its functions in terms of this Act and the National Qualifications Framework Act, 2008.
- (3) Subject to any policy issued by the Minister in terms of section 26F, the QCTO is responsible for-
 - (a) establishing and maintaining occupational standards and qualifications;
 - (b) the quality assurance of occupational standards and qualifications and learning in and for the workplace;
 - (c) designing and developing occupational standards and

qualifications and submitting them to the South African Qualifications Authority for registration on the National Qualifications Framework;

- (d) ensuring the quality of occupational standards and qualifications and learning in and for the workplace;
 - (e) promoting the objectives of the National Qualifications Framework;
 - (f) liaising with the National Skills Authority on the suitability and adequacy of occupational standards and qualifications and on the quality of learning in and for the workplace;
 - (g) liaising with the South African Qualifications Authority, other Quality Councils and professional bodies responsible for establishing standards and qualifications or the quality assurance of standards and qualifications; and
 - (h) performing any other prescribed function.
- (4) The QCTO has all such powers as are necessary to enable it to perform its functions in terms of this section.
- (5) The Minister may issue written instructions, which are not inconsistent with any policy made by the Minister in terms of section 26F, to the QCTO regarding the performance of its functions in terms of subsection (3).
- (6) The QCTO must comply with-

- (a) any policy determined by the Minister in terms of section 26F; and
- (b) any written instruction issued by the Minister in terms of subsection (5).

[S. 26H inserted by s. 11 of Act 37/2008]

26I. Delegation of functions

- (1) The QCTO may, in writing and subject to such conditions as it may determine, delegate any of its functions to-
 - (a) the executive officer of the QCTO;
 - (b) a committee of the QCTO;
 - (c) the national artisan moderation body established in terms of section 26A;
 - (d) a SETA; or
 - (e) any other suitable body.
- (2) A delegation under subsection (1)-
 - (a) does not divest the QCTO of the function delegated and the QCTO may at any time review, amend or set aside any decision made under the delegation;
 - (b) does not prevent the performance of the function by the QCTO itself; and
 - (c) may be revoked by the QCTO at any time.

[S. 26I inserted by s. 11 of Act 37/2008]

26J. Regulations regarding occupational standards and qualifications

The Minister may, after consulting the QCTO, by notice in the Gazette make regulations regarding-

- (a) the setting of occupational standards and qualifications;
- (b) the recognition and registration of occupational curricula;
- (c) the accreditation of occupational skills development providers;
- (d) the approval of occupational learning programmes;
- (e) the registration of occupational assessors and moderators;
- (f) the certification for occupational standards and qualifications;
- (g) the accreditation of occupational assessment centres;
- (h) the approval of workplaces for occupational training and the monitoring of workplaces for occupational training;
- (i) the provision of occupational foundational learning;
- (j) the provision of internships;
- (k) the appointment of occupational communities of expert practice;
- (l) the organising framework for occupations;

- (m) the recognition of prior learning in respect of occupational qualifications; and
- (n) any other matter concerning occupational standards and qualifications or which it is necessary or expedient to prescribe in order to enable the QCTO to perform its functions under this Act.

[S. 26J inserted by s. 11 of Act 37/2008]

CHAPTER 6D

WORKPLACE PRODUCTIVITY AND COMPETITIVENESS

26K. Establishment of Productivity South Africa

- (1) Productivity South Africa is hereby established as a juristic person.
- (2) Productivity South Africa must be managed in accordance with the Public Finance Management Act.
- (3) The Board of Productivity South Africa consists of seven members appointed by the Minister in accordance with Schedule 4.
- (4) The Minister must approve a constitution for Productivity South Africa which, subject to this Act, complies with the requirements set out in Schedule 4.

[S. 26K inserted by s. 11 of Act 37/2008]

26L. Functions of Productivity South Africa

The functions of Productivity South Africa are-

- (a) to promote a culture of productivity in workplaces;
- (b) to develop relevant productivity competencies;
- (c) to facilitate and evaluate productivity improvement and competitiveness in workplaces;
- (d) to measure and evaluating productivity in the workplace;
- (e) to maintain a data-base of productivity and competitiveness systems and publicising these systems;
- (f) to undertake productivity-related research;
- (g) to support initiatives aimed at preventing job losses; and
- (h) to perform any other prescribed function.

[S. 26L inserted by s. 11 of Act 37/2008]

26M. Finances of Productivity South Africa

Productivity South Africa is financed from -

- (a) money voted by Parliament for this purpose;
- (b) income earned from services rendered by it;
- (c) grants or donations made to it; and
- (d) money received from any other source.

[S. 26M inserted by s. 11 of Act 37/2008]

26N. Regulations regarding workplace productivity and competitiveness

The Minister may, after consulting Productivity South Africa, by notice in the *Gazette* make regulations regarding any improvements in workplace productivity and competitiveness which it is necessary or expedient to prescribe in order to enable Productivity South Africa to perform its functions under this Act.

[S. 26N inserted by s. 11 of Act 37/2008]

CHAPTER 7

FINANCING SKILLS DEVELOPMENT

27. National Skills Fund

(1) The National Skills Fund is hereby established.

(2) The Fund must be credited with -

- (a) 20 per cent of the skills development levies, interest and penalties collected in respect of every SETA, as required by sections 8(3)(a) and 9(a) of the Skills Development Levies Act;

[Para. (a) substituted by s. 23 of Act 9/99]

(Commencement date of para. (a): 10 September 1999)

- (b) the skills development levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA, as required by sections 8(3)(c) of the Skills Development Levies Act.

[Para. (b) substituted by s. 23 of Act 9/99]

(Commencement date of para. (b): 10 September 1999)

- (c) money appropriated by Parliament for the Fund;
- (d) interest earned on investments contemplated in section 29(3);
- (e) donations to the Fund; and
- (f) money received from any other source.

28. Use of money in Fund

- (1) The money in the Fund may be used only for the projects identified in the national skills development strategy as national priorities or for such other projects related to the achievement of the purposes of this Act as the Director-General determines.
- (2) The money allocated to the Fund in terms of sections 8(3)(a) of the Skills Development Levies Act may be used to administer the Fund within a prescribed limit.

[S. 28 amended by s. 18 of Act 31/2003 and substituted by s. 12 of Act 37/2008]

29. Control and administration of Fund

- (1) The Director-General is the accounting authority of the Fund as contemplated by section 49(2)(b) of the Public Finance Management Act and must-
 - (a) control the Fund;
 - (b) keep a proper record of all financial transactions, assets and liabilities of the Fund;

- (c) annual financial statements for the Fund in the prescribed form; and
- (d) subject to the laws governing the public service, appoint the executive officer of the Fund who will, upon such appointment, be in the employ of the public service.

(1A) The Fund must be managed in accordance with the Public Finance Management Act.

- (2) Any money in the Fund not required for immediate use may be invested in accordance with an investment policy approved by the Director-General that complies with the requirements of the Public Finance Management Act and may be withdrawn when required.
- (3) Any unexpended balance in the Fund at the end of the financial year must be carried forward to the next financial year as a credit to the Fund.
- (4) The annual financial statements contemplated in subsection (1)(c) must be submitted by the Director-General to the National Skills Authority for information as soon as possible after they have been prepared.

[S.29 amended by s. 19 of Act 31/2003 and substituted s. 13 of Act 37/2008]

30. Budget for training by public service employers

Each public service employer in the national and provincial spheres of government -

- (a) must budget for at least -
 - (i) 0,5 per cent of its payroll with effect from 1 April 2000;

- (ii) one per cent of its payroll with effect from 1 April 2001,
for the training and education of its employees; and
[Para. (a) substituted by s. 23 of Act 9/99]

- (b) may contribute funds to a SETA.
(Commencement date of s. 30: 10 September 1999)

30A. Budget for training by national and provincial public entities

If 80 per cent or more of the expenditure of a national or provincial public entity is defrayed directly or indirectly from funds voted by Parliament, that entity -

- (a) must annually budget at least one per cent of its payroll for the training and education of its employees; and
(b) may contribute funds to a SETA.

[S. 30A inserted by s. 23 of Act 9/99 and substituted by s. 20 of Act 31/2003]

30B. National standard of good practice in skills development

- (1) In order to achieve the purposes of this Act, the Minister may, by notice in the Gazette, establish a national standard of good practice in skills development.
- (2) The Minister may take any steps necessary to achieve the national standard contemplated in subsection (1) and may establish an agency or contract with an existing agency.
- (3) The Director-General may allocate funds from the National Skills Fund to fund any activity undertaken in terms of this section.

[S. 30B inserted by s. 21 of Act 31/2003]

CHAPTER 8

GENERAL

31. Jurisdiction of Labour Court

- (1) Subject to the jurisdiction of the Labour Appeal Court and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters arising from this Act.
- (2) The Labour Court may review any act or omission of any person in connection with this Act on any grounds permissible in law.
- (3) If proceedings concerning any matter contemplated in subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer the matter to the Labour Court.

(Commencement date of s. 31: 10 September 1999)

32. Monitoring, enforcement and legal proceedings

- (1) Chapter Ten, and sections 90 to 93 of and Schedule Two to the Basic Conditions of Employment Act apply, with changes required by the context, to -
 - (a) the monitoring and enforcement of this Act; and
 - (b) any legal proceedings concerning a contravention of this Act.

- (2) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act may issue an order in the prescribed form requiring any person to cease conducting the business of a private employment services agency in contravention of this Act.

[S. 32 substituted by s. 22 of Act 31/2003]

(Commencement date of s. 32: 10 September 1999)

33. Offences

It is an offence to -

- (a) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act;
- (b) obtain or attempt to obtain any prescribed document by means of fraud, false pretences or by submitting a false or forged prescribed document;
- (c) furnish false information in any prescribed document knowing that information to be false;
- (d) provide employment services for gain without being registered in terms of section 24; or
- (e) conduct the business of a private employment services agency in contravention of this Act or any prescribed requirement.

[Para. (e) added by s. 23 of Act 31/2003]

[S. 33 amended by s. 23 of Act 31/2003]

(Commencement date of s. 33: 10 September 1999)

34. Penalties

Any person convicted of an offence referred to in section 33 may be sentenced to a fine or imprisonment for a period not exceeding one year.

(Commencement date of s. 34: 10 September 1999)

35. Delegation

- (1) The Minister may in writing delegate to the Director-General or any other officer of the Department any power or duty conferred or imposed on the Minister by this Act.
- (2) The Director-General may, in writing, delegate to any officer of the Department any power or duty conferred or imposed on the Director-General by this Act.
- (3) Any person to whom any power or duty has been delegated in terms of subsection (1) or (2) must exercise that power or perform that duty subject to the conditions that the person who made the delegation considers necessary.
- (4) Any delegation in terms of subsection (1) or (2) -
 - (a) must be in writing;
 - (b) does not prevent the person who made the delegation from exercising the power or performing the duty so delegated; and
 - (c) may at any time be withdrawn in writing by that person.

(Commencement date of s. 35: 10 September 1999)

36. Regulations

The Minister may, after consultation with the National Skills Authority, by notice in the *Gazette*, make regulations regarding -

- (a) any matter which may or must be prescribed under this Act;
- (b) any procedure, period, criterion or standard for SETAs to perform any function in terms of section 10(1);
- (c) categories and amounts of grants that may be allocated in terms of section 10(1)(b)(iii);
- (d) the criteria or conditions that may be attached to grants allocated in terms of section 10(1)(b)(iii);
- (e) the evaluation of applications for grants in terms of section 10(1)(b)(iii);
- (f) the manner in which grants may be allocated in terms of section 10(1)(b)(iii);
- (g) the exercise by a SETA of any power contemplated in section 10(2);
- (h) the content, format and timeframe for submitting any report or plan that SETAs are required to submit in terms of this Act;
- (i) the services in respect of which a SETA may earn income in terms of section 14(1)(e) and the fees, including maximum fees, that may be charged in respect of such services;
- (j) the financial systems that SETAs are required to utilise;

- (k) the submission by employers to SETAs of workplace skills plans and reports and the form and contents of such reports;
- (l) the appointment by employers of workplace skills facilitators and the obligations of employers in respect of workplace skills facilitators;
- (m) the rights and functions of workplace skills facilitators;
- (n) the rights of registered trade unions, or other employee representatives, to consult with their employer over developing, implementing and reporting on workplace skills plans and on other matters dealt with in this Act;
- (o) circumstances specified in the regulations under which a private employment services agency may charge fees in respect of any services provided by private employment services agencies and the maximum fees that may be charged;
- (p) services for which private employment services agencies may not charge workseekers fees;
- (q) a form for registering private employment services agencies;
- (r) the administration, operation, functioning and obligations of the National Skills Fund; and
- (rA) any matter concerning the administration of apprenticeships or other qualifications in terms of any repealed Act, including, but not limited to, issuing duplicate certificates;
[Para. (rA) inserted by s. 14 of Act 37/2008]

- (rB) providing for the establishment of skills development forums in respect of each provincial office and specifying the operation, composition and functions of the forums;

[Para. (rB) inserted by s. 14 of Act 37/2008]

- (s) any other matter which it is necessary or expedient to prescribe in order to achieve the purposes of this Act.

[S. 36 substituted by s. 24 of Act 31/2003]

(Commencement date of s. 36: 10 September 1999)

37. Repeal of laws and transitional provisions

- (1) The laws referred to Schedule 1 are hereby repealed to the extent specified.
- (2) The repeal of those laws is subject to any transitional provision in Schedule 2.
- (3) Schedule 2 to the principal Act is hereby repealed, except for item 4A.

[Subs. (3) added by s. 15 of Act 37/2008]

(Commencement date of s. 37: 10 September 1999)

38. Act binds State

This Act binds the State.

(Commencement date of s. 38: 10 September 1999)

39. Short title and commencement

- (1) This Act is called the Skills Development Act, 1998.
- (2) This Act takes effect on a date to be determined by the President by proclamation in the *Gazette*.
- (Commencement date of s. 39: 10 September 1999)

Schedule 1

REPEAL OF LAWS

(Section 37 (1))

No. and year of law	Short title	Extent of repeal
Act No. 56 of 1981	Manpower Training Act, 1981	The whole.
Act No. 62 of 1981	Guidance and Placement Act, 1981	The whole.
Act No. 41 of 1985	Local Government Training Act, 1985	The whole.
Act No. 106 of 1996	Telecommunications Act, 1996	Sections 78 to 87.

Schedule 2

TRANSITIONAL PROVISIONS

(Section 37 (2))

1.
[Item 1 repealed by s. 37 of Act 37/2008]
2.
[Item 2 repealed by s. 37 of Act 37/2008]
3.
[Item 3 repealed by s. 37 of Act 37/2008]
4.
[Item 4 amended by s. 25 of Act 31/2003 and repealed by s. 37 of Act 37/2008]

4A. Mining Qualifications Authority

Despite anything to the contrary in either this Act or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996)-

- (a) and with effect from 20 March 2000-
- (i) the Mining Qualifications Authority established in terms of section 41(3) of the Mine Health and Safety Act, 1996, must be regarded as having been established in terms of section 9(1) of this Act as SETA 16;
 - (ii) Schedule 7 to the Mine Health and Safety Act, 1996, must be regarded as the constitution of SETA 16; and
 - (iii) the Chief Inspector of Mines must be regarded as the chairperson of SETA 16;

- (b) the Minister may, in consultation with the Minister of Minerals and Energy and after consulting the Mining Qualifications Authority-
- (i) amend Schedule 7 to the Mine Health and Safety Act, 1996, in order to bring the constitution of SETA 16 into line with the constitutions of other SETAs; and
- (ii) allow an interested professional body or a bargaining council with jurisdiction in the mining sector to be represented on the Mining Qualifications Authority; and
- (c) the Minister must, in consultation with the Minister of Minerals and Energy, with regard to SETA 16, perform any function entrusted to the Minister in Chapter 3 of this Act.
[Item 4A inserted by s. 26 of Act 31/2003]

5.
[Item 5 repealed by s. 37 of Act 37/2008]
6.
[Item 6 repealed by s. 37 of Act 37/2008]
7.
[Item 7 repealed by s. 37 of Act 37/2008]
8.
[Item 8 repealed by s. 37 of Act 37/2008]
9.
[Item 9 repealed by s. 37 of Act 37/2008]
10.
[Item 10 amended by s. 23 of Act 9/99 and repealed by s. 37 of Act 37/2008]
11.
[Item 11 repealed by s.37 of Act 37/2008]

12.

[Item 12 repealed by s. 37 of Act 37/2008]

13.

[Item 13 repealed by s. 37 of Act 37/2008]

14.

[Item 14 amended by s. 23 of Act 9/99 and repealed by s. 37 of Act 37/2008]

15.

[Item 15 repealed by s. 37 of Act 37/2008]

16.

[Item 16 repealed by s. 37 of Act 37/2008]

[Schedule 2 amended by s. 23 of Act 9/99 and ss. 25 and 26 of Act 31/2003]

Schedule 2A

TRANSITIONAL PROVISIONS: SKILLS DEVELOPMENT AMENDMENT ACT, 2008

1. Definitions

In this Schedule-

“Amendment Act” means the Skills Development Amendment Act, 2008; **“ETQA”** means an Education and Training Quality Assurance Body accredited in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, responsible for monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of that Act;

“Manpower Training Act” means the Manpower Training Act, 1981 (Act No. 56 of 1981);

“SAQA” means the South African Qualifications Authority;

“the Act” means the Skills Development Act, 1998 (Act No. 97 of 1998).

2. Contracts of apprenticeship in force immediately prior to commencement of Amendment Act

- (1) Subject to the provisions of this Schedule, all sections of the Manpower Training Act, including any regulations and conditions of apprenticeship, that concern apprentices

remain in force insofar as they apply to any contract of apprenticeship in force immediately prior to the commencement of the Amendment Act, as if the Manpower Training Act had not been repealed.

(Commencement date of subitem (1): Publication date of regulations made in terms of s. 26J)

- (2) For the purposes of this item-
 - (a) any function of the registrar must be performed by an official of the Department of Labour designated by the Minister for that purpose in writing;
 - (b) any function of a training board must be performed by the SETA to whom the assets, rights, liabilities and obligations of the training board were transferred;
 - (c) any function of the National Training Board must be dealt with by the National Skills Authority.
- (3) Any dispute about a contract of apprenticeship or any conditions of apprenticeship applicable to that contract is deemed to be a dispute contemplated in section 19(1) of the Act and must be dealt with in terms of section 19 of the Act, read with the changes required by the context.
- (4) Any outstanding matter concerning a contract of apprenticeship that had been completed prior to the commencement of the Amendment Act must be dealt with in terms of the prevailing law immediately prior to the commencement of the Amendment Act.

3. Conversion of contracts of apprenticeship in force at commencement of Act

- (1) Despite item 2, an employer and an apprentice who are party to a contract of apprenticeship in force at the commencement of this Act may conclude a learnership agreement in accordance with the form prescribed in terms of section 17(3) of the Act, subject to the following:
- (a) The training provider must be a party to the learnership agreement, unless the training element of the apprenticeship has been completed;
 - (b) the learnership agreement may only be terminated in terms of section 17(4);
 - (c) the employer and apprentice must, in addition, conclude a written contract of employment;
 - (d) the apprentice is deemed to be a learner contemplated in section 18(2) of the Act and must be employed on terms and conditions of employment that are no less favourable than those that are applicable in terms of section 18(1) of the Act;
 - (e) paragraphs (c) and (d) do not apply to an apprentice who was already employed by the employer prior to the commencement of the contract of apprenticeship.
- (Commencement date of subitem (1): Publication date of regulations made in terms of s. 26J)

4. Trades deemed to be listed

Any trade which immediately prior to the commencement of this Act was designated, or deemed to have been designated, in terms of section 13(1) of the Manpower Training Act, is deemed to have been listed in terms of section 26B(a) of the Amendment Act.

5. Coming into operation of QCTO

The QCTO comes into operation on a date determined by the Minister in the *Gazette*.

6. SAQA accreditation of SETA ETQAs

- (1) Until such time as the QCTO delegates powers and functions to a SETA in terms of Chapter 6B of the Act, a SETA ETQA will-
 - (a) remain accredited by SAQA;
 - (b) continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act; and
 - (c) have any matter concerning the performance of ETQA functions by a SETA dealt with in terms of the South African Qualifications Authority Act.
- (2) The accreditation of any education and skills development provider by a SETA ETQA remains in effect until the accreditation-
 - (a) lapses;
 - (b) is withdrawn by the SETA ETQA; or

- (c) is withdrawn in terms of regulations made under section 26J of the Act.

7. National Productivity Institute

- (1) On a date determined by the Minister by notice in the *Gazette*, all the assets, rights, liabilities and obligations of the National Productivity Institute, a company incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), registration number 75/04742/08, are transferred to Productivity South Africa.
- (2) The National Productivity Institute must thereafter be wound up in accordance with its articles of association.

[Schedule 2A inserted by s. 16 of Act 37/2008]

Schedule 3

COMPOSITION AND CONSTITUTION OF QCTO

1. Composition of QCTO

- (1) The QCTO consists of 16 members appointed by the Minister, as follows:
- (a) The chairperson;
 - (b) the chief executive officer of the SAQA;
[Para. (b) substituted by s. 6 of Act 26/2010]
 - (c) the executive officer of the National Skills Authority;
 - (d) the chief executive officer of the QCTO;
[Para. (d) substituted by s. 6 of Act 26/2010]
 - (e) the chief executive officer of the Council on Higher Education established in terms of section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);
[Para. (e) substituted by s. 6 of Act 26/2010]
 - (F) the chief executive officer of Umalusi established in terms of section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);
 - (g) two members nominated by NEDLAC to represent organised labour;
 - (h) two members nominated by NEDLAC to represent organised business;

- (i) two members nominated by NEDLAC to represent organisations of community and development interests;
 - (j) one members nominated by the Minister of Education to represent the interests of public education and training providers;
 - (k) one member nominated by the private providers of education and training to represent the interests of private education and training providers; and
 - (l) two additional members to represent the interests of the State.
- (2) Members of the QCTO contemplated by sub-items (1)(a) and (g) to (l) hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office.

2. Constitution of QCTO

The Minister must approve the constitution of the QCTO, which subject to this Act-

- (a) must provide for-
 - (i) the establishment and functioning of committees, including an executive committee;
 - (ii) rules for convening and conducting of meetings of the QCTO and its committees, including the quorum required for and the minutes to be kept of such meetings;

- (iii) the voting rights of the different members and the manner in which decisions are to be taken by the QCTO and its committees;
 - (iv) the circumstances and manner in which a member of the QCTO may be removed from office;
 - (v) the procedure for the filling of vacancies on the QCTO;
 - (vi) a code of conduct for the members of the QCTO;
 - (vii) the circumstances and manner in which the Minister may dissolve the QCTO and appoint an administrator on a temporary basis to perform its functions;
 - (viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;
 - (ix) the procedure for amending the constitution;
 - (x) the procedure for advising the Minister on regulations to be made in terms of section 26; and
- (b) may provide for any other matter necessary for the performance of the functions of the QCTO.

[Schedule 3 inserted by s. 16 of Act 37/2008]

Schedule 4

COMPOSITION AND CONSTITUTION OF PRODUCTIVITY SOUTH AFRICA

1. Composition of Productivity South Africa





- (1) Productivity South Africa consists of seven members appointed by the Minister, as follows:
 - (a) The chairperson;
 - (b) two members nominated by NEDLAC to represent organised labour;
 - (c) two members nominated by NEDLAC to represent organised business; and
 - (d) two members to represent the government.
- (2) Members of Productivity South Africa hold office for a period of five years and are eligible for reappointment upon expiry of their terms of office, but may not serve more than two consecutive terms of office.

2. Constitution of Productivity South Africa

The Minister must approve the constitution of Productivity South Africa, which subject to this Act -

- (a) must provide for-

- i) the establishment and functioning of committees, including an executive committee;
- (ii) rules for convening and conducting of meetings of Productivity South Africa and its committees, including the quorum required for and the minutes to be kept of those meetings;
- (iii) the voting rights of the different members and the manner in which decisions are to be taken by Productivity South Africa and its committees;
- (iv) the circumstances and manner in which a member of Productivity South Africa may be removed from office;
- (v) the procedure for the filling of vacancies on Productivity South Africa;
- (vi) a code of conduct for the members of Productivity South Africa;
- (vii) the circumstances and manner in which the Minister may dissolve Productivity South Africa and appoint an administrator on a temporary basis to perform its functions;
- (viii) the determination through arbitration of any dispute concerning the interpretation or application of the constitution;
- (ix) the procedure for amending the constitution;

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- (x) financial arrangements, including bank accounts, investment of surplus money, annual budgets, annual reports, financial statements and annual audits;
 - (xi) the appointment of an executive officer and such other employees necessary for the effective performance of the functions of Productivity South Africa by its members, including the determination of their terms and conditions of employment; and
- (b) may provide for any other matter necessary for the performance of the functions of Productivity South Africa.
[Schedule 4 inserted by s. 16 of Act 37/2008]