

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 546 Cape Town

7 December 2010

No. 33853

THE PRESIDENCY

No. 1176

7 December 2010

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

No. 25 of 2010: Higher education and Training Laws Amendment Act, 2010.



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GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 3 December 2010.)

ACT

To amend—

- the Adult Basic Education and Training Act, 2000, so as to amend certain definitions; to make provision for the employment of educators at public centres by inserting provisions in the said Act with regard to employers of educators, salaries and other conditions of service of educators, the educator establishment, powers of employers, appointments and the filling of posts, the transfer of educators, the secondment of educators, the retirement of educators, the discharge of educators, incapacity and misconduct and the performance of other work by educators; to provide for transitional arrangements with regard to public centres; to make provision for the determination of national education policy for public centres, for directive principles of national education policy, for consultation on policy and legislation, for the publication of national education policy and for the monitoring and evaluation of adult education and training; and to provide for quality assurance in respect of the qualifications offered by public and private centres; and
 - the Further Education and Training Colleges Act, 2006, so as to amend certain definitions; to make provision for the determination of national education policy for colleges, for directive principles of national education policy, for consultation on policy and legislation, for the publication of national education policy and for the monitoring and evaluation of further education and training; to make provision for the Council of Education Ministers and the Heads of Education Departments Committee and for their administrative functions; to provide for transitional arrangements with regard to colleges; and to provide for quality assurance in respect of the qualifications offered by colleges;
- and to provide for matters connected therewith.

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

Amendment of section 1 of Act 52 of 2000

1. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by—

- (a) the substitution for the definition of “**adult basic education and training**” of the following definition:

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- “**adult [basic] education and training**” means all learning and training programmes for adults [from] on level 1 [to 4 where level 4 is equivalent to—
- (a) **grade 9 in public schools; or**
- (b) registered on the national qualifications framework [level 1 as contemplated in the [South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)] National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”; 5
- (b) the substitution for the definition of “**Council of Education Ministers**” of the following definition: 10
- “**‘Council of Education Ministers’** means the Council established [under section 9 of the National Education Policy Act, 1996 (Act No. 27 of 1996)] by section 41H of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);”;
- (c) the substitution for the definition of “**Department**” of the following definition: 15
- “**‘Department’** means the [government department responsible for education at national level] Department of Higher Education and Training;”;
- (d) the substitution for the definition of “**educator**” of the following definition: 20
- “**‘educator’** means any person who teaches, educates or trains [a learner] another person, or provides professional educational services, including professional therapy and education psychological services, at [a] any public centre and who is appointed in a post on any educator establishment contemplated in section 20F;”;
- (e) the insertion after the definition of “**educator**” of the following definition: 25
- “**‘employer’**, in relation to any provision of Chapter 4, 5 or 7 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), which applies to, or is connected with, an educator in the service of—
- (a) the Department of Higher Education and Training, means the Director-General; and
- (b) a provincial education department, means the Head of Department;”;
- (f) the insertion after the definition of “**Head of the Department**” of the following definition: 30
- “**‘Labour Relations Act’** means the Labour Relations Act, 1995 (Act No. 66 of 1995);”;
- (g) the substitution for the definition of “**Minister**” of the following definition: 35
- “**‘Minister’** means the Minister of Higher Education and Training;”;
- (h) the substitution for the definition of “**NABABET**” of the following definition: 40
- “**‘[NABABET] NABAET’** means the National Advisory Board for Adult [Basic] Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);”;
- (i) the insertion after the definition of “**policy**” of the following definition: 45
- “**‘prescribed’** means prescribed by regulation made in terms of section 41;”.

Amendment of section 11 of Act 52 of 2000

2. Section 11 of the Adult Basic Education and Training Act, 2000, is hereby amended 50
by—

- (a) the substitution in subsection (2) for paragraph (a) of the following paragraph: 55
- “(a) educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of [section 5 of the Employment of Educators Act] Chapter 3A; and”;
- (b) the substitution for subsection (7) of the following subsection:
- “(7) [After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996, the] The Minister may, by notice in the *Government Gazette*, determine norms

and standards [by notice in the *Government Gazette*] regarding the funds used for the employment of staff referred to in subsection (2), but such norms and standards may not be interpreted [so] as [to make] making the State a joint employer of such staff.”.

Repeal of section 12 of Act 52 of 2000

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3. Section 12 of the Adult Basic Education and Training Act, 2000, is hereby repealed.

Insertion of Chapter 3A in Act 52 of 2000

4. The following Chapter is hereby inserted in the Adult Basic Education and Training Act, 2000, after Chapter 3:

“CHAPTER 3A

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Application of Chapter

20B. This Chapter applies to the employment of educators at public centres in the Republic.

Employers of educators and other persons

20C. (1) Save as is otherwise provided in this section, the Head of Department shall be the employer of educators in the service of the provincial education department in posts on the educator establishment of public centres for all purposes of employment. 15

(2) For the purposes of determining the salaries and other conditions of service of educators, the Minister shall be the employer of all educators contemplated in subsection (1). 20

(3) For the purposes of creating posts on the educator establishment of public centres in a provincial education department, the Member of the Executive Council shall be the employer of educators in the service of that department. 25

Salaries and other conditions of service of educators

20D. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators. 30

(2) Different salaries and conditions of service contemplated in subsection (1) may be determined in respect of different ranks and grades of educators. 35

(3) A determination by the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance. 40

Educator establishment

20E. (1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts, the educator establishment of a provincial education department shall consist of the posts created by the Member of the Executive Council. 45

(2) The educator establishment of any public centre under the control of a provincial education department shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said public centre or office by the Head of Department from the educator establishment of that department. 50

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- (3) For the purposes of this Chapter—
- (a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to re-designate, to convert or to abolish the post; and
 - (b) the power to allocate a post under this section shall include the power to re-allocate the post.
- (4) The non-educator establishment of a public centre is determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Powers of employers

20F. (1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator, in the service of a provincial education department shall be made, or effected, by the Head of Department.

(2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.

Appointments and filling of posts

20G. (1) In the making of any appointment or the filling of any post on any educator establishment under this Act, due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996, and which include—

- (a) the ability of the candidate; and
- (b) the need to redress the imbalances of the past in order to achieve broad representation.

(2) A person may be appointed under this Chapter—

- (a) in a permanent capacity, whether on probation or not;
- (b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or
- (c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

Transfer of educators

20H. (1) Subject to the provisions of this Chapter, the Head of Department may transfer any educator in the service of—

- (a) the relevant department to any post or position in any other department of state with the prior approval of the person in that other department of state having the power to appoint or to transfer and with the consent of that educator; and
- (b) the provincial education department to any other post in that department.

(2) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the written consent of that educator.

Secondment of educators

20I. (1) Any educator in the service of any provincial education department may, with the written consent of that educator, be placed at the disposal of—

- (a) another department of education;
- (b) another government; or