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**No. 31666**

## THE PRESIDENCY

No. 1292

1 December 2008

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

**No. 37 of 2008: Skills Development Amendment Act, 2008.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**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 27 November 2008.)*

# ACT

To amend the Skills Development Act, 1998, so as to define certain expressions; to broaden the purpose of the Act; to provide anew for the functions of the National Skills Authority; to provide anew for the composition of the National Skills Authority; to provide anew for the function of the SETAs, to provide for apprenticeships; to make further provision in respect of the implementation of employment services; to increase the quality and quantity of artisans; to repeal remaining sections of the current Manpower Training Act, 1981; to provide for Skills Development Institutes; to provide for the Quality Council for Trades and Occupations; to clarify the legal status of Productivity South Africa; to clarify the legal and governance status of the National Skills Fund; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999 and section 1 of Act 31 of 2003**

1. Section 1 of the Skills Development Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by— 5
- (a) the insertion before the definition of “Basic Conditions of Employment Act” of the following definitions:
- “**‘apprenticeship’** means a learnership in respect of a listed trade, and includes a trade-test in respect of that trade; 10
- “**‘artisan’** means a person that has been certified as competent to perform a listed trade in accordance with this Act;

- (b) the insertion after the definition of “Labour Court” of the following definitions:
- “**learner**” includes an apprentice;  
**learnership**” includes an apprenticeship;  
**learning**” means the acquisition of knowledge, understanding, values, skill, competence or experience;  
**learning programme**” includes a learnership, an apprenticeship, a skills programme and any other prescribed learning programme which includes a structured work experience component;”
- (c) the insertion after the definition of “Minister” of the following definition: 10  
“**National Qualifications Framework**” means the National Qualifications Framework contemplated by the National Qualifications Framework Act, 2008;”
- (d) the insertion after the definition of “NEDLAC” of the following definitions: 15  
“**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;  
**Occupational Qualifications Framework**” means the sub-framework for occupational qualifications which forms an integral part of the National Qualifications Framework;” 20
- (e) the insertion before the definition of “prescribed” of the following definitions: 25  
“**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);”  
**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 self-employment, a learning programme and community service;” 30
- (f) the insertion after the definition of “Public Finance Management Act” of the following definition: 35  
“**QCTO**” means the Quality Council for Trades and Occupations established in terms of section 26G;”
- (g) the insertion after the definition of “regulation” of the following definition: 40  
“**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;”
- (h) the insertion after the definition of “skills development levies” of the following definition: 45  
“**skills development provider**” means a provider of an occupational learning; and”
- (i) the insertion after the definition of “this Act” of the following definition: 50  
“**trade**” means an occupation for which an artisan qualification is required in terms of section 26B;”

**Amendment of section 2 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999**

2. Section 2 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for paragraphs (d) and (f) of the following paragraphs:
- “(d) to encourage workers to participate in [**learnership and other training**] learning programmes; 5
- (f) to ensure the quality of [**education and training**] learning in and for the workplace;”;
- (b) the substitution for subsection (2) of the following subsection:
- “(2) Those purposes are to be achieved [**by**] through— 10
- (a) [**establishing**] 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 15  
in the Skills Development Levies Act;
- (iv) SETAs;
- (v) [**labour centres; and**] provincial offices of the Department;
- (vi) [**the Skills Development Planning Unit;**] labour centres of 20  
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 25
- (xii) Productivity South Africa;
- (b) encouraging partnerships between the public and private sectors of the economy to provide [**education and training**] learning in and for the workplace; and
- (c) co-operating with the South African Qualifications Authority.”. 30

**Amendment of section 5 of Act 97 of 1998, as substituted by section 2 of Act 31 of 2003**

3. Section 5 of the principal Act is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:
- “(1) The functions of the National Skills Authority are— 35
- (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 40  
development strategy;
- (iv) the strategic framework and criteria for allocation of [**subsidies**] funds from the National Skills Fund; and
- (v) any regulations to be made;
- (b) to liaise with SETAs on— 45
- (i) the national skills development policy;
- (ii) the national skills development strategy; and
- (iii) sector skills plans;
- (c) to report to the Minister [**in the prescribed manner**] on the progress made in the implementation of the national skills 50  
development strategy;

- (d) to conduct investigations on any matter arising out of the application of this Act; **[and]**  
 (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.”; and  
 (b) the addition of the following subsection:  
 “(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.”.

**Amendment of section 6 of Act 97 of 1998, as substituted by section 3 of Act 31 of 2003**

**4. Section 6 of the principal Act is hereby amended by—**

- (a) the substitution in subsection (1) for paragraph (b) of the following paragraph:  
 “(b) 24 voting and **[five]** six non-voting members appointed by the Minister”;  
 (b) the substitution in subsection (2) for paragraph (e) of the following paragraph:  
 “(e) four voting members appointed by the Minister to represent the interests of education and **[training]** skills development providers.”;  
 (c) the substitution in subsection (2) for paragraphs (f) and (g) of the following paragraphs:  
 “(f) two non-voting members, who have expertise in the provision of employment services, appointed by the Minister; **[and]**  
 (g) a non-voting member nominated by the South African Qualifications Authority and appointed by the Minister **[to represent that Authority.]**”;  
 (d) the addition to subsection (2) of the following paragraph:  
 “(h) a non-voting member nominated by the QCTO and appointed by the Minister.”;  
 (e) the substitution for subsection (3) of the following subsection:  
 “(3) The Minister must designate **[four]** 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; **[and]**  
 (d) the interests of the State; and  
 (e) education and skills development providers.”;  
 (f) the substitution for subsection (4) of the following subsection:  
 “(4) A member of the Authority holds office for a period of **[three]** 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.”;  
 and  
 (g) the substitution for subsection (7) of the following subsection:  
 “(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.”.

**Amendment of section 10 of Act 97 of 1998**

**5. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:**

- “(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 **[learnerships]** 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 **[training]** skills development providers and workers; and
  - (iv) monitoring education and **[training]** skills development provision in the sector;
- (c) promote **[learnerships]** 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 **[learnership]** agreements for learning programmes, to the extent that it is required;
- (d) register **[learnership]** agreements for learning programmes, to the extent that it is required;
- (e) **[within a week from its establishment, apply to the South African Qualifications Authority for accreditation as a body contemplated in section 5(1)(a)(ii)(bb) and must, within 18 months from the date of that application, be so accredited]** 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 **[sector skills plan and]** service level agreement;
- (i) liaise with the **[employment services]** 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 **[employment]** placement opportunities; and
  - (ii) between education and **[training]** 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; **[and]**
- (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.”

**Substitution of section 16 of Act 97 of 1998**

6. The following section is substituted for section 16 of the principal Act:

**“Learnerships**

16. A SETA may establish a learnership if—

- (a) the learnership **[consists of]** includes a structured learning component; 5
- (b) the learnership includes **[practical]** a structured work experience **[of a specified nature and duration]** component; 5
- (c) the learnership would lead to a qualification registered by the South African Qualifications Authority **[and related to an]** associated with a trade, occupation or profession; and 10
- (d) the intended learnership is registered with the Director-General in the prescribed manner.” 10

**Amendment of section 17 of Act 97 of 1998**

7. Section 17 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 15
  - “(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 20
  - (c) a **[training]** skills development provider accredited by **[a body contemplated in section 5(1)(a)(ii)(bb) of the South African Qualifications Authority Act]** the QCTO or group of such **[training]** skills development providers;”;
- (b) by replacing the words **“training provider”** with **“skills development provider”**, where they appear in subsections (2)(c) and (5); 25
- (c) by the deletion in subsection (7) of the word “and” at the end of paragraph (a);
- (d) by the addition to subsection (7) of the following paragraphs: 30
  - “(c) prescribing the requirements for registering an agency contemplated in paragraph (a); and
  - (d) making it an offence to operate an agency contemplated in paragraph (a) except in accordance with such regulations.” 30

**Substitution of heading to Chapter 6 of Act 97 of 1998**

8. The following heading is hereby substituted for the heading to Chapter 6:

**“INSTITUTIONS IN DEPARTMENT OF LABOUR AND [REGULATION OF PRIVATE] EMPLOYMENT SERVICES [AGENCIES]”** 35

**Substitution of section 22 of Act 97 of 1998**

9. The following section is hereby substituted for section 22 of the principal Act:

**“[Skills Development Planning Unit] Administration of Act by Department 40**

22. (1) Subject to the laws governing the public service, the Director-General must[—

- (a) **establish a Skills Development Planning Unit in the Department; and]**
- (b) **provide the Unit with]** 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. 45

- (2) The functions of the [**Skills Development Planning Unit**] 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; 5
  - (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 10
- (c) to provide information on skills to—
- (i) the Minister;
  - (ii) the National Skills Authority;
  - (iii) SETAs;
  - (iv) education and [**training**] skills development providers;[**and**] 15
  - (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. 20

#### Amendment of section 23 of Act 97 of 1998

10. Section 23 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

- “(1) [**Subject to the laws governing the public service, the Director-General must—** 25
- (a) **establish labour centres in the Department; and**
- (b) **appoint such number of persons in the public service at each centre as is necessary to perform the functions of that centre.]** The functions of provincial offices of the Department in respect of employment services are— 30
- (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 35
- (d) to perform any other prescribed or delegated function.
- (2) The functions of [**those**] the labour centres of the Department in respect of employment services are—
- (a) to provide [**employment services for**] information to workers, employers and [**training**] skills development providers, including [improvement of such services to rural communities] the unemployed; 40
- (b) to register work-seekers;
- (c) to register [**vacancies and work**] placement opportunities;
- (d) to assist workers and other prescribed categories of persons— 45
- (i) to enter [**special education and training**] learning programmes;
  - (ii) to find [**employment**] placement opportunities;
  - (iii) to start income-generating projects; and
  - (iv) to participate in [**special employment**] placement programmes; [and]
- (e) [**to perform any other prescribed function related to the functions referred to in paragraph (a) to (d)]** to develop plans, programmes and coherent strategies to extend services to rural communities; and 50



(f) to perform any other prescribed function related to the functions referred to in paragraphs (a) to (e)."

### Insertion of sections 26A to 26M in Act 97 of 1998

11. The following sections are hereby inserted in the principal Act after section 26:

## "CHAPTER 6A

5

### ARTISAN DEVELOPMENT

#### National artisan moderation body

**26A.** (1) The Director-General must—

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| <p>(a) establish a national artisan moderation body in the Department; and</p> <p>(b) provide the body contemplated in paragraph (a) with the personnel and financial resources that are necessary to coordinate artisan development in the Republic.</p> <p>(2) The functions of the national artisan moderation body are to—</p> <p>(a) monitor the performance of accredited artisan trade test centres;</p> <p>(b) moderate artisan trade tests;</p> <p>(c) develop, maintain and apply a national data-bank of instruments for assessment and moderation of artisan trade tests;</p> <p>(d) develop and maintain a national data-base of registered artisan trade assessors and moderators;</p> <p>(e) record artisan achievements;</p> <p>(f) determine appeals against assessment decisions;</p> <p>(g) recommend the certification of artisans to the QCTO; and</p> <p>(h) perform any other prescribed function.</p> | <p>10</p> <p>15</p> <p>20</p> |
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#### Listing of trades

**26B.** The Minister may, on application by one or more SETAs in the prescribed form, by notice in the *Gazette*—

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|--|---------------------|
| <p>(a) list any occupation as a trade for which an artisan qualification is required;</p> <p>(b) remove any trade from the list contemplated in subparagraph (a) if an artisan qualification is no longer required for that trade.</p> | <p>25</p> <p>30</p> |
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#### National register of artisans

**26C.** (1) The Director-General must maintain a register of persons—

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| <p>(a) who have obtained an artisan qualification in terms of this Act or any repealed Act; and</p> <p>(b) who are practicing that trade.</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>(4) The Minister may make regulations concerning—</p> | <p>35</p> <p>40</p> <p>45</p> |
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- (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.

### Trade tests

**26D.** (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. 5

- (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 10
  - (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. 15

(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. 20

(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. 25

(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; 30
- (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; 35
- (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. 40

## CHAPTER 6B

### SKILLS DEVELOPMENT INSTITUTES

#### Skills development institutes

**26E.** (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. 45

- (2) A skills development institute may—
- (a) provide advisory services on skills development, mentoring and the recognition of prior learning; 50
  - (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.

## CHAPTER 6C

### QUALITY COUNCIL FOR TRADES AND OCCUPATIONS

#### Policy on occupational standards and qualifications

**26F.** (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.

#### Establishment of QCTO

**26G.** (1) The Quality Council for Trades and Occupations is hereby established as a juristic person.

(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) The Minister must appoint the executive officer of the QCTO.

(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.”

#### Functions of QCTO

**26H.** (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).

#### Delegation of functions

- 26I.** (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.

#### Regulations regarding occupational standards and qualifications

- 26J.** 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.

## CHAPTER 6D

### WORKPLACE PRODUCTIVITY AND COMPETITIVENESS 5

#### Establishment of Productivity South Africa

**26K.** (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.

#### Functions of Productivity South Africa

**26L.** 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.

#### Finances of Productivity South Africa

**26M.** 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.

#### Regulations regarding workplace productivity and competitiveness

**26N.** 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.”

#### Substitution of section 28 of Act 97 of 1998 40

12. The following section is substituted for section 28 of the principal Act:

##### “Use of money in Fund

**28.** (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. 45

(2) **[A maximum of two per cent of the]** The money allocated to the Fund in terms of section 8(3)(a) of the Skills Development Levies Act may be used to administer the Fund within a prescribed limit.”

#### Substitution of section 29 of Act 97 of 1998

13. The following section is substituted for section 29 of the principal Act: 5

##### “Control and administration of Fund

29. (1) The Director-General is the accounting **[officer]** authority of the Fund **[in terms of the Exchequer Act, 1975 (Act 66 of 1975)]** as contemplated by section 49(2)(b) of the Public Finance Management Act and must— 10

- (a) control the Fund;
- (b) keep a proper record of all financial transactions, assets and liabilities of the Fund; **[and]**
- (c) **[as soon as possible after the end of each financial year, ending on the prescribed date,]** prepare **[accounts of the income and expenditure of the Fund for the year and a balance sheet of its assets and liabilities as at the end of that year]** annual financial statements for the Fund in the prescribed form; and 15
- (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. 20

(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 **[the Public Investment Commissioner or with a financial institution approved by the Minister]** 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. 25

(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. 30

(4) The **[accounts and balance sheet]** 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.” 35

#### Amendment of section 36 of Act 97 of 1998

14. Section 36 of the principal Act is hereby amended by the insertion after paragraph (r) of the following paragraphs:

- “(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; 40
- “(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;”.

**Amendment of section 37 of Act 97 of 1998**

15. Section 37 is amended by the addition of the following subsection:

“(3) Schedule 2 to the principal Act is hereby repealed, except for item 4A.”.

**Insertion of Schedules 2A, 3 and 4 in Act 97 of 1998**

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16. The following Schedule is hereby inserted in the principal Act after Schedule 2:

**“SCHEDULE 2A****TRANSITIONAL PROVISIONS:  
SKILLS DEVELOPMENT AMENDMENT ACT, 2008****Definitions**

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1. 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;

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‘**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).”

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**Contracts of apprenticeship in force immediately prior to commencement of Amendment Act**

2. (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.

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(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;

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(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;

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(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.

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(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.

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### Conversion of contracts of apprenticeship in force at commencement of Act

3. (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: 5
- (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); 10
  - (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; 15
  - (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.

### Trades deemed to be listed 20

4. 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.

### Coming into operation of QCTO 25

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

### SAQA accreditation of SETA ETQAs

6. (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— 30
- (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. 35
- (2) The accreditation of any education and skills development provider by a SETA ETQA remains in effect until the accreditation— 40
- (a) lapses;
  - (b) is withdrawn by the SETA ETQA; or
  - (c) is withdrawn in terms of regulations made under section 26J of the Act.

### National Productivity Institute

7. (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. 45



(2) The National Productivity Institute must thereafter be wound up in accordance with its articles of association.

### SCHEDULE 3

#### COMPOSITION AND CONSTITUTION OF QCTO

##### Composition of QCTO

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1. (1) The QCTO consists of 16 members appointed by the Minister, as follows:

- (a) The chairperson;
- (b) the executive officer of the SAQA;
- (c) the executive officer of the National Skills Authority; 10
- (d) the executive officer of the QCTO;
- (e) the executive director of the Higher Education Quality Committee established in terms of section 7 of the Higher Education Act, 1997 (Act No. 101 of 1997);
- (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); 15
- (g) two members nominated by NEDLAC to represent organised labour;
- (h) two members nominated by NEDLAC to represent organised business; 20
- (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 25
- (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. 30

##### Constitution of QCTO

2. The Minister must approve the constitution of the QCTO, which subject to this Act— 35

- (a) must provide for— 35
  - (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; 40
  - (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; 45
  - (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; 50
  - (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 55

- (b) may provide for any other matter necessary for the performance of the functions of the QCTO.

#### SCHEDULE 4

### COMPOSITION AND CONSTITUTION OF PRODUCTIVITY SOUTH AFRICA

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#### Composition of Productivity South Africa

**1.** (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.

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(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.

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#### Constitution of Productivity South Africa

**2.** The Minister must approve the constitution of Productivity South Africa, which subject to this Act—

(a) must provide for—

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- (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;  
 (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

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(b) may provide for any other matter necessary for the performance of the functions of Productivity South Africa.

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**Amendment of section 65 of Act 75 of 1997**

17. Section 65 of the Basic Conditions of Employment Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter—
- (a) any workplace or any other place where an employer carries on business or keeps employment records, that is not a home; 5
  - (b) any premises used for **[or training] skills development** in terms of the **[Manpower Training Act, 1981 (Act No. 56 of 1981)] Skills Development Act, 1998 (Act No 97 of 1998)**; or 10
  - (c) any **[private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act No. 62 of 1981)] place at which any person provides or purports to provide any employment services as defined in terms of the Skills Development Act, 1998 (Act No 97 of 1998).**” 15

**Amendment of Arrangement of Sections of Act 97 of 1998**

18. The Arrangement of Sections after the Long title of the principal Act is hereby amended—

- (a) by the substitution for “**CHAPTER 6 INSTITUTION IN DEPARTMENT OF LABOUR AND REGULATION OF PRIVATE EMPLOYMENT SERVICES AGENCIES**” of the following: 20

**“CHAPTER 6****INSTITUTION IN DEPARTMENT OF LABOUR AND EMPLOYMENT SERVICES”;**

- (b) by the insertion after “**Chapter 6**” of the following Chapters: 25

**“CHAPTER 6A****ARTISAN DEVELOPMENT**

26A. National artisan moderation body

26B. Listing of trades

26C. National register of artisans

26D. Trade tests

**CHAPTER 6B****SKILLS DEVELOPMENT INSTITUTES**

26E. Skills development institutes

**CHAPTER 6C****QUALITY COUNCIL FOR TRADES OCCUPATIONS**

26F. Policy on occupational standards and qualifications

26G. Establishment of QCTO

26H. Functions of QCTO

26I. Delegation of functions

26J. Regulations regarding occupational standards and qualifications

**CHAPTER 6D****WORKPLACE PRODUCTIVITY AND COMPETITIVENESS**

- 26K. Establishment of Productivity South Africa
  - 26L. Functions of Productivity South Africa
  - 26M. Finances of Productivity South Africa
  - 26N. Regulations regarding workplace productivity and competitiveness".
- 5

**Short title and date of commencement**

**20.** This Act is called the Skills Development Amendment Act, 2008, and comes into operation on a date determined by the Minister of Labour by notice in the *Gazette*. 10