



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 650

Cape Town
Kaaopstad

19 August 2019

No. 42646

THE PRESIDENCY

No. 1078 19 August 2019

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

Act No. 12 of 2019: National Qualifications Framework Amendment Act, 2019

IHHOVISI LIKAMONGAMELI

No. 1078 19 August 2019

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelwa umphakathi:—

Ino. 12 ka 2019: Umthetho Wesichibiyelo Wohlaka Lukazwelonke Lweziqwezi-2019

ISSN 1682-5843



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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 13 August 2019)

ACT

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

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

Amendment of section 1 of Act 67 of 2008, as amended by section 8 of Act 26 of 2010

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

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

- (a) in relation to a qualification or part-qualification, includes a qualification or part-qualification that is— 10
 - (i) registered on the NQF;
 - (ii) offered by a registered, established, declared or merged and accredited education institution or skills development provider in terms of this Act or any other applicable law; and
 - (iii) lawfully obtained; and
- (b) in relation to a foreign qualification, means a qualification or part-qualification that is lawfully obtained from a foreign country and is evaluated by the SAQA in terms of this Act, 15
and authentic has a corresponding meaning;”;

(b) by the insertion after the definition of “board” of the following definitions: “**‘Constitution’** means the Constitution of the Republic of South Africa, 1996; 20

- ‘Continuing Education and Training Act’** means the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);”;
- (c) by the insertion after the definition of “education institution” of the following definitions:
- “**‘evaluate’** means the process followed by the SAQA to verify the authenticity of a foreign qualification and compare it with a South African qualification for placement within the South African NQF, and evaluation has a corresponding meaning;
- ‘foreign institution’** means a foreign juristic person offering or issuing an authentic qualification or part-qualification;
- ‘fraudulent qualification or part-qualification’** is a verified qualification or part-qualification registered on the NQF or an evaluated foreign qualification or part-qualification, which is found to be forged, fraudulently obtained or awarded in contravention of this Act, and has been declared as such by a court of law;”.
- (d) by the substitution for the definition of “*Gazette*” of the following definition:
- “**‘Gazette’** means the *Government Gazette*;
- (e) by the insertion after the definition of “learning” of the following definition:
- “**‘learner achievements’** means a qualification or part-qualification contemplated by this Act;”;
- (f) by the insertion after the definition of “Minister” of the following definitions:
- “**‘misrepresented qualification or part-qualification’** is a qualification or part-qualification—
- (a) which is not authentic; or
- (b) where the certificate of award or the SAQA Certificate of Evaluation was erroneously issued or altered in any way;
- ‘national learners’ records database’** means the electronic management information system as contemplated in section 13(1)(l);
- (g) by the insertion after the definition of “SAQA Act” of the following definition:
- “**‘SAQA Certificate of Evaluation’** means a certificate issued by the SAQA indicating the authenticity of the foreign qualification and its placement within the NQF;”;
- (h) by the substitution for the definition of “skills development provider” of the following definition:
- “**‘skills development provider’** means a provider that is registered with the Department in terms of the Continuing Education and Training Act, and is accredited by the QC for Trades and Occupations to offer occupational qualifications;”; and
- (i) by the insertion after the definition of “Umalusi” of the following definition:
- “**‘verification’** means the process followed by the SAQA to determine the authenticity of a qualification or part-qualification in terms of the relevant SAQA policy and procedures.”.

Substitution of section 2 of Act 67 of 2008

2. The following section is hereby substituted for section 2 of the principal Act: 45

“Object of Act

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

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

3. Section 3 of the principal Act is hereby amended— 50
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) Every qualification or part-qualification contemplated in subsection (1)(a) must be registered on the National Qualifications Framework in accordance with this Act.”; and

- (b) by the addition of the following subsection:
 “(3) Every private education institution or skills development provider offering education and training programme or any component thereof towards a qualification or part-qualification, must be registered by the relevant Department as a private education institution or skills development provider and accredited by the relevant QC to offer such qualification or part-qualification.”

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

4. Section 13 of the principal Act is hereby amended—

- (a) by the addition in subsection (1)(h) of the following subparagraph:
 “(iv) verify all qualifications or part-qualifications referred to it in terms of section 32A and make a decision on the status thereof;”;
- (b) by the substitution in subsection (1) for paragraph (l) of the following paragraph:
 “(l) with respect to records of education and training, maintain a national learners’ records database comprising registers of—
 (i) **[national]** qualifications [,] ;
 (ii) part-qualifications [,] ;
 (iii) qualification and part-qualification requirements and other related information;
 (iv) learner achievements [,] ;
 (v) details of the education institution or QC that awarded the qualification or part-qualification;
 (vi) recognised professional bodies **[,professional designations]** ;
 and
 (vii) associated information relating to registration, verification and accreditation;”;
- (c) by the insertion in subsection (1) after paragraph (l) of the following paragraph:
 “(lA) (i) maintain a separate register of professional designations;
 (ii) establish and maintain a register of misrepresented qualifications or part-qualifications with respect to records of education and training; and
 (iii) establish and maintain a register of fraudulent qualifications or part-qualifications with respect to records of education and training;”;
- (d) by the substitution in subsection (1) for paragraph (m) of the following paragraph:
 “(m) with respect to foreign qualifications [,]—
 (i) provide a verification or an evaluation and advisory service consistent with this Act; **[and]**
 (ii) evaluate all foreign qualifications referred to it in terms of this Act against the South African NQF in accordance with SAQA policy and procedures and, where appropriate, issue a SAQA Certificate of Evaluation; and
 (iii) formulate and publish criteria for evaluating foreign qualifications;”;
- (e) by the insertion of the following subsections after subsection (1):
 “(1A) When verifying or evaluating a qualification or part-qualification in terms of this Act, the SAQA must, amongst other things, consider whether the education institution, skills development provider or foreign institution is registered by law and whether the qualification or part-qualification is authentic and complies with the policy and criteria contemplated in section 13(1)(h).
 (1B) If after verification or evaluation, a qualification or part-qualification is found to be inauthentic or is found to be a misrepresented qualification or part-qualification or is declared by a court of law to be a fraudulent qualification or part qualification, the SAQA must refer such

a finding or information to the relevant professional body, as may be prescribed, and subject to subsection (1C):

- (a) must inform the requester and the holder of the qualification or part-qualification of the finding;
- (b) must record such finding in the register of misrepresented qualifications and part-qualifications or fraudulent qualifications and part-qualifications; and
- (c) the requester must provide the SAQA with all particulars of the holder to enable the SAQA before recording such finding in the relevant register, to give notice and comply with section (1C).

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

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

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

- (a) by the substitution for paragraph (f) of the following paragraph:
 - “(f) in consultation with the SAQA, advise the Minister on matters relating to its sub-framework;”;
- (b) by the addition in paragraph (i) of the following subparagraph:
 - “(iv) accredit the education institution or skills development provider that complies with all the requirements to offer a qualification or part-qualification registered on the NQF;”;
- (c) by the substitution in paragraph (j) for subparagraph (ii) of the following subparagraph:
 - “(ii) submit at no charge to the SAQA and within 30 days after complying with all the requirements applicable to quality assurance relating to the qualification or part-qualification such data in a format determined in consultation with the SAQA for recording on the national learners’ records database contemplated in section 13(1)(l);”.

Substitution of section 30 of Act 67 of 2008

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

“Registration of professional designation

30. A professional body that is recognised in terms of section 29 must—
- (a) apply to the SAQA, in the manner determined by the SAQA in terms of section 13(1)(i)(ii) [,]; and
 - (b) [to register a professional designation on the NQF] ensure that its professional designation is registered on a separate designated register.”.

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

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

Referral of a qualification or part-qualification to the SAQA for verification and evaluation

32A. (1) (a) All organs of state, employers, education institutions, skills development providers and QCs must authenticate, prior to appointment or registration, if the qualification or part-qualification which is presented to them for the purposes of appointment, study or for any other related purpose, is registered on the national learners’ records database.

(b) If not registered on the national learners' records database, such qualification or part-qualification must be referred to the SAQA for verification and evaluation.

(c) The Minister may in consultation with the SAQA exempt any category of persons, or entity contemplated in paragraph (a) from the provisions of this section by notice in the *Gazette*.

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

(a) the SAQA establishes that the qualification or part-qualification is an authentic qualification or part-qualification, but is not on the national learners' records database, the SAQA must record such a qualification or part-qualification on the national learners' records database; or

(b) the SAQA must comply with section 13 (1B)(a) and (b) and shall refer such a finding or information to the relevant body.

(3) The SAQA must perform its functions in terms of subsection (1) and (2) within 30 days so as to not prejudice the holder of the qualification or part-qualification.

Offences and penalties

32B. (1) A person is guilty of an offence if the person—

(a) makes or causes to be made a false entry in the national learners' records database or the misrepresented or fraudulent register;

(b) is a party to the falsification and dissemination or publication of a qualification or part-qualification of any person or the records of the national learners' records database or the misrepresented or fraudulent register; or

(c) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person.

(2) A person, an education institution or skills development provider is guilty of an offence if a person, the education institution or skills development provider claims to be offering a qualification or part-qualification registered on the NQF whereas that qualification or part-qualification is not so registered.

(3) A person is guilty of an offence, if such a person falsely or fraudulently claims to be holding a qualification or part-qualification registered on the NQF or awarded by an education institution, skills development provider, QC or obtained from a lawfully recognised foreign institution.

(4) Any person, education institution, skills development provider, foreign institution is guilty of an offence if it falsely claims to be registered and accredited as an education institution, skills development provider or foreign institution in terms of the laws of the Republic or foreign law.

(5) If a person, education institution its directors or board, a foreign institution its agents or directors or board, or a skills development provider is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the offence was—

(a) committed with the intent to gain financially, or to receive any favour, benefit, reward, compensation or any other advantage; or

(b) gained financially, or received any favour, benefit, reward, compensation or any other advantage.

(6) Any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of sections 32B(1), 32B(2), 32B(3) or 32B(4) to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(7) Any person, education institution, director or a board member of an education institution, foreign institution or its agents, or skills development provider in contravention of section 32B(4) may be ordered to close its business and declared unfit to apply and register any education institution, skills development provider or become an agent of any foreign institution in the Republic offering a qualification or part-qualification on the NQF or foreign qualification or part-qualification for a period not exceeding 10 years.” 5

Substitution of the Long Title of Act 67 of 2008

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

Short title and commencement

9. (1) This Act is called the National Qualifications Framework Amendment Act, 2019, and comes into operation on the date determined by the President by proclamation in the *Gazette*. 20

(2) Different dates of commencement may be so determined for different sections of the Act.