

REPUBLIC OF SOUTH AFRICA

NATIONAL QUALIFICATIONS FRAMEWORK AMENDMENT BILL

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

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 20—2018]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

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

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

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

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

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

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

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

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

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

Substitution of section 2 of Act 67 of 2008

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

“Object of Act

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

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

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

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

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

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

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

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

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

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

(f) by the addition of the following subsection:

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

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

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

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

Substitution of section 30 of Act 67 of 2008

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

“Registration of professional designation” 45

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

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

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

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