

PRESIDENT'S OFFICE

No. 697.

24 April 1996

NO. 27 OF 1996: NATIONAL EDUCATION POLICY ACT, 1996.

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

GENERAL EXPLANATORY NOTE:

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To provide for the determination of national policy for education; to amend the National Policy for General Education Affairs Act, 1984, so as to substitute certain definitions; to provide afresh for the determination of policy on salaries and conditions of employment of educators; and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is necessary to adopt legislation to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights;

(Afrikaans text signed by the President.)

(Assented to 16 April 1996.)

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

Definitions

1. In this Act, unless the context indicates otherwise-

(i) "Committee" means the Heads of Education Departments Committee established by section 10; (vi)

(ii) "consultative body" means a consultative body contemplated in section 11; (xiv)

(iii) "Council" means the Council of Education Ministers established by section 9; (xiii)

(iv) "Department" means the Department of Education; (iii)

(v) "Director-General" means the Director-General: Education; (iv)

(vi) "education" means any education and training provided by an

education institution, other than training as defined in section I

of the Manpower Training Act, 1981 (Act No. 56 of 1981); (viii)

(vii) "education department" means the Department and a department of any provincial government which is responsible for education; (ix)

(viii) "education institution" means any institution providing education, whether early childhood education, primary, secondary, further or higher education, other than a university or technikon, and also an institution providing specialised, vocational, adult, distance or community education; (x)

(ix) "educator" means any person who teaches, educates or trains other persons at an education institution or assists in rendering education services or education auxiliary or support services provided by or in an education department, but does not include any officer or employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); (xi)

(x) "Minister" means the Minister of Education; (vii)

(xi) "organised teaching profession" means an organisation or union which is a member of the Education Labour Relations Council established by section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and is recognised by the Minister for the purposes of this Act; (v)

(xii) "policy instrument" means the policy instrument referred to in section 7; (ii)

(xiii) "provincial political head of education" means the member of an Executive Council responsible for education in a province; (xii)

- (xiv) "school" means a pre-primary, primary or secondary school; (xv)
(xv) "stakeholder" means an organisation or body with a direct and continuing interest in the education institution, programme, phase or sector in question; (i)
(xvi) "student" means any person enrolled in an education institution;
(xvi)
(xvii) "subcommittee" means a subcommittee of the Committee. (xvii)

Objectives of Act

2. The objectives of the Act are to provide for-

- (a) the determination of national education policy by the Minister in accordance with certain principles;
- (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purpose of consultation;
- (c) the publication and implementation of national education policy;
- (d) the monitoring and evaluation of education.

Determination of national education policy by Minister

3. (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.

(2) In determining national policy for education at education institutions, the Minister shall take into account the competence of the provincial legislatures in terms of section 126 of the Constitution, and the relevant provisions of any provincial law relating to education.

(3) Whenever the Minister wishes a particular national policy to prevail over the whole or a part of any provincial law on education, the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect.

(4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system, and without derogating from the generality of this section, may determine national policy for-

- (a) education management information systems, including the provision of data in accordance with the international obligations of the government;
- (b) the organisation, management and governance of the national education system;
- (c) facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission;
- (d) innovation, research and development in education;
- (e) the ratio between educators and students;
- (f) the professional education and accreditation of educators;
- (g) the organisation, management, governance, funding, establishment and registration of education institutions;
- (h) compulsory school education;
- (i) the admission of students to education institutions, which shall include the determination of the age of admission to schools;
- (j) the minimum number of hours per day and days per year during which education shall be provided for different phases of education in education institutions;
- (c) facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission;
- (d) innovation, research and development in education;
- (e) the ratio between educators and students;
- (f) the professional education and accreditation of educators;
- (g) the organisation, management, governance, funding, establishment and registration of education institutions;
- (h) compulsory school education;
- (i) other state departments;
- (ii) provincial education departments;
- (iii) local government; and
- (iv) non-government organisations,

with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;

(q) in

4. The policy contemplated in section 3 shall be directed toward-

(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 3 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right-

(i) of every person to be protected against unfair discrimination within or by an education department or education institution on any ground whatsoever;

(ii) of every person to basic education and equal access to education institutions;

(iii) of a parent or guardian in respect of the education of his or her child or ward;

(iv) of every child in respect of his or her education;

(v) of every student to be instructed in the language of his or her choice where this is reasonably practicable;

(vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;

(vii) of every person to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race;

(viii) of every person to use the language and participate in the cultural life of his or her choice within an education institution;

(b) enabling the education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;

(c) achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women;

(d) endeavouring to ensure that no person is denied the opportunity to receive an education to the maximum of his or her ability as a result of physical disability;

(e) providing opportunities for and encouraging lifelong learning;

(f) achieving an integrated approach to education and training within a national qualifications framework;

(g) cultivating skills, disciplines and capacities necessary for reconstruction and development;

(h) recognising the aptitudes, abilities, interests, prior knowledge and experience of students;

(i) encouraging independent and critical thought;

(j) promoting a culture of respect for teaching and learning in education institutions;

(k) promoting enquiry, research and the advancement of knowledge;

(l) enhancing the quality of education and educational innovation through systematic research and development on education, monitoring and evaluating education provision and performance, and training educators and education managers;

(m) ensuring broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system;

(n) achieving the cost-effective use of education resources and sustainable implementation of education services;

(o) achieving close co-operation between the national and provincial governments on matters relating to education, including the development of capacity in the departments of education, and the effective

management of the national education system.

Consultation on national education policy

5. (1) Policy contemplated in section 3 shall be determined by the Minister after consultation with such appropriate consultative bodies as have been established for that purpose in terms of section II or any applicable law, and with-

- (a) the Council;
- (b) such national organisations representing college rectors as the Minister may recognise for this purpose;
- (c) the organised teaching profession;
- (d) such national organisations representing parents as the Minister may recognise for this purpose;
- (e) such national organisations representing students as the Minister may recognise for this purpose;
- (f) such other national stakeholder bodies as the Minister may recognise for this purpose.

(2) The policy contemplated in section 3 shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

(3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

Consultation on legislation

6. Legislation on a matter referred to in section 3 shall be introduced in Parliament or, in the case of regulations, be published in the Gazette only after consultation between the Minister and-

- (a) the Council, in respect of education at education institutions; and
- (b) all the parties in the Education Labour Relations Council established by section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), in respect of any matter falling within the objectives of that Act.

Publication of national education policy

7. The Minister shall within 21 days after determining policy in terms of section 3-

- (a) give notice of such determination in the Gazette and indicate in such notice where the policy instrument issued with regard thereto may be obtained;
- (b) table the policy instrument referred to in paragraph (a) in Parliament within 21 days after the notice has appeared in the Gazette, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 day after the commencement of the first ensuing ordinary session of Parliament.

Monitoring and evaluation of education

8. (1) The Minister shall direct that the standards of education provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the object of assessing progress in complying with the provisions of the Constitution and with national education policy, particularly as determined in terms of section 3(3).

(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the bodies referred to in section 5(1).

(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of education management information systems, or by other suitable means, in co-operation with provincial departments of education.

(4) The Department shall fulfill its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education

system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance.

(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the competent authority concerned to comment, which comment shall be published with the report.

(6) If a report prepared in terms of subsection (5) indicates that the standards of education provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 3(3), the Minister shall inform the provincial political head of education concerned and require the submission within 90 days of a plan to remedy the situation.

(7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 days after the commencement of the first ensuing ordinary session of Parliament.

Council of Education Ministers

9. (1) There is hereby established a council, called the Council of Education Ministers, consisting of-

- (a) the Minister, who shall be the chairperson;
- (b) the Deputy Minister of Education, if such Deputy Minister is appointed, who in the absence of the Minister shall be designated by the Minister as chairperson; and
- (c) every provincial political head of education.

(2) The Director-General shall attend meetings of the Council in order to report on the proceedings of the Committee, and to advise on any other matter relating to the responsibilities of the Department.

(3) The chairpersons of the Portfolio Committee on Education in the National Assembly and the Select Committee on Education in the Senate may attend meetings of the Council.

(4) The functions of the Council shall be to-

- (a) promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of Parliament and the provincial legislatures in terms of section 126 of the Constitution;
- (b) share information and views on all aspects of education in the Republic; and
- (c) co-ordinate action on matters of mutual interest to the national and provincial governments.

(5) The Council may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.

(6) The proceedings of the Council shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.

Heads of Education Departments Committee

10. (1) There is hereby established a committee called the Heads of Education Departments Committee consisting of-

- (a) the Director-General, who shall be the chairperson;
- (b) the Deputy Directors-General of the Department; and
- (c) the heads of the provincial education departments.

(2) The functions of the Committee shall be to-

- (a) facilitate the development of a national education system in accordance with the objectives and principles provided for in this Act;
- (b) share information and views on national education;

- (c) co-ordinate administrative action on matters of mutual interest to the education departments; and
 - (d) advise the Department on any matter contemplated in sections 3, 4, 5, 6, 7, 8 and II in respect of education, or on any other matter relating to the proper functioning of the national education system.
- (3) The Committee may establish subcommittees to assist it in the performance of its functions, and-
- (a) may appoint persons who are not members of the Committee to be members of a subcommittee: Provided that the organised teaching profession shall be invited to nominate representatives as members of each subcommittee;
 - (b) designate the chairperson of a subcommittee or direct that the chairperson be appointed by the subcommittee from among its members.
- (4)(a) Meetings of the Committee shall be held at such times and places as the chairperson of the Committee may determine.
- (b) The proceedings of the Committee shall not be invalid merely by virtue of the fact that there is a vacancy in the Committee.
- (c) If the chairperson of the Committee is absent from a meeting of the Committee, one of the Deputy Directors-General designated for this purpose by the chairperson shall take the chair at that meeting.
- (5) The Committee may draw up rules regarding the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers: Provided that not less than four meetings per year shall be held.

Consultative bodies

11. (1) The Minister may, subject to any applicable law, by regulation establish such bodies as may be necessary to advise him or her on matters contemplated in section 3: Provided that the Minister shall establish-
- (a) a body to be known as the National Education and Training Council, whose membership shall reflect the main national stakeholders in the national education system, to advise on broad policy and strategy for the development of the national education system and the advancement of an integrated approach to education and training;
 - (b) such other bodies as may be necessary to represent the interests of particular sectors of the education system.
- (2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation: Provided that the bodies referred to in section 5(1)(c), shall be invited to nominate representatives to any such consultative body within their respective spheres of interest.
- (3) Different regulations may be made in respect of different bodies established under subsection (1).

Allowances and remuneration of members of subcommittees and consultative bodies

12. A member of a subcommittee or a consultative body, who is not in the full-time employment of the State may, in respect of the services rendered by that member in connection with the affairs of the subcommittee or consultative body, from money appropriated for that purpose by Parliament, be paid such travelling and subsistence and other allowances, as the Minister, with the concurrence of the Minister of Finance, may determine.

Administrative functions of Council, Committee, and consultative bodies

13. (1) The administrative functions of the Council, Committee and each consultative body shall be performed by officials of the Department who are designated by the Director-General for that purpose.
- (2) The Director-General shall in respect of the Council, Committee and each consultative body designate a Secretary under whose direction the other officials shall perform their functions.

Amendment of Act 76 of 1984

14. (1) Subject to the provisions of subsection (2), the National Policy for

General Education Affairs Act, 1984 (Act No. 76 of 1984), is hereby amended to the extent set out in the Schedule.

(2) Anything done under a provision of the National Policy for General Education Affairs Act, 1984, prior to the amendment thereof by subsection (1), shall remain in force as if such amendment had not been made.

Short title

15. This Act shall be called the National Education Policy Act, 1996.

SCHEDULE

Number and year Short title Extent of repeal of law

Act No. 76 of 1984 National Policy for General 1. The substitution for Education Affairs Act section 1 of the following section:

"Definitions

<<1. In this Act, unless the context indicates otherwise-

" 'department of education' means the departments of the national and provincial governments which are responsible for education; 'educator' means any person who teaches, educates or trains other persons at any school, technical college or teachers' training college, or assists in rendering professional services or educational auxiliary services provided by or in a department of education, but does not include any officer or employee, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

'Minister' means the Minister of Education.>>".

2. The substitution for section 2 of the following section:

"Determination of policy on salaries and conditions of employment of educators

<<2. (1) Subject to the provisions of this section and the provisions of any law regarding the financing of education, the Minister may determine the national policy to be applied in respect of the salaries and conditions of employment

of educators.

(2) The policy contemplated in subsection (1) shall be determined by the Minister in accordance with the provisions of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and, if it involves expenditure from the State Revenue Fund, with the concurrence of the Minister of Finance.>>".

3. The repeal of sections 3, 4, 5, 6, 7, 8, 9 and 10.

4. The substitution for section 11 of the following section:

"Short title
<<11. This Act shall be called the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984.>>".

5. The substitution for the long title of the following long title:

<<"To provide for the determination of national policy in respect of salaries and conditions of employment of educators; and for matters connected therewith