



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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OFFICE OF THE PRESIDENT

No. 1604. 28 November 1997

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

No. 100 of 1997: Education Laws Amendment Act, 1997.

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KANTOOR VAN DIE PRESIDENT

No. 1604. 28 November 1997

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 100 van 1997: Wysingswet op Onderwyswette, 1997.

**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.

**ACT**

To amend the South African Schools Act, 1996, so as to insert a definition and substitute others; to enable public schools to appoint educator and non-educator staff additional to the approved establishment; and to make certain technical adjustments; to amend the National Education Policy Act, 1996, so as to make certain technical adjustments; and to delete an obsolete provision; to amend the Educators' Employment Act, 1994, so as to enable the Minister to determine requirements for appointment, transfer and promotion of educators; to provide for a process to enable public schools to make recommendations for the appointment, transfer or promotion of educators as a result of operational requirements of the employer; to make certain technical adjustments; and to delete obsolete provisions; to repeal the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)  
(Assented to 26 November 1997.)

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

**Amendment of section 1 of Act 84 of 1996**

1. Section 1 of the South African Schools Act 1996, is hereby amended—
  - (a) by the insertion after the definition of "public school" of the following definition:
 

**"Registrar of deeds"** means the *registrar of deeds* referred to in section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);"
  - (b) by the substitution for the definition of "Constitution" of the following definition:
 

**"Constitution"** means the *Constitution* of the Republic of South Africa, [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);"
  - (c) by the substitution for the definition of "school" of the following definition:
 

**"school"** means a *public school* or an *independent school* which enrolls learners in one or more grades [between] from grade zero [and] to grade twelve;"

**Amendment of section 2 of Act 84 of 1996**

2. Section 2 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (3) of the following words:
 

**"and this Act."**

**ALGEMENE VERDUIDELIKENDE NOTA:**

[ ] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

\_\_\_\_\_ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

**WET**

Tot wysiging van die Suid-Afrikaanse Skolewet, 1996, ten einde 'n woordoms krywing in te voeg en ander woordoms krywings te vervang; openbare skole in staat te stel om opvoeders en nie-opvoederpersoneel bykomstig tot die goedgekeurde diensstaat aan te stel; en sekere tegniese aanpassings te doen; tot wysiging van die Wet op die Nasionale Onderwysbeleid, 1996, ten einde sekere tegniese aanpassings te doen; en 'n verouderde bepaling te skrap; tot wysiging van die Wet op Indiensneming van Opvoeders, 1994, ten einde die Minister in staat te stel om vereistes vir aanstelling, oorplasing of bevordering van opvoeders te bepaal; om 'n proses te voorsien om openbare skole in staat te stel om aanbevelings te doen vir die aanstelling, oorplasing of bevordering van opvoeders as gevolg van operasionele vereistes van die werkgewer; sekere tegniese aanpassings te doen; en verouderde bepalings te skrap; tot herroeping van die Wet op die Nasionale Beleid vir die Salarisse en Diensvoorwaardes van Opvoeders, 1984; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die President geteken.)  
(Goedgekeur op 26 November 1997.)

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

**Wysiging van Artikel 1 van Wet 84 van 1996**

1. Artikel 1 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig—
  - 5 (a) deur na die woordoms krywing van "Raad van Onderwysministers" die volgende woordoms krywing in te voeg:
 

**"Registrateur van Aktes"** die *registrateur van aktes* bedoel in artikel 2 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937);"
  - 10 (b) deur die omskrywing van "Grondwet" deur die volgende omskrywing te vervang:
 

**"Grondwet"** die *Grondwet* van die Republiek van Suid-Afrika, [1993 (Wet No. 200 van 1993)] 1996 (Wet No. 108 van 1996);"
  - (c) deur die omskrywing van "skool" deur die volgende omskrywing te vervang:
 

**"skool"** 'n *openbare skool* of 'n *onafhanklike skool* wat *leerders* in een of meer *grade* [tussen] *van graad* nul [en] *tot graad* twaalf inskryf."

**Wysiging van artikel 2 van Wet 84 van 1996**

2. Artikel 2 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:
 

"(3) Geen bepaling van hierdie Wet belet 'n provinsiale wetgewer om wetgewing vir skoolonderwys in 'n provinsie ooreenkomstig die Grondwet en hierdie Wet te verorden nie."

**Amendment of section 11 of Act 84 of 1996**

3. Section 11 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A representative council of *learners* at the *school* must be established at every *public school* enrolling *learners* in the eighth grade **[and]** or higher.”. 5

**Amendment of section 13 of Act 84 of 1996**

4. Section 13 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

“(7) The **[registrar of any deeds registry]** *Registrar of deeds* may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the **[registrar]** *Registrar of deeds* with proof of the agreement contemplated in subsection (6).”; 10

(b) by the substitution in the Afrikaans text for subsection (8) of the following subsection: 15

“(8) Die bepalings van die **[Wet op die]** Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), is nie van toepassing op die reg beoog in subartikel (2) nie.”;

(c) by the addition of the following subsection:

“(9) On application by the owner and on production of the owner’s copy of the title deed, the *Registrar of deeds* must endorse on the title deed and in his or her records the fact that a *public school* has been established on the land in terms of *this Act*.”. 20

**Amendment of section 14 of Act 84 of 1996**

5. Section 14 of the South African Schools Act, 1996, is hereby amended— 25

(a) by the substitution in subsection (5), for the words preceding paragraph (a) of the following words:

“Despite subsection (3), a **[registrar of a deeds registry]** *Registrar of deeds* must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the **[registrar]** *Registrar of deeds* receives—”; 30

(b) by the insertion after subsection (6) of the following subsection, the existing subsection (7) becoming subsection (8):

“(7) The *Registrar of deeds* may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the *Member of the Executive Council* of the province in which the *public school* is situated to the effect that such *public school* has been closed in terms of section 33.”. 35

**Amendment of section 20 of Act 84 of 1996**

6. Section 20 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections: 40

“(4) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Member of the Executive Council* in terms of section 3(1) of the *Educators’ Employment Act*, 1994. 45

(5) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the *Public Service Act*, 1994 (Proclamation No. 103 of 1994). 50

(6) An *educator* and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.

**Wysiging van artikel 11 van Wet 84 van 1996**

3. Artikel 11 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- 5 “(1) ’n Verteenwoordigende raad van *leerders* van die *skool* moet by elke *openbare skool* wat *leerders* in die agtste graad [en] of hoër inskryf, ingestel word.”.

**Wysiging van artikel 13 van Wet 84 van 1996**

4. Artikel 13 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig—

- (a) deur subartikel (7) deur die volgende subartikel te vervang:
- 10 “(7) Die [registrateur van enige registrasiekantoor] *Registrateur van aktes* mag nie ’n akte van oordrag ten opsigte van die betrokke vaste eiendom verly, attesteer of registreer nie, tensy die eienaar die [registrateur] *Registrateur van aktes* van bewys van die ooreenoms in subartikel (6) beoog, voorsien het.”;
- 15 (b) deur subartikel (8) deur die volgende subartikel te vervang:
- “ (8) Die bepalings van die [Wet op die] Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), is nie van toepassing op die reg beoog in subartikel (2) nie.”; en
- (c) deur die volgende subartikel by te voeg:
- 20 “(9) Op aansoek van die eienaar en by voorlegging van die eienaar se afskrif van die titelakte, moet die *Registrateur van aktes* die titelakte endosseer en in sy of haar rekords aanteken dat ’n *openbare skool* op die grond ingevolge *hierdie Wet* ingestel is.”.

**Wysiging van artikel 14 van Wet 84 van 1996**

25 5. Artikel 14 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig—

- (a) deur in die Engelse teks in subartikel (5) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- 30 “Despite subsection (3), a [registrar of a deeds registry] *Registrar of deeds* must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the [registrar] *Registrar of deeds* receives—”; en
- (b) deur na subartikel (6) die volgende subartikel in te voeg, terwyl die bestaande subartikel (7) subartikel (8) word:
- 35 “(7) Die *Registrateur van aktes* kan enige endossement wat ooreenkomstig subartikel (5) aangebring is, kanselleer indien die eienaar van die eiendom ’n beëdigde verklaring deur die *Lid van die Uitvoerende Raad* van die provinsie waarbinne die *openbare skool* geleë is, dat sodanige *openbare skool* ingevolge artikel 33 gesluit is, voorlê.”.

**Wysiging van artikel 20 van Wet 84 van 1996**

40 6. Artikel 20 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die volgende subartikels by te voeg:

- “ (4) Behoudens *hierdie Wet*, die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en enige ander toepaslike wet kan ’n *openbare skool* poste vir opvoeders instel en opvoeders in diens neem bykomstig tot die diensstaat deur die *Lid van die Uitvoerende Raad* bepaal ingevolge artikel 3(1) van die Wet op die Indiensneming van Opvoeders, 1994.
- 45 (5) Behoudens *hierdie Wet*, die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en enige ander toepaslike wet kan ’n *openbare skool* poste vir nie-opvoeders instel en nie-opvoederpersoneel in diens neem bykomstig tot die diensstaat wat ingevolge die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), bepaal is.
- 50 (6) ’n *Opvoeder* en ’n nie-opvoeder wat in ’n pos wat ingevolge subartikel (4) of (5) ingestel is, aangestel word, moet voldoen aan die vereistes wat gestel word vir indiensneming by *openbare skole* ingevolge *hierdie Wet*, die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en enige ander toepaslike wet.
- 55



## Act No. 100, 1997

## EDUCATION LAWS AMENDMENT ACT, 1997

(7) A *public school* may only employ an *educator* in a post established in terms of subsection (4) if such *educator* is registered as an *educator* with the South African Council of Educators.

(8) The staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to—

- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

(9) When presenting the annual budget contemplated in section 38, the *governing body* of a *public school* must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

(10) Despite section 60, the State is not liable for any act or omission by the *public school* relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).

(11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the *Minister* may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.”

#### Amendment of section 24 of Act 84 of 1996

7. Section 24 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (1) of the following paragraph:

“(j) the *principal* in his or her official capacity.”

#### Amendment of section 39 of Act 84 of 1996

8. Section 39 of the South African Schools Act, 1996, is hereby amended by the substitution in the Afrikaans text for paragraph (b) of subsection (2), of the following paragraph:

“(b) billike maatstawwe en prosedures vir die algehele, gedeeltelike of voorwaardelike vrystelling [deur die beheerliggaam] van *ouers* wat nie in staat is om skoolgeld te betaal nie.”

#### Amendment of section 55 of Act 84 of 1996

9. Section 55 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(11) The *Registrar of deeds* in the office where the immovable property of a *school* is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.

(12) Any immovable property belonging to the State which was used by a *school* and not transferred or endorsed into the name of the *school* contemplated in subsection (1) remains the property of the State.

(13) Any immovable property which was transferred into the name of a *school* contemplated in subsection (1) must, if such *school* is subsequently closed in terms of *this Act* or any other applicable law, devolve upon the State.”

#### Amendment of section 59 of Act 84 of 1996

10. Section 59 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every *school* must provide such information about the *school* as is reasonably required by the *Head of Department* or the *Director-General* of the national Department of Education in consultation with the *Head of Department*.”

(7) 'n *Openbare skool* kan 'n *opvoeder* in 'n pos ingestel ingevolge subartikel (4) aanstel slegs indien sodanige *opvoeder* as *opvoeder* geregistreer is by die Suid-Afrikaanse Raad van Opvoeders.

5 (8) Die personeel beoog in subartikels (4) en (5) moet ooreenkomstig die basiese waardes en beginsels bedoel in artikel 195 van die *Grondwet* in diens geneem word, en die faktore wat in berekening gebring word by die aanstellings, moet insluit, maar is nie beperk nie tot—

- (a) die bekwaamheid van die kandidaat;
- (b) die beginsel van billikheid;
- 10 (c) die behoefte om ongeregtheid van die verlede reg te stel; en
- (d) die behoefte om verteenwoordigend te wees.

(9) Wanneer die jaarlikse begroting soos beoog in artikel 38 aangebied word, moet die *beheerliggaam* van 'n *openbare skool* voldoende besonderhede van enige poste wat beoog word ingevolge subartikels (4) en (5) aanbied, met inbegrip van die geskatte koste betreffende die aanstelling van personeel in sodanige poste en die manier waarop die voorgestelde koste betaal sal word.

15 (10) Ondanks artikel 60 is die Staat nie aanspreeklik vir enige handeling of late by 'n *openbare skool* wat voortspruit uit sy kontraktuele verantwoordelikheid as werkgever teenoor die personeel aangestel ingevolge subartikels (4) en (5) nie.

20 (11) Na oorleg soos beoog in artikel 5 van die Wet op die Nasionale Onderwysbeleid, 1996 (Wet No. 27 van 1996), kan die *Minister* norme en standaarde bepaal by kennisgewing in die *Staatskoerant* betreffende die fondse wat gebruik word vir die aanstelling van personeel beoog in subartikels (4) en (5), maar sodanige norme en standaarde word nie uitgelê as sou die Staat die gesamentlike werkgever van sodanige personeel wees nie.”

#### Wysiging van artikel 24 van Wet 84 van 1996

7. Artikel 24 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur in subartikel (1) die volgende paragraaf by te voeg:

“(j) die *prinsipaal* in sy of haar amptelike hoedanigheid.”

#### 30 Wysiging van artikel 39 van Wet 84 van 1996

8. Artikel 39 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur in subartikel (2) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) billike maatstawwe en prosedures vir die algehele, gedeeltelike of voorwaardelike vrystelling [deur die *beheerliggaam*] van *ouers* wat nie in staat is om skoolgeld te betaal nie.”

#### Wysiging van artikel 55 van Wet 84 van 1996

9. Artikel 55 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die volgende subartikels by te voeg:

40 “(11) Die *registrator* van *aktes* in die kantoor waar die vaste eiendom van 'n *skool* geregistreer is, moet, by voorlegging van die betrokke titelakte, die endossement op die akte aanbring en die inskrywing in die akteregister aanteken wat vereis word om die oordrag van die vaste eiendom te registreer.

(12) Enige vaste eiendom wat aan die Staat behoort en deur 'n *skool* gebruik is en wat nie oorgedra is na of geëndosseer is in die naam van die *skool* beoog in subartikel (1) nie, bly die eiendom van die Staat.

45 (13) Enige vaste eiendom wat in die naam van 'n *skool* beoog in subartikel (1) oorgedra is, gaan oor op die Staat indien daardie *skool* later ingevolge *hierdie Wet* of enige ander toepaslike wet gesluit word.”

#### Wysiging van artikel 59 van Wet 84 van 1996

50 10. Artikel 59 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Elke *skool* moet die inligting oor die *skool* wat redelikerwys deur die *Departementshoof* of die *Direkteur-generaal* van die nasionale Departement van Onderwys in samewerking met die *Departementshoof* vereis word, voorsien.”

**Amendment of section 3 of Act 27 of 1996**

11. Section 3 of the National Education Policy Act, 1996, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(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] 146 of the Constitution, and the relevant provisions of any provincial law relating to education.”; and

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“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—”.

**Amendment of section 4 of Act 27 of 1996**

12. Section 4 of the National Education Policy Act, 1996, is hereby amended by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:

“(a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter [3] 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right—”.

**Amendment of section 9 of Act 27 of 1996**

13. Section 9 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(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] 146 of the Constitution;”.

**Amendment of section 1 of Proclamation No. 138 of 1994, as amended by item 1 of Schedule 2 to Act 84 of 1996**

14. Section 1 of the Educators' Employment Act, 1994, is hereby amended by the deletion, in the definition of “employer”, of paragraph (d).

**Amendment of section 3 of Proclamation 138 of 1994, as amended by item 2 of Schedule 2 to Act 84 of 1996**

15. Section 3 of the Educators' Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act [and the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984)], the educator establishment at an educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates.”.

**Repeal of section 3A of Proclamation No. 138 of 1994, as amended by item 3 of Schedule 2 to Act 84 of 1996**

16. Section 3A of the Educators' Employment Act, 1994, is hereby repealed.



**Wysiging van artikel 3 van Wet 27 van 1996**

11. Artikel 3 van die Wet op die Nasionale Onderwysbeleid, 1996, word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:
- 5 “(2) By die bepaling van nasionale beleid vir onderwys by onderwysinrigtings hou die Minister rekening met die bevoegdhede van die provinsiale wetgewers uit hoofde van artikel [126] 146 van die Grondwet en die toepaslike bepalings van die een of ander provinsiale Wet met betrekking tot onderwys.”; en
- 10 (b) deur in subartikel (4) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- “ (4) Behoudens die bepalings van subartikels (1) tot (3), bepaal die Minister nasionale beleid vir die beplanning, voorsiening, finansiering, [personeelvoorsiening,] koördinerende, bestuur, beheer, programme,
- 15 monitering, evaluering en welsyn van die onderwysstelsel en, sonder om afbreuk te doen aan die algemeenheid van hierdie artikel, kan die Minister nasionale beleid bepaal vir—”.

**Wysiging van artikel 4 van Wet 27 van 1996**

12. Artikel 4 van die Wet op die Nasionale Onderwysbeleid, 1996, word hierby gewysig deur in paragraaf (a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

- “(a) die bevordering en beskerming van die fundamentele regte van elke persoon gewaarborg ingevolge Hoofstuk [3] 2 van die Grondwet en ingevolge internasionale konvensies deur die Parlement bekragtig en in besonder die reg—”.
- 25

**Wysiging van artikel 9 van Wet 27 van 1996**

13. Artikel 9 van die Wet op die Nasionale Onderwysbeleid, 1996, word hierby gewysig deur paragraaf (a) van subartikel (4) deur die volgende paragraaf te vervang:

30 “(a) ’n nasionale onderwysbeleid te bevorder wat ten volle die beleid van die regering, die beginsels vervat in artikel 4, die onderwysbelange en -behoefte van die provinsies en die onderskeie bevoegdhede van die Parlement en die provinsiale wetgewers ingevolge artikel [126] 146 van die Grondwet, in ag neem;”.

**Wysiging van artikel 1 van Proklamasie No. 138 van 1994, soos gewysig deur item 1 van Bylae 2 tot Wet 84 van 1996**

35 14. Artikel 1 van die Wet op Indiensneming van Opvoeders, 1994, word hierby gewysig deur in die omskrywing van “werkgever” paragraaf (d) te skrap.

**Wysiging van artikel 3 van Proklamasie 138 van 1994, soos gewysig deur item 2 van Bylae 2 by Wet 84 van 1996**

15. Artikel 3 van die Wet op Indiensneming van Opvoeders, 1994, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

40 “(1) Ondanks andersluidende bepalings in enige ander wet, maar behoudens hierdie Wet [en die Wet op die Nasionale Beleid vir die Salarisse en Diensvoorwaardes van Opvoeders, 1984 (Wet No. 76 van 1984)], bestaan die diensstaat van opvoeders by ’n onderwysinstelling in ’n provinsie uit die poste wat die Lid van die Uitvoerende Raad skep en die diensstaat van opvoeders van die Departement van Onderwys uit die poste wat die Minister skep.”.

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**Herroeping van artikel 3A van Proklamasie No. 138 van 1994, soos gewysig deur item 3 van Bylae 2 tot Wet 84 van 1996**

16. Artikel 3A van die Wet op Indiensneming van Opvoeders, 1994, word hierby herroep.

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**Amendment of section 4 of Proclamation No. 138 of 1994, as amended by item 4 of Schedule 2 to Act 84 of 1996**

17. Section 4 of the Educators' Employment Act, 1994, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The [qualifications] requirements for appointment, transfer and promotion [as an educator] shall be determined by the Minister.”; 5

(b) by the substitution for subsection (3) of the following subsection:

“(3) The [authority to] employer shall fill a post referred to in section 3(1) and (3) at a public school [in terms of subsection] subject to subsections (2) and (4) [is exercised] on the recommendation of [a] that public school, as represented by its governing body, and the employer may only deviate from such recommendation if— 10

(a) the candidate does not [have the required qualifications] comply with the requirements referred to in subsection (1);

(b) the candidate [has been found guilty of misconduct] is not registered or does not qualify for registration as an educator with the South African Council of Educators; or 15

(c) sufficient proof exists that the recommendation made by the school was based on improper influence.”;

(c) by the insertion after subsection (3) of the following subsection, the existing subsection (4) becoming subsection (5): 20

“(4) The public school shall make its recommendations in terms of subsection (3) from candidates identified by the employer if the number of posts on the establishment contemplated in section 3(1) and (3) is reduced by the employer due to operational requirements as contemplated in the Labour Relations Act, 1995 (Act No. 66 of 1995).”; and 25

(d) by the substitution for subsection (5) of the following subsection:

“(5) The requirements contemplated in subsection (1) must comply with the basic values and principles referred to in section 195 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the factors to be taken into account in determining the requirements, include but are not limited to— 30

(a) the ability of the candidate;

(b) the principle of equity; 35

(c) the need to redress past injustices; and

(d) the need for representivity.”.

**Amendment of section 5 of Proclamation 138 of 1994, as amended by item 5 of Schedule 2 to Act 84 of 1996**

18. Section 5 of the Educators' Employment Act, 1994, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

“Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of [the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), and] the Labour Relations Act—”. 45

**Amendment of section 15 of Proclamation No. 138 of 1994**

19. Section 15 of the Educators' Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

“Hearing by disciplinary tribunal 50

15. (1) If an educator charged in terms of section 14(1) denies the charge or fails to comply with the notice contemplated in section 14(3), the employer shall appoint a disciplinary tribunal consisting of a chairperson and two other persons, one of whom shall be nominated by the educator or the employee member of which such an educator is a member, to inquire into the charge.”. 55

**Wysiging van artikel 4 van Proklamasie No. 138 van 1994, soos gewysig deur item 4 van Bylae 2 tot Wet 84 van 1996**

17. Artikel 4 van die Wet op Indiensneming van Opvoeders, 1994, word hierby gewysig—

- 5 (a) deur subartikel (1) deur die volgende subartikel te vervang:  
 “(1) Die [kwalifikasies] vereistes vir aanstelling, verplasing en bevordering [as ’n opvoeder] moet deur die Minister bepaal word.”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang:  
 10 “(3) Die [bevoegdheid om] werkgewer moet ’n pos bedoel in artikel 3 (1) en (3) by ’n openbare skool [kragtens subartikel] vul behoudens subartikels (2) [te vul, word uitgeoefen] en (4) op die aanbeveling van [’n] sodanige openbare skool, soos verteenwoordig deur sy bestuursliggaam, en die werkgewer wyk van sodanige aanbeveling af slegs indien—  
 15 (a) die kandidaat nie [oor die vereiste kwalifikasies beskik] voldoen aan die vereistes bedoel in subartikel (1) nie;  
 (b) die kandidaat [aan wangedrag skuldig bevind is] nie geregistreer is of vir registrasie kwalifiseer as ’n opvoeder by die Suid-Afrikaanse Raad vir Onderwysers nie; of  
 20 (c) voldoende bewys bestaan dat die aanbeveling deur die beheerliggaam gemaak, op onbehoorlike beïnvloeding berus.”;
- (c) deur na subartikel (3) die volgende subartikel in te voeg, terwyl die bestaande subartikel (4) subartikel (5) word:  
 25 “(4) Die openbare skool moet ingevolge subartikel (3) sy aanbevelings doen van kandidate wat deur die werkgewer geïdentifiseer is indien die getal poste op die diensstaat soos beoog in artikel 3(1) en (3) deur die werkgewer verminder word as gevolg van operasionele vereistes soos beoog in die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995).”; en
- (d) deur subartikel (5) deur die volgende subartikel te vervang:  
 30 “(5) Die vereistes beoog in subartikels (4) en (5) moet met die basiese waardes en beginsels bedoel in artikel 195 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), ooreenstem, en die faktore wat by die vereistes in berekening gebring moet word, moet insluit, maar is nie beperk nie tot—  
 35 (a) die bekwaamheid van die kandidaat;  
 (b) die beginsel van billikheid;  
 (c) die behoefte om ongeregtegtigheid van die verlede reg te stel; en  
 (d) die behoefte om verteenwoordigend te wees.”.

**Wysiging van artikel 5 van Proklamasie 138 van 1994, soos gewysig deur item 5 van Bylae 2 by Wet 84 van 1996**

- 40 18. Artikel 5 van die Wet op Indiensneming van Opvoeders, 1994, word hierby gewysig deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:  
 “Ondanks andersluidende bepalings in ’n ander wet, maar behoudens die bepalings van [die Wet op die Nasionale Beleid vir die Salarisse en Diensvoor-  
 45 waardes van Opvoeders, 1984 (Wet No. 76 van 1984), en] die Wet op Arbeidsverhoudinge—”.

**Wysiging van artikel 15 van Proklamasie No. 138 van 1994**

19. Artikel 15 van die Wet op Indiensneming van Opvoeders, 1994, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

50 **“Verhoor deur dissiplinêre tribunaal**

15. (1) Indien ’n opvoeder wat ingevolge artikel 14(1) aangekla word, die aanklag ontken of versuim om te voldoen aan die aanseggings beoog in artikel 14(3), moet die werkgewer ’n dissiplinêre tribunaal aanstel bestaande uit ’n voorsitter en twee ander persone, van wie een genomineer word deur die opvoeder of werknemerslid waarvan sodanige opvoeder ’n lid is, om die aanklag te ondersoek.”.
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**Amendment of section 18 of Proclamation No. 138 of 1994**

**20.** Section 18 of the Educators' Employment Act, 1994, is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) one member nominated by the educator or employee member of which such educator is a member: Provided that if the educator or employee member concerned fails to nominate such a member within a reasonable time, the Member of the Executive Council shall appoint the member.”.

**Repeal of Act 76 of 1984**

**21.** The National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), is hereby repealed.

**Transitional provision**

**22.** Any educator who has been appointed in an unsubsidised post contemplated in section 3A of the Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), must, as long as his or her contractual arrangements are still in force, be regarded as being employed in terms of section 20(4) of the South African Schools Act, 1996 (Act No. 84 of 1996).

**Short title**

**23.** This Act is the Education Laws Amendment Act, 1997.

**Wysiging van artikel 18 van Proklamasie No. 138 van 1994**

20. Artikel 18 van die Wet op Indiensneming van Opvoeders, 1994, word hierby gewysig deur paragraaf (c) van subartikel (4) deur die volgende paragraaf te vervang:

- 5       “(c) een lid wat deur die opvoeder of werknemerslid waarvan sodanige opvoeder ’n lid is, benoem word: Met dien verstande dat indien die betrokke opvoeder of werknemerslid versuim om binne ’n redelike tyd so ’n lid te benoem, die Lid van die Uitvoerende Raad daardie lid aanstel.”.

**Herroeping van Wet 76 van 1984**

21. Die Wet op die Nasionale Beleid vir die Salarisse en Diensvoorwaardes van  
10 Opvoeders, 1984 (Wet No. 76 van 1984), word hierby herroep.

**Oorgangsbepaling**

22. Enige opvoeder wat in ’n ongesubsidieerde pos beoog in artikel 3A van die Wet op Indiensneming van Opvoeders, 1994 (Proklamasie No. 138 van 1994), aangestel is, word vir so lank as wat sy of haar kontraktuele reëling van krag is, geag in diens te  
15 wees ingevolge artikel 20(4) van die Suid-Afrikaanse Skolewet, 1996 (Wet No. 84 van 1996).

**Kort titel**

23. Hierdie Wet is die Wysigingswet op Onderwyswette, 1997.