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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

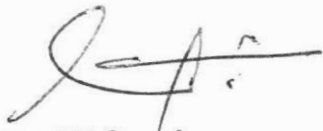
DEPARTMENT OF HIGHER EDUCATION AND TRAINING

NO. 118

07 FEBRUARY 2020

COMMUNIQUE 01 OF 2020**REVOCATION OF JOINT COMMUNIQUE 1 OF 2016 REGARDING
REGISTRATION OF PRIVATE EDUCATION AND TRAINING PROVIDERS
OFFERING QUALIFICATIONS AND PART-QUALIFICATIONS ON THE
OCCUPATIONAL QUALIFICATIONS SUB-FRAMEWORK**

I, Gwebinkundla Fellix Qonde, in my capacity as the Head of the Department of Higher Education and Training, in terms of section 22(2) (c) and (d) of the Skills Development Act, 1998 (Act No. 97 of 1998) hereby issue Communiqué 01 of 2020 as set out in the Schedule.

**Mr GF Qonde****Director-General: Higher Education and Training****Date** 24/01/2020

instances caused confusion, frustration and uncertainty within the skills development sector. Furthermore, there have been significant new legislative developments, which have profound legal implications and seek to bring about certainty on the issue of the registration of SDPs.

3. LEGAL AND LEGISLATIVE CONTEXT

- 3.1 Since the publication of Joint Communiqué 1 of 2016, the Department has been grappling with challenges regarding the enabling legislation deriving from section 29(3)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) ("the Constitution"), in terms of which SDPs must be registered, in compliance with the latter section. This enabling legislation should, amongst other things, take into account the nature and business operations of SDPs and allow for the development of the concomitant regulations outlining a clear procedure and requirements for their registration.
- 3.2 Currently, the Skills Development Act, 1998, which is the principal Act that regulates SDPs does not require that they must be registered with the State as contemplated by section 29(3)(b) of the Constitution. However, in terms of section 3(3) which must be read with section 1 of the National Qualification Framework Amendment Act, 2019 (Act No. 12 of 2019) ("NQF Amendment Act") published in Government Gazette No. 42646 of 19 August 2019 for general information, which will come into operation on the date yet to be determined by the President by proclamation in the Gazette, SDPs will be required to be registered with the Department and accredited by the relevant Quality Council, in order to provide education and training in the Republic of South Africa.
- 3.3 Section 1 of the NQF Amendment Act, defines a 'skills development provider' as *"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."*
- 3.4 Despite the legislative changes contemplated in the NQF Amendment Act, the Continuing Education and Training Act, 2006 (Act No. 16 of 2006) ("the CET Act") in its current form, does not make provision for the registration of SDPs.

This means that, for section 3(3) of the NQF Amendment Act to be effected, the CET Act must be amended.

- 3.5 Presently, there is however, nothing that prevents those SDPs who are accredited to offer qualifications or part-qualifications on the OQSF in terms of the SDA and who meet the prescribed requirements for registration from being registered with the Department, either as private colleges in terms of the CET Act or as private higher education institutions in terms of Higher Education Act.1997 (Act No. 101 of 1997).
- 3.6 As a result of the challenges and legislative developments outlined above and in an endeavour to bring about legal certainty on the issue of the registration of SDPs, the Department sought and obtained a legal opinion from the Office of Chief State Law Adviser. In its comprehensible legal opinion, the Chief State Law Adviser advised that the registration of SDPs may only be effected through legislation that provides for the requirements and procedure for such registration. Furthermore, that the SDA must be amended to require the registration of private SDPs and to provide for the requirements and procedure for their registration. To this end, the Department has already commenced with the process of amending the SDA in order to *inter alia*, address the issue of the registration of SDPs in keeping with the constitutional imperatives.
- 3.7 It is against this backdrop that the Department has decided to review its position on the Joint Communiqué 1 of 2016.

4. IMPLICATIONS OF COMMUNIQUÉ 01 OF 2020

The following are the implications of Communiqué 01 of 2020:

- 4.1 SDPs are no longer required to lodge applications for registration with Department as private colleges or private higher education institutions as contemplated in the Joint Communiqué 1 of 2016;
- 4.2 SDPs who are currently accredited by the Quality Council for Trades and Occupations (QCTO) or its delegated Quality Assurance Partners (QAPs) and registered as examination centres (where applicable) may continue to operate

as before for as long as they still meet their accreditation requirements and/or examination centre registration requirements;

- 4.3 New SDPs must first obtain accreditation from the QCTO or its delegated QAPs and approach the Department for registration as examination centres (where applicable) in order to commence with their operations;
 - 4.4 SDPs who want to become accredited assessment centres must apply directly to the QCTO for occupational qualifications or part-qualifications, trades or historically registered qualifications in terms of the QCTO Circular 1 of 2017 issued on 15 December 2017;
 - 4.5 No SDP will be penalised or adversely affected in its operations as a result of having not lodged an application for registration as per the Joint Communiqué 1 of 2016; and
 - 4.6 SDPs who want to offer qualifications or part-qualifications on the general and further education and training sub-framework or the higher education qualifications sub-framework, may, if they meet the prescribed requirements, approach the Department to be registered as a private college or private higher education institution in terms of the CET Act or Higher Education Act, 997 (Act No. 101 of 1997).
5. This Communiqué is issued by the Director-General of the Department of Higher Education and Training which revokes and replaces Joint Communiqué 1 of 2016 and shall come into operation immediately upon its publication.



Mr GF Qonde

Director-General

Date:

24 / 01 / 2020

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Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
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