
GOVERNMENT NOTICES


DEPARTMENT OF HIGHER EDUCATION AND TRAINING

No. R. 743

27 August 2010

NATIONAL QUALIFICATIONS FRAMEWORK ACT, 67 OF 2008**REGULATIONS FOR RESOLVING A DISPUTE IN TERMS OF THE NATIONAL
QUALIFICATIONS FRAMEWORK ACT, 2008**

I, Matsie Angelina Motshekga, Acting Minister of Higher Education and Training, in terms of section 8(2)(f) of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), hereby determines the Regulations set out in the Schedule in relation to the process by which a dispute involving the South African Qualification Authority as a Quality Council must be resolved.


Ms A Motshekga, MP
Acting Minister of Higher Education and Training
Date: 08 August 2010

SCHEDULE**Definitions**

1. In these Regulations, any expression to which a meaning has been assigned in the Act bears the same meaning, and, unless the context indicates otherwise –

“**CEO**” means the chief executive officer of SAQA;

“**conflict**” means a disagreement among QCs or between SAQA and a QC that, unless resolved, may result in a dispute;

“**Director-General**” means the Director-General of the department responsible for higher education and training;

“**dispute**” means a conflict that remains unresolved and relates to duties, responsibilities or functions of the respective party in terms of the Act;

“**Guidelines**” means the *Intergovernmental Dispute Prevention and Settlement Guidelines for Effective Conflict Management* (2007) published in terms of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), or any subsequent revision or successor document;

“**party**” means SAQA or a QC that is a party to a conflict or a dispute;

“**procedures**” means conflict management and dispute resolution procedures contemplated in sub regulation 4(1); and

“**system of collaboration**” means the system of collaboration contemplated in section 13(1)(f)(i) of the Act.

Application

2. These Regulations apply to a conflict or dispute among QCs or between SAQA and a QC that relates to –
 - (a) the interpretation of the Act;
 - (b) the performance of a function by a party in terms of the Act;
 - (c) the exercising of a power by a party in terms of the Act; or
 - (d) any other matter contemplated in the Act that concerns a function or power of a party.

System of collaboration

3. (1) SAQA must determine a system of collaboration whose object is to guide the mutual relations of SAQA and the QCs in such a manner as to avoid or prevent conflict and to fairly and quickly resolve a dispute if it occurs.
 - (2) The system of collaboration must take into account –
 - (a) these regulations; and
 - (b) the *Guidelines*.
 - (3) The principles underlying the system of collaboration are that SAQA and the QCs must –
 - (a) act reasonably and in good faith;
 - (b) avoid or prevent conflict;
 - (c) contain conflict if it occurs;
 - (d) maintain communication;
 - (e) declare a dispute only if all procedures for preventing it have been exhausted; and
 - (f) expedite the resolution of a dispute in terms of the Act.
 - (4) In conducting their mutual relations, SAQA and the QCs have a duty to exercise their powers and carry out their functions in terms of the system of collaboration.

Procedures to manage conflict or resolve a dispute among QCs

4. (1) The CEO must attempt to conciliate a conflict among QCs.
- (2) If conciliation is not successful the parties must within fourteen days declare a dispute in writing to the CEO.
- (3) On receipt of the declaration of a dispute the CEO must within fourteen days refer the dispute to the SAQA board.
- (4) At its next meeting the SAQA board must appoint a competent person of sufficient seniority who will act impartially on behalf of SAQA in resolving the dispute.
- (5) In resolving a dispute, the person appointed by SAQA must –
 - (a) invite written representations from the parties;
 - (b) invite verbal representations from the parties;
 - (c) consult the chairpersons of the councils of the parties concerned;
 - (d) determine any additional procedure needed to adjudicate the dispute in a fair manner and communicate these procedures to the parties;
 - (e) make a finding as to the facts of the dispute;
 - (f) have regard to the objectives of the NQF contemplated in section 5 of the Act and the functions and powers of the parties in terms of the Act;
 - (g) as soon as is reasonably possible but no later than sixty days from the date of appointment, make a decision; and
 - (h) communicate the decision, giving reasons, to the Minister, the Minister of Basic Education and the parties in writing.
- (6) SAQA may charge the parties in equal shares for the costs of resolving the dispute.

Procedures to manage conflict or resolve a dispute between SAQA and a QC

5. (1) The Director-General must attempt to conciliate a conflict between SAQA and a QC.
- (2) If conciliation is not successful the parties must within fourteen days declare a dispute in writing to the Director-General.
- (3) On receipt of a declaration of dispute by the parties the Director-General must within fourteen days notify the Minister in writing.
- (4) In resolving a dispute, the Minister must invite the parties to consider binding arbitration of the dispute in terms of Regulation 6.
- (5) If the parties do not agree to arbitration as contemplated in Regulation 6, the Minister must –
 - (a) invite written representations from the parties;
 - (b) invite verbal representations from the parties;
 - (c) consult the chairperson of SAQA and the chairpersons of the councils of the other parties concerned;
 - (d) consult the Minister of Basic Education, if Umalusi is a party;

- (e) determine any additional procedure needed to adjudicate the dispute in a fair manner and communicate these procedures to the parties;
- (f) make a finding as to the facts of the dispute;
- (g) have regard to the objectives of the NQF contemplated in section 5 of the Act and the functions and powers of the parties in terms of the Act;
- (h) as soon as is reasonably possible but no later than ninety days from the date on which the dispute was notified to the Minister in terms of subregulation (3), make a decision; and
- (i) communicate the decision to the Minister of Basic Education and the parties in writing, giving reasons.

(6) The decision of the Minister is final, unless an order of court directs otherwise.

Arbitration of a dispute

6. (1) This Regulation applies if the parties agree to arbitration as contemplated in Regulation 5(4).
- (2) The dispute must be referred by the Minister or the Director-General in writing to an arbitrator agreed by the parties.
 - (3) The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the matter fairly and quickly, but must deal with the substantial merits with a minimum of legal formality.
 - (4) The arbitrator must have regard to the objectives of the NQF contemplated in section 5 of the Act and the functions and powers of the parties in terms of the Act.
 - (5) The arbitrator must make a finding as to the facts of the dispute.
 - (6) The arbitrator's award is final and binding on the parties.
 - (7) The arbitrator must communicate the award in writing to the Minister and the parties.
 - (8) The Minister must send a copy of the award to the Minister of Basic Education if Umalusi is a party to the dispute.
 - (9) The parties must pay in equal shares for the costs of the arbitration.

Short title and commencement

7. These Regulations –
- (a) are called the Regulations for Resolving a Dispute in terms of the National Qualifications Framework Act, 2008; and
 - (b) come into effect on the date of publication in the *Gazette*.