

# MANPOWER TRAINING ACT 56 OF 1981

(English text signed by the State President)

*[Assented to: 18 August 1981]*

*[Commencement date: 1 November 1981]*

## as amended by:

Manpower Training Amendment Act 88 of 1982

Manpower Training Amendment Act 1 of 1983

Manpower Training Amendment Act 39 of 1990

General Law Third Amendment Act 129 of 1993

General Law Fifth Amendment Act 157 of 1993

## ACT

**To provide for the promotion and regulation of the training of manpower and for that purpose to provide for the establishment of a National Training Board, a Manpower Development Fund and a Fund for the Training of Unemployed Persons; to provide for the establishment, accreditation, functions and powers of training boards; the registration of regional training centres, private training centres and industry training centres; and the imposition on certain employers of a levy in aid of training; and to provide for matters connected therewith.**

*[Long title substituted by s. 52 of Act 39/90]*

### 1. Definitions

In this Act, unless the context otherwise indicates -

**“advisory committee”** means the advisory committee for regional training centres which has been established under section 31B;

*[Definition of “advisory committee” inserted by s. 1 of Act 39/90]*

**“apprentice”** means any person employed in terms of a contract of apprenticeship registered or deemed to be registered in terms of the provisions of section 16(3)(d) or section 18(1)(c) or (3) and, for the purposes of sections 42, 50, 51, 54 and 56, includes any minor employed in terms of the provisions of section 15;

**“area”** includes any number of areas, whether contiguous or not;

**“area of jurisdiction”**, in relation to any training board, means the area in respect of which that training board has in terms of this Act been accredited by the registrar;

*[Definition of “area of jurisdiction” substituted by s. 1 of Act 39/90]*

**“authorized person”** means any person referred to in section 12D(1)(f) who has been authorized by an accredited training board to perform any of the functions of that training board;

[Definition of “authorized person” substituted by s. 1 of Act 39/90]

**“board”** means the National Training Board established by section 3;

**“committee”** means a committee established in terms of the provisions of section 6(1) by the board;

[Definition of “committee” substituted by s. 1 of Act 39/90]

**“condition of apprenticeship”** means any condition of apprenticeship applicable or deemed to be applicable in terms of the provisions of section 13(2), (3), (8), (10) or (11), 22(1) or 25 and, for the purposes of sections 42, 50, 54 and 56, includes, in relation to a minor employed in terms of the provisions of section 15, any condition of employment applicable in respect of that minor in terms of the last-mentioned section;

**“Department”** means the Department of Manpower;

**“designated trade”** means any trade designated or deemed to have been designated in terms of the provisions of section 13(1) or, if the Minister has defined any trade in terms of the provisions of section 13(1)(b), that trade as so defined, and includes any branch of a designated trade;

**“Director-General”** means the Director-General: Manpower;

**“educational institution”** means any institution where education, which may include training, is provided and which is maintained, managed, controlled or subsidized by a Department of State or a provincial administration;

**“employee”** means any person employed by or who performs work for any employer in any industry and who receives or is entitled to receive remuneration from such employer;

**“employer”** means any person (including, except for the purposes of sections 31 to 35, inclusive, and sections 37, 37A and 38, the State) -

- (a) who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person;
- (b) who permits any other person in any manner to assist him in the carrying on or conducting of his business; or
- (c) who, otherwise than in an educational institution, trains any minor in a designated trade,

and **“employ”** and **“employment”** shall have corresponding meanings;

[Definition of “employer” amended by s. 1 of Act 88/82]

**“employers’ organization”** means an employers’ organization registered or deemed to be registered in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956);

**“federation”** means a federation registered or deemed to be registered in terms of the provisions of section 80 of the Labour Relations Act, 1956;

**“group training center”** .....

[Definition of “group training center” deleted by s. 1 of Act 39/90]

**“guardian”** includes, in the case of a minor who has no guardian or who has no guardian who is available to assist or capable of assisting him, a person who, with the approval of the registrar, acts as or in the place of the guardian of the minor;

**“industrial council”** means an industrial council registered or deemed to be registered in terms of the provisions of the Labour Relations Act, 1956;

**“industrial court”** means the industrial court referred to in section 17 of the Labour Relations Act, 1956;

**“industry”** includes any class of undertaking or activity, any division or part of an industry or any group of industries, as well as work in private households;

**“industry training center”** means a training centre which has been registered as an industry training centre in terms of section 34(2);

[Definition of “industry training center” inserted by s. 1 of Act 39/90]

**“labour relations”** means all aspects of and matters connected with the relationship between employer and employee, including matters relating to negotiations in respect of the remuneration and other conditions of employment of the employee, the prevention and settlement of disputes between employer and employee, the application, interpretation and effect of laws administered by the Department and the management of the affairs of trade unions, employers’ organizations, federations and industrial councils;

**“Minister”** means the Minister of Manpower;

**“National Manpower Commission”** .....

[Definition of “National Manpower Commission” deleted by s. 1 of Act 39/90]

**“officer”** means an officer as defined in section 1(1) of the Public Service Act, 1957 (Act No. 54 of 1957);

**“overtime”** means that portion of any period during which an employee works for his employer during any week or on any day, as the case may be, which exceeds the ordinary working hours which that employee can in terms of -

(a) any condition of apprenticeship;

(b) any provision of the Factories, Machinery and Building Work Act, 1941 (Act No. 22 of 1941), of the Shops and Offices Act, 1964 (Act No. 75 of 1964), or of a notice in terms of any of those Acts; or

(c) any wage regulating measure,

which is applicable in respect of that employee, be required to work during that week or on that day, as the case may be, but shall not include any period during which that employee works for his employer on a Sunday;

**“premises”** includes land, any building or structure, or any vehicle, conveyance, ship, boat or aircraft;

**“prescribed”** means prescribed by regulation made in terms of this Act;

**“private training centre”** means a training centre registered or deemed to be registered in terms of the provisions of section 32 as a private training centre;

**“regional training center”** means a centre which has in terms of section 31(2) of this Act been registered as a regional training centre or which is deemed to have been registered thereunder as such;

[Definition of “regional training center” inserted by s. 1 of Act 39/90]

**“registrar”** means the registrar of manpower training appointed under section 12;

**“remuneration”** means any payment in money or in kind, or both in money and in kind, made or owing to any person by virtue of his employment, and **“remunerate”** shall have a corresponding meaning;

**“sub-committee”** .....

[Definition of “sub-committee” deleted by s. 1 of Act 39/90]

**“the committee in question”** .....

[Definition of “the committee in question” deleted by s. 1 of Act 39/90]

**“this Act”** includes any regulation made thereunder;

**“trade”** includes any branch of a trade, or any group of trades or branches of trades;

**“trade union”** means a trade union registered or deemed to be registered in terms of the Labour Relations Act, 1956;

**“trainee”** means any person to whom training is provided in terms of the provisions of section 30;

**“training”** means any training which has as its special aim the improvement of the proficiency of any person for any work performed in or in connection with any industry, and includes training in labour relations;

**“training adviser”** means an officer appointed in terms of section 45 as a training adviser;

**“training board”** or **“accredited training board”** means a training board referred to in section 12A which has in terms of section 12B been accredited by the registrar in respect of a specific industry and a specific area;

[Definition of “training board” inserted by s. 1 of Act 39/90]

**“training committee”** means a committee established by an accredited training board by virtue of section 12C(1)(n) under its constitution as a training committee or, if no such committee has been established, the training board concerned;

[Definition of “training committee” inserted by s. 1 of Act 39/90]

**“training scheme”** .....

[Definition of “training scheme” deleted by s. 1 of Act 39/90]

**“wage regulating measure”** means -

- (a) any agreement, notice, order, determination or award published or made or deemed to have been published or made in terms of the provisions of the Labour Relations Act, 1956;
- (b) a determination made or deemed to have been made in terms of the provisions of the Wage Act, 1957 (Act No. 5 of 1957); or
- (c) a notice issued or deemed to have been issued in terms of section 30;  
[Para. (c) of definition of “wage regulating measure” substituted by s. 1 of Act 39/90]

**“workseeker”** and **“unemployed person”** means a person over the age of fifteen years who is unemployed, is not required by law to attend school, is not a pupil or a student at an educational institution, is not awaiting admission to an educational institution and who is seeking work.

[Definition of “workseeker” substituted by s. 1 of Act 39/90]

## 2. **Application of Act**

(1) The provisions of this Act shall not apply in respect of -

- (a) any person who is a registered student or a pupil at any educational institution and who is not -
  - (i) an apprentice;
  - (ii) a trainee; or
  - (iii) a person who is receiving training which has been approved for the purposes of any provision of this Act or which is provided in terms of such a provision;

- (b) any work performed in or in connection with any educational institution as part of the education or training of the persons performing it;
  - (c) any person who, after having obtained a degree, diploma or certificate at any educational institution, performs work in a designated trade in order to gain practical experience; or
  - (d) service or training in the South African Defence Force.
- (2) The provisions of sections 31 to 35, inclusive, and of sections 37 and 37A, shall not apply in respect of any mining undertaking or the training of employees in or other persons engaged in any mining undertaking: Provided that the Minister may with the concurrence of the Minister of Finance and the Minister of Mineral and Energy Affairs by notice in the *Gazette* declare any of or all those provisions to be applicable, with effect from a date specified in the notice, in respect of a mining undertaking or any division of a mining undertaking specified in the notice or in respect of any category or group, so specified, of employees in or persons engaged in any mining undertaking.
- [Subs. (2) amended by s. 2 of Act 88/82]

## **CHAPTER 1**

### **NATIONAL TRAINING BOARD, COMMITTEES AND RELATED MATTERS**

#### **3. Establishment and constitution of National Training Board**

- (1) There is hereby established a board to be known as the National Training Board.
- (2) The board shall consist of -
  - (a) two members, appointed by the Minister, who shall be the chairman and the vice-chairman, respectively, of the board;  
[Para. (a) substituted by s. 2 of Act 39/90]
  - (b) such number of other members, appointed, subject to the provisions of sub-section (3), by the Minister, as the Minister may deem necessary with a view to the proper representation of the interests of the State, employers and employees, respectively, relating to manpower training and of whom such number as the Minister may determine shall be persons who, in the opinion of the Minister, possess expert or special knowledge or experience of manpower training or development.
- (3) The Minister may, prior to the appointment by him of members of the board in terms of the provisions of subsection (2)(b), consult with such organizations or other bodies as in his opinion adequately represent the

interests of the State, employers or employees referred to in that subsection.

- (4) A member of the board shall hold office -
  - (a) subject to the provisions of subsection (10), on such conditions as the Minister may with the concurrence of the Minister of Finance determine;
  - (b) for such period as the Minister may determine at the time of the appointment of such member, but may be reappointed at the expiration of that period: Provided that the Minister may at any time terminate the membership of a member of the board if in his opinion there exist good and sufficient reasons for doing so.
- (5) The Minister may, if he deems it expedient, for a particular purpose and on such conditions and for such period as he may determine, appoint any person as an additional member of the board.
- (6) If a member of the board dies or by virtue of any provision of this section vacates his office before the expiration of his period of office, the vacancy shall be filled by the appointment by the Minister, subject to the provisions of subsections (2) and (3), of another person as a member of the board, and every member so appointed shall hold office for the unexpired portion of the period for which the vacating member was appointed.
- (7) (a) The Minister may for every member of the board appointed in terms of subsection (2)(b) appoint an alternate member in the same manner as such member, and an alternate member so appointed shall act in the place of the member for whom he has been appointed as alternate member during such member's absence or inability to act as a member of the board.
  - (b) The provisions of subsections (4) and (6) shall apply *mutatis mutandis* in respect of an alternate member of the board.
- (8) The chairman, or in his absence the vice-chairman, of the board shall preside at all meetings thereof at which he is present, and if both the chairman and the vice-chairman are absent from any meeting the members present thereat shall elect one of their number to preside at such meeting.
- (9) (a) A decision of the majority of the members of the board present at any meeting shall constitute a decision of the board.
  - (b) No decision taken by the board or act performed under authority of the board shall be invalid by reason only of an interim vacancy on the board, or of the fact that a person who is not entitled to sit as a

member of the board sat as a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the board who were present at the time and entitled to sit as members.

- (10) There shall be paid to the chairman and vice-chairman, a member, including any member referred to in subsection (5), and an alternate member of the board, and a member (including a co-opted member) of a committee, who are not in the full-time service of the State, the remuneration determined from time to time by the Minister with the concurrence of the Minister of Finance, as well as the allowances, if any, so determined.

[Subs. (10) substituted by s. 2 of 39/90]

- (11) The secretarial work incidental to the performance by the board of its functions shall be performed, subject to the directions of the chairman of the board or any other member or members of the board designated by the board for this purpose, by officers in the Department designated for this purpose by the Minister, and the Minister may designate any such officer as the secretary of the board.

#### **4. Functions and powers of board**

- (1) The board shall -

(a) advise the Minister with regard to-

(i) matters of policy arising out of or connected with the application of the provisions of this Act;

(ii) any matter relating to training;

(b) perform the other functions assigned to it by this Act or the Minister.

- (2) The board may-

(a) with a view to the performance of its functions, do the research and conduct the investigations which it deems necessary; and

(b) make rules relating to the calling of, the fixing of a quorum for and the procedure at a meeting of the board, and generally relating to all matters which may be necessary for the effective performance of the functions or the exercising of the powers of the board or, subject to section 6(2), of a committee.

[Subs. (2) substituted by s. 3 of Act 39/90]

- (3) The board may, for the purposes of the performance of any of its functions, with the approval of the Minister and with the concurrence of the Minister of Finance, enter into any agreement for the performance of a

particular act or of particular work or for the rendering of particular services, on such conditions and at such remuneration as may be agreed upon, with anybody who is in the opinion of the board fit to perform such act or work or to render such services.

[Subs. (3) substituted by s. 3 of Act 39/90]

- (4) (a) The board shall as soon as possible after 31 December of each year furnish the Minister with a report in respect of its activities during the year ending on that date, and the general state of affairs as regards training in the Republic as at that date.

- (b) The Minister may, if he deems it desirable in the public interest, table such report in Parliament.

[Subs. (4) added by s. 3 of Act 39/90]

## **5. Investigations by board**

- (1) Subject to the provisions of this section and with a view to the effective performance of the functions of the board-
- (a) the board or any member of the board may at any reasonable time enter upon or enter any premises or place where training is provided in terms of section 31, 32, 34, 36 or 37, for the purpose of acquiring information which the board desires to obtain for the purposes of or in connection with any investigation or research being conducted or done by it in terms of this Act, and the owner or occupier of any such premises or place, and every person in his employment, shall at all times furnish such reasonable facilities as may be necessary in order to enable the board or such member to enter upon such premises or enter such place, and shall so furnish all reasonably requested information;
- (b) the board may by notice summon any person who in its opinion may be able to furnish it with any relevant information regarding any matter which is being investigated, or who it suspects has any book, document or thing relating to the matter which is being investigated in his possession or custody or under his control, to appear as a witness before the board at the time and the place specified in the notice, to be questioned or to produce such book, document or thing: Provided that in the event of his convincing the board that there are reasonable grounds to believe that any other person is capable of furnishing the board with such information or of producing such book, document or thing in his possession or custody or under his control, the board shall, where the identity of such other person is known, so summon that person as a witness.
- (2) A notice referred to in subsection (1)(b) shall be signed by the chairman or the vice-chairman of the board or by an officer authorized thereto by

the chairman, and shall be served in the prescribed manner on any witness.

- (3) At proceedings contemplated in subsection (1)(b) the chairman, the vice-chairman or any other member of the board present may -
  - (a) administer an oath to or accept an affirmation from any person summoned as a witness, or any other person who is present and who is willing to give evidence; and
  - (b) thereafter put any reasonable question to him.
- (4)
  - (a) Any person who has been summoned under subsection (1)(b) as a witness and who without sufficient cause fails to attend at the appointed time and place, shall be guilty of an offence.
  - (b) Any person to whom an oath has been administered or from whom an affirmation has been taken under subsection (3)(a) and who refuses or fails to answer fully and satisfactorily to the best of his knowledge and belief all lawful and reasonable questions put to him, or to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so, or who fails to remain in attendance until excused from further attendance by the board, shall be guilty of an offence: Provided that in connection with the questioning of any such person or the production of any such book, document or thing, the rules of law relating to privilege as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, shall apply.
- (5) The questioning of any witness by the board shall be conducted in private, unless the board decides otherwise: Provided that at the request of any witness the questioning of that witness shall be conducted in private: Provided further that the board may in its discretion and with the consent of the witness authorize the presence of any specified person at the questioning of that witness.
- (6) Any person summoned to appear before the board may, if the board is satisfied that he has by reason of his appearance suffered any pecuniary loss or has been put to any expense, be paid from moneys appropriated by Parliament such allowances as the Minister may with the concurrence of the Minister of Finance from time to time determine or the amount of such loss and expense, whichever is the lesser: Provided that if the person summoned is in the full-time employment of the State, the allowances or the amount payable to him shall be determined in accordance with the laws governing his employment.
- (7) Any person who wilfully hinders the board or a committee, or a member of the board or a committee, in the exercise of any power or performance

of any function conferred or entrusted by or under this section, shall be guilty of an offence.

[S. 5 substituted by s. 4 of Act 39/90]

**6. Establishment of committees by board**

- (1) The board may establish committees, including an executive committee, to assist it in the performance of its functions and may appoint persons who are not members of the board as members of the committees, but excluding the executive committee: Provided that any committee, excluding the executive committee, may with the consent of the chairman of the board co-opt one or more other persons as a member or members of the committee for a particular period or a particular purpose.
- (2)
  - (a) The board shall in respect of each committee appoint a member of the committee to be chairman.
  - (b) If the chairman is absent from a meeting, the members present shall elect one from among their number to act as chairman at that meeting.
  - (c) A co-opted member of a committee who is not a member of the board, shall not be entitled to vote.
- (3) The board may, subject to such conditions as it may deem fit, delegate or transfer any of its powers or duties in terms of this Act, excluding powers or duties conferred or imposed under this section, to any of its committees, but shall not be divested of a power or duty so delegated or transferred, and may at any time withdraw such delegation or transfer: Provided that the board may at any time vary or set aside any decision made by such a committee.
- (4) The board may at any time terminate the membership of the chairman, or of a member or a co-opted member, of a committee.
- (5) The provisions of section 3(9)(b) shall *mutatis mutandis* apply in respect of a decision taken by a committee or any act performed under the authority of a committee.
- (6) The provisions of section 5 shall *mutatis mutandis* apply to the performance of the functions of a committee.

[S. 6 substituted by s. 5 of Act 39/90]

7. ....

[S. 7 repealed by s. 6 of Act 39/90]

8. ....

[S. 8 repealed by s. 6 of Act 39/90]

9. ....

[S. 9 repealed by s. 6 of Act 39/90]

10. ....

[S. 10 repealed by s. 6 of Act 39/90]

11. ....

[S. 11 repealed by s. 6 of Act 39/90]

## CHAPTER 2

### **REGISTRAR OF MANPOWER TRAINING, TRAINING BOARDS, TRAINING OF APPRENTICES AND ATTAINMENT OF ARTISAN STATUS**

[Heading inserted by s. 7 of Act 39/90]

#### **12. Appointment of registrar and assistant registrar of manpower training**

- (1) The Minister may, subject to the laws governing the public service -
  - (a) appoint an officer, to be known as the registrar of manpower training, who shall, subject to the control and directions of the Minister, exercise the powers conferred upon and perform the functions assigned to the registrar by this Act or by any other law and perform such other functions as the Minister may from time to time assign to him; and
  - (b) appoint one or more officers, to be known as the assistant registrar or assistant registrars of manpower training, who may, subject to the control and directions of the registrar, exercise any of the powers or perform any of the functions of the registrar: Provided that whenever the registrar is absent or for any other reason unable to perform his functions, the Minister may appoint such an assistant registrar as acting registrar.
- (2) The registrar may authorize any officer to perform, subject to his directions, any act which the registrar is competent to perform and may at any time withdraw such authorization.
- (3) Any reference in any other law, in any contract of apprenticeship in force at the commencement of this Act or in any notice issued under or document produced in the application of any law repealed by this Act, to -
  - (a) the registrar of apprenticeship appointed under section 4 of the Apprenticeship Act, 1944 (Act No. 37 of 1944);
  - (b) the Registrar of Training Schemes appointed under section 6 of the In-Service Training Act, 1979 (Act No. 95 of 1979); or
  - (c) in so far as it relates to the application of the Black Employees' In-Service Training Act, 1976 (Act No. 86 of 1976), the Secretary for Education and Training or the Director-General: Manpower,

shall be deemed to be a reference to the registrar of manpower training appointed under this section.

## **12A. Establishment of training boards**

- (1) Any -
  - (a) employer, if the registrar so approves; or
  - (b) employers' organization; or
  - (c) group of employers; or
  - (d) group of employers' organizations; or
  - (e) group of one employer and one or more employers' organizations;  
or
  - (f) group of employers and one or more employers' organizations; or
  - (g) one or more industrial councils; or
  - (h) trade union; or
  - (i) group of trade unions; or
  - (j) group of employees,

may, with a view to accreditation, establish a training board in respect of an industry and an area by signing a constitution referred to in section 12C for the training board, or causing it to be signed on their behalf.

- (2) The employer, employers' organization, industrial council, trade union or group of employees, as the case may be, by or on behalf of whom or which the constitution of the training board is signed, and any other employer, employers' organization, industrial council, trade union or group of employees who or which in terms of that constitution is from time to time admitted to participation in the training board and who or which has not withdrawn from the training board, are in this Act referred to as the parties to the training board.
- (3) Any group of employees has the right to negotiate with its employer with regard to the establishment of a training board.

[S. 12A inserted by s. 8 of Act 39/90]

## **12B. Accreditation of training boards**

- (1) A training board desiring accreditation shall submit to the registrar -

- (a) its constitution, signed by or on behalf of the parties to the training board; and
- (b) its application for accreditation,

and shall furnish to the registrar such information as he may require.

(1A) If the constitution of the training board does not provide for the representation of employees on the training board, the registrar shall -

- (a) if in his opinion there is no trade union which has an interest in the training board, appoint a person or persons to represent employees on the training board;
- (b) if a trade union in his opinion has an interest in the training board -
  - (i) request such trade union to submit to him within 30 days, in the prescribed form, the name of the person or persons who will represent the trade union on the training board;
  - (ii) appoint one or more of the persons nominated in subparagraph (i) to represent the employees on the training board and he may nominate any other person to represent employees who are not members of the trade union on the training board.

(2) If the registrar, after considering the application and any other relevant information requested by him, is satisfied that -

- (a) the main objective of the training board is to promote training; and
- (b) the constitution is consistent with this Act and does not contain provisions which are contrary to the provisions of any law or which are calculated to hinder the attainment of the objects of any law; and
- (c) there is not in existence a training board which is accredited in respect of the industry and in respect of the area concerned,

he may accredit the training board concerned in respect of the industry and area concerned.

(3) (a) If the registrar intends not to accredit the training board or to accredit it in respect of a smaller area or an industry other than that applied for, he shall, by registered mail, notify the training board thereof and of the reasons therefor and shall afford it an opportunity of submitting written representations to him or of amending the application for accreditation, as the case may be.

- (b) (i) Upon receipt of any such amended application, the registrar may, if he is

satisfied in respect of the matters referred to in subsection (2), accredit the training board in accordance with the amended application.

- (ii) If the registrar, in the case where representations are submitted to him under paragraph (a), finally decides not to accredit the training board, he shall as soon as possible notify such training board of the decision.
- (4) After the registrar has accredited a training board, he shall forward by registered mail to the training board a certificate of its accreditation, together with one copy of the constitution signed by the registrar.
- (5) With the issuing of a certificate of accreditation referred to in subsection (4), all the powers which by virtue of this Act vest in an accredited training board are conferred upon such a training board, and that training board thereby accepts all the duties so imposed upon it.
- (6) The registrar may, subject to the provisions of subsection (2), of his own motion and after consultation with a relevant training board, or at the request of such training board, amend the industry or area in respect of which the training board is accredited, with effect from a date determined by him.
- (7) If the registrar has amended the industry or area in respect of which a training board is accredited, the training board shall transmit to the registrar the certificate of accreditation issued to the training board within 14 days of being called upon by him to do so, and if the training board without reasonable excuse fails to do so, the training board and each member of the training board shall be guilty of an offence.
- (8) The registrar shall upon receipt by him of the certificate of accreditation make the necessary alterations therein and return it to the training board, or issue a fresh certificate.
- (9) (a) If the registrar has in respect of an accredited training board reason to believe that  
any duty imposed on or any power conferred upon that training board by its constitution or by this Act is not being carried out or exercised by such training board to the satisfaction of the registrar, he may give notice by registered mail to that training board to rectify the deficiencies within a period which shall not be less than 30 days, and to submit proof, as the registrar may require, of such rectification to him.
- (b) If the training board refuses or fails to comply with the notification referred to in paragraph (a) within the period determined, the registrar may by registered mail give notice to the training board in question to show cause within a period which shall not be less than 30 days, why its accreditation shall not be withdrawn.

- (c) At the expiration of the period determined in terms of paragraph (b) the registrar may, unless cause to the contrary and to his satisfaction has been shown, withdraw the accreditation of the training board in question.
- (d) Upon the withdrawal of the accreditation of a training board in terms of paragraph (c), that training board shall -
  - (i) transmit to the registrar the certificate of accreditation issued to that training board within 14 days of being called upon to do so;
  - (ii) forthwith cease to carry out the duties and exercise the powers which are imposed on or conferred upon an accredited training board by this Act; and
  - (iii) hand over, when required to do so by the registrar or an officer authorized by the registrar for that purpose, the records and documentation relating to the duties imposed on and powers conferred upon that training board by this Act,

and if the training board in question without reasonable explanation fails to do so, the training board and each member of the training board shall be guilty of an offence.

- (10) The registrar may, where the accreditation of a training board has been withdrawn in terms of subsection (9)(c), take all the steps which he deems necessary or expedient for the continuation of the activities, rights and obligations of the training board.

[S. 12B inserted by s. 8 of Act 39/90]

## **12C Constitutions of training boards**

- (1) The constitution of a training board desiring accreditation shall, subject to the provisions of this section, provide for -
  - (a) the composition of the training board;
  - (b) the appointment of members of the training board and their alternates from the ranks of representatives of the parties to the training board;
  - (c) the industry and area of jurisdiction of the training board;
  - (d) the legal personality of the training board;
  - (e) the extent to which the liability of the parties to the training board shall be limited;

- (f) the financing of the activities of the training board in the relevant industry and area and the appointment, if necessary, of a body to manage the funds of the training board;
  - (g) the appointment, removal, duties and powers of office-bearers, officers and authorized persons;
  - (h) the occasions when or the circumstances in which members shall vacate their offices;
  - (i) the procedure at meetings;
  - (j) the procedure for the handling of disputes in connection with training in the relevant industry and area;
  - (k) the admission of additional employers, employers' organizations, industrial councils or trade unions as parties to the training board;
  - (l) the keeping of proper books of account, and the auditing thereof and of related documents at least once every calendar year by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and the making available by the training board to the parties or to their representatives, and to the registrar, of copies of the accounts and statements and the auditor's report thereon;
  - (m) subject to the provisions of subsection (3), the manner of investment of funds which are not required for immediate use;
  - (n) the establishment of an executive committee, training committees and other committees, to which the training board may delegate or assign any of its powers and functions set out in its constitution or in this Act, to perform on its behalf, which delegation or assignment may in the discretion of the relevant training board at any time be varied or withdrawn;
  - (o) amendments of the constitution, copies of which must be submitted to the registrar for approval not less than 14 days prior to the date of coming into operation thereof;
  - (p) the dissolution and winding-up of the training board and its funds;  
and
  - (q) such other matters as may be prescribed.
- (2) If the training board without reasonable explanation fails to furnish the registrar with copies of the accounts and statements and auditor's report referred to in subsection (1)(l) within three months after the date of expiry of the financial year of the training board, the training board shall be guilty of an offence.

- (3) The moneys referred to in subsection (1)(m) shall only be invested in -
- (a) internal registered stock within the meaning of section 21 of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975);
  - (b) National Savings Certificates;
  - (c) Post Office savings accounts or certificates;
  - (d) savings accounts, permanent shares or fixed deposits in building societies or banks,

or in such other manner as may be approved by the registrar after consultation with the relevant training board.

- (4) Every training board shall make its constitution available in both official languages to the parties to the training board.

[S. 12C inserted by s. 8 of Act 39/90]

#### **12D. Functions of training boards**

- (1) An accredited training board shall, unless the registrar determines otherwise, perform in the industry and in the area in respect of which it has been accredited, the following functions:
- (a) Carry out the duties and exercise the powers which are by this Act imposed on or conferred upon it, with due consideration of the training needs of the Republic;
  - (b) frame conditions of apprenticeship and other formalised training schemes which will best serve the training needs of the industry in respect of which the training board has been accredited;
  - (c) accept responsibility for the administration of apprenticeship training;
  - (d) on request of the registrar inquire into and make recommendations to him with regard to any matter which in terms of the provisions of this Act falls within the functions of the registrar;
  - (e) inquire into any dispute arising out of -
    - (i) any contract of apprenticeship;
    - (ii) the application of the proviso to section 13(11),

and which has been referred to it by a party to the dispute or by the registrar or a training adviser, and endeavour to settle the dispute;

- (f) appoint persons whom it may authorize to perform any of its functions in terms of this Act;
- (g) in consultation with the registrar evaluate trade qualifications obtained outside the Republic;
- (h) in consultation with the registrar establish a system for the governing and controlling of trade testing;
- (i) make available training in the principles and techniques of evaluation to trade test officers and all persons evaluating the training and conducting the testing of apprentices;
- (j) by a continuous process of training and retraining upgrade the work proficiencies of qualified artisans;
- (k) counter any limiting factors on the flow of sufficient candidates for training as artisans;
- (l) in collaboration with the Department frame guidelines on the selection of candidates for apprenticeship and encourage employers to provide persons doing the selection with the necessary training;
- (m) in collaboration with the Department furnish prospective apprentices with vocational guidance on career selection and career content;
- (n) furnish the Department on a continuous basis with information regarding technical professions and the career opportunities which they offer;
- (o) in consultation with the board promote closer co-operation between formal education and training in respect of the design and content of curricula;
- (p) take the necessary steps, especially during downswings in the economy, for the promotion of training, including the training of apprentices;
- (q) initiate and monitor training programmes;
- (r) provide out of its own funds financial incentives for the training of apprentices and, where applicable, of other employees;
- (s) furnish the registrar with such statistics as he may require from time to time,

and may accredit training centres as contemplated in sections 31, 32 and 34 to provide training on behalf of employers in the industry and area concerned.

- (2) (a) In the carrying out of any duty or the exercise of any power imposed on or conferred upon it under this Act, an accredited training board and a training committee shall, in respect of the industry and area for which the training board is accredited, be vested with all the powers conferred upon the board by subsections (1), (2), (3), (5) and (6) of section 5, and the provisions of subsections (4), (5) and (7) of that section shall *mutatis mutandis* apply to the exercising of those powers by the training board or any such training committee: Provided that a person shall not be summoned under subsection (1) of section 5, as applied by the foregoing provisions of this paragraph, if the object or one of the objects is to investigate whether such person has committed any offence: Provided further that any amount payable under subsection (6) of section 5, as so applied, shall be paid from the funds of the training board.
- (b) The oath may be administered to or an affirmation may be taken from any witness by the person presiding over the meeting of the training board or training committee at which the witness appears.  
[S. 12D inserted by s. 8 of Act 39/90]

### **13. Designation and definition of trades, and conditions of apprenticeship**

- (1) The Minister may, subject to the provisions of subsection (4) and on the recommendation of the training board concerned, by notice in the *Gazette* -
- (a) designate any trade in an industry as a trade in respect of which the provisions of this Act shall apply in the area specified in the notice;
- (b) define such trade by reference to the work performed therein, the operations of which it is composed or the type or class of premises upon which the work or operations are performed.  
[Subs. (1) amended by s. 10 of Act 39/90]
- (2) The Minister may, in the same manner, prescribe -
- (a) the qualifications, including the minimum age (which shall not be lower than fifteen years) and educational standard, required for apprenticeship;
- (b) the standard of proficiency, including the level of theoretical training and the minimum period of practical training in actual production and maintenance circumstances, which is required before an apprentice is permitted to undergo a trade test;  
[Para. (b) substituted by s. 10 of Act 39/90]
- (bA) the basis on which recognition, in the form of exemption from a specific module or specific modules provided for in the conditions of apprenticeship of the training board concerned and which have already been completed, will be granted -

(i) in the case where a prospective apprentice has attained theoretical or practical experience before entering into a contract of apprenticeship;

(ii) in the case of the rescission of an apprentice's contract of apprenticeship for any reason whatsoever before attaining the standard of proficiency which is prescribed in terms of paragraph (b) of this subsection;

[Para. (bA) inserted by s. 10 of Act 39/90]

(c) the rates according to which apprentices shall be remunerated, the circumstances under which those rates may be reduced or shall be increased, the extent of the reduction or increase and the basis of recognition, by means of higher wages, for a first period of training or service in terms of the provisions of the Defence Act, 1957 (Act No. 44 of 1957), or section 34A(11) of the Police Act, 1958 (Act No. 7 of 1958): Provided that no rate based upon the quantity of work performed shall be prescribed: Provided further that the Minister may, before acting in terms of this paragraph, request the wage board established under the Wage Act, 1957 (Act No. 5 of 1957), to submit to him a recommendation;

[Para. (c) amended by s. 10 of Act 39/90]

(d) the classes which apprentices shall attend during their training, the number of days on which, the hours within which and the number of hours during which they shall attend such classes during any week in any year and, subject to the provisions of subsection (11), the number of hours, if any, during which and the circumstances under which apprentices shall be released from work by the employer for the purpose of attending classes on any day;

[Para. (d) substituted by s. 10 of Act 39/90]

(e) the nature and number of the correspondence courses to be followed by apprentices in lieu of or in addition to any classes prescribed in terms of paragraph (d), and the conditions subject to which those courses may be followed in lieu of those classes;

(f) the full-time training courses which apprentices shall attend, the period or periods of the attendance, and the intervals at which those courses shall be attended;

[Para. (f) substituted by s. 10 of Act 39/90]

(g) the types of work in which the employer shall provide practical training to apprentices, and the proportion of the working hours during which and the stages during the training at which he shall provide such training in each type of work;

[Para. (g) substituted by s. 10 of Act 39/90]

(h) the modular tests, either practical or theoretical or both, as well as trade tests, which apprentices shall undergo, the stage or stages

during the training at which such tests shall be undergone, the circumstances in which an apprentice may be exempted from any such test or from any part thereof, the repetition of modules failed and the number of repetitions of modular tests an apprentice will be entitled to in order to continue with his apprenticeship;

[Para. (h) substituted by s. 10 of Act 39/90]

- (i) the fees payable in respect of any test prescribed in terms of paragraph (h) , and the persons by whom such fees shall be paid;  
[Para. (i) substituted by s. 10 of Act 39/90]
- (j) the circumstances under which employers shall pay the whole or any portion specified in the notice of the fees payable in respect of any classes or courses prescribed under paragraph (d), (e) or (f), or refund to their apprentices the whole or any portion so specified of any such fees paid by them;
- (k) the maximum number of ordinary working hours which apprentices may be required or permitted to work during any week or on any day, and the days on which, the hours on any day before or after which and the intervals during which no apprentice may be required or permitted to work;
- (l) the maximum period of overtime which apprentices may be required or permitted to work during any period specified in the notice, and the rates according to which they shall be remunerated in respect of overtime;
- (m) the number of paid holidays to be allowed to apprentices during any year of their training and the rates according to which they shall be remunerated in respect of such holidays;  
[Para. (m) substituted by s. 10 of Act 39/90]
- (n) the conditions, including the payment of extra remuneration, subject to which an employer may require or permit any apprentice to perform any work outside the area of jurisdiction of the training board in question, or outside any area or class of areas specified in the notice or at a place beyond a distance so from a given point;  
[Para. (n) substituted by s. 10 of Act 39/90]
- (o) the circumstances under which an employer shall pay additional remuneration to any apprentice in his employment and the amount of the additional remuneration or the manner in which it shall be calculated;
- (p) the remuneration and other conditions of apprenticeship, in respect of any period during which an apprentice is unable by reason of any condition of apprenticeship or other specified circumstances to render service to his employer during ordinary working hours;

- (q) the minimum and maximum number of apprentices to be employed in the industry in question or in any designated trade or by any employer, or in lieu of a specific number, the authority by whom and the methods by which or the principles in accordance with which any such number shall be determined;
  - (r) the number or proportion of apprentices employed in the industry in question or in any designated trade or by any employer, to whom there shall have been issued prior to their employment as apprentices, by an authority specified in the notice, a certificate of satisfactory completion of a preparatory course of training so specified;
  - (s) any other condition of apprenticeship, of whatsoever nature, which he may deem expedient to prescribe.
- (3) The Minister may, in the same manner withdraw or amend any notice published under subsection (1) or (2).
- (4) A notice under subsection (2) or (3) relating to conditions of apprenticeship may be published simultaneously with or at any time after the publication of a notice under subsection (1) or (3) relating to the designation of the trade in question.
- (5) (a) Different conditions of apprenticeship may be prescribed under subsection (2) or (3) in respect of different classes of employers or apprentices, different designated trades and different areas, and in prescribing such different conditions the Minister may apply any method of differentiation he may deem advisable: Provided that the Minister may not so differentiate on the basis of race, colour or sex.
- (b) Notwithstanding the provisions of paragraph (a) the provisions of any notice which by virtue of the provisions of section 58(2) is deemed to have been published in terms of this Act, and which, in relation to conditions of apprenticeship, differentiate on the basis of sex, shall remain of force and effect until those provisions are amended or the notice is withdrawn.
- (6) The Minister may, in any notice published under subsection (2) or (3), declare that the conditions of apprenticeship prescribed therein or such of the said conditions as may be specified therein shall, as from a date so specified, apply in respect of apprentices who, at the date of such publication, are employed in the area to which the notice relates in any trade which is or was a designated trade in the industry in respect of which the training board in question is accredited, under contracts of apprenticeship registered in terms of section 16(3) (d) or 18(1) (c) or (3) or, by virtue of the provisions of section 58(3), deemed to be registered in terms thereof, and no such contract shall cease to be binding upon the parties thereto by reason of the fact that as a result of the notice the

conditions of apprenticeship applicable in respect of those apprentices have changed.

[Subs. (6) substituted by s. 10 of Act 39/90]

- (7) No condition of apprenticeship prescribed in terms of subsection (2)(c), (k), (l), (m), (n), (o) or (p) shall apply in respect of apprentices employed by the State.
- (8) A training board may, subject to such conditions as it may determine, approve of the training of apprentices by or on behalf of any employer in accordance with any system under which the apprentices will receive a specified portion of their training under the continuous supervision of instructors.
- (9) Any conditions of apprenticeship which are inconsistent with the conditions to which the training of apprentices under any system so approved are subject, shall not apply in respect of such apprentices.
- (10) If an apprentice who is no longer required to attend classes or follow correspondence courses prescribed under subsection (2)(d) or (e), elects to continue his studies in relation to the trade in which he is indentured, he shall be subject to the same conditions and shall enjoy the same privileges as an apprentice who is required to attend such classes or follow such correspondence courses.
- (11) The employer of any apprentice who is in terms of any condition prescribed under subsection (2)(d) or (e), or of any exemption under section 47, required to attend for the purposes of study at any place determined by the training board, shall not require or permit the apprentice, if the hours during which he is so required to attend, fall on any one day of the week, to work on that day, or if the said hours fall on more than one day of the week, to work during those hours, and the employer shall pay him in respect of any such day remuneration at a rate not less than his ordinary rate of remuneration, as if he had on such day worked his average ordinary hours for that day: Provided that if an apprentice absented himself without good reason from any such place of study, the employer may deduct so much from his remuneration as is payable to him in respect of the time during which he so absented himself.

[Subs. (11) amended by s. 10 of Act 39/90]

- (12) If an apprentice passes a trade test prescribed under subsection (2)(h), the registrar shall in collaboration with the training board in question, within 14 days after the last day of the test issue to him a certificate to that effect and his contract of apprenticeship shall be deemed to be terminated with effect from the date of issue of the certificate.

[Subs. (12) substituted by s. 10 of Act 39/90, s. 55 of Act 129/93 and s. 7 of Act 157/93]

- (13) The Minister may in writing and on the conditions which he determines, delegate any power conferred upon him in terms of subsection (1) or (2)

of this section to an officer in the service of the Department, and may at any time withdraw such delegation.

[Subs. (13) added by s. 10 of Act 39/90]

#### **14. Demarcation of trades**

Whenever in connection with any area in respect of which two or more training boards have been accredited in respect of different industries, there is in the opinion of the Minister doubt as to whether any operation falls within the scope of a designated trade in an industry in respect of which one of those training boards has been accredited, or within the scope of a designated trade in an industry in respect of which any other of those training boards has been accredited, the Minister shall, after consultation with the board and the training boards in question, determine the matter, and the Minister may in the same manner vary any such determination.

[S. 14 substituted by s. 11 of Act 39/90]

#### **15. Employment of minors in designated trades**

(1) Any employer who -

- (a) has any minor who is not an apprentice or a trainee in his employment in a designated trade at the commencement of the Manpower Training Amendment Act, 1990;  
[Para. (a) substituted by s. 12 of Act 39/90]
- (b) takes any minor into his employment in a designated trade in a capacity other than that of an apprentice or a trainee;
- (c) has any minor who is not an apprentice or a trainee in his employment in a designated trade and for any reason terminates his employment,

shall -

- (i) in the case of an employer referred to in paragraph (a) , within thirty days after the said commencement;
- (ii) in the case of an employer referred to in paragraph (b) , within fourteen days after the date of the employment in question;
- (iii) in the case of an employer referred to in paragraph (c) , within fourteen days after the date of the relevant termination of employment,

in the prescribed manner and in the form determined by the relevant training board notify the training committee in question of the fact that a minor is so in employment or of the employment or of the termination of employment, as the case may be.

[Subs. (1) amended by s. 12 of Act 39/90]

- (2) No person shall take into or retain in his employment in a designated trade any minor who is not qualified in terms of section 17 to bind himself as an apprentice, or who is not qualified so to bind himself in accordance with the conditions of apprenticeship prescribed in respect of apprentices in the designated trade in question.
- (3) Every minor employed under this section shall be employed in accordance with conditions which are not less favourable to him than the conditions, if any, prescribed or deemed to have been prescribed under section 13(2), in so far as they relate to the rates of remuneration and hours of work of apprentices employed in the trade in question, and in accordance with any other conditions which are applicable in respect of such employment by virtue of the provisions of subsection (4).  
[Subs. (3) substituted by s. 12 of Act 39/90]
- (4) The Minister may in any notice in terms of section 13(2) or (3) declare that any of or all the other conditions of apprenticeship contained therein shall apply also in respect of minors employed in terms of this section.

## **16. Employment and apprenticeship**

- (1) The provisions of subsections (2) and (3) shall, with effect from the date on which any trade is designated or deemed to have been designated in terms of the provisions of section 13(1)(a), be applicable in respect of any minor, excluding a trainee, employed in such a trade within the area specified as contemplated in the said section.
- (2) No person shall keep such a minor in his employ -
  - (a) for any period which -
    - (i) either in itself or together with any other period or periods during which the minor has previously been in his employ in that trade and within that area, is more than four months; or
    - (ii) together with the total period during which the minor has previously been employed in that trade and within that area by other persons or by other persons and himself, is more than six months,

unless a contract of apprenticeship has been entered into in accordance with this Act and with the conditions of apprenticeship applicable to that trade in the area in which the minor is employed, and in the form determined by the training board in question, and has been lodged with the training committee in question for registration: Provided that employment prior to the date of the designation shall not be included in determining any period of employment referred to in this paragraph;

[Para. (a) amended by s. 13 of Act 39/90]

- (b) if the training board in question has refused to register a contract of apprenticeship entered into between that person and the minor.  
[Para. (b) substituted by s. 13 of Act 39/90]
- (3) (a) If at the time of the designation the minor is employed under a written contract of apprenticeship entered into prior to the publication, in terms of section 13(1) or (3), of the notice relating to such designation, the employer shall, within three months after the designation, in the form determined by the training board in question, lodge the contract with the training committee in question for registration.
- (b) The training board in question shall register any contract lodged under paragraph (a), but the provisions of this Act, other than the provisions of paragraph (a), shall not apply in respect of the contract or of the minor concerned while he is employed under the contract.
- (c) If the minor has without a written contract of apprenticeship been employed in that trade continuously during a period of not less than twelve months immediately prior to the publication, in terms of section 13(1) or (3), of the notice relating to the designation, and enters, within two months after the date of the designation, into such a contract with his employer in accordance with the provisions of this Act and the conditions of apprenticeship applicable to that trade in the area in which he is employed, and in the form determined by the training board in question, the employer shall, within one month after the date upon which it was entered into, lodge the contract with the training committee in question for registration.
- (d) The training board concerned shall register any contract lodged under paragraph (c), and the prospective apprentice may be exempted in the discretion of the training board from any module or modules or any part thereof completed by him during the period he was employed without a written contract of apprenticeship.  
[Subs. (3) substituted by s. 13 of Act 39/90]
- (4) The provisions of subsections (2) and (3) shall not apply in respect of -
  - (a) any minor who has completed the relevant training in the trade in question under a contract of apprenticeship registered or deemed to be registered under this Act; or  
[Para. (a) substituted by s. 13 of Act 39/90]
  - (b) any minor employed, in an area declared by the Minister by notice in the *Gazette*, after consultation with the board, to be an area for the purposes of this paragraph, in any industry or designated trade so declared by the Minister to be an industry or a trade for the said purposes: Provided that no contract of apprenticeship in a designated trade in that industry, or in that designated trade, shall be binding in the area so declared unless it has been entered into in

accordance with this Act and with the conditions of apprenticeship applicable to that trade in the area in question, and in the form determined by the training board in question, and has been registered under section 18.

[Para. (b) amended by s. 13 of Act 39/90]

- (5) The Minister may in the same manner amend or withdraw any notice published in terms of subsection (4)(b).

## **17. Who may bind himself as an apprentice**

- (1) Any person who -

- (a) has the qualifications prescribed under section 13;
- (b) has obtained a certificate of physical fitness in the prescribed form;
- (c) has attained the age of fifteen years; and
- (d) is not required by law to attend any school,

may, subject to and in accordance with the provisions of this Act, bind himself as an apprentice in any designated trade.

- (2) If any such person is a minor he shall be assisted by his guardian.

- (3) Any minor may so bind himself so as to complete the training prescribed under section 13 in respect of the designated trade in question, after his majority.

[Subs. (3) substituted by s. 14 of Act 39/90]

- (4) With the approval of the training board in question any person who may bind himself as an apprentice in terms of subsection (1), (2) or (3) may so bind himself with more than one employer, subject to the inclusion in the contract of apprenticeship of such conditions as to the respective obligations of the different employers as may be determined by that training board after consultation with the training committee in question or, if there be none, with the employers in question.

[Subs. (4) substituted by s. 14 of Act 39/90]

## **18. Registration of contracts of apprenticeship**

- (1) No contract of apprenticeship in a designated trade entered into before the commencement of the Manpower Training Amendment Act, 1990, but not registered immediately prior to such commencement, or entered into after such commencement shall be valid unless -

- (a) at the time it was entered into, it was reduced to writing; and

- (b) it has been signed by or on behalf of the employer and by the apprentice and, in the case of an apprentice who is a minor, by his guardian; and
  - (c) it has been registered by the relevant training board.
- (2) The employer shall lodge the contract in the form determined by the relevant training board and within one month after the date on which it was entered into, with the training committee concerned for registration.
- (3) Notwithstanding anything to the contrary contained in this Act a training board may, upon the application of an employer in an industry and area in respect of which the training board in question has been accredited but no trade has been designated under this Act, register a contract of apprenticeship entered into by such employer and his employee or prospective employee employed or to be employed by the said employer in a trade which corresponds to a trade which has been designated under this Act, as if the trade has been so designated, and after registration such a contract shall be binding on the employer and employee concerned provided the contract -
  - (a) was reduced to writing at the time it was entered into; and
  - (b) has been signed by or on behalf of the employer and by the employee and, in the case of an employee who is a minor, by his guardian.
- (4) Any contract registered in terms of subsection (3), shall be deemed to be a contract entered into in terms of the provisions of this Act, and the employer and apprentice concerned shall comply with such conditions of apprenticeship and other conditions as may be determined by the relevant training board and specified in the contract.
- (5) Subject to the provisions of section 16(3)(d) a training board may, when considering the registration of a contract of apprenticeship, in addition to any other ground on which it may lawfully grant or refuse such registration, take into account any other circumstance, including a report by the training committee in question to the effect that in its opinion registration will not be in the interests of the prospective apprentice, as well as the prospective apprentice's prospects of obtaining employment in the trade in question at the expiry of the contract.

[S. 18 substituted by s. 15 of Act 39/90]

## **19. Training of apprentices**

- (1) If in the opinion of a training board any apprentice is not receiving adequate training, that training board may order the employer of the apprentice to take such steps, specified in the order, as the training board deems necessary to ensure that the apprentice will receive adequate

training at the expense of the employer, and the training board may withdraw or amend any such order.

[Subs. (1) substituted by s. 16 of Act 39/90]

- (2) The training board in question may in any such order specify the classes of work in which the apprentice is to be trained, the periods during which, the intervals at which or the dates between which he shall be so trained, the conditions relating to supervision, the method or place of work, and any other matter or condition relating to the training of the apprentice.

[Subs. (2) substituted by s. 16 of Act 39/90]

## **20. Employment of apprentices for less than ordinary working time, and loan of services of apprentices**

- (1) If, in the opinion of the training board concerned, the employer of an apprentice is, for any reason beyond the control of the employer, unable to provide the apprentice with work or training during the full period of his ordinary working hours, it may authorize in writing, for such period and subject to such conditions as it may determine, the employment of the apprentice for a specified number of hours on any day or in each week, or on a specified number of days in each week, which is less than the number of such hours or days, as the case may be, ordinarily worked by the apprentice, against payment of the ordinary wages of the apprentice or of wages according to a specified rate of wages which is less than the rate of his ordinary wages.

[Subs. (1) substituted by s. 17 of Act 39/90]

- (2) The training board concerned may authorize in writing, for such period and subject to such conditions as it may determine, the loan of the services of an apprentice to another employer, if in its opinion it would be in the interest of the apprentice to do so.

[Subs. (2) substituted by s. 17 of Act 39/90]

- (3) No loan of the services of an apprentice to another employer, authorized under subsection (2), shall release the person who is the employer in terms of the contract of apprenticeship from any obligation under the contract.
- (4) No person shall employ an apprentice for less than the number of hours on any day or in any week, or on less than the number of days in any week, as the case may be, ordinarily worked by the apprentice, or lend or borrow the services of an apprentice, except in accordance with the provisions of subsection (1) or (2), as the case may be.

## **21. ....**

[S. 21 repealed by s. 18 of Act 39/90]

## **22. Transfer of apprentices and of contracts of apprenticeship**

- (1) An employer may send or transfer an apprentice from one place to another in the course of the ordinary practising of the trade in question by such

apprentice, but shall not without the prior consent of the training board concerned so send or transfer an apprentice -

- (a) if it would not be reasonably convenient for such apprentice to travel daily to and from his normal place of residence or to comply with any condition of apprenticeship prescribed in terms of section 13(2)(d), (e) or (f) and which is applicable to him; or
- (b) from the area of jurisdiction of one training committee to the area of jurisdiction of another training committee.

[Para. (b) substituted by s. 19 of Act 39/90]

[Subs. (1) amended by s. 19 of Act 39/90]

- (2) The rights and obligations of an employer under any contract of apprenticeship may, with the prior consent of the training board concerned, be transferred to another employer, but no such transfer shall be complete until it has been registered by that training board.

[Subs. (2) substituted by s. 19 of Act 39/90]

- (3) (a) The training board may in its discretion grant or withhold its consent referred to in subsection (1) or (2), and may when granting its consent referred to in subsection (1), impose such conditions as it may deem necessary.

- (b) The training board shall not grant its consent referred to in subsection (1)(b) or (2) unless -

- (i) it is satisfied that all parties to the contract of apprenticeship have agreed to the proposed action; and

- (ii) it has consulted the training committees in question.

[Subs. (3) substituted by s. 19 of Act 39/90]

- (4) If an apprentice is transferred in terms of this section from the area of jurisdiction of one training committee to the area of jurisdiction of another training committee, any conditions of apprenticeship applicable in respect of the trade in question within the last-mentioned area of jurisdiction shall, with effect from the date of the transfer, apply in respect of the apprentice and any such conditions applicable to him in the first-mentioned area of jurisdiction shall as from such date cease to be so applicable.

[Subs. (4) substituted by s. 19 of Act 39/90]

- (5) (a) If any person is apprenticed to a partnership, his contract of apprenticeship shall not be terminated by reason of the death or retirement of any partner if the business of the partnership is continued by another person or partnership, but the rights and obligations of the employer under the contract shall in such case be deemed to be transferred to the person or partnership continuing the business.

- (b) The person or partnership, referred to in paragraph (a), continuing the business, shall in the prescribed manner and within one month of

the date of such death or retirement, lodge the contract with the training committee in question for registration of the transfer.

[Para. (b) substituted by s. 19 of Act 39/90]

- (6) The provisions of this section shall not apply in respect of apprentices employed by the State.

### **23. Suspension of apprentices**

- (1) If an employer is satisfied that an apprentice bound to him by contract in terms of this Act has committed a serious breach of the terms of the contract or of any condition of apprenticeship, he may forthwith suspend the apprentice in his service for a period not exceeding the number of days ordinarily worked in a week in the industry in question, or such further period as the training board in question may from time to time allow.

[Subs. (1) substituted by s. 20 of Act 39/90]

- (2) (a) If in the opinion of the training board an apprentice has acted in a manner

justifying his suspension in terms of subsection (1), and he has not been suspended by the employer concerned, the training board may at any time by written notice order the suspension of the apprentice in the service of the employer concerned as from such date and for such period, not exceeding 30 working days, as the training board may determine.

- (b) A training board may in writing and subject to such conditions as it may determine, delegate the powers conferred upon it by paragraph (a) to any of its training committees to be exercised, subject to the directions of the training board, by that training committee in respect of apprentices within that training committee's area of jurisdiction.

- (c) Any such delegation may at any time be withdrawn by the training board.

[Subs. (2) substituted by s. 20 of Act 39/90]

- (3) Any employer who has so suspended an apprentice shall report the matter in writing to the training committee in question within three days of the date on which he suspended the apprentice.

[Subs. (3) substituted by s. 20 of Act 39/90]

- (4) The training committee in question shall, as soon as may be, inquire into and submit any suspension in terms of subsection (1) to the training board concerned for confirmation, amendment or setting aside: Provided that the period of any suspension as so amended shall not exceed thirty working days.

[Subs. (4) amended by s. 20 of Act 39/90]

- (5) If the training board amends or sets aside the suspension of an apprentice in terms of subsection (4), it may order that any or all of the remuneration

which may have been withheld from the apprentice during the period of suspension, be paid to a specified officer within such period as the training board may direct.

[Subs. (5) substituted by s. 20 of Act 39/90]

- (6) An order made in terms of subsection (5) and any decision in terms of subsection (7) in respect of any such order, other than a rescission thereof, shall have the effect of, and may be executed as if it were, a civil judgment in favour of the Government of the Republic, and the specified officer shall pay any amount received by him in pursuance of the order or decision to the apprentice concerned or, if he is a minor, to his guardian.
- (7) If an employer or an apprentice feels aggrieved by any decision of a training board in terms of this section, or if a training board fails to give any decision within 30 days, he may at any time within 30 days of the decision, appeal to the registrar or submit the matter, after the expiration of the said period, to the registrar, as the case may be, and the registrar may thereupon, after consultation with the parties in question, confirm the decision of the training board or give such other decision as, in his opinion, the training board ought to have given, or decide the matter, as the case may be.  
[Subs. (7) substituted by s. 20 of Act 39/90]
- (8) The suspension of an apprentice shall not release him from compliance with any condition of apprenticeship prescribed or deemed to have been prescribed in terms of section 13(2)(d), (e) or (f).
- (9) The provisions of this section shall not apply in respect of apprentices employed by the State.

#### **24. Rescission of contracts of apprenticeship**

No contract of apprenticeship shall be rescinded except -

- (a) with the consent of the training board concerned, by agreement of the parties thereto; or  
[Para. (a) substituted by s. 21 of Act 39/90]
- (b) by the training board, after consultation with the training committee in question, on its own initiative or at the instance of any party thereto, if it is satisfied that it is expedient to do so.  
[Para. (b) substituted by s. 21 of Act 39/90]

#### **25. Modification of contracts of apprenticeship**

- (1) Whenever it appears that the facts relating to any apprentice are incorrectly recorded in his contract of apprenticeship or have changed after the conclusion thereof and that by reason thereof prejudice is caused to a party to the contract, the training board may, if it is satisfied that it is desirable to do so, on the application of the prejudiced party and after consultation with the other party and the training committee in question,

modify the terms of the contract by affixing thereto a statement setting out the correct facts or the facts as they have so changed, as the case may be, and the relevant terms of the contract as amended in pursuance of those facts.

[Subs. (1) substituted by s. 22 of Act 39/90]

- (2) Any such statement shall be signed by the training board and thereafter the relevant terms as set out therein shall form part of the contract of apprenticeship and the training board shall adjust its records in accordance therewith: Provided that no additional financial liability shall be imposed on any party to the contract in respect of any period prior to the date on which the statement is signed.

[Subs. (2) amended by s. 22 of Act 39/90]

## **26. Contracts to remain binding under certain circumstances**

Notwithstanding the publication of any notice under section 13(3) relating to the designation or definition of any trade, a contract of apprenticeship registered or deemed to be registered under section 16(3)(d) or section 18(1)(c) or (3) shall continue to be binding on the parties thereto, and the relevant provisions of this Act shall continue to apply to the contract as if the notice had not been published.

[S. 26 amended by s. 23 of Act 39/90]

## **27. ....**

[S. 27 repealed by s. 24 of Act 39/90]

## **28. Trade tests**

- (1) Whenever in the opinion of a training board adequate provision has been made in the industry and area in respect of which it has been accredited, for a trade test to be undergone in any trade in accordance with standards recognized by the registrar and the training board concerned, that training board may, on the application of any person who has been trained as a trainee in terms of this Act or the Training of Artisans Act, 1951 (Act No. 38 of 1951), or any other person who has not passed a trade test as contemplated in section 13(2)(h) of this Act or section 16(2)(h) of the Apprenticeship Act, 1944 (Act No. 37 of 1944), but who satisfies the training board that he has undergone training or gained experience in the trade in question of a nature and for a period which reasonably concurs with the conditions of apprenticeship for the trade in question and in the opinion of the training board is adequate, and on payment by such person of the prescribed fee, admit him to a trade test in accordance with the said standards.
- (2) A trade test referred to in subsection (1) shall be undergone at such time and place as the training board concerned may determine.
- (3) If any such trade test is passed by the applicant, a certificate to that effect shall be issued to him by the registrar in collaboration with the training board concerned.

[S. 28 substituted by s. 25 of Act 39/90]

**29. Consultation with registrar by training boards**

Training boards shall from time to time consult the registrar as to the standards to be applied in determining the training and experience which are for the purposes of section 28 adequate for admission to a trade test referred to in that section.

[S. 29 substituted by s. 26 of Act 39/90]

**CHAPTER 3**

**TRAINING OF TRAINEES**

**30. Training of persons who are not apprentices or minors**

Whenever the Minister is satisfied that it is necessary in the public interest to do so, he may, after consultation with the board and any other Minister which in his opinion has any interest therein, and with the concurrence of the Minister of Finance, make such arrangements as he may deem expedient to provide for the training in a particular trade or occupation of persons who are not apprentices or minors, and he may for that purpose by notice in the *Gazette* issue such directives as he may deem necessary for such training: Provided that the Minister may after consultation with the board provide, in terms of the foregoing provisions of this section, for the training of persons who are minors but who have completed a first period of training or service in terms of the provisions of the Defence Act, 1957 (Act No. 44 of 1957), or section 34A(11) of the Police Act, 1958 (Act No. 7 of 1958).

[S. 30 substituted by s. 27 of Act 39/90]

**CHAPTER 4**

**TRAINING CENTRES**

[Heading amended by s. 28 of Act 39/90]

**31. Regional training centres**

- (1) Any group or association of employers engaged in an area determined in terms of subsection (9) and who have, subject to section 31A, by means of a constitution made provision for the establishment, management and operation of a centre for the training of employees and other persons by a governing body, may apply to the registrar for the registration of that centre as a regional training centre.
- (2)
  - (a) The registrar may, on such conditions as he may deem fit, register a centre to which an application contemplated in subsection (1) relates, as a regional training centre.
  - (b) On the registration in terms of paragraph (a) of a centre as a regional training centre, that centre shall become a juristic person.

- (3) (a) The conditions contemplated in subsection (2)(a) may also relate to -
- (i) the courses of training which may be provided at the regional training centre in question;
  - (ii) the nature, duration and standard of such courses;
  - (iii) the standard of education or practical experience which shall have been achieved or gained by employees and other persons before they may be permitted to undergo training of a particular nature at the regional training centre in question;
  - (iv) the requirements relating to their qualifications and experience with which persons who will provide instruction at the regional training centre in question, shall comply;
  - (v) the premises, equipment, facilities and materials which shall be used or provided for the purposes of training by the regional training centre in question; and
  - (vi) any other matter connected with such regional training centre or training provided there.
- (b) The registrar may withdraw or from time to time amend any condition imposed or deemed to have been imposed in terms of this section.
- (4) The governing body of a regional centre shall furnish the registrar with such information relating to that centre or the control, management or functioning thereof as the registrar may from time to time require.
- (5) The Minister may, at the request of the governing body of a regional training centre, on such conditions as the Minister may deem fit and on such basis as he may determine with the concurrence of the Minister of Finance, out of money appropriated by Parliament for that purpose, provide financial assistance to that regional training centre.
- (6) (a) Whenever the registrar, in respect of a regional training centre, has reason to believe that -
- (i) the regional training centre has been liquidated; or
  - (ii) any condition imposed on that centre in terms of subsection (2)(a) or deemed to have been imposed in terms thereof, has not been complied with; or

- (iii) training in accordance with the provisions of this Act is no longer being provided at that centre,

he may send a registered letter to the head office or last known head office of that centre requiring the centre to show cause within the period determined in that letter, not being less than 30 days, why its registration shall not be withdrawn.

- (b) At the expiry of the period determined in terms of paragraph (a) the registrar may, unless cause to the contrary to his satisfaction has been shown, withdraw the registration of the centre.
  - (c) Upon the withdrawal of the registration of a centre in terms of paragraph (b), that centre shall cease to be a juristic person: Provided that the liability (if any) of every person charged with the winding-up of the centre, shall continue and may be enforced as if the registration of the centre had not been withdrawn.
- (7) The registrar shall from time to time inform the board of all applications received by him in terms of subsection (1).
  - (8) The provisions of this section shall not apply in respect of training in connection with which the provisions of any agreement have in terms of section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), been declared binding.
  - (9) The Minister may for the purposes of subsection (1) determine areas, and may determine different areas in respect of different categories of work determined by him for this purpose.
  - (10) A regional training centre shall be established at the place or places determined by the governing body concerned with the approval of the registrar.
  - (11) Any training in terms of this section the cost of which is intended to be considered for the purposes of an employees training allowance as referred to in section 11*sept* of the Income Tax Act, 1962 (Act No. 58 of 1962), shall take place in accordance with courses approved by the registrar.
  - (12) From the date of commencement of the Manpower Training Amendment Act, 1990 -
    - (a) any centre which was registered as a group training centre immediately prior to the said date shall be deemed to be a regional training centre which has been registered in terms of this section, as amended by the said Act, and any conditions, if any, which applied to the group training centre shall, subject to subsection (3)(b), remain applicable in respect of the regional training centre;

- (b) every person in the employ of the governing body of the group training centre immediately prior to the said date, shall become an employee of the regional training centre;
- (c) all movable or immovable property which immediately prior to the said date vested in the governing body of the group training centre shall, without payment of transfer duty, stamp duty or other fees, accrue to and vest in the regional training centre, subject to any charge with which such property may be burdened: Provided that all funds which immediately prior to the said date were vested in the said governing body by trust, donation or bequest, shall be applied by the regional training centre in accordance with the conditions of the trust, donation or bequest;
- (d) the regional training centre shall assume and be liable for all lawful debts and liabilities of the governing body of the group training centre, subject to all lawful conditions under which those debts and liabilities were incurred;
- (e) a registrar of deeds shall, at the written request of the regional training centre, record on any title deed, document or record registered or kept in the deeds registry concerned, the fact that the regional training centre is the successor in law of the governing body of the former group training centre; and
- (f) any reference in any law or document to a group training centre or to the governing body of a group training centre, shall be deemed to be a reference to a regional training centre or to the governing body thereof, respectively.

[S. 31 amended by s. 1 of Act 1/83 and substituted by s. 29 of Act 39/90]

### **31A. Constitutions of regional training centres**

- (1) A constitution of a regional training centre referred to in section 31(1), shall provide for -
  - (a) the composition of its governing body;
  - (b) the election or appointment of the members of its governing body;
  - (c) the term of office of and vacation of office by such members;
  - (d) the convening of, the quorum for and the procedure at meetings of its governing body;
  - (e) the financial year of the centre;
  - (f) the liquidation of the centre: Provided that after all liabilities and obligations of the centre have been discharged, any remaining assets which cannot be disposed of in terms of the constitution of the

centre shall be disposed of in accordance with directions of the registrar; and

- (g) any other matter necessary for the effective performance, carrying out the exercise of the functions, duties and powers of its governing body.
- (2) The governing body of a regional training centre may, in consultation with the registrar, from time to time amend or substitute the constitution of the centre.
- (3) The governing body of a regional training centre may, subject to the provisions of this Act and any condition imposed in terms of section 31(2)
- 
- (a) determine the staff establishment of the centre;
  - (b) appoint, promote or discharge any person at the centre;
  - (c) determine the conditions of service, leave and other privileges, salaries, salary scales, retirement and pension benefits and other service benefits of persons employed at the centre;
  - (d) acquire movable and immovable property required for the management and conduct of the centre, and sell or otherwise dispose of such property no longer required for such purposes;
  - (e) open an account with a banking institution registered in terms of the Banks Act, 1965 (Act No. 23 of 1965);
  - (f) invest moneys not required for immediate use only in -
    - (i) internal registered stock within the meaning of section 21 of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975);
    - (ii) National Savings Certificates;
    - (iii) Post Office savings accounts or certificates;
    - (iv) savings accounts, permanent shares or fixed deposits in building societies or banks,or in any other manner approved by the registrar;
  - (g) borrow money;
  - (h) generally, do anything which can be reasonably be regarded as necessary or desirable for the effective management or control of the centre.

[S. 31A inserted by s. 30 of Act 39/90]

**31B. Establishment of advisory committee for regional training centres**

- (1) The Minister shall establish a committee to be known as the advisory committee for regional training centres.
- (2) The advisory committee shall consist of -
  - (a) one person nominated by each of the regional training centres;
  - (b) one person nominated by the board; and
  - (c) one person nominated by the Department.
- (3) The Minister shall appoint the members referred to in subsection (2), of whom one member shall be designated by him as chairman and another member as vice-chairman of the advisory committee.
- (4) A member of the advisory committee shall hold office for such period as the Minister may determine at the time of the appointment of such member, but may be reappointed at the expiration of that period: Provided that the Minister may at any time terminate the membership of a member if in his opinion there is sufficient reason for doing so.
- (5) If a member of the advisory committee dies or for any reason vacates his office, the vacancy shall, subject to the provisions of subsections (2) and (3), be filled by the appointment of another person as member of the advisory committee, and the member so appointed shall hold office for the unexpired portion of the period for which his predecessor was appointed.
- (6) The chairman of the advisory committee shall, in the event of an equality of votes on any matter considered at any meeting of the advisory committee, have a casting vote in addition to his deliberative vote.
- (7) When the chairman of the advisory committee is absent from a meeting of the committee, the vice-chairman shall act as chairman, and when both the chairman and vice-chairman are absent after due notice of such meeting has been given to them, the members of the advisory committee present at that meeting shall elect one from among their number to preside at that meeting, and the person acting as chairman in terms of this subsection shall, while so acting, have all the powers and perform all the functions of the chairman.
- (8) The advisory committee may make rules as to -
  - (a) the convening of, the fixing of a quorum for and the procedure at meetings;

- (b) any other matter which may be necessary for the efficient performing, carrying out or exercise of its functions, duties and powers.
- (9) The advisory committee shall advise the registrar on -
- (a) matters contemplated in section 31(3); and
  - (b) any other matter relating to the training of employees or other persons which the registrar refers to it.
- (10) There shall be paid to a member of the advisory committee who is not in the full-time service of the State, the remuneration determined from time to time by the Minister with the concurrence of the Minister of Finance, as well as the allowances (if any) so determined.
- (11) The secretarial work of the advisory committee shall be performed by officers or employees serving in the Department who have been designated for this purposes by the Director-General.  
[S. 31B inserted by s. 30 of Act 39/90]

### **32. Private training centre**

- (1) Any employer of other person who conducts or intends to conduct a training centre, excluding a regional training centre, industry training centre or a training centre for which provision is made in an agreement which has in terms of section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), been declared binding, at which training is provided or will be provided to employees or other persons, may apply to the registrar for the registration of such training centre as a private training centre.  
[Subs. (1) substituted by s. 31 of Act 39/90]
- (2) The registrar may, on such conditions as he may deem fit, register a training centre to which an application contemplated in subsection (1) relates, as a private training centre.
- (3) The conditions contemplated in subsection (2) may also relate to any matter specified in section 31(3)(a), and to the fees which may be charged in respect of training provided at the training centre in question.
- (4) The employer or person on whose application a private training centre has been registered as such, shall furnish the registrar with such information relating to that centre or the control, management or functioning thereof as the registrar may from time to time require.  
[Subs. (4) substituted by s. 31 of Act 39/90]
- (5) The provisions of section 31(3)(b), (6)(a) and (b), (7) and (11) shall *mutatis mutandis* apply in respect of a private training centre.  
[Subs. (5) substituted by s. 31 of Act 39/90]

- (6) Any scheme which immediately prior to the date of commencement of the Manpower Training Amendment Act, 1990, was registered as a training scheme in terms of section 34 of this Act as it existed immediately prior to that date shall, as from that date, be deemed to be registered under this section as a private training centre, and any conditions, if any, on which that registration was effected under subsection (2) of the said section 34 shall be deemed to have been imposed under this section in respect of the private training centre.

[Subs. (6) added by s. 31 of Act 39/90]

### **33. Requirements for provision of training in labour relations**

No person, excluding a trade union, employers' organization, federation, industrial council or educational institution, may conduct a training centre referred to in section 31(1), 32(1) or 34(1) where training in labour relations is provided, unless that training centre has been registered in terms of section 31(2), 32(2) or 34(2) as a regional training centre, private training centre or industry training centre, as the case may be, and the said training is provided in accordance with courses approved by the registrar: Provided that this section shall not apply to an employer who provides training in labour relations to his own employees.

[S. 33 substituted by s. 32 of Act 39/90]

### **34. Industry training centres**

- (1) Any training board which conducts or intends to conduct a training centre, excluding a regional training centre, private training centre or a training centre for which provision is made in an agreement which has in terms of section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), been declared binding, in a particular industry and area in which training is provided or will be provided to employees or other persons, may apply to the registrar for the registration of such a training centre as an industry training centre.
- (2) The registrar may on such conditions as he may deem fit, register a training centre to which an application contemplated in subsection (1) relates, as an industry training centre.
- (3) The conditions contemplated in subsection (2) may also relate to any matter specified in section 31(3)(a) and to the fees which may be charged in respect of training provided at the training centre in question.
- (4) The training board on whose application an industry training centre has been registered as such, shall furnish the registrar with such information relating to that centre or the control, management or functioning thereof as the registrar may from time to time require.
- (5) The provisions of section 31(3)(b), (6)(a) and (b), (7) and (11) shall *mutatis mutandis* apply in respect of an industry training centre.

[S. 34 substituted by s. 33 of Act 39/90]

### **35. Grants-in-aid in respect of training in labour relations**

- (1) The Minister may on such conditions as he may deem fit and on such basis as he may determine with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose, award grants-in-aid to -
  - (a) any trade union or employers' organization which is registered in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956), and which provides training in labour relations to its office-bearers, employees or members or, in the case of such an employers' organization, to the employees of its members;
  - (b) any federation which is registered in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956), and which provides training in labour relations to its employees or to the office-bearers, employees or members of its affiliated unions or organizations or, in the case of a federation of employers' organizations, to the employees of the members of its affiliated organizations.
- (2) Any grant-in-aid awarded in terms of subsection (1) shall be utilized exclusively to defray costs arising from the presentation of such training.
- (3) The Minister may at any time and without furnishing any reason therefor suspend, reduce or withdraw any grant-in-aid awarded in terms of subsection (1).
- (4) For the purposes of subsection (1) "office-bearer" means an office-bearer as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956).

[S. 35 substituted by s. 34 of Act 39/90]

### **36. Training of workseekers and other persons**

Notwithstanding anything to the contrary contained in any law, the Minister may, after consultation with the board and with the concurrence of the Minister of Finance, make such arrangements as he may deem fit to provide for the training of workseekers or other persons if in his opinion such arrangements are necessary or desirable in the public interest.

#### **36A. Fund for Training of Unemployed Persons**

- (1) There is hereby established a fund to be known as "the Fund for the Training of Unemployed Persons", hereinafter in this section referred to as the fund, into which shall be paid -
  - (a) money appropriated by Parliament for the fund from time to time;
  - (b) money appropriated by interest groups in the private sector for the fund from time to time;

- (c) any other money which may accrue to the fund from any other source; and
  - (d) interest earned in terms of subsection (9).
- (2) The money in the fund shall be utilized for financing training whereby unemployed persons are equipped with working skills to facilitate their entry into the labour market.
- (3) The control and administration of the fund shall be vested in the Director-General, who shall in this regard be advised by a committee consisting of 11 members appointed by the Minister, and which shall be constituted as follows:
  - (a) The Director-General or an officer of the Department designated by him for that purpose, who shall be the chairman;
  - (b) seven members representing the private sector;
  - (c) two officers from the Department; and
  - (d) the chairman of the board.
- (4) The said committee shall, in relation to training whereby unemployed persons may be equipped with working skills to enter the labour market, advise the Director-General on -
  - (a) work categories in which unemployed persons should be trained;
  - (b) the granting of contracts for the training of unemployed persons;
  - (c) the standards that should apply to the training of unemployed persons;
  - (d) the placement in employment of trained unemployed persons; and
  - (e) any other matter connected with the training of unemployed persons and their placement in lucrative employment in the labour market.
- (5) The period of office of members of the committee mentioned in subsection (3)(b) and (c) shall be one year, and such members may at the expiry of their period of office be reappointed by the Minister.
- (6) A vacancy which occurs in the committee shall be filled by a person appointed by the Minister, which person shall hold office for the unexpired portion of the period of office of his predecessor, and may on the expiry of his period of office be re-appointed by the Minister.

- (7) The chairman of the committee shall determine in consultation with the other members of the committee the times and venues of meetings of the committee and the procedure to be followed at meetings, and he shall report at each meeting of the committee on -
- (a) payments from the fund; and
  - (b) the collection of money appropriated or owed to the fund, or which accrues to the fund.
- (8) (a) The Director-General shall for the purposes of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), be the accounting officer in relation to the affairs of the fund, and shall keep a proper record of all money paid into and out of the fund.
- (b) The accounts relating to the fund shall be audited by the Auditor-General.
- (9) Any money in the fund which is not required for immediate use shall be invested with the Corporation for Public Deposits and may be withdrawn when required for use.
- (10) Any unexpended balance in the fund at the end of any financial year shall be carried forward as a credit in the fund to the ensuing financial year.
- (11) The committee shall furnish the Minister on a six-monthly basis with a report on its activities and the balance of the fund.
- (12) The secretarial work of the committee shall be performed by officers and employees serving in the Department who shall be designated for this purpose by the Director-General.
- (13) The provisions of section 31B(8) and (10) shall *mutatis mutandis* apply in respect of a committee appointed in terms of this section.

[S. 36A inserted by s. 35 of Act 39/90]

### **37. Approval of certain training for purposes of employees training allowance**

The registrar may, for the purposes of an employees training allowance as referred to in section 11*sept* of the Income Tax Act, 1962 (Act No. 58 of 1962), after consultation with the board and having due regard to the objects of this Act, approve the training of employees at a training centre in an area or territory

- (a) for which a legislative assembly has been established in terms of the provisions of the National States Constitution Act, 1971 (Act No. 21 of 1971);

- (b) which formed part of the Republic and became an independent State in terms of an Act of Parliament.

### **37A. Training allowances in respect of certain training**

- (1) Subject to the provisions of subsection (2) the Minister may, on such conditions as he may deem fit and on such basis as he may determine with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for that purpose, pay to any employer in any area designated as an industrial development area by the Minister of Finance with the concurrence of the Minister of Industries, Commerce and Tourism, training allowances in respect of any training which his employees receive or have received at or under -
  - (a) a regional training centre;  
[Para. (a) substituted by s. 36 of Act 39/90]
  - (b) a private training centre;
  - (c) an industry training centre;  
[Para. (c) substituted by s. 36 of Act 39/90]
  - (d) a centre or scheme for which provision is made in an agreement which has in terms of section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), been declared binding; or
  - (e) a centre or scheme conducted in an area or territory -
    - (i) for which a legislative assembly has been established in terms of the provisions of the National States Constitution Act, 1971 (Act No. 21 of 1971);
    - (ii) which formed part of the Republic and became an independent State in terms of an Act of Parliament.
- (2) No training allowances shall be paid in terms of subsection (1) unless -
  - (a) in the case of training referred to in paragraphs (a) to (d) , inclusive, of that subsection, the training takes place or has taken place in accordance with courses approved by the registrar;
  - (b) in the case of training referred to in paragraph (e) of that subsection, the registrar has approved the training.  
[S. 37A inserted by s. 3 of Act 88 of 1982.]

## **CHAPTER 5**

### **MANPOWER DEVELOPMENT FUND**

#### **38. Establishment of Manpower Development Fund, and related matters**

- (1) There is hereby established a fund to be known as the Manpower Development Fund, hereinafter referred to as the fund, into which shall be paid -
  - (a) money appropriated by Parliament for the fund from time to time;
  - (b) amounts repaid in respect of loans granted in terms of subsection (4), as well as interest paid in respect of such loans;
  - (c) any interest earned in terms of subsection (5);
  - (d) any other money which may accrue to the fund from any other source.
- (2) The Director-General shall, subject to the directions of the Minister, be responsible for the administration of the fund, including -
  - (a) the control over payments from the fund; and
  - (b) the collection, for the benefit of the fund, of all money due or accruing to the fund,and shall for the purposes of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and the regulations made thereunder, be the accounting officer in relation to the affairs of the fund.
- (3) The Director-General shall keep a proper record of all money paid into and out of the fund, and the accounts relating to the fund shall be audited by the Auditor-General.
- (4) The money in the fund shall be utilized for the granting of loans, on such conditions as the Minister may after consultation with the board determine, to be utilized for the purposes of a regional training centre, private training centre, industry training centre or scheme referred to in section 39(4), or of a scheme for the training of employees to which the provisions of an agreement which has in terms of section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), been declared binding, relate.  
[Subs. (4) substituted by s. 37 of Act 39/90]
- (5) Any money in the fund which is not required for immediate use, shall be invested with the Public Debt Commissioners and may be withdrawn when required for use.
- (6) Any unexpended balance in the fund at the end of any financial year shall be carried forward as a credit in the fund to the ensuing financial year.
- (7) Applications for loans in terms of subsection (4) shall be lodged with the Director-General on the prescribed form.

## CHAPTER 6

## GENERAL PROVISIONS

### 39. Training levies

- (1) The Minister may, after consultation with the board, by notice in the *Gazette* impose a levy, payable by employers in general or by any category of employers specified in the notice, for the purpose of raising money which can be utilized for the purposes of the achievement of any of the objects of this Act or for the financing of any scheme under which provision is made for the provision of training and for which no provision is made in this Act.
- (2) A notice published in terms of subsection (1) -
  - (a) shall state the amount and basis of the levy;
  - (b) shall state the date on which such levy shall become payable and the person or officer to whom payments in respect of the levy shall be made;
  - (c) shall state the purpose for which the levy is imposed and the basis on which the proceeds of the levy will be expended;
  - (d) may require employers who are liable to pay the levy to keep, for such periods as may be specified in the notice, such records, and to render, for such periods, such returns as may be so specified;
  - (e) may provide for the exemption of any employer or category of employers from the liability to pay such levy, either generally or in respect of a specified industry, area or category of employees;
  - (f) may provide for any other matter so as to ensure an effective administration of the provisions of such notice.
- (3) The Minister may, in the same manner, withdraw or from time to time amend any notice published in terms of this section.
- (4) Any group or association of employers who have created a scheme for the training of employees (excluding training in connection with which the provisions of any agreement have in terms of section 48 of the Labour Relations Act, 1956 (Act No. 28 of 1956), been declared binding) which provides for the establishment of a fund for the purposes of such scheme and provides for the payment of contributions (hereinafter referred to as a levy) to such fund by employers and the establishment of a body to administer such fund, may request the Minister to declare such scheme binding in respect of the industry in which they are engaged in the area in which they are so engaged.

- (5) Upon receipt of a request contemplated in subsection (4) the Minister may, if he deems it expedient to do so, and after consultation with the board, by notice in the *Gazette* declare that, with effect from a date and for a period specified in the notice, such provisions of the scheme as are set out in the notice shall be binding upon all employers and employees, or upon any specified group or class of employers and employees, engaged or employed in that industry in that area.
- (6) The provisions of subsections (2) and (3) shall *mutatis mutandis* apply in respect of a notice referred to in subsection (5).
- (7) The body referred to in subsection (4), which has been established to administer a fund referred to in that subsection, shall furnish the registrar with such information relating to that fund as the registrar may from time to time require.

#### **40. Acceptance of premiums and bonuses**

- (1) No person shall directly or indirectly require or permit any person to pay or give any consideration in respect of the employment of any trainee, minor or apprentice in a designated trade, or receive any such consideration from any person.
- (2) Any person who has in contravention of the provisions of subsection (1) paid or given any such consideration, may recover it in a magistrate's court, and the said court may, if it has convicted any person of a contravention of the said subsection, summarily and without pleadings but in the presence of that person and on proof of the amount, give judgment therefor against the person so convicted, and the judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted in that court.

#### **41. Appeals**

- (1) (a) Any employer, prospective employer, apprentice, prospective apprentice or minor (hereinafter referred to as the appellant) who feels aggrieved by a decision of a training board in terms of section 13(8), 16(3)(d), 17(4), 18(3) or (5), 19, 20(1) or (2), 22, 23(2)(a) or (7), 24 or 25(1), may within 30 days after the date of the decision appeal in writing to the registrar, and the registrar may, after consultation with the training board in question, confirm the training board's decision or give such other decision as in the opinion of the registrar the training board should have given.
- (b) An appellant who feels aggrieved by a decision of the registrar on an appeal in terms of paragraph (a), may within 30 days after the date of the decision appeal in writing to the Minister, and the Minister may, after consultation with the board, confirm the

decision of the registrar or give such other decision as the registrar should in the opinion of the Minister have given.

- (2) Any applicant whose application in terms of section 12B(3)(a) or (b), 31(1), 32(1), 34(1) or 37 for accreditation as a training board or the registration of a regional training centre, a private training centre or an industry training centre, or for the approval of training referred to in section 37, as the case may be, has been refused by the registrar, or any training board whose accreditation has been withdrawn in terms of section 12B(9), may within 30 days after the date of the refusal or withdrawal, as the case may be, appeal in writing to the Minister, and the Minister may, after consultation with the board, confirm or set aside the registrar's decision and may, if he sets aside that decision, direct the registrar to accredit the training board in question or, subject to the provisions of section 31(2), 32(2) or 34(2), as the case may be, to register the regional training centre, private training centre or industry training centre in question, or to approve the training referred to in section 37.

[S. 41 substituted by s. 38 of Act 39/90]

#### **42. Evasion of payment of remuneration**

- (1) No employer shall require or permit -
- (a) any apprentice to pay or repay to him any remuneration or amount payable or paid to that apprentice in terms of the contract of apprenticeship or in terms of any condition of apprenticeship;
  - (b) any trainee to pay or repay to him any remuneration or amount payable or paid to that trainee in terms of any directive issued in terms of section 30 or deemed to have been issued in terms thereof,

[Para. (b) substituted by s. 39 of Act 39/90]

or do any act or permit any act to be done as a direct or indirect result of which that apprentice or trainee is deprived of the benefit of any remuneration or amount so payable or paid, or of any portion thereof.

- (2) No employer shall require or permit any apprentice or trainee to give a receipt for, or otherwise to represent that he has received, more than he has actually been paid by the employer.

#### **43. Application of wage regulating measures**

Notwithstanding anything to the contrary contained in any law, the provisions of any wage regulating measure shall, in so far as they are not inconsistent with any provision of this Act or of any notice published or deemed to have been published in terms of section 13 or any directive issued or deemed to have been issued in terms of section 30 and which applies to any employer, apprentice, minor or trainee, or with any provision of a contract of apprenticeship entered into or deemed to have been entered into by any apprentice in accordance with the provisions of this Act and registered or deemed to be registered in terms of

section 16(3)(d) or 18(1)(c) or (3), apply in respect of such employer, apprentice, minor or trainee.

[S. 43 substituted by s. 40 of Act 39/90]

#### 44. Records to be kept

(1) Every employer upon whom a contract of apprenticeship is binding and every employer who employs a trainee or, in a designated trade, a minor other than an apprentice shall -

(a) at all times keep in respect of every apprentice or trainee concerned and every such minor a record of the remuneration paid, of the time worked, of any unauthorized absence from work or the attendance of compulsory training courses and of such other particulars as may be determined from time to time by the training board concerned, including, without prejudice to the generality of the provisions of this subsection, particulars of the progress made by such apprentice, trainee or minor in any prescribed course of training and the steps taken by the employer to carry out any conditions prescribed in terms of section 13(2)(g) ; and

[Para. (a) substituted by s. 41 of Act 39/90]

(b) furnish to every apprentice or trainee concerned and every such minor so employed a logbook in the form determined from time to time by the training board concerned.

[Para. (b) substituted by s. 41 of Act 39/90]

(2) (a) The records referred to in subsection (1)(a) shall be kept in the form and manner determined from time to time by the training board concerned.

(b) Any apprentice, trainee or minor referred to in subsection (1)(b) shall at the stages determined from time to time by the training board concerned enter in the logbook furnished to him in terms of the said subsection, such particulars of the practical training received by him as may be required.

[Subs. (2) substituted by s. 41 of Act 39/90]

(3) Every person who is or has been an employer referred to in subsection (1) shall retain any record made in terms of that subsection for a period of three years subsequent to the date of the record, and shall on demand by a training adviser or authorized person made at any time during the said period of three years produce the said record for inspection.

[Subs. (3) substituted by s. 41 of Act 39/90]

(4) .....

[Subs. (4) deleted by s. 41 of Act 39/90]

(5) .....

[Subs. (5) deleted by s. 41 of Act 39/90]

#### **45. Appointment of training advisers**

- (1) The Minister may appoint any suitably qualified officer as a training adviser for the purposes of this Act.
- (2) Every training adviser shall be furnished with a certificate, signed by the Director-General or an official duly appointed by him for this purpose, stating that he has been appointed as a training adviser in terms of this Act.
- (3) The Minister may in writing and subject to such conditions as he may deem fit delegate his power under subsection (1) to the Director-General or any other officer.

[S. 45 substituted by s. 42 of Act 39/90]

#### **46. Powers of training advisers**

- (1) A training adviser may -
  - (a) at the request of any employer or any other person who provides or intends to provide training to employees, workseekers or other persons -
    - (i) assist such employer or other person in the determination of needs relating to such training;
    - (ii) advise such employer or other person in connection with -
      - (aa) the development of training programmes followed or to be followed by him;
      - (bb) the improvement of the quality of the training provided by him;
      - (cc) the selection for training of employees, workseekers or other persons;
      - (dd) the testing of employees, workseekers or other persons during, or after completion of their training;
    - (iii) give, to those persons providing instruction to such employees, workseekers or other persons in the course of such training, guidance in connection with any aspect of such instruction; and
  - (b) subject to the directions of the Director-General, take such other steps as may, in his opinion, serve to promote the training of employees, workseekers or other persons.
- (2) A training adviser may conduct investigations -

- (a) in order to ascertain whether any provision of this Act, or any condition of apprenticeship, or any directive issued or deemed to have been issued in terms of section 30 or any provision of a notice published or deemed to have been published in terms of section 39 or 47(1), or any condition specified in a certificate referred to in section 47(3), or any condition imposed or deemed to have been imposed in terms of section 31(2)(a), 32(2) or 34(2), is being or has been complied with;

[Para. (a) substituted by s. 43 of Act 39/90]

- (b) into the effectiveness of the training provided at any regional training centre or private training centre or industry training centre or by any employer to apprentices or trainees in his employ;

[Para. (b) substituted by s. 43 of Act 39/90]

- (c) into any other matter connected with any regional training centre, private training centre or industry training centre or with the training of apprentices, trainees or other persons and which in the opinion of the registrar should be investigated,

[Para. (c) substituted by s. 43 of Act 39/90]

and may for that purpose -

- (i) enter any premises or place in respect of which he has reason to believe that it is used for or is connected with the providing of any training, and inspect such premises or place or any equipment, facilities or materials thereon or therein used for the purposes of such training;
- (ii) question, either in private or in the presence of any other person, any person whom he finds upon or in such premises or place;
- (iii) examine any book, record or other document, or a microfilm or other microform reproduction thereof, connected with any training, or in writing direct any person having in his possession or custody or under his control such book, record, other document or reproduction, to produce such book, record, other document or reproduction for inspection;
- (iv) make extracts from or copies of any book, record, other document or reproduction referred to in paragraph (iii).

(3) No person shall -

- (a) refuse or fail to place, when required by a training adviser to do so, anything in his possession or custody or under his control, or which is upon any premises occupied by him, and which may in the opinion of the training adviser relate to an investigation being

conducted by him in terms of subsection (2), at the disposal of the training adviser for the purposes of such an investigation;

- (b) refuse or fail to comply with any direction referred to in subsection (2)(iii);
  - (c) hinder or obstruct any training adviser in the exercise of his powers;
  - (d) falsely hold himself out to be a training adviser.
- (4) A training adviser who exercises any power conferred upon him by this section shall, at the request of any person affected by the exercise of such power, produce the certificate issued to him in terms of section 45(2).  
[Subs. (4) substituted by s. 43 of Act 39/90]
- (5) .....  
[Subs. (5) deleted by s. 43 of Act 39/90]

#### **47. Exemptions**

- (1) Notwithstanding anything contained in this Act the Minister may, if in his opinion special circumstances exist which justify exemption, after consultation with the board and the training board in question and by notice in the *Gazette* exempt any class, group, section or type of employers or employees specified in the notice, either generally or with such restrictions as he may deem fit, and subject to such conditions, if any, as he may impose in the notice, from any of or all the provisions of this Act, or from any directive issued or deemed to have been issued in terms of section 30, or from any provision of a notice published or deemed to have been published in terms of section 39, or from any condition of apprenticeship, and the Minister may, in so specifying any such class, group, section or type, differentiate on any ground he may deem advisable: Provided that the Minister may not so differentiate on the basis of sex, race or colour.  
[Subs. (1) amended by s. 44 of Act 39/90]
- (2) The Minister may, in the same manner, withdraw or amend any notice published under subsection (1).
- (3) The Minister may, on the recommendation of the board and after consultation with the training board in question, if in his opinion special circumstances exist which justify exemption, by means of a certificate signed by an officer, exempt any person, either generally or with such restrictions as he may deem fit and subject to such conditions as he may impose and for such period as he may specify, from any of or all the provisions of this Act, or from any directive issued or deemed to have been issued in terms of section 30, or from any provision of a notice published or deemed to have been published in terms of section 39, or from any condition of apprenticeship, or from any condition prescribed in a notice published under subsection (1).  
[Subs. (3) substituted by s. 44 of Act 39/90]

- (4) Notwithstanding the provisions of subsection (1), the provisions of any exemption which by virtue of the provisions of section 58(2) is deemed to have been granted under this Act and which differentiate on the basis of sex, shall remain of force and effect until those provisions are amended or the exemption is withdrawn.
- (5) The Minister may at any time, on the recommendation of the board and after consultation with the training board in question, withdraw any exemption granted in terms of subsection (3) or amend the conditions on which it was granted.  
[Subs. (5) substituted by s. 44 of Act 39/90]
- (6) The Minister may in writing and on such conditions as he may deem fit, delegate any power conferred upon him by subsection (3) or (5) to any officer in the service of the Department and may at any time withdraw such delegation.

#### **48. Prohibition of victimization**

- (1) No employer shall dismiss any person employed by him or reduce the rate of his remuneration or otherwise alter his conditions of service to conditions less favourable to him or alter to his disadvantage his position relatively to other persons employed by that employer, because that employer suspects or believes, whether or not the suspicion or belief is justified or correct, that -
  - (a) that person has given to the Minister, the board, a training board, a training adviser, an officer, an authorized person or a training committee information which he is by or in terms of this Act required to give, or which relates to his conditions of service or those of other persons employed by his employer, or has complied with any lawful requirement of the board, a training board, a training adviser, an authorized person or a training committee, or has given evidence before a court of law or the industrial court;  
[Para. (a) substituted by s. 45 of Act 39/90]
  - (b) that person has refused or omitted to perform any act the performance of which an employer is by section 42 prohibited from requiring or permitting;
  - (c) that person is or has been a member of any trade union or any other organization of employees the object of which is or was to protect or further the interests of employees in their relations with their employers, or takes or has taken part outside ordinary working hours or, with the consent of the employer, during working hours in the forming of or lawful activities of any such trade union or organization.

- (2) The court convicting an employer of a contravention of the provisions of sub-section (1) may, in addition to any sentence which it may impose -
- (a) where the reduction of the rate of remuneration or the alteration of the conditions of service or the position of an employee of that employer formed the subject of the charge on which the employer was convicted, order the employer to restore, subject to such conditions as the court may impose, the rate of remuneration, conditions of service or position of the employee to that existing prior to the reduction or alteration, with effect from the date on which the reduction or alteration was made;
  - (b) where the dismissal of an employee of that employer formed the subject of the charge on which the employer was convicted, order the employer to pay to the employee an amount estimated by the court to be equal to three months' remuneration calculated at the rate according to which the employee was being remunerated at the time of his dismissal.
- (3) Any order given under subsection (2)(b) shall have the effect of, and may be executed as if it were, a civil judgment in favour of the employee concerned.

#### **49. Secrecy**

- (1) No member or alternate member of the board, a committee of the board, a training board, a training committee or the advisory committee for regional training centres, no training adviser, authorized person or officer and no person allowed to be present at any meeting of the board, a committee of the board, a training board or a training committee, or at any interrogation referred to in section 5, shall disclose to any person any information in relation to the financial or business affairs of any person, firm or business which came to his knowledge in the course of the performance of any function or the exercise of any power in terms of this Act or as the result of his attendance at such meeting or interrogation, as the case may be, except -
- (a) to the Minister or an officer; or
  - (b) in the performance of his functions or the exercise of his powers in terms of this Act; or
  - (c) in the course of proceedings in the industrial court or a court of law.  
[Subs. (1) amended by s. 46 of Act 39/90]
- (2) Notwithstanding the provisions of subsection (1), the registrar may, in such manner as he may deem fit, disclose any information in relation to the name of any regional training centre, private training centre, industry training centre, or a training centre or scheme for which provision is made in an agreement which has in terms of section 48 of the Labour Relations

Act, 1956 (Act No. 28 of 1956), been declared binding, or of any person or employer who applied for the registration thereof, or in relation to the place where such centre or scheme is conducted, or the title and duration of the training courses taken in any such centre or under such scheme, if such courses have been approved by him for the purposes of section 11*sept* of the Income Tax Act, 1962 (Act No. 58 of 1962), and section 37A of this Act, respectively.

[Subs. (2) added by s. 2 of Act 1/83 and substituted by s. 46 of Act 39/90]

## 50. Offences and penalties

- (1) Any person who contravenes or fails to comply with -
- (a) any provision of a contract of apprenticeship registered or deemed to be registered in terms of section 16(3)(d) or 18(1)(c) or (3);
  - (b) any directive issued or deemed to have been issued in terms of section 30, or any provision of a notice published or deemed to have been published in terms of section 39 or 47(1);  
[Para. (b) substituted by s. 47 of Act 39/90]
  - (c) any provision contained in a certificate issued or deemed to have been issued in terms of section 47(3);
  - (d) any condition of apprenticeship; or
  - (e) the provisions of section 5(4)(a) or (b) , 5(7), 12B(7), 12C(2), 13(11), 15(1), (2) or (3), 16(2), 16(3)(a) or (c) , 18(2) or (4), 20(4), 22(1) or (5)(b) , 23(3), 31(4) or (11), 32(4), 33, 34 (4), 39(7), 40(1), 42, 44, 46(3) or 49,  
[Para. (e) substituted by s. 47 of Act 39/90]

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subs. (1) amended by s. 47 of Act 39/90]

- (2) Any person who -
- (a) fails to comply with any conditions imposed in terms of section 22(3)(a), 31(2)(a) , 32(2) or 34(2), or with an order given in terms of section 19(1) or 23(2) (a) or (5), or with a direction referred to in section 4(1)(b) ;  
[Para. (a) substituted by s. 47 of Act 39/90]
  - (b) in any manner furnishes or makes or causes to be furnished or made any return or statement for the purposes of or in connection with any application, request, appeal or proceedings in terms of this Act, or any return or statement in any other manner provided for in this Act, knowing such return or statement to be false in respect of any particular thereof;

- (c) makes any incorrect statement or entry in any record kept in terms of section 44, knowing it to be incorrect,

shall be guilty of an offence and liable on conviction to the penalties prescribed by subsection (1).

- (3) (a) Any person who contravenes the provisions of section 48(1), shall be guilty of an offence and liable on conviction to a fine not exceeding six hundred rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- (b) Any person who fails to comply with any order under section 48(2)(a), shall be guilty of an offence and liable on conviction to a fine not exceeding twenty rand for every day on which the offence continues.
- (4) Any training board which or a member of any training board who contravenes or fails to comply with any provision of section 12B(9)(d), shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand, and the court shall order the training board so convicted to forthwith comply with the provision in question.  
[Subs. (4) substituted by s. 47 of Act 39/90]
- (5) The provisions of section 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall not apply in respect of an offence referred to in subsection (3)(a) or in respect of an offence which consists of a failure to make any payment to any apprentice or trainee or of a failure to pay any levy imposed or deemed to have been imposed in terms of section 39.  
[Subs. (5) substituted by s. 47 of Act 39/90]

## **51. Order upon employer to pay amount underpaid**

- (1) Whenever an employer is convicted under section 50(1) of a failure to make any payment owing by him to any apprentice or trainee, the court convicting him shall determine the difference between the amount which the employer paid and the amount which he would have paid if the failure of which he has been convicted had not occurred, or, if no amount has been paid by the employer, the amount which he would have paid if the said failure had not occurred: Provided that if the court is unable on all the evidence, whether given before or after conviction, to determine the said difference or the said amount exactly, it shall, to the best of its ability, estimate that difference or amount, as the case may be.
- (2) The difference or amount determined in terms of subsection (1), or the amount at which it is estimated in terms of the said subsection, is in this section referred to as the amount underpaid.

- (3) The proceedings of the court under subsection (1) shall be taken before sentence is passed, and shall be deemed to form part of the trial.
- (4) After the court has in accordance with the provisions of subsection (1), determined or estimated the amount underpaid, the court shall order the convicted person to pay the said amount to an officer designated by the court (hereinafter referred to as the designated officer) within a period fixed by the court, in instalments or otherwise, as the court may determine.
- (5) The court may at any time, upon the application of the person convicted and on good cause shown by him, extend the period within which the amount underpaid shall be paid to the designated officer, or vary the amounts of the instalments.
- (6) An order given in terms of the provisions of subsection (4) shall have the effect of, and may be executed as if it were, a civil judgment in favour of the Government of the Republic, and the designated officer shall pay any amount received by him in pursuance of the order to the apprentice or trainee in respect of whom the failure occurred, or if he is a minor, to his guardian.
- (7) It shall not be a defence to a charge of a failure referred to in subsection (1) to prove that the failure with which the accused was charged is due to lack of means.
- (8)
  - (a) Any employer who is notified by an officer of the Department that any amount of money as determined by that officer is payable by the employer to any person by virtue of any condition of apprenticeship, contract of apprenticeship or notice in terms of this Act, and who admits that the amount so determined is payable by him, may pay that amount to the officer of the Department for paying over to the person concerned.
  - (b) Any amount of money which has in terms of paragraph (a) been paid to an officer of the Department and which has, after the expiration of a period of six months as from the date on which it was received by him, not yet been paid over to the person to whom it was payable by the employer concerned, shall be paid into the State Revenue Fund.
  - (c) Money paid into the State Revenue Fund in terms of paragraph (b) may, on application made by the Director-General within three years as from the date on which it has been so paid into the said Fund, be paid to the Director-General for paying over to the person referred to in paragraph (b).

**52. Order in respect of unpaid levies**

- (1) Whenever any person is convicted under section 50(1)(b) of a failure to pay a levy imposed or deemed to have been imposed in terms of section 39, the court convicting him shall, in addition to any punishment imposed in respect of the offence in question, summarily inquire into and assess the amount of the levy payable by that person to any person or officer referred to in section 39(2)(b) or to a body referred to in section 39(4), as the case may be, and order that person to pay that amount, in instalments or otherwise, as the court may determine, to the person, officer or body concerned, as the case may be, within such period as the court may determine.

[Subs. (1) substituted by s. 48 of Act 39/90]

- (2) An order given in terms of the provisions of subsection (1) shall have the effect of, and may be executed in the same manner as, a judgment pronounced in the course of civil proceedings.
- (3) The provisions of section 51(5) and (7) shall *mutatis mutandis* apply in respect of the payment of an amount in terms of an order referred to in subsection (1) and any failure to pay a levy referred to in that subsection, respectively.
- (4) Any employer who is notified by a person or officer referred to in section 39(2)(b) or a body referred to in section 39(4) that any amount of money as determined by that person, officer or body is payable by the employer by virtue of any notice in terms of this Act whereby a levy is imposed, and who admits that the amount so determined is payable by him, may pay that amount to the person, officer or body concerned for the purposes of the levy in question.

[Subs. (4) substituted by s. 48 of Act 39/90]

### **53. Liability of employer for acts or omissions of managers, agents or employees**

- (1) If any manager, agent or employee of any employer has done or omitted to do any act which it would be an offence in terms of this Act for that employer to do or to omit to do, the employer shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect of that act or omission unless it is proved that -
  - (a) in doing or omitting to do that act, such manager, agent or employee was acting without the connivance or the permission of the employer;
  - (b) all reasonable steps were taken by the employer to prevent any act or omission of the kind in question; and
  - (c) it was not under any condition or in any circumstance within the scope of the authority or in the course of the employment of the manager, agent or employee concerned to do or to omit to do an act,

whether lawful or unlawful, of the nature of the act or omission charged.

- (2) The fact that an employer issued instructions forbidding any act or omission of the kind in question, shall, for the purposes of subsection (1)(b), not by itself be regarded as sufficient proof that he took all reasonable steps to prevent such act or omission.
- (3) If any manager, agent or employee of any employer has done or omitted to do any act which would be an offence in terms of this Act for that employer to do or to omit to do, that manager, agent or employee shall be liable to be convicted and sentenced in respect of that act or omission as if he were the employer.
- (4) Any manager, agent or employee referred to in subsection (3) may be convicted and sentenced in terms of the said subsection, in addition to the employer concerned.
- (5) Whenever the manager, agent or employee of any employer is by virtue of the provisions of subsection (4) convicted of a contravention of the provisions of section 48(1) or of a failure referred to in section 51(1) or section 52(1), the court shall give an order under section 48(2), 51(4) or 52(1), as the case may be, against the employer, and the provisions of the said sections shall *mutatis mutandis* apply in respect of such order, and no such order shall be given against such manager, agent or employee.

#### **54. Evidence and presumptions**

- (1) Proof of publication in the *Gazette* of a notice in terms of section 13, 16, 30, 39 or 47 shall be conclusive proof that all the provisions of this Act in respect of matters precedent or incidental to the publication of the notice have been complied with.  
[Subs. (1) substituted by s. 49 of Act 39/90]
- (2) In the absence of satisfactory proof of the age of a particular person, the age of that person shall, in any proceedings in terms of this Act, be deemed to be that stated by a training adviser or authorized person to be in his opinion the probable age of that person, but any interested person who is dissatisfied with that statement may require that the person whose age is in question appear before and be examined by a district surgeon at the expense of the said interested person, and a statement contained in a certificate by the district surgeon who examined that person as to what in his opinion is the probable age of that person, shall, for the purposes of the said proceedings, be conclusive proof of the age of that person.
- (3) Whenever in any proceedings in terms of this Act it is proved that any person was at any time present upon or in any premises on or in which any particular industry was being carried on, or in any vehicle used in the carrying on of that industry, that person shall, unless the contrary is

proved, be deemed then to have been an employee of the person who at that time carried on that industry on or in those premises.

- (4) A minor or apprentice shall be deemed to be working in a designated trade during any period during which he is present on or in any premises on or in which that trade is being carried on: Provided that if it is proved that any minor or apprentice had not worked during any portion of any such period, the presumption provided for in this sub-section shall not apply in respect of the minor or apprentice with reference to that portion of the period.
- (5) In any proceedings in terms of this Act, any statement or entry contained in any book or document or in any microfilm or other microform reproduction of such a book or document kept by any employer or by his manager, agent or employee, or found upon or in any premises occupied by that employer, or in any vehicle used in the business of that employer, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer, or by any manager, agent or employee of that employer in the course of his work as manager or in the course of his agency or employment.
- (6) If an employer has, in respect of any period, failed to keep the records which he is in terms of section 44 required to keep, or to retain such records for the period specified in subsection (3) of that section, or has falsified such records or caused them to be falsified, then in any proceedings under this Act, an employee employed by him during the period in respect of which the failure or the falsification has occurred shall be presumed to have worked in his employment each week during the whole period of his employment falling within the period in respect of which the failure or falsification occurred, not less than the ordinary number of hours which the employee was by virtue of the provisions of this Act required so to work: Provided that if it is proved what hours any such employee actually worked during any particular week during the period of his employment falling within the period in respect of which the failure or falsification occurred, the presumption provided for in this subsection shall not apply in respect of that employee in relation to that week.
- (7) Whenever in any proceedings in terms of this Act it is proved that any incorrect statement or entry is contained in any record kept by any person in terms of this Act, that person shall be presumed, unless the contrary is proved, to have made that statement or entry knowing it to be incorrect.
- (8) Whenever any person is charged in terms of the provisions of section 50(1) with a failure to pay to any person employed by him during any period the remuneration which he in terms of -
  - (a) any contract of apprenticeship registered or deemed to be registered in terms of section 16(3)(d) or 18(1)(c) or (3);

- (b) any condition of apprenticeship;
- (c) any directive issued or deemed to have been issued in terms of section 30; or  
[Para. (c) substituted by s. 49 of Act 39/90]
- (d) the provisions of a certificate issued or deemed to have been issued in terms of section 47(3),

was required to pay to that person in respect of that period, and it is proved that that person was employed by the accused during any period covered by the charge and that in terms of that contract, condition of apprenticeship or notice or in terms of the provisions of that certificate, as the case may be, the accused was required to pay to that person a certain amount as remuneration in respect of that period, the accused shall be presumed, unless the contrary is proved, not to have paid that amount to that person.

- (9) Whenever any person is charged in terms of the provisions of section 50(3) with having, in contravention of the provisions of section 48(1) and by reason of a suspicion or belief referred to in that section and specified in the charge -

- (a) dismissed any person from his employment;
- (b) reduced the rate of such person's remuneration;
- (c) otherwise altered the conditions of service of such a person to conditions less favourable to him; or
- (d) altered to his disadvantage the position of such a person relatively to other persons employed by the accused,

and it is proved that the accused has committed any of the deeds referred to in paragraphs (a) to (d) , inclusive, it shall be presumed, unless the contrary is proved, that the accused has so acted by reason of the suspicion or belief specified in the charge.

- (10) Whenever any person is charged in terms of the provisions of section 50(2)(b) with having furnished or made or caused to be furnished or made any return or statement knowing such return or statement to be false in respect of any particular thereof specified in the charge, and it is proved that such return or statement is false in respect of the said particular thereof, it shall be presumed, unless the contrary is proved, that the accused has furnished or made such return or statement or caused it to be furnished or made, knowing such return or statement to be false in respect of the said particular thereof.

- (11) Any record purporting to be the minutes of a meeting of the board, a committee, a training board or a training committee and purporting to have been signed by a person describing himself as the chairman or acting chairman of the board or the committee, training board or training committee in question shall, on its mere production by any person, be *prima facie* proof of the proceedings recorded therein.  
[Subs. (11) substituted by s. 49 of Act 39/90]
- (12) Whenever any person is charged in terms of the provisions of section 50(1)(e) with a contravention of section 20(4), it shall be presumed, unless the contrary is proved, that the reduction in the hours or days of employment, or the lending or borrowing of the services of an apprentice, as the case may be, to which the charge relates, has not been authorized by the training board in question as required by section 20.  
[Subs. (12) substituted by s. 49 of Act 39/90]
- (13) (a) In any proceedings under this Act, an affidavit purporting to have been made by  
the Minister, an officer to whom the Minister has or is deemed to have delegated any of his powers in terms of section 47(6), the registrar or the secretary of any training board or training committee, as the case may be, in which it is stated that on the date or between the dates specified in the affidavit -
- (i) the Minister or the registrar, as the case may be, reached a decision on an appeal in terms of section 41; or  
[Subpara. (i) substituted by s. 49 of Act 39/90]
  - (ii) the Minister or the said officer granted any exemption in terms of section 47(3); or
  - (iii) the registrar reached a decision or gave any authority or issued or varied any direction or order, as the case may be, under any provision of this Act; or
  - (iv) the training board concerned in terms of this Act, its constitution or its conditions of apprenticeship reached a decision or gave any authority or issued or varied any direction or order, as the case may be; or  
[Subpara. (iv) substituted by s. 49 of Act 39/90]
  - (v) the said secretary received a notice in terms of section 15(1) from any person and in connection with any employment so specified; or  
[Subpara. (v) substituted by s. 49 of Act 39/90]
  - (vi) the Minister or the said officer withdrew any exemption granted in terms of section 47(3) or amended the conditions on which it was granted; or

(vii) the training board concerned withdrew or amended any order issued by it in terms of section 19; or  
[Subpara. (vii) substituted by s. 49 of Act 39/90]

(viii) the said secretary did not receive any notice in terms of section 15(1) from any person and in connection with any employment so specified; or

(ix) an apprentice so specified did not attend any class prescribed in terms of section 13(2)(d) and so specified, or did not complete any paper, so specified, in connection with correspondence courses prescribed in terms of section 13(2)(e),  
[Subpara. (ix) substituted by s. 49 of Act 39/90]

and setting out, in the cases referred to in paragraphs (i) to (v), inclusive, the terms of the decision, exemption, authority, direction or order or variation thereof or notice, and, in a case referred to in paragraph (ix), particulars of the classes or papers in question, shall, on its mere production in those proceedings by any person, but subject to the provisions of paragraph (b), be *prima facie* proof of the facts stated therein.

[Para. (a) amended by s. 49 of Act 39/90]

(b) The person presiding at the proceedings at which any such affidavit is adduced in evidence may cause the Minister, the said officer, the registrar or the said secretary, as the case may be, to be summoned to give oral evidence in the proceedings in question, or may cause written interrogatories to be submitted to him for reply, and the interrogatories and any reply on oath thereto purporting to be a reply from the Minister, the said officer, the registrar or the said secretary, as the case may be, shall in like manner be admissible as evidence in the proceedings.

## **55. Jurisdiction of magistrates' courts**

Notwithstanding anything to the contrary contained in any law, a magistrate's court shall have jurisdiction to impose any penalty or to make any order of court provided for in this Act.

## **56. Civil legal remedies of employees and employers**

(1) The provisions of this Act shall not derogate from -

(a) any right which an apprentice may have to institute a civil action against his employer in respect of any contravention of or failure to comply with any provision of a contract of apprenticeship or any condition of apprenticeship, except in respect of a failure referred to in section 51(1);

- (b) any right which an employer may have to institute a civil action against an apprentice in respect of any contravention of or failure to comply with any provision of the contract of apprenticeship in question or any condition of apprenticeship.
- (2) No civil action for the recovery of any amount underpaid, referred to in section 51(2), in respect of which an order has been issued in terms of section 51(4), or for the recovery of an amount in respect of which an order has been issued in terms of section 52(1), may be instituted in any court.
- (3) Subject to the provisions of subsection (4), the provisions of section 51 or of subsection (1) or (2) of this section shall not prohibit any employee -
  - (a) where his employer has been convicted of an offence consisting of a failure referred to in section 51(1) which occurred in respect of that employee, from recovering from his employer, by way of a civil action, any amount owing to him under any agreement with his employer, in excess of the amount underpaid referred to in section 51(2); or
  - (b) where his employer has not been so convicted, from recovering from his employer, by way of a civil action, any amount which his employer is required to pay to him in terms of the provisions of a contract of apprenticeship or of any notice in terms of this Act which is or was binding upon him and his employer, or in terms of any condition of apprenticeship.
- (4) An employee to whom his employer has failed to pay any amount which the employer is required to pay to him in terms of any contract of apprenticeship or any condition of apprenticeship or in terms of the provisions of any notice in terms of this Act which is or was binding upon the employer, shall not be entitled to recover from his employer by means of a civil action the amount or any part of the amount which his employer has so failed to pay to him, unless -
  - (a) that employee produces to the court a certificate signed by the attorney-general concerned in which the attorney-general states that he declines to prosecute in respect of the failure upon which the employee intends to base the cause of action; or
  - (b) the employer has been acquitted on a charge of that failure.

## **57. Regulations**

- (1) The Minister may make regulations regarding -
  - (a) any matter which in terms of this Act is required or permitted to be prescribed; and

- (b) generally, any matter which he considers necessary or expedient to prescribe in order that the objects of this Act may be achieved.  
[Subs. (1) substituted by s. 50 of Act 39/90]

- (2) Any regulation relating to State revenue or expenditure shall be made with the concurrence of the Minister of Finance.
- (3) Any regulations made under this section may prescribe penalties, not exceeding a fine of two hundred rand, for any contravention thereof or failure to comply therewith.

**58. Repeal of laws, and savings**

- (1) Subject to the provisions of this section the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

[Subs. (1) substituted by s. 51 of Act 39/90]

- (2) Any rule, notice or certificate made, published, served or issued or any other steps taken or any other thing done in terms of a provision of a law repealed by subsection (1), shall be deemed to have been made, published, served, issued or done in terms of the corresponding provision of this Act.
- (3) Any contract of apprenticeship registered in terms of the provisions of a law repealed by subsection (1), shall be deemed to be a contract of apprenticeship registered in terms of the provisions of this Act.

- (4) .....

[Subs. (4) deleted by s. 51 of Act 39/90]

- (5) Any private centre approved or registered as a private centre in terms of a provision of a law repealed by subsection (1), shall be deemed to be a private training centre registered as such in terms of the provisions of this Act.

- (6) .....

[Subs. (6) deleted by s. 51 of Act 39/90]

- (7) .....

[Subs. (7) deleted by s. 51 of Act 39/90]

- (8) .....

[Subs. (8) deleted by s. 51 of Act 39/90]

- (9) .....

[Subs. (9) deleted by s. 51 of Act 39/90]

**59. Short title and commencement**

This Act shall be called the Manpower Training Act, 1981, and the provisions thereof shall come into operation on a date fixed by the State President by proclamation in the *Gazette* .

## SCHEDULE

### LAWS REPEALED

Number and year of law	Title of law	Extent of repeal
Act 37 of 1944	Apprenticeship Act, 1944	The whole
Act 28 of 1951	Apprenticeship Amendment Act, 1951	The whole
Act 38 of 1951	Training of Artisans Act, 1951	The whole
Act 28 of 1956	Labour Relations Act, 1956	Section 48A
Act 44 of 1957	Defence Act, 1957	Section 4(2)ter
Act 7 of 1958	Police Act, 1958	Section 34B(4)
Act 29 of 1959	Apprenticeship Amendment Act, 1959	The whole
Act 46 of 1963	Apprenticeship Amendment Act, 1963	The whole
Act 86 of 1976	Black Employees' In-Service Training Act, 1976	The whole
Act 95 of 1979	In-Service Training Act, 1979	The whole