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## Industrial and Vocational Training Act

### Act 16 of 1982

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## eSwatini

# Industrial and Vocational Training Act

Act 16 of 1982

Commenced on 1 April 1986 by [Industrial and Vocational Training Act \(Date of Commencement\) Notice, 1986](#)

*[This is the version of this document at 1 December 1998.]*

An Act to consolidate the law in relation to industrial and vocational training and to introduce new provisions relating thereto.

## Part I – Preliminary

### 1. Short title

This Act may be cited as the Industrial and Vocational Training Act.

### 2. Interpretation

In this Act, unless the context otherwise requires—

“**appointed day**” means such day as the Minister may appoint, by notice in the *Gazette*, for the coming into operation of this Act or any provision thereof;

“**apprentice**” means a person who is bound by a written contract to serve an employer for a period not exceeding an aggregate of five years, or such lesser period as the Board may determine under the provisions of [section 29\(2\)](#), with a view to acquiring knowledge, including theory and practice, of a trade or occupation in which the employer is reciprocally bound to instruct that person;

“**apprenticeable trade**” means a trade or occupation designated by the Minister under [section 16\(4\)](#);

“**Board**” means the Industrial and Vocational Training Board established under [section 6](#);

“**contract**” means a contract of apprenticeship or a contract of traineeship as the context may require;

“**competent person**” means a person possessing qualification or experience or both, necessary for any purpose under this Act;

“**Committee**” means a Committee established under [section 9](#);

“**Director**” means the Director of Industrial and Vocational Training appointed under [section 5](#);

“**employer**” means any person or undertaking, corporation, company, public authority or body of persons who or which has entered into a contract of employment with an employee and includes:—

- (a) any agent, representative, foreman or manager of such person, undertaking, corporation, company, public authority or body of persons who is placed in authority over that employee; or
- (b) in the case of any such person—
  - (i) who has died, his executor;
  - (ii) who has become of unsound mind, his *Curator Bonis*;
  - (iii) who has become an insolvent, the trustee of his insolvent estate;
  - (iv) which is a company in liquidation, the liquidator of the company;

“**Fund**” means the Industrial and Vocational Training Fund established under [section 14\(1\)](#);

“**industry**” means a sector of economic activity wherein the employers provide a similar service, or are engaged in the manufacture, processing, purchase or sale of a similar product or similar products;

“**Inspector of Training**” means an Inspector of Training appointed under [section 5](#);

“**journeyman**” means a person who is qualified by experience or qualifications or both, to instruct and supervise apprentices or trainees in the trade or occupation in which such experience or qualifications have been acquired;

“**Minister**” means the Minister responsible for labour;

“**Minor**” means a person under the age of eighteen years;

“**month**” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding calendar month;

“**scheme**” means a scheme made under [section 30](#);

“**trade**” means a skilled occupation;

“**trainee**” means a person, other than an apprentice, who is bound by a written contract to serve an employer for a period stipulated in the contract but not exceeding an aggregate of three years, with a view to acquiring knowledge of a trade or occupation in which the employer is reciprocally bound to instruct that person;

“**training levy order**” means an order made under [section 13\(1\)](#).

### 3. Act binds Government

Subject to [section 4](#), this Act shall apply to employment with, by, or under the Government, other than to employment in the Umtsofo Swaziland Defence Force, the Royal Swaziland Police and the Swaziland Prison Service.

### 4. Minister may exempt

- (1) The Minister may, by order published in the *Gazette*, exempt any person or public authority or class of persons or public authorities from the operation of all or any of the provisions of this Act or any regulation, order or direction made thereunder.
- (2) No exemption shall be made by the Minister which is incompatible with any International Labour Convention for the time being in force, in Swaziland.

## Part II – Administration

### 5. Appointment and powers of Director and Inspectors and establishment of Directorate

- (1) The Minister may, by notice in the *Gazette*, designate any public officer to be the Director and such other officers, as may be necessary for the purposes of this Act, to be Inspectors of Training.
- (2) Every Inspector of Training may, subject to the directions of the Director, perform any act or discharge any duty which may lawfully be performed or is required to be discharged by the Director under this Act.
- (3) Every inspector of Training shall be given a certificate of identity signed by the Director and, when exercising, or seeking to exercise any of the powers specified in this Act, shall if so required, produce the certificate as proof of his identity.

- (4) Any Inspector of Training may—
- (a) at any reasonable time enter any premises in which he has reasonable cause to believe that an apprentice or trainee is employed or has been employed within the previous six months and may take with him any competent person or a police officer;
  - (b) interview, alone or in the presence of others, any person concerning the application of this Act so far as it affects him, or may apply to any other person for information he considers necessary;
  - (c) require any apprentice or trainee to appear before him at any reasonable time and place fixed by the Inspector and interview that apprentice or trainee;
  - (d) require the production or the delivery of any records required to be kept by or under this Act and of any document relating to matters under this Act and may examine, make extracts from any records or documents produced or delivered as aforesaid.
- (5) An Inspector of Training—
- (a) shall not enter or inspect a private dwelling house without the consent of the occupier thereof;
  - (b) shall, on the occasion of a visit or inspection notify the employer or his representative of his presence, unless he has reasonable grounds for believing that such notification would be prejudicial to the performance of his duties; and
  - (c) shall, if so required by the employer, be accompanied during any inspection or examination by the employer or his representative.
- (6) Any person who—
- (a) without reasonable cause refuses or fails to comply with any lawful requirement or direction made by the Director or any Inspector of Training under this section; or
  - (b) hinders the Director or any Inspector of Training in the exercise of his powers this section;
- shall be guilty of an offence, and on conviction shall be liable to a fine not exceeding five hundred Emalangeni or to imprisonment for a period not exceeding six months.
- (7) The Director shall have all the powers of an Inspector of Training under this Act.
- (8) Should the Minister deem it to be appropriate and in the interests of Swaziland, he may, by notice in the *Gazette* and after consultation with the Board establish a Directorate of Industrial and Vocational Training with such powers and functions as are set out in the notice.

## 6. Establishment of Industrial and Vocational Training Board

- (1) There shall be an Industrial and Vocational Training Board consisting of a Chairman, and not less than ten other members who shall be appointed by the Minister as follows—
- (a) the Chairman, who shall be appointed by the Minister after consultation with organisations of employers' and employees;
  - (b) the Deputy Chairman, who shall be appointed by the Minister after consultation with organisations of employers' and employees;
  - (c) three members, who shall be appointed to represent employers from a panel of six names submitted to the Minister by organisations of employers;
  - (d) three members who shall be appointed to represent employees from a panel of six names submitted to the Minister by organisations of employees;
  - (e) one member who shall be a public officer, appointed to represent the Ministry of Education;

- (f) one member, who shall be a public officer, appointed to represent the Ministry of Public Works and Transport;
  - (g) one member shall be a representative of the Swaziland Institute of Personnel and Training Management;
  - (h) one or more members shall be appointed to represent any other interests.
- (2) The Director or his representative shall be the Secretary of the Board.
  - (3) A member of the Board shall hold office for a period of not more than three years and shall be eligible for re-appointment.
  - (4) The Minister may terminate the appointment of a member on account of—
    - (a) the member's physical or mental incapacity;
    - (b) the member's absence from three consecutive meetings of the Board;
    - (c) a recommendation by a majority of the Board's members representing the interests of employees that one of their number should be replaced;
    - (d) a recommendation by a majority of the Board's members representing the interests of employers that one of their number should be replaced.
  - (5) A member of the Board may at any time resign from the Board by giving one month's notice in writing addressed to the Minister.
  - (6) Where the Minister terminates an appointment under subsection (4) or receives a letter of resignation from a member of the Board under subsection (5), the Minister shall appoint a replacement for the unexpired period of the appointment and, in doing so, shall follow the procedure set out in subsection (1).
  - (7) All appointments to the Board shall be published in the *Gazette*.

## 7. Meetings and quorum of the Board

- (1) Meetings of the Board shall take place at such intervals, not exceeding four months, as the Chairman may decide.
- (2) Notwithstanding subsection (1) the Chairman shall convene a meeting of the Board not more than fourteen days after the receipt of a written request for such a meeting signed by three members of the Board.
- (3) A quorum of the Board shall be the Chairman or Deputy Chairman and four members, one of whom must be a representative of employers, and one of whom must be a representative of employees. All members and the Deputy Chairman (when he is not exercising the functions of the Chairman) shall be entitled to vote on any matter before the Board and in the case of an equality of votes the Chairman shall have a casting vote.
- (4) The Board may co-opt to serve on it for such time as it thinks fit, any person whose assistance or advice it may require, but a person so co-opted shall not be allowed to vote at any meeting of the Board nor be counted as a member thereof for the purposes of forming a quorum.

## 8. Duties and functions of the Board

- (1) The Board shall consider and advise the Minister upon any matter affecting industrial and vocational training referred to the Board by the Minister and may, of its own volition, investigate or make recommendations to the Minister or issue directions to a Committee on any matter connected with industrial and vocational training or with this Act.



- (2) Without prejudice to the generality of the requirements of subsection (1) such matters shall include —
- (a) measures considered necessary by the Board to ensure an adequate supply of trained manpower in all sectors of employment in Swaziland;
  - (b) steps to be taken to improve the quality and efficiency of industrial and vocational training;
  - (c) the establishment, review and maintenance of a system or systems of tests in respect of any trade or occupation and for the granting of certificates of efficiency to, and the making of reports upon persons who enter for such tests;
  - (d) the protection and promotion of the welfare of apprentices and trainees;
  - (e) measures necessary to ensure that the cost of apprenticeship and other training are shared equitably among employers;
  - (f) the investigation, and where possible, the settlement of any dispute or other matter arising out of a contract which may be referred to the Board by the Director;
  - (g) the performance of such duties and functions in regard to industrial and vocational training as the Minister may direct.

## 9. Committees

- (1) The Board may establish Committees to exercise the duties and functions set out in [section 11](#) in relation to training or trade testing in specified industries, trades or occupations or in relation to any group of trades or occupations.
- (2) A Committee shall be appointed by the Board in writing and shall consist of not less than six persons so as to provide equal representation of employers and employees and a representative of the Swaziland College of Technology and a representative of the Swaziland Institute of Personnel and Training Management.
- (3) Members of a Committee who have been appointed to represent employers or to represent employees, shall hold office for a period of three years or such lesser period as may be specified at the time of their appointment and a retiring member shall be eligible for reappointment.
- (4) A Chairman and Deputy Chairman shall be chosen by a Committee from amongst members appointed under subsection (2).
- (5) Any member of a Committee may, with the permission of the Chairman of the Committee, appoint a person to be an alternate member in his absence, and may, on informing the Chairman, rescind such appointment.
- (6) No person appointed as an alternative member of a Committee under subsection (5) may himself appoint an alternate member or act as an alternate member in respect of more than one member, otherwise he may exercise all the powers and duties of a member of a Committee.
- (7) If a member of any Committee is —
  - (a) without the permission of the Chairman absent from two consecutive meetings of the Committee; or
  - (b) prevented by physical or mental incapacity from carrying out his duties as a member of the Committee,

the Board may terminate his appointment in writing and he shall cease to exercise any of the functions of a member of the Committee with effect from the date of the notification and the Board shall appoint a replacement for him on the Committee.
- (8) The Director or his representative shall be the Secretary of any Committee established under this section.

- (9) A Committee may, with the approval of the Board, establish subcommittees for any purpose not in conflict with [section 11](#) and may co-opt any person to serve on any subcommittee.
- (10) A subcommittee established under subsection (9) shall regulate its own procedure.

## 10. Meetings and quorum of Committees

- (1) Meetings of a Committee shall take place at such intervals, not exceeding three months, as the Chairman may decide.
- (2) A quorum of a Committee shall be the chairman, or Deputy Chairman and two members, one of whom must be a representative of employers and one of whom must be a representative of employees. All members of a Committee present at a meeting shall have the right to vote and in the event of an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.
- (3) A Committee may co-opt to serve on it, for such time as it thinks fit, any person but such person shall neither be entitled to vote nor be counted as a member of that Committee for the purpose of forming a quorum.

## 11. Duties and functions of committees

- (1) A Committee may, in respect of any industry, trade or occupation within the competence of the Committee—
  - (a) make, or assist other persons in making enquiries into any matter relating to training;
  - (b) provide advice about training;
  - (c) provide advice on the facilities and training to be provided at educational institutions;
  - (d) provide advice or make arrangements for the application of selection tests for persons wishing to be employed as apprentices or as trainees;
  - (e) make recommendations for the application of trade tests or other methods for ascertaining the standards of proficiency recommended by the Committee for apprentices, trainees or other persons;
  - (f) provide advice on the establishment of a scheme or schemes for the training of apprentices or trainees;
  - (g) perform such functions of the Board as the Board may delegate to it in writing.
- (2) A Committee may, of its own volition and shall, whenever so directed by the Board, submit to the Board proposals for the imposition and collection of a training levy on employers in an industry in respect of which the Committee is established, or for changes in, withdrawal or substitution of a training levy which is already in force.
- (3) Proposals submitted to the Board under subsection (2) may include provision for exempting from a training levy order any employer, who in view of the small number of his employees, the Committee considers ought to be exempted from the order.

## Part III – Training levies and establishment of Fund

### 12. Proposals for training levy

- (1) The Minister may, by notice in writing, require the Board to exercise its power of direction under [section 8\(1\)](#) concerning the submission of proposals for a training levy in respect of any industry specified in the notice.

- (2) Where a Committee—
- (a) has, of its own volition, or in pursuance of a direction given by the Board, submitted proposals for a training levy which the Board considers to be unsatisfactory; or
  - (b) has failed to comply within a reasonable time with a direction of the Board made under [section 8\(1\)](#) to submit proposals for a training levy;
- the Board may direct the Committee to submit fresh proposals, or initial proposals, as the case may be, within a specified time, and if it directs the Committee to submit fresh proposals it shall indicate, in writing, in which respects the proposals already submitted appear to be unsatisfactory.
- (3) If a Committee, having received a direction of the Board under subsection (2) fails to comply with that direction, the Board may declare the Committee to be in default and may make an order requiring members of the Committee to vacate their offices with immediate effect.
- (4) An order made under subsection (3) may contain provisions authorising such persons as may be named in the order to carry out for such period as the Board deems expedient the functions of the Committee, and the persons so named shall notwithstanding the provisions of this Act relating to the quorum or the representation of employers and employees or a Committee, be deemed to have been appointed under [section 9](#).
- (5) Where any proposals submitted to the Board under [section 11\(2\)](#) are approved by the Board, they shall be presented to the Minister by the Board.

### 13. Training levy orders

- (1) Where the Minister has received proposals for the introduction, change, substitution or withdrawal of a training levy, he may make an order giving effect to such proposals; such order may make different provisions in relation to different classes or descriptions of employers and may provide for the amendment, substitution or withdrawal of a previous training levy order.
- (2) Nothing in the Act shall be construed as requiring the Minister to make a training levy order in a case where he considers it inexpedient to make one; and the Minister shall not make a training levy order unless—
- (a) such of the proposals submitted to him under [section 11\(2\)](#) provides for the exemption from the training levy of employers, who, in view of the small number of their employees, ought in his opinion to be exempted from it;
  - (b) he is satisfied by evidence furnished by the Board and accompanying the proposals presented to him that the proposals are necessary to encourage adequate training in the industry;
  - (c) the amount which he estimates would be payable by any employer in the industry is less than one per cent of the aggregate of the total remuneration estimated by the Minister to be payable by that employer to persons employed in the industry, in respect of the relevant period specified in the proposals.
- (3) A training levy order may contain provisions as to the evidence by which an employer's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by any person by way of the levy shall become due and the manner in which it shall be recoverable.
- (4) If any person fails to pay any amount payable by him under the provisions of a training levy order within the time prescribed by that order, a sum equal to one per cent of such amount shall be added thereto for each month or part of a month that the amount remains unpaid and such payment shall be in addition to and not in substitution for any other penalty prescribed by this Act.
- (5) A training levy order may contain provisions prescribing offences and penalties for contravention of the order not exceeding a fine of five hundred Emalangeni or imprisonment for a period not exceeding six months.

#### **14. Establishment of Industrial and Vocational Training Fund**

- (1) At a date to be appointed by the Minister there shall be established for the purposes of this Act, a Fund to be known as the Industrial and Vocational Training Fund.
- (2) There shall be paid into the Fund—
  - (a) such moneys as are, from time to time, received by way of a training levy order;
  - (b) such moneys as may, from time to time, be appropriated by Parliament for the purposes of the Fund;
  - (c) such moneys as are, from time to time, received by the Minister, for the purposes of the Fund, from the trustees of any trust, or by way of the gift or bequest of any person.
- (3) The Minister shall cause proper accounts of the Fund to be kept together with adequate financial and other records in relation thereto and shall, within four months after the end of the financial year to which the accounts relate, or such longer period as the Minister may approve, submit such accounts to the Auditor General for audit.
- (4) The Auditor General shall, as soon as may be after the receipt of any accounts submitted to him under subsection (3) audit them and submit his report thereon to the Minister and to the Board.
- (5) Any moneys forming part of the Fund may be invested in such manner as the Minister may direct after consultation with the Minister responsible for finance.
- (6) The Fund shall be administered in accordance with regulations made by the Minister after consultation with the Minister responsible for finance.

#### **15. Disbursements from the Fund**

The Minister may, acting on the advice of the Board, make payments from the Fund to any person, employer, company or association or body of persons either corporated or unincorporate in an industry in respect of which a training levy order has been made for any of the following purposes—

- (a) the payment of maintenance and travelling allowances to persons attending training courses approved by the Board;
- (b) the making of grants or loans to persons, institutions or employers providing training courses or training facilities approved by the Board;
- (c) the reimbursement of fees to employers providing further education in respect of persons who receive such education as part of, and in association with their training;
- (d) the reimbursement of an employer for all or part of his training costs, including fees, board and lodging, instruction costs, cost of materials and wages of apprentices, trainees and such other employees as the Board may approve while they are attending training courses held in connection with their employment.

### **Part IV – Employment of apprentices and trainees**

#### **16. Permission to employ apprentices and designation of apprenticeable trades**

- (1)
  - (a) No person shall employ apprentices without having first obtained the written permission of the Director so to do.
  - (b) The Director's permission as aforesaid shall specify the maximum number of apprentices who may be employed at any one time by the person to whom the permission is given.

- (2) No permission shall be given under this section unless the person applying therefor satisfies the Director that his establishment offers reasonable opportunities for the proper training of apprentices proposed to be employed by him.
- (3) Any person aggrieved by any decision of the Director under this section may appeal against such decision to the Minister whose decision thereon, after consultation with the Board, shall be final.
- (4) The Minister may, on the advice of the Board, and by notice in the *Gazette*—
  - (a) designate any trade or occupation in any industry as an apprenticeable trade and may define such trade by reference to the work performed therein or the operations of which it is composed;
  - (b) require that any person entering an apprenticeable trade for the purpose of acquiring the skills of such trade shall not do so except under a contract of apprenticeship.
- (5) The Minister may, on the advice of the Board, vary or revoke any designation made under subsection (4).
- (6) Any person who—
  - (a) employs an apprentice without having first obtained the written permission of the Director to employ apprentices; or
  - (b) having obtained the written permission of the Director to employ apprentices, employs at any one time a number of apprentices in excess of the maximum number specified in such written permission;
  - (c) employs any person in an apprenticeable trade for the purpose of his acquiring the skills of such trade or occupation other than on a contract where such contract is required under subsection (4);shall be guilty of an offence and on conviction shall be liable to a fine of five hundred Emalangeni or to imprisonment for a period not exceeding six months.

## 17. Permission to employ trainees

- (1)
  - (a) No person shall employ trainees without having first obtained the written permission of the Director so to do.
  - (b) The Director's permission as aforesaid shall specify the maximum number of trainees who may be employed at any one time by the person to whom the permission is given.
- (2) No permission shall be given under this section unless the person applying therefor satisfies the Director that his establishment offers reasonable opportunities for the proper training of trainees proposed to be employed by him.
- (3) Any person aggrieved by any decision of the Director under this section may appeal against such decision to the Minister whose decision thereon, after consultation with the Board, shall be final.
- (4) Any person who—
  - (a) employs a trainee without having first obtained the written permission of the Director to employ trainees; or
  - (b) having obtained the written permission of the Director to employ trainees, employs at any one time a number of trainees in excess of the maximum number specified in such written permission,shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five hundred Emalangeni or to a period of imprisonment not exceeding six months.

## 18. Who may bind himself as an apprentice or trainee

- (1) Any person who has—
  - (a) attained the age of fifteen years;
  - (b) completed any period of compulsory education required by law;
  - (c) in the case of a trade or occupation in respect of which a scheme has been made, holds the qualifications prescribed under that scheme; and
  - (d) has been certified fit as provided in [section 19](#),may, subject to subsection (2), bind himself as an apprentice or as a trainee in any trade or occupation.
- (2) A person who is a minor shall not bind himself as an apprentice or trainee except with the consent of his parent or guardian or, if he has no parent or guardian, with the consent of the Director.
- (3) A minor who, with such consent as required by subsection (2), binds himself as an apprentice or trainee shall be bound by the contract throughout its currency notwithstanding that he may, in the meantime, have attained his majority.

## 19. Medical examination of apprentices and trainees

Every person shall, before entering into a contract, be medically examined by a medical practitioner at the expense of the employer and a medical certificate to the effect that he is medically fit to be employed on a contract shall be obtained by the employer.

## 20. Registration of contracts

- (1) Every contract made after the commencement of this Act shall be in the prescribed form.
- (2) An employer who enters into a contract with any person shall, within one month thereof, lodge with the Director, for the purposes of registration—
  - (a) the original of the contract and two copies thereof; and
  - (b) the medical certificate obtained under [section 19](#).
- (3) Any person who fails to comply with any of the provisions of subsection (2) shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five hundred Emalangeni or to a period of imprisonment not exceeding six months.
- (4) No contract made after the commencement of this Act shall be binding until it has been registered by the Director.
- (5) The Director may refuse to register any contract if, in his opinion—
  - (a) it is not in the interests of the person named therein as the apprentice or trainee; or
  - (b) it is not made in accordance with the provisions of a scheme.
- (6) In coming to a decision under subsection (5) the Director shall have regard, in addition to any other consideration, to the prospects of the person named as the apprentice or trainee obtaining employment, at the expiration of the contract, in the trade or occupation in which he seeks to bind himself as apprentice or trainee.
- (7) Any party dissatisfied with the refusal of the Director to register a contract may appeal to the Minister within thirty days from the date upon which the refusal of the Director is communicated to him and the Minister's decision thereon, after consultation with the Board, shall be final.

- (8) In every case where the Director registers a contract under this Act, he shall—
  - (a) endorse the particulars of registration on the original and both copies;
  - (b) return the original of the contract and one copy to the employer; and
  - (c) retain the other copy for his records.
- (9) The employer shall deliver the copy referred to in subsection (8)(b) to the apprentice or trainee for him to keep.

## 21. Transfer of contracts

- (1) The rights and obligations of an employer under any contract may, with the consent of the apprentice or trainee concerned and with the approval of the Director, be transferred to another employer for the remaining period of the contract.
- (2) The Director may withhold his approval under the provisions of this section if, in his opinion, the transfer is not in the interests of the apprentice or trainee.
- (3) Subject to subsection (5), no transfer of the rights and obligations of an employer under any contract of apprenticeship of traineeship shall take effect until the instrument of transfer—
  - (a) has been reduced to writing;
  - (b) has been signed by both employers affected by the transfer;
  - (c) has been signed by the apprentice or trainee, or where the apprentice or trainee is a minor by his parent or guardian, or by the Director where the apprentice or trainee has no parent or guardian;
  - (d) has been registered by the Director in the manner required by subsection (4).
- (4) The employer to whom the rights and obligations under a contract are being transferred under subsection (3) shall within one month of the date of which the instrument of transfer is signed by him, lodge the original and two copies of such instrument with the Director for registration, and any such employer who fails so to lodge such instrument shall be guilty of an offence and on conviction shall be liable to a fine of E500.00 or to imprisonment for six months.
- (5) Where under any contract an apprentice or trainee is employed by two or more persons in partnership, unless the apprentice or trainee shall otherwise elect, his contract shall not be terminated by reason only of the death or retirement of any partner, if the business of the partnership is continued by the surviving or continuing partner or partners, whether alone, or jointly with another person or persons, and the rights and obligations of the employer under such contract shall be deemed to be transferred to the person or partners continuing the business.

## 22. Termination and extension of contracts

- (1) Subject to [section 24](#) any contract may be terminated or extended—
  - (a) by mutual agreement in writing of the parties thereto, with, in the case of an apprentice or trainee who is a minor, the same consent as is requisite for binding himself as an apprentice or trainee;
  - (b) by the Director at the instance of any party thereto if he is satisfied that it is desirable so to do after having given both parties to the contract an opportunity to be heard by or make representations to him;
  - (c) by the Director at the instance of the Board.
- (2) The employer shall give notice to the Director of the termination of any contract under subsection (1)(a) and any employer who fails to give such notice within a period of one month after the date of



the termination shall be guilty of an offence and on conviction shall be liable to a fine of E500.00 or to imprisonment for six months.

- (3) The fact of termination or extension shall be endorsed by the Director upon the copy of the contract retained by him under [section 20](#).
- (4)
  - (a) Any party dissatisfied with the decision of the Director in respect of a contract may appeal to the Minister within one month from the date upon which the decision of the Director is communicated to him.
  - (b) The Minister shall consult the Board on the matter of the appeal and, in the event of his setting aside the decision of the Director he may make such direction as he considers appropriate, including a direction with regard to the payment of any wages payable to the apprentice or trainee under a contract, as he considers just, and may be recovered by the apprentice or trainee from the employer as a civil debt.
- (5) The decision of the Minister under subsection (4) shall be endorsed by the Director upon the copy of the contract retained by him under [section 20](#).
- (6) Where any employer becomes insolvent or ceases to carry on business in Swaziland, and the transfer of any of his apprentices or trainees to another employer in accordance with this Act is, for any reason, impossible or impracticable, the Director may, after enquiry, terminate the contract, and provide the apprentice or trainee with a certificate of service in such form and manner prescribed by the Board.
- (7) A contract terminated under this section shall be terminated for all purposes but without prejudice to any right of action which may have accrued before the date of termination.

## 23. Enticement of apprentice or trainee

Any person who induces or attempts to induce an apprentice or trainee to leave the service of his employer, or who employs a person whom he knows is bound by a contract to any other person shall be guilty of an offence and on conviction shall be liable to a fine of five hundred Emalangeni or to imprisonment for six months.

## 24. Probationary period

- (1) Notwithstanding the provisions of any other written law relating to employment, the first four months of every contract shall be a period of probation during, or at the expiration of which, the contract may be terminated by either party.
- (2) The employer shall give notice to the Director of the termination of any contract under the provisions of subsection (1), and any employer who fails to give such notice within a period of one month after the date of such termination shall be guilty of an offence and on conviction shall be liable to a fine of E500.00 or to imprisonment for six months.

## 25. Suspension of apprentice or trainee

- (1) If an employer is satisfied that an apprentice or trainee bound to him by a contract has committed a serious breach of the terms or conditions of such contract he may suspend the apprentice or trainee and shall, within seven days thereof, report the suspension to the Director in writing and the Director shall forthwith investigate the suspension and may confirm, set it aside or vary the terms thereof.
- (2) Where the Director sets aside the suspension of an apprentice or trainee the employer shall pay to the apprentice or trainee such wages as may have been withheld from him during the period of suspension.
- (3) Whether or not a complaint has been lodged by the employer, the Director may, when an investigation by him has revealed that the apprentice has, *prima facie*, committed a serious breach



of his contract, suspend the apprentice or trainee and when he does so shall report his action to the Board and to the employer.

- (4) Except as provided in subsection (2), no wages shall accrue to an apprentice or trainee during any period of suspension ordered under subsection (3).
- (5) Any employer who fails to report the suspension of an apprentice or trainee in accordance with the provisions of this section shall be guilty of an offence and on conviction shall be liable to a fine of five hundred Emalangeni or to imprisonment for six months.

## **26. Records to be kept by employers**

- (1) Every employer who employs an apprentice or trainee shall keep such records and other particulars as may be prescribed:

Provided that the Director may, after consultation with the Board, authorise in writing the keeping of records and particulars in some other form if they will, in his opinion, enable him to ascertain therefrom such particulars as he may require.

- (2) Every person who employs or has employed an apprentice or trainee shall retain any record made in accordance with this section for a period of three years after the date of which the contract came to an end.
- (3) Every employer who fails to keep the required records in the proper form and manner and every employer and former employer who fails to retain any record made in accordance with this section for the required period shall be guilty of an offence and on conviction shall be liable to a fine of five hundred Emalangeni or to imprisonment for six months.

## **27. Limitations in regard to method of payment and overtime**

Notwithstanding the provisions of any other law for the time being in force in Swaziland, any term of a contract of apprenticeship or traineeship or any condition of apprenticeship or traineeship which—

- (a) provides that the whole or any part of the wages of an apprentice or trainee shall be based upon the quantity of work done; or
- (b) requires an apprentice or trainee under eighteen years of age to work overtime;

shall be null and void.

## **28. Certificate of apprenticeship and traineeship**

- (1) The employer of an apprentice or trainee shall, on the satisfactory completion of the contract of apprenticeship or traineeship certify the completion to the Director in such form and manner as may be prescribed.
- (2) Where the Director is satisfied that an apprentice or trainee has satisfactorily completed his contract, he shall cause a certificate of such completion to be prepared in the prescribed form; the form shall be signed by the Director and shall be given to the apprentice or trainee by him.

## **29. Extension or remission of contract**

- (1) If during the currency of his contract, an apprentice or trainee is absent from work, other than for purposes of leave provided for in the contract or for sickness or other good cause, for a period of thirty days or more, or for a number of periods amounting in the aggregate to thirty days or more, the Director may, if he considers it expedient, order that the term of his contract be extended by the number of days on which he has been absent and the contract shall stand extended accordingly.
- (2) Where it is proved to the satisfaction of the Board that a person has undergone previous technical training relevant to the trade or occupation in which he desires to be apprenticed, the Board may

authorise the Director to reduce the period of apprenticeship to be served by such person to such lesser period as it shall determine.

- (3) Where it is proved to the satisfaction of the Board that during the period of his contract an apprentice has acquired, relevant to the trade or occupation in which he is apprenticed a degree of proficiency which would justify the reduction of the period of the apprenticeship, the Board may authorise the Director, subject to the approval and consent of the apprentice and the employer, to reduce the period of apprenticeship to be served by the apprentice to such lesser period as the Board may determine.

## **Part V – Making of training schemes etc.**

### **30. Training schemes**

- (1) The Minister may, after consultation with the Board and subject to [section 31](#), make schemes for regulating the training of apprentices or trainees in any industry, trade or occupation:

Provided that any term of any contract registered before the date such scheme becomes effective which is less advantageous than the requirement of such scheme, shall be deemed to be varied accordingly.

- (2) A scheme may, in respect of any trade or occupation to which it relates, specify—
- (a) the qualifications, including age and educational standard required for apprentices or for trainees;
  - (b) without prejudice to [section 29](#), the period of apprenticeship or traineeship;
  - (c) the practical and theoretical training which shall be provided by or at the expense of employers for their apprentices or trainees which such apprentices or trainees shall undergo and the manner in which such training shall be provided and undergone, and which shall be of a standard, where applicable, not less than that prescribed by any regulations made under [section 34\(1\)](#);
  - (d) the proficiency tests or examinations which apprentices or trainees shall, from time to time be required to undergo;
  - (e) the maximum number of ordinary working hours which apprentices or trainees may be required or permitted to work during any week or on any day;
  - (f) the days on which, the hours on any day before or after which, and the intervals during which no apprentice or trainee shall be required or permitted to work;
  - (g) the maximum period of overtime which apprentices or trainees over the age of eighteen years may be required or permitted to work on any day or during any specified period;
  - (h) the minimum number of paid holidays to be allowed to an apprentice or trainee during the currency of his contract;
  - (i) the minimum wages and conditions of employment which shall apply to apprentices and trainees;
  - (j) the minimum wages and other conditions of employment which shall apply in respect of any period during which an apprentice or trainee is unable, by reason of any condition of his contract or other specified circumstances to render service to his employer during ordinary working hours;
  - (k) any other matter which in the opinion of the Minister, after consultation with the Board, is necessary for the effective operation of the scheme.

- (3) Different conditions may be specified under this section in respect of different classes of employers, apprentices or trainees, or different industries, trades or occupations; in prescribing such different conditions, the Minister may apply any method of differentiation he may deem advisable.
- (4) A scheme may be amended by a subsequent scheme or by an order made by the Minister on the advice of the Board.

### **31. Procedures for making schemes**

- (1) Before making a scheme, the Minister shall publish in the *Gazette* and in a newspaper published and circulating in Swaziland, a notice of his intention to make a scheme, specifying a place where copies of a proposed scheme may be inspected and the date, which shall not be less than thirty days from the date of such publication, before which any objection to the proposed scheme shall be sent to the Minister.
- (2) Every objection to a proposed scheme shall be in writing and shall state—
  - (a) the specific grounds of objection; and
  - (b) the alterations (if any) to the proposed scheme which are requested by the objector.
- (3) The Minister shall consider any objection submitted to him in accordance with subsection (2) and he may, but shall not be obliged to, consider any other objection; thereafter the Minister may, after consultation with the Board—
  - (a) withdraw the proposed scheme;
  - (b) make the scheme in the terms of the proposed scheme under the provisions of subsection (1);
  - (c) make the scheme subject to such alterations to the proposed scheme as he considers necessary.
- (4) No alteration to any scheme shall be made under paragraph (c) of subsection (3) if such alteration substantially affects the proposed scheme as originally published under subsection (1).
- (5) Where the Minister makes a scheme, he shall publish it in the *Gazette* and in a newspaper published and circulating in Swaziland.

## **Part VI – Miscellaneous**

### **32. Supervision of apprentices and trainees**

- (1) Every employer of apprentices or trainees shall appoint by name or title, from among his employees —
  - (a) a person responsible for the general supervision of the training of apprentices and trainees under the provisions of this Act and any scheme of training made thereunder; and
  - (b) at each place or worksite where apprentices or trainees are employed for a period of not less than three months at a time, a journeyman who shall be responsible for the day to day guidance of the apprentices or trainees in matters related to their trade or occupation; the name or title and qualifications of the journeyman appointed under the provisions of this paragraph shall be notified by the employer to the Director in writing.
- (2) The Director may, by notice to an employer in writing, disapprove the appointment of any journeyman deemed by him not to be competent for the purposes of this section and such notice may specify the nature of the training which the Director requires the journeyman to undertake before his appointment may be approved.

- (3) Where a total of fifteen or more apprentices and trainees are employed at any one place or worksite the journeyman appointed under subsection (1) shall devote the whole of his time during normal working hours to the guidance of apprentices and trainees and where the number of employed is less than fifteen the journeyman shall devote that proportion of his time to the guidance of apprentices and trainees as the total number of such apprentices and trainees so employed bears to fifteen.
- (4) An employer who fails to make any appointment required by subsection (1) or who fails to ensure that subsection (3) is complied with shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five hundred Emalangeni or to a period of imprisonment not exceeding six months.

### 33. Disclosure of information an offence

- (1) Any member of the Board or any public officer who discloses to any person, except for the purposes of the performance of his duties or the exercise of his powers under this Act, any information in relation to the financial affairs, plant, equipment or working processes of any person, such information having been acquired in the performance of his duties or in the exercise of his powers under this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding five hundred Emalangeni or to a period of imprisonment not exceeding six months.
- (2) Nothing in this section shall apply to the disclosure of information made for the purpose of any proceedings which may be taken under this Act or for the purposes of a report of such proceedings.

### 34. Regulations

- (1) The Minister may make regulations for carrying out the purposes of this Act and, in particular, may make regulations prescribing—
  - (a) the form of contracts of apprenticeship or traineeship and the matters for which provision shall be made in such contracts;
  - (b) the manner in which educational standards may be proved;
  - (c) the returns which employers may from time to time be required to furnish to the Director and the period within which those returns shall be so furnished;
  - (d) the procedures for the registration and transfer of contracts and for the notification of the expiration or termination of such contracts;
  - (e) the form and manner in which notice of completion of apprenticeship or traineeship is to be given by employers;
  - (f) the form of certificates of completion of apprenticeship or traineeship;
  - (g) the establishment and maintenance of trade and occupation standards, including—
    - (i) the holding of tests in respect of such trades and occupations for the purpose of granting a certificate of proficiency to any person who passes any such test;
    - (ii) the circumstances wherein a certificate of apprenticeship may be related to a proficiency certificate;
  - (h) the numbers and qualifications of journeymen to be provided for the instruction of apprentices or trainees and the ratio of apprentices and trainees thereto;
  - (i) the reimbursement to members of the Board and Committees of expenses incurred by them attending meetings called under the Act;
  - (j) the circumstances in which employers may be required to establish such instructor training and as, in the Board's opinion, may be necessary to ensure the effective instruction or training of apprentices or trainees;

- (k) all or any matters which by this Act are required or permitted to be prescribed.
- (2) Different regulations may be made under the provisions of this section in respect of different classes of employers or apprentices or trainees and of different trades and occupations and in making such regulations the Minister may apply any method of differentiation he may deem advisable.

### **35. Institution of proceedings**

The Director or any Inspector of Training may institute proceedings in the name of the Director in respect of any offence under this Act and may appear and prosecute in such proceedings.

### **36. Repeal and Savings**

- (1) The Industrial Training Act, 1967, is hereby repealed.
- (2) Notwithstanding the repeal of the Industrial Training Act, 1967, every contract valid under that Act shall be deemed to be valid under this Act.