

NATIONAL ASSEMBLY

WRITTEN REPLY

QUESTION 657.

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INTERNAL QUESTION PAPER: 05/2025

657. Mr M Shikwambana (EFF) to ask the Minister of Basic Education: to ask the Minister of Basic Education:

(1) By what date will the (a) Basic Education Laws Amendment Act (Bela), Act 32 of 2024, be implemented and (b) guidelines be finalised;

(2) whether all the relevant stakeholders were consulted during the process of drafting the guidelines; if not, why not; if so, what were the inputs of the specified stakeholders on the drafted guidelines?

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Response

The President has, in terms of section 54 of the Basic Education Laws Amendment Act, 2024 (Act No. 32 of 2024) (BELA Act), proclaimed the commencement date of the BELA Act to be 24 December 2024 (as per Proclamation Notice 237 of 2024 published in Government Gazette 51836 of 24 December 2024).

The amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act have therefore commenced, and is being implemented, in full from 24 December 2024.

No regulations, norms and standards, policies and guidelines can delay implementation of the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA.

In announcing the commencement arrangements for the BELA Act on 20 December 2024, the President made it clear that the Minister of Basic Education is now tasked with leading and coordinating implementation of the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act. This includes ensuring the development of national regulations, norms and standards and policy, and the coordination of functions between all key role-players in our schooling system, required to support the implementation of the BELA Act.

Prior to and since the commencement of the BELA Act, the Department of Basic Education (DBE) has made good progress in supporting the basic education sector to give effect to the BELA Act. For example, the DBE has, during the 2024 school year, completed the training of officials in Provincial Education Departments and education districts whose roles are directly impacted by the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act. This foundational training ensures that provincial and district teams are well-equipped to support schools to give meaningful effect to the South African Schools Act and the Employment of Educators Act, both as amended by the BELA Act. Since the start of the 2025 school year, these trained officials are guiding school principals and School Governing Bodies through tailored training sessions, supported by oversight from the DBE. This approach is intended to ensure consistency and readiness across all levels.

Furthermore, in terms of ongoing responsibilities, the DBE has structured implementation tasks across relevant units at both provincial and district levels. Each unit is aligned with specific aspects of the South African Schools Act and the Employment of Educators Act, both as amended by the BELA Act, that are relevant to its operational mandate. This targeted approach will enable focused execution and monitoring of the South African Schools Act and the Employment of Educators Act,

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both as amended by the BELA Act, to ensure that such legislation is implemented lawfully and in the best interests of learners.

To further ensure that the South African Schools Act and the Employment of Educators Act, both as amended by the BELA Act, are implemented properly in the best interests of learners, the DBE has embarked on an ambitious drive to develop and introduce national policy, national norms and standards and national regulations that will enable and empower all partners in basic education – including the National Government, Provincial Education Departments and public schools represented through their School Governing Bodies – to give meaningful effect to this important piece of legislation.

It must be noted, however, that the development and introduction of the required national regulations, norms and standards and policy does not in any way delay implementation of the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act (which amendments came into force and effect on 24 December 2024).

The development of national regulations, norms and standards and policy takes time and must be undertaken in accordance with the substantive and procedural requirements set out in the relevant empowering legislation, including the important requirements concerning public consultations on the proposed national regulations, norms and standards and policy. As indicated publicly on 21 December 2024, the DBE is working towards publishing these for public comment by the end of June 2025.

Introducing a new suite of regulations, norms and standards and policy for implementation should as far as possible be undertaken at the beginning of a school year so as not to disrupt existing operations at a provincial level and at a school level during a school year. Therefore, the introduction of the national regulations, norms and standards and policy required to support implementation of the South African Schools Act and the Employment of Educators Act, both as amended by the BELA Act, will not occur during the 2025 school year. The DBE will, however, work tirelessly towards these being introduced in time for the start of the 2026 school year.

It must be appreciated that requiring the immediate implementation of a new but wide-reaching piece of legislation like the BELA Act (which, as indicated, amends the South African Schools Act and the Employment of Educators Act) days before the start of a new school year requires all key stakeholders in the basic education sector to have clarity on what is expected of them to give practical and meaningful effect to that legislation.

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To this end, various stakeholders have expressed an urgent need for interim guidance on how to give effect to certain amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act pending the development and introduction of national regulations, norms and standards and policy. This need has been expressed by various stakeholders in different ways, including via correspondence, in the media, at statutory meetings, through parliamentary engagements and as part of public dialogues and campaigns.

Pending the development of the required national regulations, norms and standards and policy, it is therefore necessary to develop and issue guidelines to support education departments, public schools and parents in giving meaningful and consistent effect to the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act.

A draft set of these guidelines was developed on an urgent basis by the Ministry team and shared with the DBE for consideration in early January 2025. The DBE subsequently circulated the first draft of these guidelines to Provincial Education Departments, educator unions, School Governing Body associations, principals associations and home education stakeholders in January 2025 for urgent comment. The period for comment was subsequently extended to 7 February 2025. Thereafter, the DBE and the Ministry updated the draft guidelines after considering all inputs received from various stakeholders and circulated the revised draft to provinces for final review.

The revised draft of these guidelines has been considered by the Head of Education Departments Committee (HEDCOM) and will be tabled before the Council for Education Ministers (CEM) for discussion before being issued to the sector.

During the various consultations on the draft guidelines, the following was noted:

- The Minister of Basic Education is empowered by law to issue non-binding guidelines as an advisory tool to support and coordinate the sector in its implementation of basic education legislation;
- All MECs for Education and Provincial Education Departments support the need for the regulations to be developed as soon as possible and do not wish for the development of guidelines to delay development of regulations;
- Guidelines cannot create obligations or rights that go beyond what the South Africa Schools Act and the Employment of Educators Act, both as amended by the BELA Act, provide nor should they interfere with or circumvent the scope of powers and functions conferred by such legislation on the relevant functionaries;

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- Many provinces and educator unions elected not to provide substantive inputs on the draft guidelines;
- Pressing and legitimate concerns were raised by certain stakeholders, including various home education stakeholders, that can be addressed in the interim through guidelines; and
- Regrettably, discussions regarding implementation of the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act continue to be weaponised for political reasons. This undermines efforts to ensure the smooth implementation of these amendments in the best interests of learners.

The main purpose of the guidelines in question is to prevent amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act from being implemented differently in different provinces or in a manner that is not consistent with the objectives and requirements of the Constitution, the South African Schools Act and the Employment of Educators Act, as well as applicable administrative justice law (including the Promotion of Administrative Justice Act (PAJA)) and applicable case law.

In particular, a lack of legal clarity in respect of certain amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act may disrupt or undermine the carefully balanced set of powers and functions conferred by law on the National Government, Provincial Education Departments and public schools represented through their School Governing Bodies, or otherwise have an adverse impact on the best interests of learners. This is clear if we consider all the litigation that has occurred between provincial governments and public schools since the introduction of the South African Schools Act.

The draft guidelines are intended only to offer non-binding guidance on a proper interpretation of certain amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act that is consistent with the Constitution, applicable basic education legislation (including the directive principles in section 4 of the National Education Policy Act, together with the South African Schools Act and the Employment of Educators Act), applicable administrative justice law (including the PAJA) and applicable case law.

The draft guidelines are also intended to support training and compliance efforts, enabling schools and education departments to align their policies with legislative requirements. In turn, this will reduce the risk of legal disputes arising.

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Any functionary that exercises their powers and discharges their functions in terms of the South African Schools Act and the Employment of Educators Act, both as amended by the BELA Act, in a manner that does not align with a proper interpretation of applicable basic education legislation, administrative justice law (including the PAJA) and case law runs the risk of having their decision-making legally challenged. The guidelines serve as an advisory tool to assist functionaries to mitigate this risk in a coordinated manner.

Functionaries always remain responsible for exercising their respective powers and discharging their respective functions in accordance with applicable law, including the legislation and case law referred to above, whether they apply the guidelines or not. Furthermore, the guidelines are not intended to create obligations or rights that go beyond what the South Africa Schools Act and the Employment of Educators Act, both as amended by the BELA Act, provide nor are they intended to interfere with or circumvent the scope of powers and functions conferred by such legislation on the relevant functionaries.

Finally, the development and issuing of the guidelines does not in any way delay implementation of the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act (which amendments came into force and effect on 24 December 2024). In fact, the guidelines are a tool intended to facilitate the timeous implementation of these amendments. Furthermore, the development and issuing of the guidelines does not in any way delay development of the required national regulations, norms and standards and policies.

The implementation of the amendments to the South African Schools Act and the Employment of Educators Act introduced by the BELA Act must always have the best interests of all 13.5 million learners at its centre.