



# LESOTHO Government Gazette

## EXTRAORDINARY

Vol. XLIX

Tuesday- 27th January, 2004

No.7

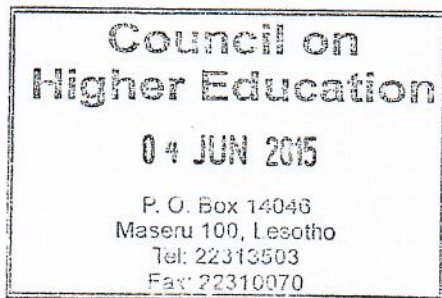
### CONTENTS

No.

Page

#### ACT

1	Higher Education Act, 2004 .....	59
---	----------------------------------	----



Published by the Authority of His Majesty the King  
Price: M15.00

---

ACT NO. 1 OF 2004  
**HIGHER EDUCATION ACT, 2004**  
**ARRANGEMENT OF SECTIONS**

**Section**

**PART I – PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Determination of higher education policy

**PART II – THE COUNCIL ON HIGHER EDUCATION (CHE)**

4. Establishment of the CHE
5. Functions of the CHE
6. Composition of the CHE
7. Terms of office
8. Vacation of office
9. Meetings of the CHE and committees
10. Executive manager and employees of the CHE
11. Executive committee of the CHE
12. Information to be provided to the CHE
13. Quality promotion and quality assurance functions of the CHE
14. Funds of the CHE

15. Remuneration and allowances of members of the CHE and committees
16. Accounts and audit
17. Annual report

### **PART III –HIGHER EDUCATION PUBLIC INSTITUTIONS**

18. Establishment of higher education public institutions
19. Consequences of declaration as higher education public institutions
20. Merger of higher education public institutions or their subdivisions
21. Closure of a higher education public institutions

### **PART IV – GOVERNANCE OF HIGHER EDUCATION PUBLIC INSTITUTIONS**

22. Institutional governance structures
23. Council of a higher education public institution
24. Senate of a higher education public institution
25. Committees of council and senate
26. Vice-Chancellor of a higher education public institution
27. Institutional statutes and institutional rules
28. Appointment and conditions of service of employees
29. Students' representative council
30. Disciplinary measures

- 
31. Admission to a higher education public institution
  32. Co-operation between higher education public institutions

**PART V – FUNDING OF HIGHER EDUCATION PUBLIC INSTITUTIONS**

33. Allocation of Funds by Minister
34. Funds of higher education public institutions
35. Keeping of records
36. Action on failure of council to comply with this Act

**PART V –HIGHER EDUCATION PRIVATE INSTITUTIONS**

37. Registration of higher education private institutions
38. Display of the certificate of registration
39. Books and audit
40. Closure or conversion of higher education private institution
41. Amendment of registration
42. Conditions for registration
43. Cancellation of registration
44. Appeal to Minister

**PART VII- INDEPENDENT EVALUATION**

45. Independent evaluation
46. Cases where independent evaluation may be necessary
47. Functions of an independent assessor

**PART VIII – GENERAL AND TRANSITIONAL PROVISIONS**

- 48. Name change of higher education public institution
- 49. Offences
- 50. Limitation of liability
- 51. Delegation of powers
- 52. Application of Act
- 53. Regulations

## ACT NO. 1 OF 2004

**HIGHER EDUCATION ACT, 2004**

**An Act to provide for the regulation of higher education in Lesotho; for the establishment, composition and functions of a Council for Higher Education; for the governance and funding of higher education public institutions; for the registration of higher education private institutions; for quality assurance and quality promotion in higher education, and for incidental matters.**

**ENACTED by the parliament of Lesotho**

**PART I – PRELIMINARY****Short title and commencement**

1. This Act may be cited as the Higher Education Act, 2004 and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. In this Act, unless the context otherwise requires –

**“academic employee”** means any person appointed to teach or to do research at a public higher education institution;

**“accreditation”** means the process leading to the issuance of a certificate of accredited status by an educational institution or a recognised local or international body attesting to the quality or standards of one or more educational programmes and to the effectiveness of the management and operations of the higher education institution offering the programme;

**“COSC”** means the Cambridge Overseas School Certificate, or its equivalent certified by the Examinations Council of Lesotho or any other recognised national body;

**“CHE”** means the Council on Higher Education established by section 4(1);

**“council”** means the governing body of a higher education public institution;

**“employee”** means any person employed at a higher education public institution;

**“executive manager”** means the chief executive officer of the CHE appointed under section 10;

**“higher education”** means a learning programme leading to qualifications higher than COSC or its equivalent and whose accreditation has been approved by the CHE under section 5(3) (c);

**“higher education private institution”** means an institution registered as such under section 37;

**“higher education public institution”** means a higher education institution that is established, deemed to be established or declared as a higher education public institution under section 18;

**“institutional rules”** means any rules made by the council under section 27;

**“institutional statute”** means a statute made by the council under section 27;

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

**“prescribed”** means prescribed by regulations;

**“Registrar”** means a person designated as such under section 37(1);

**“this Act”** includes the regulations made under this Act;

**“university”** means a university established as such by an Act of Parliament or declared as such under section 18;

**“Vice Chancellor”** means the chief executive and accounting officer of a university and includes a rector;

### **Determination of higher education policy**

3. (1) The Minister shall -
- (a) determine policy on higher education ;
  - (b) publish such policy by notice in the Gazette; and
  - (c) table such policy before Parliament.
- (2) The policy so determined shall be binding on all higher education institutions in Lesotho.

## **PART II – THE COUNCIL ON HIGHER EDUCATION**

### **Establishment of the CHE**

4. (1) There is established the CHE as a body corporate with perpetual succession and a common seal.

(2) The CHE shall be capable of suing and being sued, owning and disposing of property, entering into contracts, borrowing and lending out money with the approval of the Minister in consultation with the Minister of Finance and performing any other functions legally permissible under this Act.

### **Functions of the CHE**

5. (1) The CHE shall –
- (a) monitor the implementation of the policy on higher education institutions;
  - (b) publish information regarding developments in higher education, on a regular basis;



- (c) promote the access of students to higher education institutions; and
- (d) perform any other function that is conferred on or assigned to it in terms of this Act or delegated or assigned to it by the Minister.

(2) The CHE may advise the Minister on any aspect of higher education on its own initiative, or when so requested by the Minister.

(3) The CHE shall, through the Higher Education Quality Assurance Committee established under section 13(1) –

- (a) promote quality assurance in higher education;
- (b) audit the quality assurance mechanisms of higher education institutions;
- (c) accredit programmes and issue a certificate of accreditation of higher education; and
- (d) monitor and evaluate the performance of academic programmes and higher education institutions.

(4) The advice contemplated in subsection (2) may include advice on –

- (a) quality promotion and quality assurance;
- (b) teaching and research;
- (c) the structure and planning of the higher education system;
- (d) a mechanism for the allocation of public funds;
- (e) the appropriate incentives or imposition of sanctions such as, diminution or withdrawal of government funding, downgrading, termination of a programme or even closure of an institution;

- (f) student bursaries;
- (g) governance of the higher education institutions and higher education systems.

(5) The advice of the CHE shall not be binding on the Minister but where the Minister rejects the advice, the Minister shall state reasons for doing so.

(6) The Minister may act without the advice of the CHE if the matter is urgent or if the CHE fails to provide the advice within two months and in such a case, the Minister shall notify the CHE of such action.

#### Composition of the CHE

6. (1) The CHE shall consist of –
- (a) a chairperson appointed by the Head of State on the advice of the Prime Minister;
  - (b) eight members appointed by the Minister, five of whom shall be appointed in terms of section 6(3) and the remaining three shall be appointed in terms of section 6(4);
  - (c) the Principal Secretary responsible for the Ministry of Education;
  - (d) the Principal Secretary responsible for the Ministry of Finance and Planning; and

(2) The Executive Manager shall be an *ex-officio* member of secretary to the CHE.

(3) The selection of the chairperson and the five members shall be undertaken in such a manner as to ensure, as far as practicable, that –

- (a) the functions of the CHE in terms of this Act are performed according to the highest professional standards;
- (b) the membership, taken as a whole shall –
  - (i) be broadly representative of higher education system in Lesotho; and
  - (ii) have deep knowledge and understanding of the higher education and research;
  - (iii) be committed to excellence in higher education.

(4) The selection of the three members shall be from among persons who serve the interest of the public as a whole and who possess experience in public affairs and such other qualities of mind as to enable them to discharge their duties.

(5) The Minister shall cause the names of the members to be published by notice in the Gazette.

#### **Terms of office**

7. (1) The chairperson of the CHE shall hold office for a period of five years.

(2) A member of the CHE shall hold office for a period of four years.

(3) A member, including the chairperson, may not serve for more than two consecutive terms of office.

#### **Vacation of office**

8. (1) A person shall cease to be a member of the CHE, if he or she –

- 
- (a) resigns by giving a written notice to the chairperson, or in the case of the chairperson, to the Minister;
  - (b) is absent from three consecutive meetings of the CHE without the leave of the chairperson or, in the case of chairperson, without the leave of the executive committee of the CHE;
  - (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine;
  - (d) is declared unfit to attend his personal affairs by a court of law.
- (2)
- (a) If a member vacates his or her office, the vacancy may be filled by the Minister in terms of section 6(1)(b);
  - (b) If a chairman vacates his or her office the vacancy may be filled by the Head of State in terms of section 6(1)(a).

### **Meetings of the CHE and committee**

9. (1) Meetings of the CHE and its committees shall be held at such times and places as may be determined by the chairperson concerned, but the chairperson shall convene a meeting at least twice a year or, if asked to do so in writing by at least one third of the members of the CHE, or a committee.

(2) Whenever the chairperson is absent from any meeting of the CHE or a committee, the members present shall elect a person from among themselves to preside at that meeting.

(3) The CHE may make rules relating to the procedure at its meetings and its committees, including the quorum for such meeting, the

procedure for decision-making and any other matter necessary or expedient for the performance of its functions.

(4) The proceedings at a meeting of the CHE or at a committee shall not be invalid by reason that a vacancy exists in the CHE or such committee, at the time of the meeting.

#### **Executive manager and employees of the CHE**

10. (1) The CHE shall appoint an executive manager, who shall –
- (a) be the chief executive and the Secretary of the executive committee of the CHE;
  - (b) be responsible for management of all the affairs of the CHE;
  - (c) supervise the employees of the CHE;
  - (d) account for the assets and liabilities of the CHE;  
and
  - (e) prepare annual financial statements.

(2) The CHE may appoint such other employees as it thinks necessary to assist the executive manager.

(3) The CHE shall, with the concurrence of the Minister, determine the conditions of service of the executive manager and other employees of the CHE.

#### **Executive Committee of the CHE**

11. (1) The CHE shall establish an executive committee and determine its functions.

- (2) The executive committee shall consist of –
- (a) the chairperson of the CHE;

- (b) four members of the CHE, including the Principal Secretary of the Ministry of Education; and
- (c) the executive manager who shall also be the secretary to the executive committee.

(3) A decision of the executive committee shall be regarded as a decision of the CHE, unless such decision is revoked at the next meeting of the CHE.

(4) Anything done in consequence of a decision of the executive committee before its revocation shall not be invalid by reason only of the fact that the decision is revoked by the CHE under subsection (3).

#### **Information to be provided to the CHE**

12. (1) Every higher education institution operating in Lesotho shall provide the CHE with such information as the CHE may reasonably require to enable it to perform its functions and exercise its powers.

(2) For the purpose of subsection (1), it shall be the duty of the Vice Chancellor concerned to provide the information.

(3) A Vice Chancellor who negligently or deliberately fails to provide the information required, or who falsifies or misrepresents information commits an offence and is liable on conviction to a fine of not less than twenty thousand Maloti or to imprisonment not less than five years, or both.

#### **Quality promotion and quality assurance functions of CHE**

13. (1) The CHE shall establish the Higher Education Quality Assurance Committee to perform the quality promotion and quality assurance functions of the CHE in terms of this Act.

(2) The Higher Education Quality Assurance Committee shall consist of –

- (a) a chairperson appointed by the Minister
- (b) the Chief Education Officer Tertiary who shall also be the secretary to the quality promotion and quality assurance committee;
- (c) the Chief Education Officer Secondary;
- (d) the Chief Education Officer Primary;
- (e) not more than three representatives of higher education public institutions and not more than two representatives of higher education private institutions;
- (f) the Director of the Technical and Vocational Training Division;
- (g) five members appointed by the CHE and these should have knowledge and understanding of higher education.

(3) The Higher Education Quality Assurance Committee may, with the concurrence of the CHE, delegate any quality promotion and quality assurance functions to other appropriate bodies capable of performing such functions.

- (4) The delegation under subsection (3) shall –
- (a) be in writing;
  - (b) be subject to such conditions as the Higher Education Quality Assurance Committee may determine; and
  - (c) not prevent the performance of such functions by the Higher Education Quality Assurance Committee.

(5) The CHE may charge fees for any service rendered by the Higher Education Quality Assurance Committee to any person, institution or department of the Government.

(6) The Minister may make regulations to give effect to quality promotion and quality assurance in terms of this Act.

### **Funds of the CHE**

14. (1) The funds of the CHE shall consist of moneys appropriated by the Parliament.

(2) The CHE may also receive funds from other legitimate sources, including donations, contributions or fees for services rendered.

(3) The CHE shall –

(a) submit, to the Minister for approval, an estimate of its income and expenditure for the following financial year six months before the commencement of the financial year; and

(b) not incur any expenditure which exceeds the total amount approved in terms of paragraph (a) without the prior approval of the Minister.

(4) If the Minister does not approve the CHE's statement of its estimated income and expenditure, the Minister shall require the CHE to provide him or her with a revised statement within a specified period.

(5) The CHE shall use its funds in accordance with the approved statement referred to in subsection (3), and any unexpended balance shall be carried forward as a credit to the following financial year.

(6) Subject to subsection (5), the CHE shall be entitled to invest any portion of its funds in such a manner as the Minister may approve.



---

**Remuneration and allowances of members of the CHE and committees**

15. (1) The chairperson and every other member of the CHE and the executive committee of the CHE, shall, in respect of services rendered by him or her in connection with the affairs of the CHE or a committee, receive –

- (a) such travelling, subsistence and any other allowances; and
- (b) in the case of the chairperson of the CHE, such additional remuneration,

as the Minister may from time to time in consultation with the Minister of Finance determine.

(2) A member who is in full time employment with the Government of Lesotho shall not receive a sitting allowance.

**Accounts and audit**

16. (1) The CHE shall keep proper books and records of account for its income, expenditure and assets.

(2) The books of accounts and financial statements of the CHE shall be audited at the end of each financial year by the Auditor-General.

**Annual report**

17. (1) The CHE shall, within three months after the end of each financial year, submit a written report to the Minister on the performance of its mandate during the previous financial year.

(2) The Minister shall table copies of the report before Parliament as soon as reasonably practicable.

### **PART III -HIGHER EDUCATION PUBLIC INSTITUTIONS**

#### **Establishment of higher education public institutions**

18. (1) The Minister may, after consulting the CHE and by notice published in the Gazette and from the moneys appropriated for this purpose by Parliament, establish a university, polytechnic or college.

(2) Notwithstanding subsection (1), a university, polytechnic or college may also be established by an Act of Parliament and, when so established, it shall be deemed to be a higher education public institution established under this Act.

(3) Any higher education public institution which already exists at the coming into operation of this Act shall be deemed to be a higher education public institution established under this Act.

(4) The Minister may, after consulting the CHE and by notice published in the Gazette, declare any institution existing and providing higher education on the date of commencement of this Act as a university, polytechnic or college.

(5) The regulations made under this Act shall prescribe the procedure to be followed for the purpose of subsection (4).

(6) The notice contemplated in subsections (1) and (4) shall determine –

- (a) the date of establishment of the institution;
- (b) the type and name of the institution; and
- (c) the physical location and official address.

(7) Every higher education public institution established, deemed to have been established or declared as a higher education public institution under this Act, shall be a body corporate with perpetual succession and a common seal.

(8) Nothing contained in this Act or any other law may be regarded as obliging the Minister to declare an education institution in terms of this section.

(9) A higher education public institution shall not, without the concurrence of the Minister, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person real right therein or servitude thereon.

#### **Consequences of declaration as higher education public institution**

19. (1) From the date determined in terms of section 18(6) –

- (a) the education institution shall be a higher education public institution;
- (b) the assets, liabilities, rights and obligations of the education institution shall devolve upon the higher education public institution;
- (c) any agreement lawfully entered into by or on behalf of the educational institution shall be deemed to have been concluded by the higher education public institution.

(2) Immovable property devolving upon the higher education public institution in terms of subsection (1)(b) shall be transferred to such institution without payment of transfer duty, stamp duty or other costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

(3) The Registrar of Deeds shall, on submission of the title deed and on application by the higher education public institution, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer.

(4) The declaration of an education institution as a higher education public institution in terms of section 18(4) shall not affect anything lawfully done by the education institution prior to the declaration.

(5) All funds which, immediately prior to the date determined in terms of section 18(6) were vested in an education institution by virtue of a trust, donation or bequest shall be applied by the higher education public institution in accordance with the trust, donation or bequest, as the case may be.

#### **Merger of higher education public institution or their sub-divisions**

20. (1) Subject to sub-section (2), the Minister may, after consulting the CHE and by notice published in the Gazette, merge two or more higher education public institutions, or merge a sub-division of a higher education institution with another higher education public institution.

(2) The Minister shall –

- (a) give a written notice of the intention to merge;
- (b) publish a notice giving reasons for the proposed merger in at least one local newspaper;
- (c) give the councils of the higher education public institutions concerned and any other interested person an opportunity to make representations within at least 45 days of a date of the notice referred to in paragraph (b); and
- (d) consider such representations, before taking a decision.

(3) A higher education public institution resulting from the merger of two or more higher education public institutions shall be deemed to be a higher education public institution established under this Act.

(4) Where a sub-division of a higher education public institution is merged with another higher education public institution, the assets, liabilities, rights and obligations of the sub-division concerned devolve upon the higher education public institution with which it has merged in the manner agreed to by the councils of the higher education

public institutions or failing such agreement, in a manner determined by the Minister after consulting such councils.

#### **Closure of higher education public institution**

21. (1) The Minister may, after consulting the CHE and by notice published in the Gazette, close a higher education public institution.

(2) On such closure, all assets and liabilities of the higher education public institution shall be dealt with by the Minister in accordance with the law and any assets remaining after payment of all liabilities shall vest in the Government of Lesotho.

(3) Section 19(2) shall apply with the modifications to any closure.

### **PART IV – GOVERNANCE OF HIGHER EDUCATION PUBLIC INSTITUTIONS**

#### **Institutional governance structure**

22. (1) Every higher education public institution shall appoint a chancellor as its titular head.

(2) Every higher education public institution shall establish the following structures and offices –

- (a) a council;
- (b) a senate;
- (c) a vice – chancellor or rector;
- (d) a deputy vice-chancellor or deputy rector;
- (e) a registrar;
- (f) a students' representative council;

- (g) such other structures and offices as may be provided for by the institutional statute or an Act of Parliament.

### **Council of a higher education public institution**

23. (1) A council established under section 22(2)(a) (in this Act referred to as "the council") shall be the supreme governing body of the higher education public institution and shall govern it subject to this Act, any other law and the institutional statute.

(2) At least sixty per cent of the members of a council shall be persons, who are not employed by, or students of the higher education public institution concerned and to that end, the council shall propose the appointment of additional persons and submit their names to the CHE for approval.

(3) The CHE shall not be obliged to accept the names of persons referred to in sub-section (2) but shall give reasons if the proposal of the council is not accepted.

(4) The members of the council shall –

- (a) be persons of integrity and shall have adequate knowledge and experience relevant to the higher education systems; and
- (b) participate in the deliberations of the council solely in the best interests of the higher education public institution concerned.

### **Senate of a higher education public institution**

24. (1) A senate established under section 22(2)(b) of a higher education public institution shall be accountable to the council for the academic and research functions of the higher education public institution and shall perform such other functions as may be delegated or assigned to it by the council by the institutional statute or a resolution of the council.

(2) The majority of members of the senate shall be full-time academic employees of a higher education public institution concerned.

**Committees of council and senate**

25. (1) The council and the senate may each establish committees to perform any of their functions and may appoint persons, who are not members of the council or the senate, as the case may be, as members of such committees.

(2) The council and the senate shall not be divested and shall be responsible for the performance of any function delegated or assigned to a committee under this section.

(3) The council and the senate of the higher education public institution may jointly nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.

(4) The composition, functions, procedures at meetings and dissolution of a committee and a joint committee shall be determined by an institutional statute, rules or an Act of Parliament.

**Vice-Chancellor of a higher public education institution**

26. (1) The vice-chancellor of a higher education public institution shall be responsible for the management and administration of the higher education public institution.

(2) The manner of appointment of vice-chancellor and deputy vice-chancellor shall be determined by an institutional statute or an Act of Parliament.

(3) The deputy vice-chancellor of a higher education public institution shall perform such functions as shall be specified in institutional statutes, an Act of Parliament, or which shall be assigned to him or her by the vice - chancellor.

**Institutional statutes and institutional rules**

27. (1) The Council may make an institutional statute, subject to sub-section (2), to give effect to any law relating to the higher education public institution and to promote the effective management of the institution in respect of matters not expressly prescribed by any law and

may make institutional rules to give effect to the institutional statute or statutes.

(2) Any institutional statute may be submitted to the Minister for approval, and if so approved, shall be published in the Gazette.

(3) The Minister shall table any institutional statute made under this section before Parliament as soon as reasonably practicable, before or after it has been published in the Gazette.

(4) The Minister shall make a standard institutional statute, which shall apply to every higher education public institution that has not made an institutional statute until such time as the council of such a higher education public institution makes its own institutional statute under this section.

#### **Appointment and conditions of service of employees**

28. (1) The council shall appoint the employees of the higher education public institution and determine their conditions of service, disciplinary provisions, privileges and functions, subject to applicable labour law.

(2) The council shall not discriminate in the appointment of persons to the higher education public institution on the ground of race, nationality, gender, religion or political affiliation.

#### **Students' representative council**

29. The establishment and composition, manner of election, term of office, functions and privileges of the students' representative council of a higher education public institution shall be determined by an institutional statute.

#### **Disciplinary measures**

30. Every student and employee of a higher education public institution shall be subject to such disciplinary measures and procedures as may be determined by an institutional statute.



**Admission to a higher education public institution**

31. (1) Subject to this Act, the senate of the higher education public institution shall determine the admission policy of the higher education public institution.

(2) The admission policy shall not discriminate with respect to admission of persons to the higher education public institution on the ground of race, nationality, gender, religion or political affiliation.

(3) The admission policy shall be a public document available on request.

(4) The senate may, with the approval of the Council, determine –

- (a) entrance requirements in respect of particular higher education programmes;
- (b) the number of students who may be admitted for a particular higher education programme and the manner of selection; and
- (c) the minimum requirements for readmission to study at the public higher education institution concerned.

**Co-operation among higher education public institutions**

32. (1) A higher education public institution may co-operate with another in any manner to achieve the optimal utilisation of resources and the performance of their functions.

(2) A higher education public institution may establish sub-regional and international co-operation arrangements and apply to the Minister to support such co-operation as a mechanism to promote excellence.

---

## **PART V – FUNDING OF HIGHER EDUCATION PUBLIC INSTITUTIONS**

### **Allocation of funds by the Minister**

33. (1) The Minister shall, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of higher education public institutions.

(2) The Minister shall, subject to the policy determined in terms of sub-section (1), allocate public funds to higher education public institutions on a fair and transparent basis.

(3) The Minister may, subject to the policy determined in terms of sub-section (1), impose –

- (a) any reasonable condition in respect of an allocation contemplated in sub-section (2); and
- (b) different conditions in respect of different higher education public institutions, different instructional Programmes or different allocations, if there is a reasonable basis for such differentiation.

### **Funds of higher education public institutions**

34. The funds of higher education public institution shall consist of –

- (a) funds allocated by the Minister in terms of section 33;
- (b) any donations or contributions received by the institution;
- (c) money raised by the institutions;
- (d) money raised by means of loans;
- (e) income derived from investments;

- (f) money received for services rendered to any other institution or person;
- (g) money payable by students for higher education programmes provided by the institution;
- (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
- (i) money received from any other legal or legitimate source.

#### **Keeping of records and books of accounts**

35. (1) The council shall —

- (a) in the manner in which the Minister may determine, keep records of all its proceedings; and
- (b) in accordance with generally accepted accounting principles and with the international accounting standards keep, complete accounting records of all assets, liabilities, income and expenditure and any other financial transactions of the higher education public institution as a whole, of its substructures and of other bodies operating under its auspices.

(2) The council shall, in respect of the preceding year and by a date or dates and in the manner determined by the Minister, provide the Minister with —

- (a) a report on the overall governance of the higher education public institution;
- (b) a duly audited statement of income and expenditure; and
- (c) a balance sheet and cash flow statement.

**Action on failure of council to comply with this Act**

36. (1) If a council fails to comply with any provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution, or with any condition subject to which any such allocation is paid to such an institution, the Minister may require the council to comply with the provision or condition within a specified period.

(2) If the council thereafter fails to comply with the provision or condition, the Minister may withhold payment of any portion of any allocation appropriated by Parliament in respect of the higher education public institution concerned.

(3) Before taking action under sub-section (2), the Minister shall give the council a reasonable opportunity to make representations and consider the representations.

(4) If the Minister acts under sub-section (2), a report regarding the action shall be tabled in Parliament by the Minister as soon as reasonably practicable after the action.

**PART VI – HIGHER EDUCATION PRIVATE INSTITUTIONS****Registration of higher education private institutions**

37. (1) For the purposes of this section –

“person” includes a higher education private institution.

(2) The Principal Secretary for Education shall designate an employee in the Ministry of Education to perform the functions of the Registrar in terms of this Act.

(3) The Principal Secretary may designate any other employee of the Ministry of Education to assist the Registrar in the performance of his or her functions in terms of this Act.

(4) No person shall provide higher education unless the institution is registered as a private higher education institution by the Registrar in terms of this Act.

(5) All existing higher education private institutions shall, at the coming into operation of this Act, register the institution with the Registrar.

(6) An application for registration to operate higher education private institution shall be made to the Registrar in a manner determined by the Registrar and shall be accompanied by a prescribed fee.

(7) The Registrar, shall in consultation with the CHE, register an institution as a higher education private institution if the Registrar has reason to believe that the applicant –

- (a) is financially capable of satisfying its obligations to prospective students and is accredited by the Qualifications Authority;
- (b) with regard to all of its higher education programmes shall –
  - (i) maintain acceptable standards that are not inferior to standards at a comparable higher education public institution, which may require producing certificates of accreditation from recognized local or international bodies;
  - (ii) have appropriate quality assurance systems in place; and
  - (iii) comply with any other reasonable requirements determined by the Registrar.
- (c) has an adequate and appropriate governance and management structure to achieve its goals and objectives, subject to the approval of the Minister.

(8) The Registrar may require further information, particulars and documents in support of any application for registration.

(9) If the Registrar decides –

(a) to grant the application, he or she shall –

- (i) enter the applicant's name in the appropriate register of higher education private institutions;
- (ii) issue a certificate of registration stating the terms of such registration;
- (iii) provide the certificate to the applicant; and
- (iv) as soon as practicable after the decision, publish the certificate of registration in the Gazette.

(b) not to grant the application, he or she shall advise the applicant in writing of the decision and provide the applicant with written reasons for his or her decision.

(10) Notwithstanding subsection (7), the Registrar may, in consultation with the CHE, conditionally register an applicant who does not fulfil the requirements for registration, if the Registrar believes that the applicant will be able to fulfil the relevant requirements within a period not exceeding three months.

(11) If the Registrar conditionally registers an applicant under subsection (10), he or she shall –

- (a) determine the period within which the applicant shall satisfy the requirements for registration;
- (b) enter the applicant's name in the appropriate register of higher education private institutions;

- (c) issue a certificate of conditional registration stating the terms and the duration of such registration;
- (d) provide the certificate of conditional registration to the applicant; and
- (e) as soon as practicable after the decision, publish the certificate of conditional registration in the Gazette.

(12) The Registrar may, on good cause shown, extend the period referred to in subsection (11)(a).

(13) If, on expiry of the period referred to in subsection (11)(a) or any extension thereof, the applicant –

- (a) satisfies the requirements for registration specified by the registrar, the registrar shall register the applicant in accordance with subsection (7);
- (b) fails to satisfy the requirements for registration specified by the registrar the applicant's conditional registration lapses.

(14) Any person may, free of charge inspect –

- (a) the register of higher education private institutions; and
- (b) the auditor's report provided in terms of section 39.

(15) The Registrar shall provide a certified copy of, or extract from, any of the documents referred to in subsection (14) to any person on payment of a prescribed fee.

#### **Display of the certificate of registration**

38. (1) A higher education private institution shall conspicuously display –

- (a) its certificate of registration or conditional registration or a certified copy thereof on its premises; and
- (b) its registration number and an indication that it is registered or conditionally registered on all its official documents.

(2) If the Registrar has cancelled the registration or conditional registration of a higher education private institution under section 43, the higher education private institution shall return the original certificate of registration or conditional registration to the registrar within 14 days from the date of cancellation.

#### **Books and audit**

39. (1) Every higher education private institution shall, in accordance with generally accepted accounting principles and in compliance with the international accounting standards –

- (a) keep books and records of income, expenditure, assets and liabilities;
- (b) prepare financial statements within three months of the end of the financial year, including at least –
  - (i) a statement of income and expenditure, for the previous year;
  - (ii) a balance sheet as at the end of the previous year; and
  - (iii) any other information the registrar may reasonably require.

(2) Every higher education private institution shall, within the period determined by the registrar –

- (a) ensure an annual audit of its books;



- (b) provide the registrar with a certified copy of the auditor's report in respect of the financial statement referred to in subsection (1); and
- (c) provide the registrar with any, additional information, particulars or documents in the manner determined by the registrar.

(3) A higher education private institution which fails to comply with the requirements of subsections (1) and (2) commits an offence and is liable on conviction to a fine not less than M50,000.00.

#### **Closure or conversion of a higher education private institution**

40. (1) Where the Minister is of the opinion that a higher education private institution is undergoing a management or financial crisis the Minister, after consulting the CHE, may close down or convert such a private higher education institution into a public one.

(2) On such closure, all assets and liabilities of the institution shall be dealt with by the Minister in accordance with the law.

#### **Amendment of registration**

41. (1) A person may apply to the Registrar to amend the registration of an institution or conditions of registration –

- (a) in the manner determined by the Registrar; and
- (b) by paying a prescribed fee.

(2) The Registrar may not amend the registration of a higher education private institution unless the registrar is satisfied that such amendment is in the interests of higher education and complies with the provisions of this Act.

(3) The Registrar may require further information, or documents in support of any application for such amendment.

(4) If the Registrar decides –

- 
- (a) to grant application he or she shall –
- (i) amend the certificate of registration or conditional registration accordingly;
  - (ii) provide a copy of the amended certificate to the applicant; and
  - (iii) as soon as reasonably practicable after the decision, publish the amended certificate in the Gazette; or
- (b) not to grant the application he or she shall advise the applicant of the decision and provide reasons for the decision in writing.

#### **Conditions for registration**

42. (1) The Registrar may impose any reasonable condition on a higher education private institution in respect of –

- (a) its registration;
- (b) its conditional registration; or
- (c) any amendment of its registration or conditional registration.

(2) The Registrar may impose different conditions under subsection (1) in respect of different institutions if there is a reasonable basis for such difference.

(3) Subject to section 43, the Registrar may on reasonable grounds amend or cancel any condition imposed under this section or impose new conditions under this section.

**Cancellation of registration**

43. (1) The Registrar may, on reasonable grounds, cancel any registration or conditional registration in terms of this Act.

(2) If the accreditation of any programme offered by a higher education private institution is withdrawn the registrar shall review such institution's registration.

(3) The Registrar may not act under this section unless the registrar has –

- (a) informed the higher education private institution of the intention to so act and the reason thereof;
- (b) granted the higher education private institution and other interested persons and opportunity to make representations in relation to such action; and
- (c) considered such representations.

**Appeal to the Minister**

44. (1) Any interested person may appeal in writing to the Minister against any decision of the registrar in terms of this Part.

(2) An appeal referred to in subsection (1) shall be lodged with the Minister within 60 days of the date of the Registrar's decision.

(3) The Minister may, on good cause shown, extend the period within which an appeal against the decision of the Registrar may be noted.

(4) An appeal under this section does not suspend the operation of any decision of the Registrar unless a competent court otherwise orders on good cause shown.

## **PART VII – INDEPENDENT EVALUATION**

### **Independent evaluation**

45. (1) The CHE shall appoint an independent evaluation panel consisting of at least three suitable assessors, who –

- (a) have adequate knowledge and experience of higher education;
- (b) are not members of the CHE; and
- (c) comply with any other requirements as may be determined by the CHE.

(2) A member of the panel shall be appointed for a period of not more than two years, and may be reappointed once.

(3) The Minister may, from the evaluation panel, appoint an assessor who is independent in relation to the higher education institution concerned to conduct an investigation at the institution –

- (a) in the cases referred to in section 46;
- (b) after consulting the council of the higher education institution concerned, if practicable.

(4) The council of the higher education institution and any person affected by the investigation shall assist and co-operate with the independent assessor in the performance of his functions in terms of section 47.

(5) The Minister may appoint one independent assessor under section 46 to conduct an investigation at two or more higher education institutions.

(6) An independent assessor appointed under section 46 may, with the concurrence of the Minister appoint any other person with suitable

knowledge and experience to assist him in the performance of his functions.

(7) The Minister may, with the concurrence of the Minister of Finance, determine the remuneration and allowances to be paid to an independent assessor and any other person appointed under this section.

#### **Cases where independent evaluation may be necessary**

46. The Minister may appoint an independent assessor under section 45(3) if –

- (a) the council requests the appointment; or
- (b) circumstances arise at a higher education institution that –
  - (i) involve financial or other maladministration of a serious nature;
  - (ii) seriously undermine the effective functioning of the public higher education institution;
  - (iii) the council has failed to resolve such circumstances; or
- (c) the appointment is in the interest of higher education in an open and democratic society.

#### **Functions of an independent assessor**

47. (1) An independent assessor appointed under section 45(3) shall, within 30 days of appointment and on the terms of reference specified by the Minister –

- (a) conduct an investigation at the higher education institution concerned;
- (b) report, in writing, to the Minister on the findings of the investigation; and

- (c) suggest appropriate measures which may include closure of the institution or conversion of a private institution into a public one.

(2) The Minister shall as soon as practicable provide a copy of a report referred to in subsection (1) to the council concerned and publish that report in the Gazette.

## **PART VIII – GENERAL AND TRANSITIONAL PROVISIONS**

### **Name change of higher education public institution**

48. A council of a higher education public institution other than a council of a university established by an Act of Parliament may, with the approval of the Minister and by notice published in the Gazette, change the name of such higher education institution.

### **Offences**

49. (1) Any person who, without the authority of a higher education institution –

- (a) offers or pretends to offer any higher education programme or part thereof;
- (b) purports to confer a qualification granted by a higher education institution or in collaboration with a higher education institution; or
- (c) purports to perform an act on behalf of a higher education institution, commits an offence and is liable on conviction to a fine not less than M50,000.00 or to imprisonment not less than five years or to both fine and imprisonment.

(2) Any person who pretends that a qualification has been awarded to him by a higher education institution, whereas in fact no such qualification has been so awarded commits an offence and is liable on conviction to a fine not less than M50,000.00 or to imprisonment not less than five years or to both a fine and imprisonment.

(3) Any person who contravenes section 37(4) or 38(2) commits an offence and is liable on conviction to a fine not less than M50 000 or to imprisonment not less than five years or to both such fine and imprisonment.

(4) Any higher education private institution which fails to comply with section 38(1) commits an offence and is liable on conviction to a fine not less than M20 000.

#### **Limitation of liability**

50. The State, the CHE, and any person appointed in terms of this Act are not liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function contemplated in this Act.

#### **Delegation of powers**

51. (1) The Minister may, on such conditions as the Minister may determine, delegate any of his or her powers under this Act except the power to make regulations, and assign any of the duties in terms of this Act to –

- (a) the council of a higher education public institution;
- (b) the CHE;
- (c) any employee of the Ministry of Education.

(2) The council may on such conditions as it may determine, delegate any of its powers under this Act or delegated to it in terms of subsection (1), except the power to make an institutional statute and assign any of its duties in terms of this Act or assigned to it in terms of subsection (1), to other internal structures, the vice-chancellor or any other appropriate employee of the higher education public institution concerned.

#### **Application of Act**

52. (1) This Act shall prevail over any other law dealing with higher education except the Constitution.

(2) The existing institutional statute, the Constitution and rules of a higher education public institution or higher education private institution in force at the commencement of this Act continue to apply to the extent that such statute and rules are consistent with this Act.

(3) The council and senate of any higher education public institution, existing at the commencement of this Act shall continue to exist and perform the functions which they performed prior to the commencement of this Act but shall comply with the provisions of this Act within 18 months after the commencement of this Act.

### **Regulations**

53. The Minister may make regulations consistent with this Act on –

- (a) any matter which the Minister is empowered or required to prescribe by regulations in terms of this Act; and
- (b) any other matter in respect of which the Minister thinks necessary or expedient to achieve the objects of this Act.