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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION**No. R. 633****13 July 2001****MINISTRY OF EDUCATION**

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**CALL FOR COMMENT ON THE DRAFT REGULATIONS ON THE
REGISTRATION OF PRIVATE HIGHER EDUCATION INSTITUTIONS**

I, Kader Asmal, as Minister of Education, hereby publish the Draft Regulations on the Registration of Private Higher Education Institutions for comment in terms of section 69 of the Higher Education Act, 1997 (Act No. 101 of 1997) and in compliance with section 4(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), as set out in the Schedule.

Comments from interested parties are invited, and should reach the Department not later than 31 August 2001.

Comments should be directed to the Director-General, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke. Comments may also be faxed to (012) 326-9128 or sent by E-mail to Locke.M@doe.gov.za.

The name, address, telephone number and fax number of the person, or organisation responsible for submitting comments must also be provided.

**PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION**

2 JULY 2001

**DRAFT REGULATIONS FOR THE REGISTRATION OF
PRIVATE HIGHER EDUCATION INSTITUTIONS**

**ISSUED UNDER THE HIGHER EDUCATION ACT (ACT NO. 101 OF 1997)
(As amended by Act No. 54 of 1999 and Act No. 55 of 2000)**

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CHAPTER 1 DEFINITIONS

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Higher Education Act, 1997 (Act No. 101 of 1997) has the same meaning and, unless the context otherwise indicates—

‘accreditation’ means accreditation or provisional accreditation as determined by the HEQC;

‘amendment application’ means an application made in terms of section 58 of the Act;

‘approved programme or qualification’ means a programme or qualification approved by the registrar in terms of regulation 15(5) and included in a registration certificate in terms of regulation 21(1);

‘condition’ means a stipulation or directive imposed by the registrar on an institution in terms of section 60 of the Act;

‘conversion application’ means an application to convert provisional registration as contemplated in regulation 5;

'conversion of provisional registration' means the action contemplated in section 54(6)(a) of the Act whereby a provisionally registered institution is registered¹;

'director' means the director of a company that owns an institution or an applicant for registration;

'expiry date' means the date on which provisional registration contemplated in section 54 of the Act expires;

'foreign applicant' means an applicant who is a foreign juristic person;

'HEQC' means the Higher Education Quality Committee of the CHE;

'institution' means a private higher education institution that is registered or provisionally registered in terms of the Act;

'NQF' means the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act. No. 58 of 1995);

'parent institution' means a foreign higher education institution to which a foreign applicant is legally, commercially or academically subordinate or on which it is otherwise dependent;

'programme' means the sequential learning activities, associated with curriculum implementation, leading to the achievement of a qualification registered at levels 5 to 8 on the NQF;

'qualification' means a qualification registered at levels 5 to 8 on the NQF in terms of regulation 8 of the SAQA National Standards Bodies Regulations, 1998 (Regulation 452 of 28 March 1998);

'registration' means the registration of a private higher education institution in terms of the Act;

'requirements' means the prescribed criteria contemplated in chapter 3 of these regulations or any other criteria prescribed in the Act that an applicant or institution must fulfil in order to be registered or maintain registration;

'site' means any learning site such as a campus, satellite campus or learning centre controlled and administered by the same institution;

¹The term "provisional registration" is used in place of "conditional registration" in line with the Higher Education Amendment Bill, 2001 currently before Parliament. If approved, the change will affect the following sections of the Higher Education Act, 1997: 1, 54, 55, 58, 59, 60 and 62.

'the Act' means the Higher Education Act, 1997 (Act No. 101 of 1997) and any regulations or policy determined in terms of or under the Act.

CHAPTER 2 APPLICATION PROCESS

2. Eligibility

(1) A person proposing to provide higher education as contemplated in the Act is eligible to apply for registration if-

(a) registered as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

(b) recognised as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973).

(2) A person that purports to operate an institution without registration-

(a) is guilty of an offence in terms of section 66 of the Act; and

(b) is not eligible to apply for registration except in terms of regulation 7(4).

3. First application

(1) Anyone that intends to establish and maintain a private higher education institution must apply for registration in terms of these regulations at least eighteen months before the institution is to start operating.

(2) An application-

(a) must be submitted in full to the registrar in the form determined by the registrar in the *Government Gazette*;

(b) must be accompanied by the full fee determined by the registrar by notice in the *Government Gazette*;

(c) will not be considered by the registrar unless the applicant complies with (a) and (b).

(3) The registrar may require an applicant to clarify items in its application or submit additional information before the application is determined.

(4) An applicant must promptly notify the registrar before the application is determined if there is any change in the information submitted in the application.

4. Amendment application

(1) An institution must submit an amendment application to the registrar in terms of these regulations at least twelve months before the proposed amendment is intended to come into effect, but the registrar may for good reason permit a later submission if requested in writing by the applicant.

(2) Regulation 3 applies to the submission of an amendment application, except for 3(1).

5. Conversion application

(1) An institution must submit an application to the registrar for the conversion of provisional registration by the date determined by the registrar in terms of regulation 15(4)(b).

(2) Regulation 3 applies to the submission of a conversion application, except for 3(1).

6. Withdrawal of application

(1) An application made in terms of regulations 3, 4 or 5 may be withdrawn by notice in writing to the registrar, but no notice of withdrawal is valid if it is submitted after the registrar has notified the applicant in writing of the result of the application.

(2) On receipt of a valid notice of withdrawal the registrar must forthwith return the application documents to the applicant.

7. Subsequent application

(1) An applicant that has withdrawn an application in terms of regulation 6(1) may submit a subsequent application to the registrar not less than 24 months after the date of withdrawal.

(2) An applicant whose-

(a) application has been denied other than in terms of regulation 15(7); or

(b) provisional registration has lapsed; or

(c) registration has been cancelled

may submit a subsequent application not less than 36 months after the date of denial, lapsing or cancellation respectively.

(3) A person whose application has been denied in terms of regulation 15(7) may submit a subsequent application not less than 60 months after the notification of such denial of registration has been issued by the registrar.

(4) Despite (2) a person who has been found guilty of an offence in terms of section 66 of the Act may submit a subsequent application not less than 60 months after paying the fine or serving the term of imprisonment as the case may be.

(5) Regulation 3 applies to the submission of a subsequent application.

CHAPTER 3 REQUIREMENTS FOR REGISTRATION

8. Compliance with the Act

In order to be registered an applicant must fulfil the requirements of the Act.

9. Name of applicant

An applicant must apply for registration in the same name under which it is registered or recognised in terms of the Companies Act, 1973 (Act No. 61 of 1973), and must declare the name under which the institution, if registered, will trade.

10. Prohibition of discrimination on the basis of race

An application must include a signed declaration by the applicant that the institution, if registered, will not discriminate on the basis of race.

11. Quality assurance

(1) An applicant must propose to offer only programmes and qualifications that are registered on the NQF.

(2) An applicant must submit a signed declaration in the application contemplated in regulation 3(2) that-

(a) the applicant has applied to the HEQC for accreditation, listing the programmes for which it has applied to be accredited; and

(b) the institution, if registered, will comply with the requirements of the HEQC as contemplated in section 53(1)(b)(ii) or 53(1)(c) of the Act.

(3) An applicant must provide evidence in the application contemplated at 3(2) that it-

(a) will not exceed the enrolment that the facilities and equipment can reasonably accommodate, and will comply with all regulations relating to the health and safety of persons on the premises;

(b) has sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;

(c) has the necessary academic and support staff with appropriate academic or professional qualifications and experience to achieve the objectives of each programme;

(d) has a quality management system including assessment policies and procedures appropriate to each programme;

(e) will maintain full records of each student's admission, academic progress and assessment of learning in respect of each programme.

12. Finance

(1) An applicant must submit proof in the application contemplated in regulation 3(2), that-

(a) its income is or will be sufficient to sustain its programmes in an acceptable manner; and

(b) it has or will have a stable financial position that will enable it to maintain operational continuity.

(2) An applicant must submit proof in the application contemplated in regulation 3(2) that it has established financial surety or guarantees to ensure that the institution meets its obligations to its enrolled students.

13. Foreign applicants

A foreign applicant must submit proof in the application contemplated in regulation 3(2) that-

(a) its parent institution operates lawfully as a higher education institution or is accredited by the appropriate accrediting body in its country of origin;

(b) a qualification awarded in its name will be fully recognised by its parent institution and by the appropriate state authorities in its country of origin; and

(c) a student who is awarded its qualification will suffer no disadvantage if he or she applies to enrol for an appropriate advanced qualification in the parent institution.

14. Monitoring and evaluation

An applicant must submit a signed declaration in the application contemplated in regulation 3(2) that if registered or provisionally registered the institution will comply with-

(a) an evaluation of the institution by the registrar every three years from the date on which the certificate of registration was signed; and

(b) any other reasonable process arranged by the registrar after consultation with the institution for the purpose of monitoring compliance with the requirements of the Act and the conditions of registration.

CHAPTER 4 REGISTRATION

15. Determination of an application

(1) The registrar must consider and determine an application for registration-

(a) in accordance with section 54 of the Act and these regulations;

(b) at least six months before the applicant intends to commence operations.

(2) In determining the application of a foreign applicant, the registrar must independently verify the information contemplated in regulation 13(a).

(3) In determining an application, the registrar must consider-

(a) all the information and declarations provided by the applicant and any other relevant information;

(b) the advice of the HEQC on the applicant's application for accreditation;

- (c) whether, if registered, the institution in all its higher education programmes will maintain acceptable standards that are not inferior to standards at a comparable public higher education institution;
 - (d) whether, if registered, the institution in all its higher education programmes will comply with the requirements of the HEQC in terms of sections 53(1)(b)(ii) or 53(1)(c) of the Act;
 - (e) whether the applicant has met all other relevant requirements of the Act;
 - (f) a determination by the Minister relating to the scope and range of operations of institutions in terms of section 3(3) of the Act;
 - (g) a decision by the registrar to differentiate between a foreign juristic person and a local juristic person in terms of section 54(1)(b) of the Act;
 - (h) the proposed programmes and qualifications and the respective sites where they are to be offered;
 - (i) section 54(3) and (4) of the Act concerning provisional registration;
 - (j) section 60 of the Act concerning conditions attached to registration or provisional registration;
 - (k) regulation 20 concerning the registration name;
 - (l) the rights of the general public, the students and the applicant; and
 - (m) the interests of the higher education system as a whole.
- (4) In the light of (3) the registrar must determine whether to-
- (a) register the institution;
 - (b) grant provisional registration in terms of section 54(3) and (4) of the Act, stating-
 - (i) the terms of provisional registration;
 - (ii) the date by which the registrar must receive an application for the conversion of provisional registration, which must not be later than 12 months from the date on which the certificate of provisional registration is signed;
 - (c) impose a condition in terms of section 60 of the Act;
 - (c) deny the application.

(5) In determining to grant registration or provisional registration as contemplated in (4) the registrar must approve the programmes and qualifications to be offered by the institution and the respective sites where they are to be offered.

(6) Despite (3) and (4), if an applicant proposes to use the term "university" or "technikon" in the name of an institution the registrar must assess the application against appropriate criteria provided to the Minister by the CHE before making a determination.

(7) Despite (4), if an applicant is found to have knowingly submitted fraudulent, false or misleading information the registrar must deny the application and refer the matter to the South African Police Service for investigation.

16. Conversion of provisional registration

(1) The registrar must consider and determine an application for the conversion of provisional registration submitted in terms of regulation 5(1) in accordance with section 54(6) of the Act and regulation 15(3).

(2) The registrar must determine whether to-

(a) register the applicant in terms of section 54(6)(a) of the Act with effect from the expiry date;

(b) impose a condition in terms of section 60 of the Act, and if so to state in writing what condition and the reasons why it has been imposed; or

(c) deny registration.

(3) If the registrar has not received an application submitted in terms of regulation 5(1), or if registration is denied in terms of (2)(c), the registrar must notify the institution in writing that its provisional registration will lapse 60 days from the date of the notice, giving reasons.

17. Amendment of registration

(1) The registrar must consider and determine an amendment application in accordance with section 59 of the Act and regulation 15(3) at least three months before the amendment is to come into effect.

(2) The registrar must determine whether to-

(a) amend the registration or provisional registration; or

(b) impose a condition in terms of section 60 of the Act; or

(c) deny the amendment application.

(3) In the case of 2(b) or (c), the registrar must notify the institution in writing, giving reasons.

(4) If the Minister prescribes a new requirement in terms of section 53(1)(c) of the Act, the registrar must establish the import of the new requirement for the registration or provisional registration of an institution, and if needed amend the terms of registration or provisional registration accordingly.²

18. Cancellation of registration

(1) Subject to sections 62 and 63 of the Act, the registrar must cancel the registration or provisional registration of an institution if-

(a) the institution ceases to-

(i) meet the criteria of eligibility contemplated in regulation 2; or

(ii) fulfil the requirements for registration contemplated in the Act and chapter 3 of these regulations; or

(iii) comply with a condition imposed by the registrar in terms of section 60 or 61 of the Act.

(b) the institution ceases to operate or terminates all its programmes;

(c) the institution provides fraudulent, false or misleading information-

(i) to the registrar;

(ii) in any of its public documents or advertising and marketing material;

(d) the institution is liquidated;

(e) a director is convicted of an offence in terms of section 66 of the Act.

² At present the registrar is empowered to determine additional "reasonable" requirements for registration. The Higher Education Amendment Bill, 2001 proposes to change this by substituting a new sub-paragraph in section 53(1)(c), which will give the Minister the power to prescribe "any other reasonable requirement" for registration.

(2) If the HEQC withdraws accreditation from one or more of an institution's programmes, the registrar must review the institution's registration or provisional registration in terms of section 62(2) of the Act and determine whether reasonable grounds exist for cancellation.

(3) If the registrar proposes to cancel an institution's registration or provisional registration, the registrar must-

(a) comply with section 63 of the Act;

(b) publish the intention to cancel by notice in the *Government Gazette*, with reasons;

(c) consider any representation from the institution or an interested person in relation to such action;

(d) publish the final determination in the *Government Gazette*, with reasons; and

(e) if the final determination is to cancel a registration or provisional registration, issue a notice in writing to the institution that its registration or provisional registration will be cancelled 60 days from the date of the notice in the *Government Gazette* contemplated in (d).

19. Publication of registration notices

(1) The registrar must publish every decision made in terms of this chapter by notice in the *Government Gazette*.

(2) The institution must take reasonable steps to ensure that a notice dealing with the lapsing or cancellation of registration is brought to the attention of students enrolled at the institution.

CHAPTER 5 REGISTRATION CERTIFICATE

20. Registration name

(1) Subject to this regulation, if the registrar grants registration or provisional registration, the institution must be registered under its legal name, but the registrar may include in the registration certificate such translations, abbreviations, acronyms or trade names as uniquely identify the institution.

(2) Despite (1), the registrar must not register an institution-

(a) under a name that the registrar considers to be fraudulent, false or misleading; or

(b) under the same name as another institution, or include in two certificates of registration the same translation, abbreviation, acronym or trade name.

(3) In the case of 2(a) or (b), the registrar must agree an acceptable alternative with the applicant.

21. Certificate of registration

(1) The certificate of registration or provisional registration must include the following-

(a) the registered name of the institution and any approved translation, abbreviation, acronym or trade name;

(b) the institution's unique registration number;

(c) approved programmes and qualifications;

(d) the respective sites at which approved programmes and qualifications are to be offered;

(e) the date by which all the requirements for registration must be met, if the institution is provisionally registered in terms of section 54(3) and (4) of the Act;

(f) any condition imposed in terms of section 60 of the Act;

(g) the registrar's name, signature and date of signature;

(h) the national coat of arms of the Republic of South Africa and the logo of the Department of Education.

(2) If an institution's registration is amended in terms of sections 58 or 59, or a new condition is imposed or a condition amended in terms of section 61 of the Act, the registrar must issue an amended certificate of registration to the institution.

(3) On receipt of the amended certificate of registration, the institution must within 14 days return the previous certificate of registration to the registrar.

CHAPTER 6

RESPONSIBILITY OF AN INSTITUTION

22. Maintenance of registration

In order to maintain its registration an institution must-

- (a) continue to fulfil the requirements of the Act;
- (b) discharge the responsibilities of a registered institution in terms of this chapter;
- (c) comply with any condition imposed by the registrar in terms of section 60 or 61 of the Act;
- (d) with respect to all its higher education programmes comply with the requirements of the HEQC in terms of section 53(1)(b)(ii) of the Act;
- (e) notify the registrar of any change in the information submitted in an application in terms of regulations 3, 4 or 5;
- (f) undergo an evaluation of the institution by the registrar every three years from the date on which the certificate of registration was signed;
- (g) comply with any other reasonable process arranged by the registrar after consultation with the institution for the purpose of monitoring compliance with the requirements of the Act and the conditions of registration.
- (h) report immediately to the registrar-
 - (i) reduction or loss of any physical facility necessary for the proper conduct of a programme;
 - (ii) reduction or loss of any supporting service to a programme;
 - (iii) change in the site of delivery of a programme;
 - (iv) substantial change in the curriculum of a programme.
 - (v) any significant reduction in the financial or personnel resources needed to sustain a programme; or
 - (vi) failure to meet a commitment made to the registrar in the process of registration or as a result of monitoring or review.

23. Display of registration status

Subject to sections 55(1) and 66(4) of the Act, an institution must display-

(a) its registration certificate or a certified copy in a prominent place accessible to the public and to all students on each of its sites;

(b) the following statement in full on its letterhead and official documents -

(i) if the institution is registered, "Registered by the Department of Education as a private higher education institution under the Higher Education Act, 1997. Registration certificate no. [state number on certificate]"; or

(ii) if the institution is provisionally registered, "Provisionally registered by the Department of Education until [expiry date] as a private higher education institution under the Higher Education Act, 1997. Provisional registration certificate no. [state number on certificate]".

24. Approved programmes

(1) An institution must offer only such programmes and qualifications on any of its sites as are approved by the registrar and included in the registration certificate.

(2) An institution must ensure that any approved programme is continued long enough to enable any cohort of students to complete the full programme, but if unavoidable circumstances prevent this-

(a) the registrar must be informed without delay;

(b) the institution must make satisfactory arrangements to enable the affected students to complete the programme at a comparable public or private institution; and

(c) despite (b), the institution must ensure that its students are appropriately reimbursed or compensated as contemplated in regulation 12(2); and

(3) An institution must comply with the criteria for accreditation of its programmes by the HEQC, but if the HEQC withdraws accreditation for any programme, the registrar must review the terms of its registration in terms of section 62(2) of the Act and regulation 15(3).

(4) An institution must submit an amendment application to the registrar in terms of regulation 4 if it intends to withdraw, suspend indefinitely or add a programme, qualification or site.

25. Information for students and the public

An institution must publish at least once each year a calendar or brochure for the information of students and the public containing-

- (a) registered name of the institution;
- (b) contact details for head office and each site;
- (c) the statement contemplated in regulation 22(b);
- (d) mission statement;
- (e) legal status;
- (f) names of directors, chief executive and senior management;
- (g) names and qualifications of full-time academic staff;
- (h) admission requirements and procedures including recognition of prior learning;
- (i) language policy;
- (j) mode of instruction;
- (k) details of each approved programme and qualification by site;
- (l) accreditation status of each approved programme and qualification;
- (m) rules relating to assessment, academic credit, progression and qualification;
- (n) fees and charges including refund in case of cancellation or withdrawal;
- (o) student financial aid;
- (p) student support services;
- (q) rules or code of conduct.

26. Academic records

(1) An institution must keep comprehensive records of the academic achievement of each student enrolled in an approved programme.

(2) An institution must make available to an enrolled student or past student on demand a transcript of his or her academic record which shows-

(a) full name;

(b) identity number or passport number and nationality if not a South African citizen;

(c) student number;

(d) courses taken by code number and name for each year in chronological order;

(e) mark or grade for each course, with an explanatory note on the marking or grading system;

(f) qualification awarded.

(3) An institution must make available to an enrolled student or past student on demand a copy of a certificate awarded to the student.

(4) An institution must submit to SAQA such information from its academic records as SAQA requires for the National Learners' Records Database.

27. Official documents, marketing and advertising

(1) With respect to all its official documents, advertising and marketing material, an institution must-

(a) comply with regulation 22(b);

(b) ensure that all information about its approved programmes and qualifications and accreditation status is accurate; and

(c) make no false, fraudulent or misleading statement.

(2) An institution may not display on its letterhead, official documents or marketing or advertising material-

(a) the national coat of arms of the Republic of South Africa;

- (b) the logo of the Department of Education;
- (c) the logo of the HEQC or the CHE.

28. Information required by the registrar

An institution must submit such information as the registrar may reasonably require for the purpose of monitoring compliance with the Act and maintaining the higher education information management system, including but not restricted to-

- (a) information in a form specified by the Department of Education to be submitted by a date determined by the registrar;
- (b) an annual audited financial statement as contemplated in section 57(1) of the Act to be submitted by a date determined by the registrar in the form specified by the Department of Education;
- (c) an annual auditor's report as contemplated in section 57(2) of the Act to be submitted by a date determined by the registrar in the form specified by the Department of Education;
- (d) information required in respect of the monitoring and evaluation contemplated in regulation 14;
- (e) a certified copy of any agreement relating to the provision of academic or administrative services or the sharing of staff or facilities between the institution and another institution.

29. Lapse or cancellation of registration

An institution that has been notified by the registrar that its provisional registration has lapsed in terms of regulation 16 or that its provisional registration or registration has been cancelled in terms of regulation 18 must-

- (a) inform its students within 14 days from the date of the registrar's notice that its registration has lapsed or been cancelled and notify the students of the arrangements that will be made to safeguard their interests in terms of this regulation;
- (b) issue to each enrolled student a copy of his or her academic transcript;
- (c) reimburse or compensate any enrolled student who has a lawful claim on the institution as a consequence of its ceasing to operate, as contemplated in regulation 12(2);

(d) make adequate arrangements for affected students to complete their programmes at a comparable public or private institution; and

(e) cease operating no later than 60 days from the date of the registrar's notice, and any institution that fails to comply is guilty of an offence in terms of section 66 of the Act.

CHAPTER 7 APPEALS

30. Procedure

(1) Subject to section 64 of the Act, an interested person who appeals against a decision of the registrar must lodge the appeal in writing with the Minister within 60 days of the date of the registrar's decision.

(2) An appeal document must specify-

(a) the decision being appealed;

(b) the grounds for the appeal;

(c) the remedy being sought.

(3) The Minister must decide an appeal within 60 days of its being lodged unless there are compelling reasons for delay and the appellant is informed accordingly.

CHAPTER 8 GENERAL AND TRANSITIONAL ARRANGEMENTS

31. Conflict of interest

The registrar or any employee contemplated in section 50 of the Act must not-

(a) have a financial interest in any institution or applicant for registration;
or

(b) sit on the governing body of any institution or applicant for registration.

32. Date of commencement

These regulations come into effect on 1 January 2002.

33. Transitional arrangements

- (1) These regulations apply to any pending application for registration.
- (2) Institutions registered prior to these regulations must comply with these regulations within 24 months of the date of commencement.

34. Title

These regulations are the Registration of Private Higher Education Institutions Regulations, 2001.

EXPLANATORY MEMORANDUM TO THE DRAFT PRIVATE HIGHER EDUCATION INSTITUTIONS REGULATIONS, 2001

1. INTRODUCTION

These Regulations provide the legal framework within which the registrar will regulate the registration of private higher education institutions in terms of the Higher Education Act, 1997 (Act No. 101 of 1997). Until now the registrar has managed the registration process in terms of an administrative manual that has been evolving in the light of practical experience.

The Department of Education's understanding of the complex issues related to registration has benefited by the advice of the private provider community, the South African Qualifications Authority, the Higher Education Quality Committee of the Council on Higher Education, and the growing jurisprudence relating to chapter 7 of the Act.

It is now necessary to bring certainty to the practice of registration by making regulations under the Act. When they come into effect on 1 January 2002 they will replace the administrative manual. The manual will cease to have standing after 31 December 2001.

2. EXPLANATION OF THE PROVISIONS OF THE REGULATIONS

Scheme of arrangement

Chapter 7 of the Higher Education Act, 1997 deals with Private Higher Education Institutions. It is a brief chapter but the implications of its provisions are complex. The regulations flow from the Act and must be consistent with the Act. The regulations spell out the requirements of the Act in a manner that enables the

Department of Education and the private providers to understand their respective duties and obligations and act accordingly.

The regulations have therefore been arranged with a view to implementation, as follows:

1. Definitions
2. Application process (what providers need to know)
3. Requirements for registration (criteria providers need to meet)
4. Registration (what the registrar has to take into account)
5. Registration certificate (what appears on it and what must be done with it)
6. Responsibility of a registered institution (what institutions must do to remain registered, and what obligations they incur)
7. Appeals (how to lodge an appeal against a decision of the registrar)
8. General and transitional arrangements

Application process

Chapter 2 of the Regulations distinguishes between four types of application, in order to deal with a variety of circumstances envisaged by the Act.

- A “first application” is the initial application to register.
- An “amendment application” is submitted if an institution wishes the registrar to alter the terms of its registration.
- An institution that has been granted provisional registration must submit a “conversion application” by a date specified by the registrar. If successful, the institution’s provisional status will be converted to registration. If unsuccessful, the provisional registration lapses. The Regulations use the term “provisional registration” in place of “conditional registration” because the Higher Education Amendment Bill, 2001 proposes to substitute the former term for the latter.

- An applicant whose application has been withdrawn or denied, or an institution whose provisional registration has lapsed or whose registration has been cancelled, may submit a "subsequent application" after a specified time interval.

Requirements for registration

The requirements for registration are prescribed in the Act. Chapter 3 of the Regulations elaborates on these in order to operationalise the Act's provisions.

The Act defines higher education in terms of programmes and qualifications offered at levels 5-8 of the NQF. Before granting registration to a private higher education institution, the registrar must be satisfied that it will provide education of a standard not inferior to a comparable public institution, and that it will comply with the requirements of the Higher Education Quality Committee. It is apparent that the registrar must have appropriate evidence in order to make such judgments.

Accordingly, the Regulations require an applicant to submit-

- a signed declaration that it has applied for accreditation to the HEQC, and that it will comply with the HEQC's requirements
- evidence that its facilities, staff, quality management and information system will support the students it proposes to enroll and the programmes it proposes to offer, and
- proof of its financial competence and its ability to meet its obligations to its students.

A foreign applicant is defined as a person recognised as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973). In addition to the other stipulations in this chapter, a foreign applicant must submit proof concerning the

bona fides of its parent institution and the equal recognition that will be accorded to its South African qualifications and graduates in its country of origin.

The Act does not limit the period of registration, but provides that the registrar may with good reason cancel an institution's registration. In order to gauge whether a registered institution complies with the terms of its registration it is necessary for the registrar to monitor and evaluate each registered institution. The Regulations provide for a regular triennial evaluation of registered institutions. If the registrar needs to monitor the situation in an institution between evaluations, the Regulations empower the registrar to do so after consultation with the institution concerned. An applicant must declare in its application that it is willing to comply with such scrutiny.

Registration

The Constitutional guarantee of the right to establish and maintain a private education institution (section 29(3)) is related to the broader public good. A private institution must not practise racial discrimination. It must be registered with the state. Its standards must not be inferior to those of a comparable public institution. The Act makes clear that private higher education institutions are part of the national system of higher education, and that the way in which they are conducted must serve the interests of the system as a whole. Thus the requirements for registration ensure that registration cannot be an arbitrary or perfunctory act. Registration serves a public purpose. It protects the fundamental right to establish and maintain a private education institution, it protects the public from incompetent or fraudulent operators and it protects the integrity of the higher education system.

These considerations underlie Chapter 4, which sets out in detail what the registrar must consider in arriving at a decision.

In the light of these considerations, the registrar must decide whether to register the institution, grant provisional registration, or deny the application. In either of the first two cases, the registrar may attach a condition to the registration with which the institution must comply. The registrar may grant provisional registration if an institution does not fulfill all the requirements but is likely to do so within 12 months. By a date specified by the registrar, the institution must submit a conversion application. The registrar must determine the conversion application before the institution's provisional registration expires.

The Act accords a special status to the terms "university" and "technikon". Before a private institution may be registered in the name of a university or technikon, the registrar must be certain that the applicant accords with the relevant criteria supplied to the Minister by the CHE.

The Regulations prescribe the period within which the registrar must make a decision in respect of each type of application.

A due process of notification must be followed when the registrar decides on an application, a conversion application, a lapse of provisional registration or a cancellation. Moreover the registrar must give reasons when an application is denied or a registration lapses or is cancelled.

Registration certificate

In a competitive business environment the name of a private institution may have potent market value. It is important, therefore, that each institution is registered in its own legal name, and not the name of another institution. A less than scrupulous provider may try to gain market advantage by subtly or crudely misrepresenting itself in the name it chooses.

Chapter 5 of the Regulations ensures that such dangers are minimised if not eliminated. An institution must be registered in its legal name. The registrar may agree that the certificate carries such translations, abbreviations, acronyms or trade names as uniquely identify the institution. But two institutions may not register under the same name, and the registrar may decline a name that he or she considers to be fraudulent, false or misleading. In such cases an alternative name must be agreed between the registrar and the applicant.

Each certificate of registration must include the institution's approved programmes and qualifications, and the sites on which they are to be offered.

Responsibility of an institution

Registration is a license to operate a private higher education institution without limitation of time, but it is not a license for providers to do as they please. The requirements for registration remain applicable beyond the act of registration. Compliance with conditions attached to registration is also necessary for the maintenance of registration. The Act does not prescribe an expiry date for registration, but provides that the registrar may cancel a registration on reasonable grounds (section 62). Thus chapter 6 of the Regulations sets out the responsibilities of an institution. These must be discharged if the institution is to maintain its registration.

The responsibilities of an institution broadly encompass the maintenance of quality, probity and protection of the rights of students.

Quality is to be maintained principally-

- by ensuring that only approved programmes and qualifications are offered on approved sites
- by submitting the institution to the quality assurance requirements of the HEQC, including the criteria for accreditation of its programmes, and

- by participating in the periodic evaluations and monitoring exercises conducted by the registrar.

Probity is to be maintained principally-

- by ensuring that the institution displays its registration status conspicuously and in full
- by requiring the institution to represent itself honestly and accurately to the public, and
- by requiring annual reports, audited financial statements and auditors' reports.

The protection of students' rights is to be maintained principally-

- by requiring an institution to publish an annual calendar or brochure covering all essential information about its programmes, staff, academic requirements, student services and so forth
- by keeping comprehensive student records and making transcripts and certificates available to enrolled students and past students on demand, and
- by making proper provision for the financial and academic interests of students in the event that an institution ceases to operate.

Appeals

An interested person may appeal any decision of the registrar to the Minister. Chapter 7 sets out what an appeal document should contain, and provides the time frames for lodging and deciding an appeal.

General and transitional requirements

Chapter 8 has regulations to prevent conflicts of interest by the registrar or any employee of the Department of Education who deals with registration matters. Neither the registrar nor any such employee may have a financial interest in an

applicant for registration or a registered institution, or sit on the governing body of a registered institution.

Since the Regulations entail some alteration in the current requirements for registration, the process of determining registration, and the monitoring and evaluation of institutions, some lapse of time is required to permit all concerned to study the implications and prepare themselves adequately. At the same time, it is in the interests of all parties to bring certainty in a complex environment where substantial commercial, academic, employment and state interests are at stake.

Chapter 8 therefore provides that the Regulations will come into effect on 1 January 2002. From that date all pending and new applications will be dealt with in terms of the Regulations. Already registered institutions will have 24 months to comply.

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