

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

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GOVERNMENT NOTICE
DEPARTMENT OF EDUCATION
NO. R ... OF 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;

‘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-