



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 460

Pretoria, 31 October 2003
Oktober

No. 25642



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

CONTENTS

*No.**Page
No. Gazette
 No.*

GOVERNMENT NOTICE

Education, Department of*Government Notice*

1602	Further Education and Training Act (98/1998): Regulations: Registration of Private Further Education and Training Institutions.....	3	25642
------	---	---	-------

GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 1602

31 October 2003

FURTHER EDUCATION AND TRAINING ACT, 1998 (ACT NO 98 OF 1998)

REGULATIONS FOR THE REGISTRATION OF PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS

The Minister of Education, after consultation with the Council of Education Ministers, hereby publishes the Regulations for the Registration of Private Further Education and Training Institutions in terms of section 47, as read with section 26 (1) (b) (111) of the Further Education and Training Act, 1998 (Act No. 98 of 1998), as set out in the Schedule.



Professor Kader Asmal, MP
Minister of Education

Date: 14 July 2003

SCHEDULE

CHAPTER 1

DEFINITIONS

1. Definitions

In these regulations, any word or expression to which a meaning has been assigned in the Further Education and Training Act, 1998 (Act No. 98 of 1998), has the same meaning and, unless the context otherwise indicates –

"accreditation" means the certification for a particular period of time, of a body or an institution as having the capacity to fulfil a particular function in the quality assurance system set up by the South African Qualifications Authority in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

"amendment" means an alteration in the conditions of registration or provisional registration of an institution in terms of section 34 of the Act;

"application for amendment" means an application made in terms of section 31 of the Act;

"application for conversion" means an application for conversion of provisional registration contemplated in regulation 16;

"condition" means a stipulation or directive imposed by the registrar on an institution in terms of section 33 of the Act;

"conversion of provisional registration" means the action contemplated in section 27(6)(a) of the Act whereby a provisionally registered institution is registered;

"director" means the director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973);

"expiry date" means the date on which the provisional registration contemplated in section 27(4)(a) and (5) of the Act expires;

"foreign applicant" means an applicant who is a foreign juristic person as defined in the Act;

"Gazette" means Government Gazette;

"GENFETQA" means the General and Further Education and Training Quality Assurance Council established in terms of section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), also known as 'Umalusi';

"institution" means a private further education and training institution that is registered or provisionally registered in terms of the Act;

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

"programme" means the sequential learning activities, associated with curriculum implementation, leading to the achievement of a qualification registered at levels 2 to 4 on the NQF;

"qualification" means a qualification registered at levels 2 to 4 on the NQF in terms of regulation 8 of the National Standards Bodies Regulations, 1998 (Government Gazette No. 452 of 28 March 1998);

"registration" means the granting of an application to operate as a private further education and training institution in terms of the Act, offering such programmes leading to registered qualifications on such sites as the registrar may approve in terms of these regulations;

"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 fulfill 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 an applicant or an institution; and

"the Act" means the Further Education and Training Act, 1998 (Act No. 98 of 1998) and any regulations determined in terms of or under the Act.

APPLICATION PROCESS

2. Eligibility

Subject to these regulations a person proposing to provide further education and training as contemplated in the Act, is eligible to apply for registration if–

- (a) registered as a company 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).

3. Application for registration

- (1) A legal person contemplated in Regulation 2 who intends to establish and maintain a private further education and training institution must apply to the registrar in terms of these regulations.
- (2) Sub-regulation (1) also applies to a juristic person established through a merger between institutions, with a resultant loss of the juristic personality of the old institutions and the creation of a new juristic person.
- (3) Subject to section 32, of the Act an applicant for registration must—
 - (a) submit the application in full at least eighteen months before the institution is to start operating in the form determined by the registrar in the Gazette; and
 - (b) send the full fee determined by the registrar by notice in the Gazette, with the application.
- (4) The registrar must acknowledge receipt of the application.
- (5) If an applicant does not comply with sub-regulation (3)(a) and (b) the registrar must decline to process the application.
- (6) The registrar may require an applicant to clarify items in the application or submit additional information before the application is determined.
- (7) An applicant must within 14 days after receiving acknowledgement of the application by the registrar, notify the registrar if there is any change in the information submitted in the application.

4. Application for amendment

- (1) Regulation 3(3) to 3(6) also applies to the submission of an application for amendment, except that it must be submitted twelve months before the proposed amendment is intended to come into affect.
- (2) The registrar may for good reason permit a later submission if requested in writing by the applicant.

5. Application for conversion of provisional registration

Regulation 3(3) to 3(7) also applies to the submission of an application for conversion of provisional registration except that it must be submitted by the date determined by the registrar.

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.
- (2) On receipt of a valid notice of withdrawal the registrar must forthwith return the application documents to the applicant, but the registrar must retain the fee submitted by the applicant as contemplated in regulation 3 (3) (b)

7. Subsequent application for registration

- (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 12 months after the date of withdrawal.
- (2) An applicant whose—
 - (a) application has been denied ;
 - (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) Despite sub-regulation (2), a person who has been found guilty of an offence in terms of section 44 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.

CHAPTER 2

REQUIREMENTS FOR REGISTRATION

8. Compliance with the Act

In order to be registered, an applicant must fulfill the requirements of the Act, as contemplated in section 26 and the provisions of these regulations.

9. Name of applicant

An applicant must apply for registration in the same name under which the institution 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 unfair discrimination and Quality assurance

The applicant must submit a sworn declaration in the application that

- (a) The institution, if registered, will not unfairly discriminate on the basis of race as contemplated in section 29(3)(a) of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996).
- (b) the applicant has applied to GENFETQA for accreditation, listing the programmes for which it has applied to be accredited; and
- (c) the institution, if registered, will comply with the requirements of GENFETQA as contemplated in section 26(1)(b)(ii) of the Act.
- (d) it 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;
- (e) it owns or leases for a sufficient period of time sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;
- (f) it has the necessary academic and support staff with appropriate qualifications and experience to achieve the objectives of each programme;
- (g) it has a quality management system including assessment policies and procedures appropriate to each programme and
- (h) it will maintain full records of each student's admission, academic progress and assessment of learning in respect of each programme.

- 11** The applicant must agree to an in loco inspection and verification of (d) to (h) above by the registrar or the registrar's appointed agent.

12. Finance

- (1) An applicant must submit proof 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 that it has established financial surety or guarantees to ensure that the institution meets its obligations to its enrolled students.
- (3) An applicant must submit a signed declaration that on registration the institution is or will become a member of or contributor to a fidelity guarantee fund approved by the registrar and make contributions to such fund according to a scale of payments determined by the Minister by notice in the Gazette.

13. Foreign applicants

A foreign applicant must submit proof in the first application that—

- (a) its parent institution operates lawfully as an education institution and 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 the student applies to enroll for an appropriate advanced qualification in the parent institution.

14. Monitoring and evaluation

An applicant must submit a sworn declaration that if registered or provisionally registered, the institution will comply with—

- (1) an evaluation of the institution by the registrar every three years from the date on which the certificate of registration was signed; and
- (2) 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 3

REGISTRATION

15. Determination of an application

- (1) The registrar must consider and determine an application for registration—
 - (a) in accordance with section 27 of the Act; and
 - (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.
- (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 GENFETQA on the applicant's application for accreditation;
 - (c) whether, if registered, the institution in all its further education and training programmes will maintain acceptable standards that are not inferior to standards at a comparable public further education and training institution;
 - (d) whether, if registered, the institution in all its further education and training programmes will comply with the requirements of GENFETQA in terms of section 26 of the Act;
 - (e) whether the applicant has met all other relevant requirements of the Act;
 - (f) the differentiation between a foreign juristic person and a local juristic person in terms of section 27(1)(b) of the Act;
 - (g) the proposed programmes and qualifications and the respective sites where they are to be offered;
 - (h) section 33 of the Act concerning conditions attached to registration or provisional registration;
 - (i) the rights of the general public, the students and the applicant; and
 - (j) the interests of further education and training as a whole.
- (4) In the light of sub-regulation (1) to (3) the registrar must determine whether to—
 - (a) register the institution;
 - (b) grant provisional registration in terms of section 27(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 33 of the Act; or
 - (d) deny the application.
- (5) The registrar, after considering the advice contemplated in sub-regulation (3)(b), must stipulate the approved programmes, qualifications and sites in respect of which registration or provisional registration is granted.
- (6) 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.
- (7) The registrar must notify the relevant Head of Department of the registration or provisional registration of a private FET institution in that province.

16. Conversion of provisional registration

- (1) The registrar must consider and determine an application for conversion of provisional registration submitted in accordance with regulation 5.
- (2) The registrar must determine whether to—
- (a) register the applicant in terms of section 27(6)(a) of the Act with effect from the expiry date;
 - (b) impose a condition in terms of section 33 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 for conversion submitted in terms of regulation 5 or if registration is denied, the registrar, after taking into account the interests of the students at the institution, must notify the institution in writing that its provisional registration will lapse by a specified date, and give reasons for the decision.

17. Application for amendment

- (1) The registrar must consider and determine an application for amendment in accordance with section 32 of the Act 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 33 of the Act; or

(c) deny the application for amendment.

- (3) The registrar must notify the institution in writing and give reasons for the decision made in terms of sub-regulation (2)(a) or (b).
- (4) If the Minister prescribes a new requirement in terms of section 26(1)(b)(iii) of the Act, the registrar must establish the import of the new requirements for the registration or provisional registration of an institution, and if needed, amend the terms of registration or provisional registration accordingly.

18. Cancellation of registration

- (1) Subject to sections 35 and 36 of the Act, the registrar must cancel the registration or provisional registration of an institution if—
- (a) the institution ceases to—
 - (i) be eligible in terms of regulation 2;
 - (ii) fulfill 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 33 or 34 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; or
 - (e) a director is convicted of an offence in terms of section 44 of the Act.
- (2) If GENFETQA withdraws accreditation for one or more of an institution's programmes, the registrar must review the institution's registration or provisional registration in terms of section 35(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 36 of the Act;
 - (b) publish the intention to cancel by notice in the 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 Gazette, with reasons;

- (e) notify the relevant Head of Provincial Education Department of the decision; and
- (f) 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 is cancelled and, taking into account the interests of the students at the institution, specify the date on which the cancellation will take effect.

19. Notification of registration matters

- (1) The registrar must notify the relevant Head of Department of the registration, provisional registration, lapsing or cancellation of registration of an institution that has its head office or a site of learning in that province.
- (2) The institution must take reasonable steps to ensure that a notice dealing with the lapsing or cancellation of its registration is brought without delay to the attention of students enrolled at the institution.

CHAPTER 4

REGISTRATION CERTIFICATE

20. Registration name

- (1) If the registrar grants registration or provisional registration, the institution must be registered under its legal name.
- (2) The registrar may include in the registration certificate such translation, abbreviation, acronym or trade name that uniquely identifies the institution.
- (3) 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
 - (c) with the same translation, abbreviation, acronym or trade name as another institution,

but must agree on an acceptable alternative with the applicant.

21. Certificate of registration

- 11 The certificate of registration or provisional registration must include–
 - 1. the registered name of the institution and any approved translation, abbreviation, acronym or trade name;

2. the institution's unique registration number;
 3. approved programmes and qualifications;
 4. the respective sites and provinces at which approved programmes and qualifications are to be offered;
 5. the date by which all the requirements for registration must be met, if the institution is provisionally registered in terms of section 27(3) and (4) of the Act;
 6. any condition imposed in terms of section 33 of the Act;
 7. the registrar's name, signature and date of signature; and
 8. 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 section 31 or 32 of the Act or an amended condition or new condition is imposed in terms of section 34 of the Act, the registrar must issue an amended certificate of registration to the institution and must inform the relevant Head of Department of the affected province or provinces accordingly.
- (3) The institution must return the previous certificate of registration to the registrar within 14 days of receipt of the amended certificate of registration

CHAPTER 5

RESPONSIBILITY OF AN INSTITUTION

22. Maintenance of registration

In order to maintain its registration an institution must—

- (a) continue to fulfill 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 33 or 34 of the Act;
- (d) with respect to all its further education and training programmes comply with the requirements of GENFETQA in terms of section 26(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; and
- (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 28 (1) and 44 (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 further education and training institution under the Further Education and Training Act, 1998. 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 further education and training institution under the Further Education and Training Act, 1998. 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; and
 - (b) the institution must make adequate arrangements to enable affected students to complete the programme at a comparable public or private institution and affected students who have a lawful claim on the institution as a result of an approved programme being discontinued must be refunded the unexpended portion of their fees pro rata.

- (3) An institution must comply with the criteria for accreditation of its programmes as determined by GENFETQA.
- (4) If GENFETQA withdraws accreditation for any approved programme, the registrar must review the terms of its registration in terms of section 35(2) of the Act.
- (5) An institution must submit an application for amendment to the registrar in terms of regulation 4 if it intends to withdraw or indefinitely suspend an approved programme or add a programme, qualification or site.

25. Information for students and the public

An institution must publish at least once a 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 in the respective province;
- (c) the declaration contemplated in regulation 11;
- (d) mission statement;
- (e) legal status;
- (f) names of directors, chief executive and senior management;
- (g) names and qualifications of 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 in each province;
- (l) accreditation status of each approved programme;
- (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) learning contract;
- (r) rules or code of conduct; and
- (s) grievance procedures.

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, on request by an enrolled or past student and on payment of the prescribed fee, provide a transcript of the student's 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;
 - (f) mark or grade for each course, with an explanatory note on the marking or grading system; and
 - (g) qualification awarded by GENFETQA, if any.

- (3) An institution must, on request by an enrolled or past student and on payment of the prescribed fee, make arrangements through GENFETQA to provide a copy of a student's certificate.
- (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) ensure that all information about its approved programmes and qualifications and accreditation status is accurate; and
 - (b) 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; or
 - (b) the logo of the Department of Education; or
 - (c) the logo of the GENFETQA.

28. Information required by the registrar

- a. An institution must submit such information as the registrar may reasonably require for the purpose of monitoring compliance with the Act and maintaining the further education and training management information system, including but not restricted to—
 - (a) information in a form specified by the Department of Education, to be submitted to the registrar;
 - (b) an annual audited financial statement as contemplated in section 30 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 30 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 monitoring and evaluation contemplated in regulation 14; and
 - (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, which for purposes of this regulation means a public or private institution or any other company, organisation or body.

29. Lapse or cancellation of registration

- (1) Any institution that has been notified by the registrar that its provisional registration has lapsed in terms of regulation 3 or that its provisional 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 or make adequate arrangements for affected students to complete their programmes at a comparable public or private institution; and
 - (d) cease to operate no later than the end of that academic year, and any institution that fails to comply is guilty of an offence in terms of section 44 of the Act.

CHAPTER 6**APPEALS****30. Procedure**

- (1) Subject to section 37 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.

12 An appeal document must specify—

- (a) the decision being appealed against
- (b) the grounds for the appeal; and
- (c) the remedy being sought.

- 13 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 7

GENERAL AND TRANSITIONAL ARRANGEMENTS

31. Conflict of interest

The registrar or any employee contemplated in section 23 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. Transitional arrangements

- (1) These regulations apply to any pending application for registration.
- (2) A person that has been exempted from registration in terms of section 51 of the Act must apply for registration in terms of regulations 2 and 3 by the date specified by the Minister by notice in the Gazette.

33. Short Title and commencement

These regulations may be cited as Regulations for the Registration of Private Further Education and Training Institutions, and come into operation on the date of publication thereof.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531