

# **SUPPLEMENT TO**

# **THE**

# **SWAZILAND GOVERNMENT**

# **GAZETTE**

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**THE HIGHER EDUCATION ACT, 2013**

(Act No. 2 of 2013)



**I ASSENT**

**MSWATI III**  
King of Swaziland

25<sup>th</sup> April, 2013

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**AN ACT**  
**ENTITLED**

**AN ACT** to provide for the regulation of higher education by establishing a Council for Higher Education and to provide for matters connected therewith.

**ENACTED** by the King and the Parliament of Swaziland.

**PART I**  
**PRELIMINARY**

***Short Title and Commencement***

- 1. (1) This Act may be cited as the Higher Education Act, 2013

(2) This Act shall come into force on such date as the Minister may, by notice in the Gazette, appoint.

### ***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 or private higher education institution and any other employee designated as such by the education council of that institution;

“accreditation” means recognition, approval, authorisation or endorsement in accordance with this Act.

“applicant” means any person who makes any application referred to in Parts III and IV of this Act;

“auditor” means a person who is registered as such in terms of section 9(3) of the Accountants Act, 1985;

“Council” means the Swaziland Higher Education Council established in terms of section 3 of this Act;

“education council” means a governing body of a public or private higher education institution;

“financial year” means a year commencing on the 1<sup>st</sup> day of April and ending on the 31<sup>st</sup> of March of the following year”

“higher education” means all learning programmes commenced after secondary education and leading to a higher qualification;

“higher education institution” means any institution that provides higher education on full-time, part-time or long distance basis and which is-

(a) established or deemed to be established as a public or private higher education institution under this Act;

(b) declared as a public or private higher education institution under this Act; or

(c) registered or conditionally registered as a public or private higher education Institution;

“pendent inspector” means a person who has knowledge and experience of higher education, who is not part of the higher education institution concerned;

“Minister” means the Minister responsible for Education and Training;

“private higher education institution” means any institution registered in terms of this Act and which is wholly owned and funded by a private individual or individuals;

“public higher education institution” means any institution registered in terms of this Act and wholly or partly owned or funded by the Government;

“secondary education” means post primary education in which instruction is given up to and including “O” level or “A” level or its equivalent as applicable;

“Secretariat” means the Swaziland Higher Education Secretariat established in terms of section 10;

“student” means any person registered as a student at a higher education institution;

“Vice-Chancellor” includes a president or principal or any other person heading a higher education institution; and

“vice-principal” includes a vice-rector or a deputy vice-chancellor.

## **PART II**

### **ESTABLISHMENT OF THE SWAZILAND HIGHER EDUCATION COUNCIL**

#### ***Establishment of the Swaziland Higher Education Council***

3. There is hereby established the Swaziland Higher Education Council, a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies Corporate may by law perform.

#### ***Seal of the Council***

4. (1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Secretary of the Council.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice Chairperson or any other member of the Council authorised to do so by a resolution of the Council.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Council by the Chairperson or any other member generally or specifically authorised by the Council to do so.

#### ***Powers and functions of Council***

5. (1) The Council shall be responsible for the accreditation, promotion, coordination and determination of higher education, the maintenance of standards of teaching, examination and research in higher education institutions and the vetting of sources of funding of higher education institutions.

(2) Without prejudice to the generality of subsection (1) the Council shall among other things-

- (a) formulate policy on higher education and advise the Minister accordingly;
- (b) coordinate the long term planning and overall development of higher education;
- (c) liaise with both public and private sectors of the economy on all matters relating to human resources development requirements;
- (d) plan for the funding of higher education and research, including the recurrent and development needs of public higher education institutions;

- (e) receive and review budgets for public higher education institutions and make recommendations to the Minister;
  - (f) promote quality assurance and audit quality assurance in high education;
  - (g) promote coordination among higher education institutions;
  - (h) advise Government on the establishment of public and private higher education institutions;
  - (i) receive and approve applications from persons seeking to establish public and private higher education institutions;
  - (j) review and approve programmes of study in respect of public and private higher education institutions;
  - (k) accredit private and public higher education institutions;
  - (l) ensure that quality assurance procedures are in place in all higher education institutions;
  - (m) ensure the audit of physical facilities and the assessment of their adequacy in higher education institutions;
  - (n) advise the Minister on governance of higher education institutions and the higher education system; and
  - (o) advice on any other matters related to higher education.
- (3) The advice to the Minister contemplated in subsection (2) (a) may include advice on-
- (a) quality promotion and quality assurance;
  - (b) research;
  - (c) the structure of the higher education system;
  - (d) a mechanism for the allocation of public funds;
  - (e) student financial aid;
  - (f) student support services; and
  - (g) fees to be charged by higher education institutions.
- (4) The Council shall have power to co-opt members.

***Information to be provided to the Council***

6. Every higher education institution shall, when requested to do so, provide the Council with such information as the Council may reasonably require for the performance of its functions.

### *Composition of the Council*

(1) The Council shall consist of the following part-time members who shall be appointed by the Minister, in writing-

- (a) a Chairperson, who shall be a person who qualifies to be a lecturer at a university;
- (b) the Principal Secretary in the Ministry of Education or a representative of that Principal Secretary;
- (c) the Principal Secretary in the Ministry of Finance or a representative of that Principal Secretary;
- (d) the Principal Secretary in the Ministry of Public Service or a representative of that Principal Secretary;
- (e) the Attorney-General or a representative of the Attorney-General;
- (f) one person representing the disabled;
- (g) two persons, each representing the private sector and the statutory corporations and who shall be appointed for their ability and experience in labour, business, finance or accountancy professions;
- (h) two Vice Chancellors, one representing a public higher education institution and another representing a private higher education institution;
- (i) two principals of higher education institutions, one representing public institutions and one representing private institutions; and
- (j) a representative of the academic community.

(2) The Vice-Chairperson shall be elected by the members of Council from among their number.

(3) The appointment of the Chairperson, members and co-opted members shall be undertaken in such a manner as to ensure, in so far as practically possible, that the-

- (a) functions of the Council in terms of this Act are performed according to the highest professional standards;
- (b) membership taken as a whole is broadly representative of the higher education system, research and related interests;
- (c) membership taken as a whole appreciates the role of the higher education system in reconstruction and development; and
- (d) membership as a whole has known and attested commitment to the interest of higher education.

(4) The appointments to the Council shall be published by notice in the Gazette by the Minister.



***Disqualification from appointment***

8. A person shall not be qualified for appointment as a member if that person-
- (a) is not a citizen of Swaziland;
  - (b) is declared insolvent or bankrupt;
  - (c) is declared to be of unsound mind;
  - (d) has been convicted of an offence involving fraud or dishonesty;
  - (e) has been convicted of an offence under any written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine; or
  - (f) has been dismissed from any office for gross misconduct.

***Tenure and vacation of office***

9. (1) Subject to subsection (2), a member, other than the Chairperson, a Principal Secretary, the Attorney General or a representative of the Principal Secretary or the Attorney-General shall hold office for a period not exceeding four years and at the end of that period shall be eligible for reappointment for not more than two terms.

(2) The Chairperson shall hold office for a period not exceeding five years and at the end thereof shall be eligible for reappointment for a single term.

(3) A member, other than a Principal Secretary or a representative of a Principal Secretary, and the Attorney-General or a representative of the Attorney-General may resign the office of member upon giving one month's notice, in writing, to the Minister, or upon giving such shorter period of notice as may be agreed by the Minister and the member.

- (4) The office of a member shall become vacant if the member-
- (a) resigns from that office by giving thirty days written notice to the Minister;
  - (b) is absent, without reasonable excuse, from three consecutive meetings of the Council of which the member has had notice;
  - (c) becomes mentally or physically incapable of performing the duties of a member;
  - (d) is declared bankrupt or insolvent;
  - (e) is convicted of an offence involving fraud or dishonesty;
  - (f) is convicted of an offence under any written law and is sentenced to imprisonment of not less than six months, without the option of a fine;
  - (g) conducts oneself in a manner, which, in the opinion of the Minister, would bring disrepute to the Council or prejudice the activities of the Council; or
  - (h) ceases to be a citizen of Swaziland.

### ***Executive Secretary of Council***

10. (1) The Council shall appoint an Executive Secretary on such terms as Council may determine.

(2) A person shall not be appointed as an Executive Secretary unless that person holds such qualifications and has such experience as the Council may determine.

(3) The Executive Secretary shall among other things-

- (a) develop resource allocation and utilisation models and coordinate the preparation of the annual budgets of higher education institutions;
- (b) coordinate the planning and provision of physical facilities for higher education institutions;
- (c) establish a documentation and information centre on higher education and carry out relevant research;
- (d) review the needs of the labour market in consultation with the Ministry responsible for finance and such other persons or institutions as the Minister may direct;
- (e) develop performance indicators and compile statistics on higher education institutions to provide information for planning, development and research in higher education; and
- (f) prepare annual reports on the activities of the Council;
- (g) organise and service the meetings and sittings of the Council;
- (h) keep records of all deliberations and decisions of the Council; and
- (i) follow up on the issues and decisions of the Council, ensure their implementation and report at subsequent meetings of the Council.

(4) The Executive Secretary shall, with the approval of the Council, employ staff necessary for the proper discharge of the functions of the Council, on such terms and conditions as may be determined by the Council.

### ***Filling of casual vacancy***

11. (1) Where the office of a member of the Council becomes vacant before the expiry of the term of office of that member, the Minister may appoint another member in place of the member who vacates office and that member shall hold office only for the unexpired portion of the term of the member who vacates office.

(2) The member appointed under subsection (1) shall be nominated by the organisation of which the member who vacates office was a representative.

### ***Disclosure of interest***

12. (1) If a member is present at a meeting of the Council or any committee of the Council at which any matter is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, the member shall, as soon as reasonably practicable after the commencement of the meeting, disclose such interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on, any question dealing with such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

### ***Meetings and procedure of Council***

3. (1) The Council shall hold its first meeting on a date and place fixed by the Minister, and the Council shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.

(2) The Council shall meet at least four times in each financial year.

(3) The Chairperson of the Council-

(a) may convene a special meeting of the Council at any time; and

(b) shall convene a special meeting of the Council on the written request of the Minister or the request of not fewer than seven members of the Council, which meeting shall be convened for a date not sooner than seven days nor later than thirty days after receipt of such request.

(4) Business shall not be discussed at a special meeting convened in terms of subsection (2) other than-

(a) such business as may be determined by the Chairperson of the Council, where the Chairperson convened the meeting in terms of paragraph (a) of subsection (3); or

(b) the business specified in the request for the meeting, where the Chairperson of the Council convened the meeting in terms of paragraph (b) of subsection (3).

(5) The Chairperson of the Council, in the absence of the Chairperson or the Vice-chairperson, shall preside at meetings of the Council.

(6) If the Chairperson and Vice-chairperson are both absent from any meeting of the Council, the members present may elect one of their number to preside at that meeting as chairperson.

(7) A majority of members shall form a quorum at any meeting of the Council.

(8) All acts, matters or things authorised or required to be done by the Council shall be decided by a majority vote at a meeting of the Council at which a quorum is present.

(9) At all meetings of the Council each member present shall have one vote on each question before the Council and, in the event of an equality of votes, the Chairperson or person presiding shall have a casting vote in addition to a deliberative vote.

(10) A member shall not take part in the consideration or discussion of, or vote on, any question before the Council which relates to the vacation of office of that member.

(11) Any proposal circulated among all members of the Council and agreed to by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the Council and shall be incorporated in the minutes of the next succeeding meeting of the Council.

(12) The Council may invite any person whose presence it deems necessary to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

### ***Rules of the Council***

14. (1) Subject to the approval of the Minister, the Council may from time to time, enact rules for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing may make rules-

- (a) regulating the appointment, conditions of service, termination of appointment and retirement benefits of the staff of the Council;
- (b) to appoint persons authorised to sign contracts, cheques and other documents on behalf of the Council, and otherwise regulating procedure in relation to transactions entered into by the Council; and
- (c) to ensure that the seal of the Council is kept in proper custody and is used only by authority of the Council.

### ***Committees of the Council***

15. (1) The Council shall appoint Committees consisting of its members or of other suitably qualified persons, and in particular may appoint the following Committees-

- (a) the Finance, Planning and Budget Committee which shall among other things-
  - (i) receive and review budgets from public higher education institutions;
  - (ii) make plans for the funding of public higher education institutions, including funding for research and the recurrent and development needs of higher education institutions; and
  - (iii) make plans for the funding of private higher education institutions in circumstances where the Council decides, with the approval of the Minister, that it is necessary to alleviate a specific short term financial difficulty that may affect the wellbeing of students;
- (b) the Advisory Committee which shall, among other things promote coordination among higher education institutions and deal with any matter relating to higher education;
- (c) the Academic Planning and Development Committee which shall, among other things-
  - (i) advise on the long term plans and overall development of higher education;

- (ii) receive and appraise applications from organisations seeking to establish private higher education institutions;
  - (iii) arrange for the review and approval of programmes of study and make recommendations in respect of private higher education institutions;
  - (iv) advise on the accreditation of higher education institution; and
  - (v) ensure that quality assurance procedures are in place in all higher education institutions; and
- (d) the Assessment Committee which shall, among other things-
- (i) enquire into and for the purpose of ascertaining the correctness of the particulars submitted under section (2);
  - (ii) periodically enquire into the general academic, administrative and student welfare of a higher education institution;
  - (iii) conduct such other investigations as are relevant to an application as the Council may deem necessary; and
  - (iv) ensure that higher education institutions provide quality education.

(2) The Council may from time to time appoint such other Committees either of a general or special nature consisting of such number of members as the Council may think fit, to assist in the carrying out of its duties.

(3) The Council may delegate any of its powers, functions or duties under this Act to a Committee appointed under subsection (2).

### ***Allowances***

6. A member shall be paid out of the funds of the Council such allowances as the Minister, in consultation with the Minister of Finance, may from time to time determine.

## **PART III**

### **ESTABLISHMENT OF HIGHER EDUCATION INSTITUTIONS**

#### ***Application for establishment of public or private higher education institutions***

17. (1) A person shall not establish a public or private higher education institution except in accordance with the provisions of this Act.

(2) A person wishing to establish a public or private higher education institution shall apply to the Council for approval by submitting to the Secretary an application accompanied by such details and documentation as may be prescribed by the Council.

(3) Public or private higher education institutions established after the commencement of this Act, shall be established only in accordance with this Act.

(4) The application for a private higher education institution shall-

- (a) indicate the period it will take to establish the institution;
- (b) have time bound phases for the establishment of the institution; and
- (c) indicate ownership of the land or premises or authority to use the land or premises.

***Verification of resources***

18. (1) The Council shall before approving an application made in terms of section 17, consider the suitability of an application and verify if an applicant has access to adequate resources to establish a higher education institution.

(2) All costs associated with the verification and evaluation of resources under subsection (1) shall be borne by the applicant.

***Provisional authority***

19. (1) Where the Council is satisfied that-

- (a) the resources required, as may be prescribed, are available or are likely to be available;
- (b) the applicant is following realistic plans to achieve the aims and objects for which the higher education institution is to be established;
- (c) the higher education institution when established is likely to attain and maintain standards set out in Part V on a long term basis; and
- (d) the establishment of the higher education institution is in the interests of higher education in Swaziland;

the Council may accept the proposal and issue a letter under seal constituting a provisional authority to operate in the manner specified in subsection 2.

(2) A letter constituting provisional authority shall authorise the person or institution named in that letter to start preparing to implement the proposal accepted in terms of subsection (1) and in particular to-

- (a) set up a governing body for the higher education institution intended to be established;
- (b) commence or continue the development of physical facilities;
- (c) commence or continue the assembly of academic resources;
- (d) advertise the programmes of instruction expected to be conducted at that higher education institution; and
- (e) admit students to such programmes as the Council may approve.

(3) The name and particulars of every higher education institution in respect of which a letter of provisional authority is issued under this section shall be published by notice in the Gazette.

***Refusal, suspension or revocation of authority***

20. (1) The Council may refuse to issue a letter of provisional authority if it is satisfied that the person who or institution that has applied for it is unlikely to procure the financial, academic, physical and other resources necessary for the establishment of a viable higher education institution.

(2) The Council may, by notice published in the Gazette suspend or revoke a letter of provisional authority if-

- (a) the person or institution named in that letter has not within two years of issue made substantial progress in respect of the matters set out in section 19 (2);
- (b) the person or institution named in that letter has not notified the Council of the intention not to proceed with the establishment of a higher education institution, or is in any event, patently incapable of complying with the standards set out in Part V of this Act; or
- (c) in the opinion of the Council fundamental changes have since occurred which, had such changes been in existence at the time the application was considered under section 19 (1) the letter would not have been issued.

(3) The Council shall, in all cases of suspension, indicate the steps which the holder of the letter must take before provisional authority can be restored.

(4) Where a letter of provisional authority is refused or revoked in accordance with this section, the Council shall not entertain any subsequent application or substantially similar proposal by the same person or institution within two years of that refusal or revocation unless good cause is shown by the applicant or unless that was the express understanding at the time of the refusal or revocation.

**PART IV**

**REGISTRATION OF EXISTING HIGHER EDUCATION INSTITUTIONS**

***Registration procedure***

21. (1) Every higher education institution which is in operation shall, within six months of the commencement of this Act or within such extended period as the Council may permit, apply to the Executive Secretary for registration.

(2) Every higher education institution that is operating under a letter of provisional authority and that has procured to the satisfaction of the Council the financial, academic, physical and other resources necessary for the establishment of a viable higher education institution shall apply to the Executive Secretary for registration.

(3) An application for registration in accordance with subsections (1) and (2) shall be as prescribed by the Minister in regulations.

***Effect of registration***

22. (1) The Council shall prepare and publish in the Gazette a list of all registered higher education institutions to which section 21 applies and in respect of which details have been received, and shall in that publication indicate in respect of each such higher education institution whether all particulars set out in the application under section 21 have been supplied.

(2) Any higher education institution which does not appear in the list prepared under subsection (1) or whose particulars are incomplete shall, from the date of publication of that register cease to operate or to perform functions consistent with those of a higher education institution.

(3) Notwithstanding the provisions of subsection (2) the Council may, where good cause is shown by the applicant, permit a higher education institution whose particulars are incomplete, to operate for a further period of three months whereupon the higher education institution shall, unless all particulars are supplied, cease to operate.

(4) Each higher education institution appearing in the register and whose particulars are complete shall be issued with a certificate of registration bearing the seal of the Council and such certificate shall constitute authority to continue operations until such time as it is suspended or revoked.

(5) The Council may suspend and or revoke the registration of a higher education institution where such institution has failed to comply with the provisions of this Act after reasonable notice has been given to it.

(6) It shall be an offence for any person to administer or otherwise perform any function in furtherance of the aims and objects of a higher education institution where the operations have been suspended or revoked in terms of either subsection (2), (3) or (5).

(7) A person convicted of an offence under subsection (6) shall be liable to a fine not exceeding E50 000-00 (fifty thousand Emalangeni) or to imprisonment for a period not exceeding five (5) years or to both such fine and such imprisonment.

## PART V INSTITUTIONAL STANDARDS

### *Institutional standards*

23. (1) The Minister may, on the recommendation of the Council, prescribe regulations setting out institutional standards to govern the performance, operations and general conduct of all higher education institutions authorised to operate under this Act.

(2) The Council may, at the request of each higher education institution indicate in writing the time and specific steps to be taken towards the attainment of the standards referred to in subsection (1).

### *Evaluation of performance and supervision*

24. (1) A higher education institution authorised to operate under this Act shall as long as such institution is in force, prepare and submit to the Council-

- (a) an annual report of its activities in each year of operation before or by the end of its academic year; and
- (b) where necessary, a detailed assessment at such interval as the Council may determine, of the steps it has taken towards the achievement of the aims and objects for which it was established.



(2) The Council shall discuss all reports submitted pursuant to subsection (1) and may make such comments or give such other instructions for action by the higher education institution concerned.

(3) Where a higher education institution fails, without sufficient cause, to comply with the requirements of subsection (1), the Council may suspend or revoke registration of the higher education institution in accordance with section 22 (5).

## PART VI ACCREDITATION OF PUBLIC AND PRIVATE HIGHER EDUCATION INSTITUTIONS

### *Criteria for accreditation*

25. (1) Any public or private higher education institution which is a holder of a certificate of registration issued in accordance with this Act may apply to the Council for accreditation.

(2) The Council shall accredit a higher education institution where-

- (a) the certificate has been held for a period of at least three years or for such other period as the Council may in a particular case determine;
- (b) the certificate has not been suspended or revoked; and
- (c) the most recent assessment of the higher education institution in accordance with section 24 (1) (b) of this Act indicates that the Council is satisfied with the progress made so far in the design, implementation or maintenance of an academic and administrative system acceptable in terms of the institutional standards prescribed under this Act and relevant to the needs of higher education in Swaziland.

(3) An application for accreditation shall, in addition to any other details as the Council may specify be accompanied by-

- (a) a list of the academic qualifications for all members of staff employed by the higher education institution during the period assessed under section 24 (b) and of those expected to be employed by the higher education institution in future;
- (b) a list of the total number of students that have been enrolled in each programme of instruction offered at the higher education institution and the standards attained by those that have graduated during the period assessed;
- (c) a statement of the size and quality of the library and modules which have been developed for each programme to be offered at the higher education institution;
- (d) a statement of the financial resources that are available for the exclusive use of the higher education institution, certified by the auditors of the higher education institution; and
- (e) an inventory of the physical facilities, including land that are available for the exclusive use of the higher education institution.

***Obligations of accredited higher education institutions***

26. Every accredited higher education institution shall-

- (a) ensure that the institutional standards prescribed under Part V are maintained at all times; and
- (b) all lawful instructions issued by the Council or any other authority empowered to do so under this Act are complied with; and
- (c) submit to such other modes of supervision including inspection and visitation at such intervals as may be determined by the Council.

***Appointment of an Assessment Committee***

27. (1) The Council shall, before considering an application submitted in terms of section 25, appoint an Assessment Committee in terms of section 15 (1).

(2) The Committee shall consist of at least five (5) members who shall-

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

(3) A member of the Assessment Committee shall be appointed for a period of three years and may be reappointed.

(4) The Assessment Committee shall submit a factual and evaluative report to the Council within six months of the date of its appointment.

***Consideration of report of Assessment Committee by the Council***

28. (1) As soon as the report of the Assessment Committee is received, the Council shall consider all documentation relevant to the application and shall indicate what revisions or amendments, if any, the higher education institution concerned should be required to make before the merits of the institution are assessed.

(2) Where after a full deliberation on the merits of each application the Council is satisfied that-

- (a) the information submitted in accordance with section 27 (4) forms a sound basis for the academic and administrative organisation of the higher education institution; and
- (b) the higher education institution has effectively organised adequate human, physical, financial and other resources into an educational programme comparable to that of similar institutions authorised to operate in the Kingdom of Swaziland, it shall recommend to the Minister that the higher education institution be accredited.

(3) Where the Council is not satisfied in the manner specified in subsection (2) it shall refuse to recommend accreditation.

(4) Should an application for accreditation be refused, the Council shall not accept or entertain more than one re-application for such accreditation within a period of two years as from the date of the first application.

***Appointment of an independent inspector***

29. (1) The Minister may, further to the Assessment Committee established in terms of section 27, appoint an inspector, who is independent, in relation to a public higher education institution to conduct an investigation at that institution-

- (a) in the cases referred to in section 30; and
- (b) after consulting the education council of the public higher education institution concerned if practicable.

(2) The education council of the higher education institution and any person affected by the investigation shall assist and co-operate with the independent inspector in the performance of the functions of the inspector in terms of section 33.

***Instances where an independent inspector may be appointed***

30. (1) An independent inspector may be appointed under section 29 if-

- (a) the education council of a higher education institution requests the appointment;
- (b) circumstances arise at a higher education institution that involve financial or other maladministration of a serious nature;
- (c) there is a serious undermining of the effective functioning of the higher education institution and the education council of the higher education institution has failed to resolve such circumstances; and
- (d) the appointment is in the interests of higher education in an open and democratic society.

(2) The Minister may appoint an independent inspector under section 29 to conduct an investigation at two or more higher education institutions.

***Functions of the independent inspector***

31. (1) An independent inspector appointed under section 29 shall, within 30 days 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.

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

***Independent inspector may appoint assistant***

32. An independent inspector appointed under section 29 may, with the concurrence of the Minister, appoint any other person with suitable knowledge and experience to assist the inspector in the investigations.

**PART VII**  
**FINANCIAL PROVISIONS**

***Funds of the Council***

33. (1) The funds of the Council shall consist of-

- (a) moneys appropriated by Parliament for the purposes of Council;
- (b) legitimate grants and donations that the Council may receive;
- (c) income that the Council may receive from investments, rental building or educational materials; and
- (d) money payable by any person, institution or organ of state for services rendered by the Council or the Assessment Committee.

(2) The Council-

- (a) shall in each financial year, at such time and in such manner as the Minister may determine, submit for the approval of the Minister, a statement of its estimated income and expenditure for the ensuing financial year, which approval shall be granted with the consent of the Minister of Finance;
- (b) may any time during the financial year, submit for the approval of the Minister adjusted statements of its estimated income and expenditure which approval shall be granted with the consent of the Minister of Finance;
- (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraph (a) and (b) above.

(3) Where the Minister does not approve the statement of estimated income and expenditure in terms of this section, the Minister shall request the Council to submit revised statements within a specified time limit.

(4) The money contemplated in subsection (1) shall be used by the Council in accordance with the approved statement referred to in subsection (2) and any unexpended balance shall be carried forward to the following financial year.

(5) Subject to subsection (4), the Council may invest any portion of its funds in such manner as it may determine, with the approval of the Minister and the concurrence of the Minister of Finance.

***Financial year***

34. The financial year of the Council shall be a period of twelve months ending on the 31<sup>st</sup> of March.

### ***Accounts and audit***

35. (1) The Council shall keep and maintain proper accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Council, and shall prepare, in each financial year, a statement of such accounts.

(2) The accounts of the Council in respect of each financial year shall, within three months of the end of that year, be audited by an auditor appointed by the Council.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it pertinent to comment on, whether or not-

- (a) the auditor has received all the information and explanation which, to the best knowledge and belief of the auditor, were necessary for the performance of the duties;
- (b) the accounts and related records of the Council have been properly kept;
- (c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and
- (d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditor and a copy of the audited accounts shall, within fourteen days of the completion of that audit, be forwarded to the Council by the auditor.

### ***Annual report***

36. (1) The Council shall within a period of six months after the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the Council during that year, together with the report of the auditor and the audited accounts as provided for in section 35 and the Council shall cause such report to be published in such manner as the Minister may require.

(2) A report compiled in accordance with subsection (1) shall be laid in Parliament by the Minister, within three months of receipt.

### ***Action on failure by an education council of a higher education institution to comply with this Act***

37. (1) If an education council of a higher education institution 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 institution, the Minister may call upon such education council to comply with the provision or condition within a specified period.

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

(3) Before taking action under subsection (2), the Minister shall-

- (a) give notice to the education council of the higher education institution concerned of the intention so to act;
- (b) give such education council a reasonable opportunity to make representations; and
- (c) consider such representations.

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

### **PART VIII**

#### **MERGER AND CHANGE OF NAME OF HIGHER EDUCATION INSTITUTIONS**

##### ***Requirements for merger of higher education institutions***

38. (1) Higher education institutions which intend to merge shall submit an application, accompanied by valid certificates of registration which have not been suspended or revoked, to the Council.

(2) The merging institutions shall submit proof that they were assessed and certified by the Council to have met all requirements of this Act.

(3) The merging institutions shall provide to the Council documentation to show that the merger will not work to the detriment of the existing personnel and standards.

##### ***Change of name of a higher education institution***

39. (1) An education council of a higher education institution other than an education council of a public university established or incorporated by an Act of Parliament may, with the approval of the Minister and by notice in the Gazette, change the name of such higher education institution.

(2) A name of a university established or incorporated by an Act of Parliament may only be changed by amendment of such Act.

### **PART IX**

#### **OFFENCES**

##### ***Fraud***

40. (1) Any person other than a higher education institution who, without the authority of a higher education institution-

- (a) offers or pretends to offer any higher education programme or part;
- (b) purports to confer a qualification granted by a higher education institution, or in collaboration with a higher education institution purports to perform an act on behalf of such higher education institution

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years or to a fine not exceeding E 1 000 000 (one hundred thousand) or to both such fine and such imprisonment.

(2) Any person who pretends that a qualification has been awarded to that person by a higher education institution, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding two years or to a fine not exceeding E10 000 (ten thousand) or to both such fine and such imprisonment.

## **PART X GENERAL**

### ***Limitation of liability***

41. The Government, the Council or any person appointed in terms of this Act shall not be 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***

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

- (a) the Council;
- (b) the education council of a higher education institution;
- (c) any employee of the Ministry; or
- (d) any organ of state.

### ***Regulations***

43. The Minister may in consultation with the Council, make regulations on-

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

### ***Conflict with other laws***

44. The provisions of this Act shall prevail over any other law dealing with higher education matters and in the event of any conflict or inconsistency, the conflicting or inconsistent provision of such written laws shall, to the extent of the conflict or inconsistency, be deemed to be superseded.

