
GENERAL NOTICE

NOTICE 828 OF 2001**DEPARTMENT OF EDUCATION****INVITATION FOR COMMENT ON THE DRAFT BILLS, 2001**

The Minister of Education hereby publishes the following Bills for comment:

- (a) Education Laws Amendment Bill, 2001
- (b) General and Further Education and Training Quality Assurance Bill, 2001
- (c) Higher Education Amendment Bill, 2001

All interested parties and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke, Fax No. (012) 326-9128 or by e-mail: locke.m@educ.pwv.gov.za.

Kindly provide the name, address, telephone number, fax number and e-mail address of the person or organisation submitting the comments.

The comments should reach the department not later than 7 May 2001.

PROFESSOR KADER ASMAL, MP

MINISTER OF EDUCATION

DATE:

HIGHER EDUCATION AMENDMENT BILL, 2001

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Higher Education Act, 1997, so as to define certain concepts; to allow for the establishment of interim councils for new, declared or merged public higher education institutions; to provide for a member of council to serve only on one public higher education institution council; to provide for the dissolving of councils of public higher education institutions; to provide for the recomposition of a council if the majority of members resigns; to provide for a seat for a public higher education institution; to provide for conferring of degrees and honorary degrees by a public higher education institution; to provide for the repeal of the Certification Council for Technikon Education Act 88 of 1986; to provide for the repeal of the Universities' Private Acts, to provide for the repeal of old Acts and other matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 101 of 1997

1. Section 1 of the Higher Education Act, 1997 (hereafter referred to as the principal Act) is hereby; amended by-

- (a) the insertion after the definition of "college" of the following definition:

"conditions' means the general or specific stipulation or directive, which may be of a suspensive or prescriptive nature, given by the registrar to be fulfilled by the registered or conditionally registered private higher education institution, and must be fulfilled within a stipulated time-frame".

- (b) the insertion after the definition of "registrar" of the following definition:

"requirements" means the prescribed criteria as contemplated in section 53 to which a private higher education institution must comply before it is eligible for registration.

Amendment of section 20 of Act 101 of 1997

2. Section 20 of the principal Act is hereby amended by -

- (a) the deletion of subsection (2); and
- (b) the addition after subsection (5) of the following subsections:

~~(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period of six months, to perform the functions relating to governance except the function to make the institutional statute.~~

(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.

(8) The interim council contemplated in subsection (6) consists of -

- (a) the chairperson; and
- (b) four members.

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.

(10) The interim council must perform the functions relating to governance, and must in particular -

- (a) appoint an interim management;

- (b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
 - (c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).
- (11) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.

Amendment of section 21 of Act 101 of 1997

3. Section 21 of the principal Act is hereby amended by the addition after subsection (5) of the following subsections:

- ~~“(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for six months, to perform the functions relating to governance except the function to make the institutional statute.~~
- (7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.
 - (8) The interim council contemplated in subsection (6) consists of -
 - (a) the chairperson; and
 - (b) four members.
 - (9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.
 - (10) The interim council must perform the functions relating to governance, and must in particular -
 - (a) appoint an interim management;
 - (b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
 - (c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).
 - (11) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.”.

Amendment of section 23 of Act 101 of 1997

4. Section 23 of the principal Act is hereby amended by the addition after subsection (4) of the following subsections:

- (5) The Minister must in the notice contemplated in subsection (1) establish an interim council for six months, to perform the functions relating to governance except the function to make the institutional statute.
- (6) The Minister may extend the period referred to in subsection (5) once for a further period not exceeding six months.
- (7) The interim council contemplated in subsection (5) consists of -
 - (a) the chairperson; and
 - (b) four members.
- (8) The four members contemplated in subsection (7)(b) must be appointed by the Minister from nominations received from the public higher education institutions contemplated in subsection (2)(a).
- (9) The four members contemplated in subsection (7)(b) may not include any member of staff or student from the public higher education institutions contemplated in subsection (2)(a).
- (10) The interim council must co-opt three members of the interim management contemplated in subsection (11)(a) and these co-opted members have no voting powers.
- (11) The interim council must perform the functions relating to governance, and must in particular -
 - (a) appoint an interim management;
 - (b) ensure that a council is constituted in terms of the standard statute contemplated in section 33(3); and
 - (c) ensure that all the other structures are constituted in terms of the standard statute contemplated in section 33(3).
- (12) Any decision of the interim council that may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.

Amendment of section 26 of Act 101 of 1997

5. Section 26 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subject to subsection (4) a structure referred to in subsection (2)(a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute **[or an Act of Parliament]**.”.

Amendment of section 27 of Act 101 of 1997

6. Section 27 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The council of a public higher education institution must govern the public higher education institution, subject to this Act, **any other law** and the institutional statute.”; and

(b) by the addition of the following subsections after subsection (7)

~~“(8) A member of a council of a public higher education institution may not serve on the council of another public higher education institution.~~

(9) Despite subsection (8) a member of a council of a public higher education institution who is serving on more than one public higher education institution council on or before 30 November 2001 may complete his or her term of office.

(10) If 60 per cent or more of the members of a public higher education institution council that are not staff or students of such public higher education institution resigned at a particular meeting of council, it is deemed that such council has resigned.

- (11) If a council resigns as contemplated in subsection (10) a new council must be constituted in terms of the statute of the public higher education institution."

Amendment of section 28 of Act 101 of 1997

7. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- "(3) The number of persons contemplated in subsection (2)(b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute [**or an Act of Parliament**]."

Amendment of section 29 of 101 Act of 1997

8. Section 29 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- "(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute or [,] institutional rules [**or an Act of Parliament**]."

Amendment of section 31 of Act 101 of 1997

9. Section 31 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) the management, as determined by the institutional statute [**or an Act of Parliament**];"; and

- (b) by the substitution for subsection (3) of the following subsection:

“(3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute **[or an Act of Parliament]**.”

Amendment of section 32 of Act 101 of 1997

10. Section 32 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) an institutional statute, subject to section 33, to give effect to any matter not expressly prescribed by this Act **[law relating to the public higher education institution and to promote the effective management of the institution in respect of matters not expressly prescribed by any law]**; and

Amendment of section 35 of Act 101 of 1997

11. Section 35 of the principal Act is hereby amended by the substitution for the section of the following section:

“The establishment and composition, manner of election, term of office, functions and privileges of the students' representative council of a public higher education institution must be determined by the institutional statute or the institutional rules.”

Amendment of section 41A of Act 101 of 1997

12. Section 41A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister

may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act [or a private Act of Parliament], appoint a person as administrator to replace the council or management and perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months.”.

Insertion of new sections 65A, 65B and 65C in Act 101 of 1997

13. The principal Act is hereby amended by the insertion after section 65 of the following new sections:

“Seat of public higher education institution

- 65A.** (1) The seat of a public higher education institution is the physical location of the institution as contemplated in section 20(3)(c), section 21(2)(c), section 23(4) or section 24(3).
- (2) Subject to the approval of the Minister, a public higher education institution may conduct its activities beyond the seat contemplated in subsection 1.
- (3) If the activities contemplated in subsection (2) fall within the seat of another public higher education institution or at a place where the academic activities of another public higher education institution are conducted, the Minister’s approval is subject to consultation with such other public higher education institution.
- (4) The seat and other areas of activities of a public higher education institution as contemplated in subsections (1) and (2) must be reflected by institutional statute.

Degrees, diplomas and certificates

- 65B.(1) A public higher education institution may, subject to the provisions of this Act and its institutional statute, confer such degrees in any faculty as it may deem expedient to confer.
- (2) Save as is provided by subsection (1), no degree may be conferred by the public higher education institution upon any person who has not attained, in examination or other test, the prescribed standard of proficiency.
- (3) A public higher education institution may grant a diploma or certificate to any person who has pursued a course of study approved by the council of the public higher education institution.”.

Honorary degrees

- 65C. Subject to the provisions of its institutional statute a public higher education institution may, on the resolution of the council and the senate of the public higher education institution, and without examination, confer a honorary degree of master or doctor in any faculty upon any person whom the public higher education institution may deem worthy of such a degree, provided that the holder of such a degree which has been conferred must not, by the fact that he or she has been admitted thereto, be entitled to practise any profession.”

Amendment of section 72 of Act 101 of 1997

14. Section 72 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Any university established or incorporated by a Private Act of Parliament **[continues to exist in terms of such Private Act and]** is deemed to be a university established in terms of this Act.”.

- “(8) The Certification Council for Technikon Education Act, 1986 (Act No. 88 of 1986).”.

Repeal of laws

15. The laws listed in the Schedule are hereby repealed in their entirety.

Transitional arrangements

16. (1) Despite section 14, the Certification Council for Technikon Education established in terms of section 2 of the Council for Technikon Education Act, 1986 (Act No. 88 of 1986) continue to exist and to perform its functions as if that Act has not been repealed, until a date determined by the Minister by notice in the Gazette.
- (2) All assets which vested in the Certification Council for Technikon Education immediately prior to the commencement of this Act, vest in the Council on Higher Education provided that sufficient funds must be made available to the Certification Council to perform its functions until the date contemplated in subsection (1).

Short title

17. This Act is the Higher Education Amendment Act, 2001.

Schedule

- Potchefstroom University College (Private) Act 101 of 1992
- Potchefstroomse Universiteit vir Christelike Hoër Onderwys Amendment Act 25 of 1921
- Potchefstroomse Universiteitskollege vir Christelike Hoër Onderwys (Private) Act 5 of 1933
- Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Act 19 of 1950
- Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Act (House of Assembly) 80 of 1993
- Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Amendment Act 72 of 1973
- Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Amendment Act (House of Assembly) 108 of 1992
- Potchefstroomse Universiteit vir Christelike Hoër Onderwys (Private) Amendment Act (House of Assembly) 64 of 1993
- Medical University of Southern Africa (Private) Amendment Act 25 of 1997
- Rand Afrikaans University (Private) Amendment Act 107 of 1983
- Rand Afrikaans University (Private) Amendment Act 33 of 1989
- Rand Afrikaans University (Private) Amendment Act 44 of 1987
- Rand Afrikaans University (Private) Amendment Act 49 of 1980
- Rand Afrikaans University (Private) Amendment Act 70 of 1969
- Rand Afrikaans University (Private) Amendment Act 84 of 1970
- Rand Afrikaans University (Private) Amendment Act 93 of 1982
- Rand Afrikaans University Act 51 of 1966
- Rhodes University (Private) Act 15 of 1949
- Rhodes University (Private) Act Amendment Act 7 of 1965
- Rhodes University (Private) Amendment Act (House of Assembly) Act 159 of 1993
- Rhodes University (Private) Amendment Act 21 of 1973
- Rhodes University (Private) Amendment Act 62 of 1979
- Rhodes University (Private) Amendment Act 69 of 1983
- Rhodes University (Private) Amendment Act 81 of 1972
- Rhodes University (Private) Amendment Act 99 of 1986
- Rhodes University Act Amendment (Private) Act 6 of 1960
- University of Cape Town (Private) Act 8 of 1999 Medical University of Southern Africa Act 78 of 1976

- University of Durban-Westville (Private) Amendment Act 32 of 1997
University of Durban-Westville (Private) Amendment Act 82 of 1996
University of Durban-Westville Act 81 of 1983
University of Durban-Westville Amendment Act 51 of 1993
University of Fort Hare Act 40 of 1969
University of Fort Hare Amendment Act 28 of 1971
University of Natal (Private) Amendment Act (House of Assembly) 163 of 1993
University of Natal (Private) Amendment Act 66 of 1977
University of Natal (Private) Amendment Act 71 of 1979
University of Natal (Private) Amendment Act 71 of 1983
University of North-West (Private) Act 17 of 1996
University of Port Elizabeth (Private) Amendment Act (HA) 98 of 1988
University of Port Elizabeth (Private) Amendment Act (House of Assembly) 69 of 1992
University of Port Elizabeth (Private) Amendment Act 114 of 1976
University of Port Elizabeth (Private) Amendment Act 66 of 1969
University of Port Elizabeth (Private) Amendment Act 68 of 1983
University of Port Elizabeth (Private) Amendment Act 83 of 1996
University of Port Elizabeth (Private) Amendment Act 86 of 1979
University of Port Elizabeth Act 1 of 1964
University of Port Elizabeth Amendment Act 31 of 1967
University of Port Elizabeth Amendment Act 40 of 1965
University of Pretoria (Private) Act (House of Assembly) 106 of 1990
University of Pretoria (Private) Amendment Act (House of Assembly) 158 of 1993
University of South Africa (Private) Amendment Act 22 of 1973
University of South Africa (Private) Amendment Act 54 of 1993
University of South Africa (Private) Amendment Act 62 of 1969
University of South Africa Act 19 of 1959
University of South Africa Amendment Act 13 of 1964
University of South Africa Amendment Act 53 of 1967
University of Stellenbosch (Private) Act (House of Assembly) 107 of 1992
University of the North Act 47 of 1969
University of the North Amendment Act 150 of 1992
University of the Orange Free State (Private) Act 21 of 1949
University of the Orange Free State (Private) Act Amendment (Private) Act 29 of 1962
University of the Orange Free State (Private) Act Amendment Act 36 of 1959

- University of the Orange Free State (Private) Amendment Act (House of Assembly) 68 of 1992
- University of the Orange Free State (Private) Amendment Act (House of Assembly) 81 of 1993
- University of the Orange Free State (Private) Amendment Act 108 of 1978
- University of the Orange Free State (Private) Amendment Act 34 of 1989
- University of the Orange Free State (Private) Amendment Act 69 of 1974
- University of the Orange Free State (Private) Amendment Act 70 of 1971
- University of the Orange Free State (Private) Amendment Act 97 of 1984
- University of the Western Cape Act 78 of 1983
- University of the Witwatersrand, Johannesburg, (Private) Amendment Act 32 of 1968
- University of the Witwatersrand, Johannesburg, (Private) Amendment Act 37 of 1980
- University of the Witwatersrand, Johannesburg, (Private) Amendment Act 21 of 1997
- University of the Witwatersrand, Johannesburg, (Private) Amendment Act (House of Assembly) 78 of 1991
- University of the Witwatersrand, Johannesburg, (Private) Amendment Act (House of Assembly) 78 of 1993
- University of the Witwatersrand, Johannesburg, (Private) Act 15 of 1959
- University of Transkei (Private) Act 81 of 1996
- University of Venda (Private) Act 89 of 1996
- University of Zululand (Private) Amendment Act 80 of 1996
- University of Zululand Act 43 of 1969
- The Certification Council for Technikon Education Act 82 of 1986
- The Certification Council for Technikon Education Amended Act 185 of 1993
- Universities Acts Amendment Act 9 of 1918
- Universities Amendment Act 82 of 1959
- Universities Amendment Act 46 of 1961
- Universities Amendment Act 43 of 1965
- Universities Amendment Act 24 of 1968
- Universities Amendment Act 67 of 1969
- Universities Amendment Act 67 of 1975
- Universities Amendment Act 65 of 1977
- Universities Amendment Act 83 of 1983
- Universities Amendment Act 86 of 1986
- Universities Amendment Act 123 of 1991

Universities Amendment Act 21 of 1993
Universities Amendment Act (House of Assembly) 64 of 1989
University Laws Amendment Act 23 of 1953
Black Education Account Abolition Act 20 of 1972
Black Universities Amendment Act 6 of 1973
General Law Amendment Act 29 of 1974
Black Universities Amendment Act 57 of 1977
Black Education Amendment Act 67 of 1978
Universities for Blacks Amendment Act 52 of 1979
Universities for Blacks Amendment Act 14 of 1982
Technikons (Education and Training) Amendment Act 48 of 1983
Universities, National Education Policy and Technikons Amendment Act 75 of 1984
Technikons (Education and Training) Amendment Act 77 of 1984
Tertiary Education (Education and Training) Act 92 of 1984
University Staff (Education and Training) Amendment Act 28 of 1985
Technikons (National Education) Amendment Act 89 of 1986
Universities and Technikons for Blacks, Tertiary Education (Education and Training) and
Education and Training Amendment Act 3 of 1986
Universities (Education and Training) Amendment Act 34 of 1987
Education Laws (Education and Training) Amendment Act 95 of 1987
Education Laws (Education and Training) Amendment Act 31 of 1988
Technikons (National Education) Amendment Act (House of Assembly) Act 33 of 1988
Universities Amendment Act (House of Assembly) Act 64 of 1989
Universities and Technikons (Education and Training) Amendment Act 41 of 1990
Universities Amendment Act 123 of 1991
General Law Amendment Act 49 of 1996
Universities and Technikons Advisory Council Amendment Act 57 of 1985
Universities and Technikons Advisory Council Amendment Act 24 of 1991

EXPLANATORY MEMORANDUM TO THE HIGHER EDUCATION AMENDMENT BILL, 2001

1. INTRODUCTION

This Bill provides for the amendment of the Higher Education Act, 1997 (Act No. 101 of 1997) so as to provide for additional provisions to the Act and to make certain technical adjustments.

2. REASONS FOR AND SUBSTANCE OF BILL

Repeal of the Private Acts

- 2.1 (a) In the White Paper it was indicated that the Minister will request the Council on Higher Education "to investigate and consult upon ... and provide advice on the desirability or otherwise of perpetuating Private University Acts, in the absence of such Private Acts for Technikons and Colleges."
- (b) This was necessary as the Higher Education Act created the legal basis for the establishment of a single, national higher education system and replaced previous legislation dealing with higher education. However, it left intact the Private Acts of Universities. This is anomalous as the Higher Education Act supersedes the Private Acts and technikons are not governed by Private Acts.
- (c) The Council on Higher Education's advice had been received. They recommended, amongst others, that the outcome of the Council on Higher Education's size and shape investigation be awaited. As a result of the report made by the Council on Higher Education on the size and shape of higher education institutions, the Minister developed policy which was published and does not effect the issue of Private Acts in any manner.
- (d) The Institutional Statutes of all Higher Education Institutions have been brought into line with the Higher Education Act in terms of the composition

and functions of councils, senates and institutional forums. As the Private Acts have not been amended (amendments to Private Acts can only be effected by Parliament), the old composition and functions of councils and senates are still in place in the Private Acts. Thus, the Universities' Institutional Statutes are not in compliance with their own Private Acts, which cause confusion. Furthermore, although the Higher Education Act supersedes the Private Acts, there are matters that are contained in the Private Acts on which the Higher Education Act is silent.

- (e) The Private Acts also keep a number of archaic Amendment Acts and Acts "alive" (see Schedule to the Higher Education Amendment Bill, 2001).

Repeal of the Certification Council for Technikon Education (SERTEC)

- 2.2 The Higher Education Quality Committee (HEQC) of the Council on Higher Education has been awarded their Education and Training Quality Assurer status by the South African Qualifications Authority. In this regard, it was decided that the SERTEC Act will be repealed and that the assets of SERTEC will be dealt with through transitional arrangements in the Amendment Bill. As the HEQC will in future perform all the functions SERTEC had performed, SERTEC assets and liabilities will be taken over by Council on Higher Education.

The dissolution of Councils

- 2.3 Given that two Councils had already over the last few years "decided" to dissolve, while there is no authority for such action, it was thought important that such authority be included in the Higher Education Act. If the members of a council decide at a meeting that all or more than 60% of the external members will resign such council is dysfunctional and must be reconstructed in terms of the Institutional Statutes.

The establishment of interim councils for new, declared or merged public institutions

- 2.4 The Higher Education Act is silent on the matter of governance during the process of establishing a new institution, declaring an institution as a Higher Education Institution or merger of Higher Education Institutions. The Bill seeks to address this vacuum.

Seats of institutions

- 2.5 The need has arisen to bring legal certainty to the operational areas of Higher Education Institutions. The seats of Universities were prescribed by the Private Act which is to be repealed by this amendment Bill. There is no prescription of operational areas for Technikons in any current legislation.

3. CONSULTATION

Extensive consultations will be held with all relevant role players (Council on Higher Education, SAUVCA and CTP), on the above issues. The Bill will also be published for the public to make comments on any of the provisions of the Bill.

4. PARLIAMENTARY PROCEDURE

The Department is of the opinion that this Bill must be dealt with in terms of the procedures tabled in section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

5. FINANCIAL IMPLICATION

No additional costs are foreseen as result of these amendments.