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GOVERNMENT NOTICES

DEPARTMENT OF EDUCATION

No. 1257

7 October 2002

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

CALL FOR COMMENT ON THE DRAFT REGULATIONS FOR THE REGISTRATION OF PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS

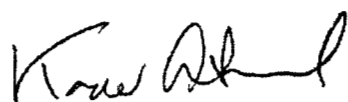
I, Kader Asmal, as Minister of Education, hereby publish the Draft Regulations for the registration of private Further Education and Training Institutions for comment in terms of section 47 of the *Further Education and Training (FET) Act, 1998 (No. 98 of 1998)* and in compliance with section 4(3) of the *Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)*.

Comments from interested parties are invited, and should reach the Department of Education not later than Friday, 15 November 2002.

Presentation of comments should be organized according to the seven (7) chapters in the draft regulations.

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

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



Professor Kader Asmal, MP

Minister of Education

Date: 02-10-2002

No. 1258

7 October 2002

FURTHER EDUCATION AND TRAINING ACT, 1998

**REGULATIONS FOR THE REGISTRATION OF
PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS**

The Minister of Education has in terms of section 47(1)(b) of the Further Education and Training (FET) Act, 1998 (Act No. 98 of 1998) made the Regulations

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’ or preliminary 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;

‘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;

‘GENFETQA’ means the General and Further Education and Training Quality Assurance Council, a body established in terms of the GENFETQA Act, 2001 (Act No. 58 of 2001), and 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 SAQA National Standards Bodies Regulations, 1998 (Government Gazette 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 fulfil in order to be registered or maintain registration;

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

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

APPLICATION PROCESS

2. Eligibility

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 juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
- (b) recognised as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973).

3. Application for registration

- (1) Anyone that 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, 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 Government Gazette; and
 - (b) send the full fee determined by the registrar by notice in the Government Gazette, with the application.
- (4) If an applicant does not comply with sub-regulation (3)(a) and (b) the registrar must decline to process the application.
- (5) The registrar may require an applicant to clarify items in the application or submit additional information before the application is determined.
- (6) An applicant must within 14 days 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) applies to the submission of an amendment application, 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(6) applies to the submission of the application for the conversion of the 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, but the notice of withdrawal is invalid if it is submitted after the registrar has already notified the applicant in writing of the result of the application.
- (2) On receipt of a valid notice of withdrawal the registrar must forthwith return the application documents to the applicant, subject to retainment of the administration fee.

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 ; or
 - (b) provisional registration has lapsed; or
 - (c) registration has been cancelled

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

- (3) 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.

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

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

11. Quality assurance

- (1) The applicant must propose to offer only qualifications that are registered on the NQF and programmes approved by the registrar.
- (2) The applicant must submit a signed declaration in the application that-
 - (a) the applicant has applied to GENFETQA for accreditation, listing the programmes for which it has applied to be accredited; and
 - (b) the institution, if registered, will comply with the requirements of GENFETQA as contemplated in section 26 (ii) of the Act.

- (3) An applicant must submit a signed declaration in the application that it –
- (a) will not exceed the enrolment that the facilities and equipment can reasonably accommodate, and will comply with all regulations relating to the health and safety of persons on the premises;
 - (b) has sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;
 - (c) has the necessary academic and support staff with appropriate qualifications and experience to achieve the objectives of each programme;
 - (d) has a quality management system including assessment policies and procedures appropriate to each programme; and
 - (e) will maintain full records of each student's admission, academic progress and assessment of learning in respect of each programme.

12. Finance

- (1) An applicant must submit proof 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) The registrar may require from the institution to become a member of an approved Fidelity Guarantee Fund.

13. Foreign applicants

A foreign applicant must submit proof in the first application that: -

- (a) its parent institution operates lawfully as an education institution or is accredited by the appropriate accrediting body in its country of origin;
- (b) a qualification awarded in its name will be fully recognised by its parent institution and by the appropriate state authorities in its country of origin; and
- (c) a student who is awarded its qualification will suffer no disadvantage if the student applies to enroll for an appropriate advanced qualification in the parent institution.

14. Monitoring and evaluation

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

- (a) an evaluation of the institution by the registrar every three years from the date on which the certificate of registration was signed; and
- (b) any other reasonable process arranged by the registrar after consultation with the institution for the purpose of monitoring compliance with the requirements of the Act and the conditions of registration.

CHAPTER 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 provisions of section 27(1)(b) of the Act. This allows the differentiation between the foreign juristic person and a local juristic person;
 - (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 (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; and
 - (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;
 - (d) deny the application.
- (5) In determining to grant registration or provisional registration as contemplated in sub-regulation (4), the registrar, after considering the advice from GENFETQA as

contemplated in sub-regulation (3)(b), must approve the programmes and qualifications to be offered by the institution and the respective sites where they are to be offered.

- (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 the conversion of provisional registration submitted in accordance with section 27 of the Act and regulation 15(3).
- (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 submitted in terms of regulation (5), or if registration is denied, the registrar, with given reasons, must notify the institution in writing that its provisional registration will lapse 60 days from the date of the notice.

17. Amendment application

- (1) The registrar must consider and determine an amendment application 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 amendment application.
- (3) In determination of sub-regulation (2)(b) or (c), the registrar must notify the institution in writing and, give reasons for his/her decision.
- (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) meet the criteria of eligibility contemplated in regulation 2; or
 - (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 Government Gazette, with reasons;
 - (c) consider any representation from the institution or an interested person in relation to such action;
 - (d) publish the final determination in the Government Gazette, with reasons;
 - (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 will be cancelled 60 days from the date of the notice in the Government Gazette contemplated in paragraph (d).

19. Publication of registration notices

- (1) The registrar must inform the Head of Provincial Education Department of the province affected.
- (2) The institution must take reasonable steps to ensure that a notice dealing with the lapsing or cancellation of registration is brought to the attention of students enrolled at the institution.

CHAPTER 4

REGISTRATION CERTIFICATE

20. Registration name

- (1) If the registrar grants registration or provisional registration, the institution must be registered under its legal name. The registrar may include in the registration certificate such translations, abbreviations, acronyms or trade names which uniquely identify the institution.
- (2) The registrar may not register an institution –
 - (a) under a name that the registrar considers to be fraudulent, false or misleading; or
 - (b) under the same name as another institution, or include in two certificates of registration the same translation, abbreviation, acronym or trade name; but must agree on an acceptable alternative with the applicant.

21. Certificate of registration

- (1) The certificate of registration or provisional registration must include –
 - (a) the registered name of the institution and any approved translation, abbreviation, acronym or trade name;
 - (b) the institution's unique registration number;
 - (c) approved programmes and qualifications;
 - (d) the respective sites and provinces at which approved programmes and qualifications are to be offered;
 - (e) the date by which all the requirements for registration must be met, if the institution is provisionally registered in terms of section 27(3) and (4) of the Act;
 - (f) any condition imposed in terms of section 33 of the Act;
 - (g) the registrar's name, signature and date of signature;
 - (h) the national coat of arms of the Republic of South Africa and the logo of the Department of Education.
- (2) If an institution's registration is amended in terms of section 31 or 32 of the Act or a new condition in terms of section 34 of the Act is imposed, the registrar must issue an amended certificate of registration to the institution and must inform the Head of Department of the affected province accordingly.
- (3) Within 14 days on receipt of the amended certificate of registration, the institution must return the previous certificate of registration to the registrar.

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 32 or 33 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 (b)(ii) of the Act;
- (e) notify the registrar of any change in the information submitted in an application in terms of regulations 3,4 or 5;
- (f) undergo an evaluation of the institution by the registrar every three years from the date on which the certificate of registration was signed;
- (g) comply with any other reasonable process arranged by the registrar after consultation with the institution for the purpose of monitoring compliance with the requirements of the Act and the conditions of registration;
- (h) report immediately to the registrar –
 - (i) reduction or loss of any physical facility necessary for the proper conduct of a programme;
 - (ii) reduction or loss of any supporting service to a programme;
 - (iii) change in the site of delivery of a programme;
 - (iv) substantial change in the curriculum of a programme;
 - (v) any significant reduction in the financial or personnel resources needed to sustain a programme; or
 - (vi) failure to meet a commitment made to the registrar in the process of registration or as a result of monitoring or review.

23. Display of registration status

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

25. Information for students and the public

An institution must publish at least once 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 full-time academic staff;
- (h) admission requirements and procedures including recognition of prior learning;
- (i) language policy;
- (j) mode of instruction;
- (k) details of each approved programme and qualification by site 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) rules or code of conduct; and
- (r) 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, make a transcript available to an enrolled or past student of his or her academic record on payment of the prescribed fee, contemplated in section 22 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), 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.
- (3) An institution must make arrangements through GENFETQA to avail to an enrolled or past student a copy of a certificate to the student, on request.
- (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 any other department of State;
 - (c) the logo of the Council for Quality Assurance in General and Further Education and Training.

28. Information required by the registrar

- (1) 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.

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 16(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;
 - (d) make adequate arrangements for affected students to complete their programmes at a comparable public or private institution; and
 - (e) cease to operate no later than 60 days from the date of the registrar's notice, and any institution that fails to comply is guilty of an offence in terms of section 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.
- (2) An appeal document must specify –
 - (a) the decision being appealed;
 - (b) the grounds for the appeal; and
 - (c) the remedy being sought.
- (3) The Minister must decide an appeal within 60 days of its being lodged, unless there are compelling reasons for delay and the appellant is informed accordingly.

CHAPTER 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. Date of commencement

These regulations come into effect on 1 January 2003.

33. Transitional arrangements

- (1) These regulations apply to any pending application for registration.
- (2) A person that has been exempt 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 in the notice contemplated in section 51 of the Act and if registered must comply with these regulations by 1 January 2004.

34. Short Title

This regulations will be known as “Regulations For The Registration Of Private Further Education And Training Institutions, 2002”.

EXPLANATORY MEMORANDUM TO THE DRAFT PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS REGULATIONS, 2002

1. Introduction

Together with the Act, these regulations provide the legal framework within which the registrar will regulate the registration of private further education and training institutions in terms of the Further Education and Training Act, 1998 (Act No 98 of 1998). Until now all private FET institutions have been exempt from registration till a date determined by the Minister. When that date is determined and published, all private FET institutions will be obliged to operate within the terms of these regulations. The Department of Education expects that they will come into effect on January 2003.

With some variations, the FET regulations have been drafted in line with the draft regulations for the registration of private higher education institutions. Application forms to accompany these regulations are being drafted in line with the application forms for private higher education registration.

The Department of Education's understanding of the complex issues related to registration has benefited by private higher education registration process as well as the advice of the private provider community and the Council for Quality Assurance in General and Further Education and Training.

2. Explanation of the provisions of the regulations

Scheme of arrangement

Chapter 4 of the Further Education and Training Act, 1998, deals with Private Further Education and Training Institutions. It is a brief chapter but the implications of its provisions are complex. The regulations flow from the Act and must be consistent with the Act. The regulations spell out the requirements of the Act in a manner that enables the Department of Education and the private providers to understand their respective duties and obligations and act accordingly.

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

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

3. Application process

Chapter 1 provides for eligibility for registration as a juristic person in terms of the Companies Act, 1973.

The regulations distinguish between four types of application, in order to deal with a variety of circumstances envisaged by the Act.

- An “application for registration”, the initial application to register.
- An “application for amendment” is submitted if an institution wishes the registrar to alter the terms of its registration.
- An institution that has been granted provisional registration must submit an “application for conversion” by a date specified by the registrar. If successful, the institution’s provisional status will be converted to registration. If unsuccessful, the provisional registration lapses. The Regulations use the term “provisional registration” in place of conditional registration because of the amendment to the FET Act that propose to substitute the former term for the latter.
- An applicant whose application has been withdrawn or denied, or an institution whose provisional registration has lapsed or whose registration has been cancelled, may submit a “subsequent applicant” not less than 36 months after a date of denial, lapsing or cancellation.

4. Requirements for registration

The requirements for registration are prescribed in the Act. Chapter 2 of the Regulations elaborates on these in order to operationalise the Act’s provisions.

The Act defines further education and training in terms of programmes and qualifications offered at levels 2 to 4 of the NQF. Before granting registration to a private further education and training institution, the registrar must be satisfied that it will provide education of a standard not inferior to a comparable public institution, and that it will comply with the requirements of GENFETQA. It is apparent that the registrar must have appropriate evidence in order to make such judgments. The quality determinations in this regard will be obtained from GENFETQA, that include programmes that have been evaluated and approved as well as institutional accreditation. This information will form part of the conditions for the registration of the said institution.

Accordingly, the regulations require an applicant to submit –

- A signed declaration that it has applied for accreditation/programme evaluation to GENFETQA, and that it will comply with the requirements set by GENFETQA.
- Evidence that its facilities, staff, quality management and information system will support the students it proposes to enroll and the programmes it proposes to offer, and
- Proof of its financial competence and its ability to meet its obligations to its students.

A foreign applicant is defined as a person recognised as an external company in terms of the Companies Act, 1973 (Act No 61 of 1973). In addition to the other stipulations in this chapter, a foreign applicant must submit proof concerning the *bona fides* of its parent institution and the equal recognition that will be accorded to its South African qualifications and graduates in its country of origin.

The Act does not limit the period of registration, but provides that the registrar may with good reason cancel an institution's registration. In order to gauge whether a registered institution complies with the terms of its registration it is necessary for the registrar to monitor and evaluate each registered institution.

The regulations provide for a regular triennial evaluation of registered institutions. If the registrar needs to monitor the situation in an institution between evaluations, the regulations empower the registrar to do so after consultation with the institution concerned. An applicant must declare in its application that it is willing to comply with such scrutiny.

5. Registration

Section 29(3) of the Constitution, 1996 (Act No. 108 of 1996), guarantees the right to establish and maintain a private further education and training institution. A private institution may not practice discrimination on the grounds of race. A private FET institution must be registered with the state. Its standards must not be inferior to those of a comparable public institution. The Act makes clear that private further education and training institutions are part of the national system of further education and training, and that the way in which they are conducted must serve the interests of the system as a whole. Thus the requirements for registration ensure that registration cannot be an arbitrary or perfunctory act.

Registration serves a public purpose. It protects the fundamental right to establish and maintain a private education institution, it protects the public from incompetent or fraudulent operators and it protects the integrity of the further education and training system.

These considerations underlie Chapter 3 of the regulations, which sets out in detail what the registrar must consider in arriving at a decision.

In the light of these considerations, the registrar must decide whether to register the institution, grant provisional registration, or deny the application. In either of the first two cases, the registrar may attach a condition to the registration. By a date determined by the registrar, an institution granted provisional registration must submit an application for conversion. The registrar must determine the application for conversion before the institution's provisional registration expires. The regulations prescribe the period within which the registrar must make a decision of each type of application.

A due process of notification must be followed when the registrar decides on an application for registration, an application for conversion, a lapse of provisional

registration or a cancellation. Moreover the registrar must give reasons when an application is denied or a registration lapses or is cancelled.

The registrar must notify the Head of the provincial education department about the registration of any private FET institution registered in the respective province.

6. Registration certificate

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

Chapter 4 of the Regulations ensures that such dangers are minimised if not eliminated. An institution must be registered in its legal name. The registrar may agree that the certificate carries such translations; abbreviations, acronyms or trade names that uniquely identify the institution. Two institutions may not register under the same name, and the registrar may decline a name that he or she considers to be fraudulent, false or misleading. In such cases an alternative name must be agreed between the registrar and the applicant.

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

7. Responsibility of an institution

Registration is a license to operate a private further education and training institution without limitation of time, but it is not a license for providers to do as they please. The requirements for registration remain applicable beyond the act of registration. Compliance with conditions attached to registration is also necessary for the maintenance of registration. The Act does not prescribe an expiry date for registration, but provides that the registrar may cancel a registration on reasonable grounds (section 35). Thus chapter 5 of the regulations sets out the responsibilities of an institution. These must be discharged if the institution is to maintain its registration.

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

Quality is to be maintained principally -

- by ensuring that only approved programmes and qualifications are offered on approved sites;
- by submitting the institution to the quality assurance requirements of GENFETQA, including the criteria for approval of its programmes; and
- by participating in the periodic evaluations and monitoring exercises conducted by the registrar.

Probity is to be maintained principally –

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

The protection of student's rights is to be maintained principally –

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

8. Appeals

An interested person may appeal to the Minister against any decision of the registrar. Chapter 6 sets out what an appeal document should contain, and provides the time frames for lodging and deciding an appeal.

9. General and transitional arrangements

Chapter 7 has regulations to prevent conflict of interest by the registrar or any employee of the Department of Education who deals with registration matters. Neither the registrar nor such employee may have a financial interest in an applicant for registration or a registered institution, or sit on the governing body of a registered institution.

All private FET institutions are exempt from registration till a date determined by the Minister. It is anticipated that all such institutions will be required to have been registered with the Department in accordance with the regulations by January 2004.

The Department expects that the announcement to this effect will be made in January 2003, pending the promulgation of the Education Laws Amendment Bill, 2002.
