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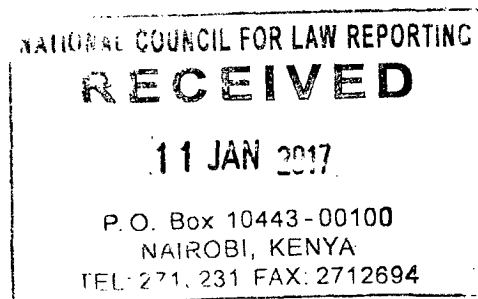
NAIROBI, 30th December, 2016

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The Universities (Amendment) Act, 20161183



THE UNIVERSITIES (AMENDMENT) ACT**No. 48 of 2016***Date of Assent: 23rd December, 2016**Date of Commencement: 13th January, 2017***AN ACT of Parliament to amend the Universities Act, 2012
and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Universities (Amendment) Act, 2016.

Short title.

2. Section 2 of the Universities Act, 2012 (in this Act referred to as the principal Act) is amended—

Amendment of section 2 of No.42 of 2012.

(a) by deleting the definition of “accreditation” and substituting therefor the following new definition—

“accreditation” means the procedure by which the Commission recognises an institution as a University and as having fulfilled the prescribed criteria for mounting its academic programmes”;

(b) by deleting the definition of the word “programmes accreditation” and substituting therefor the following new definition—

“programme accreditation” means the process by which the Commission formally recognizes an academic programme of a University, including a foreign university”;

(c) by inserting the following new definitions in proper alphabetical sequence—

“academic programme” means the design of learning content which includes the intention, the structure of the content, the delivery mode, academic resources and assessment modes”;

“instrument of accreditation” means the Charter or Letter of Interim Authority establishing a university issued under this Act”;

“quality assurance” means the employment by a university of various measures and mechanisms developed by the Commission to assess, maintain and enhance standards of programmes offered by a university”;

(d) in the definition of the word—

- (i) “sponsor” by inserting the words “including the government” immediately after the word “person”; and
- (ii) “technical university” by deleting the words “an institute of”.

3. Section 5 of the principal Act is amended—

- (a) in subsection (1) by deleting the word “accredit” appearing in paragraph (1) and substituting therefor the word “approve”;
- (b) by inserting the following new subsection immediately after subsection (2A)—

“(2B). (1) The Commission shall, in approving and inspecting university academic programmes—

- (a) analyse and consider the following factors—
 - (i) learning content of a programme;
 - (ii) purpose and objectives of a programme;
 - (iii) structure of a programme;
 - (iv) delivery mode of a programme;
 - (v) availability of academic resources to implement a programme;
 - (vi) mode of assessment of the programme;
 - (vii) learning environment of a university;
 - (viii) learning facilities of a university;

Amendment of
section 5 of No.42
of 2012.

(ix) extra-curricular activities offered by a university;

(b) ensure openness, maintain objectivity and consistency in arriving at its decision.

(2) Despite subsection (1), the Commission may consider any other factor as it may deem fit and may rank each factor assessed to indicate the level of compliance.

4. The principal Act is amended by deleting section 6 and substituting therefor the following new section 6—

Amendment of section 6 of No.42 of 2012.

6. (1) The Commission shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for university education;
- (c) the Principal Secretary in the Ministry for the time being responsible for national treasury;
- (d) one person appointed by the Cabinet Secretary who is a distinguished academic scholar with at least ten years' experience in management of university education;
- (e) one person nominated by the Federation of Kenya Employers and appointed by the Cabinet Secretary;
- (f) one person nominated by chairpersons Councils of public universities in a forum of chairpersons of the Councils of public universities convened by the Cabinet Secretary for that purpose;
- (g) one person nominated by chairpersons Councils of private universities in a forum of chairpersons of the Councils of private universities convened by the Cabinet Secretary for that purpose; and
- (h) the Commission Secretary who shall be an ex-officio member.

(2) A person who was serving as a member of the Commission prior to the commencement of this section shall continue to serve as a member for the remainder of his or her unexpired term or for a period not exceeding

ninety days after commencement of this section, whichever is earlier, after which new commissioners shall be appointed in accordance with this section.

5. The principal Act is amended by inserting the following new section immediately after section 5—

Insertion of new section 5A into No.42 of 2012

Conflicts with other Acts in approval of programmes

5A (1) If there is a conflict between the provisions of this Act and the provisions of any other Act in matters relating approval or accreditation of academic programmes offered by universities, the provisions of this Act shall prevail.

(2) Despite the provisions of any other law, the recognition, licensing, student indexing, approval or accreditation of any academic programme including postgraduate degrees, diplomas including postgraduate diplomas and other academic certificates offered at a university shall be the exclusive mandate of the Commission to be exercised in accordance with this section at the exclusion of any other person or body.

(3) The Commission may, before approving any academic programme consult with any relevant body established by written law to regulate the profession to which the academic programme relates where such law empowers the professional body to approve or accredit courses offered at any university or colleges.

(4) Pursuant to section 5(2), the Commission may engage—

- (a) professional bodies and associations to carry out inspection of universities on its behalf;
- (b) the Auditor-General to offer the Commission professional opinion on management and financial positions of a particular university

(5) A person who without the authority of the Commission under this Act purports to license, accredit, recognise,

audit, inspect, index students or collect a fee or a charge from a university or a student commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding two years or both.

6. Section 7 of the principal Act is amended in Act is amended—

Amendment of section 7 of No. 42 of 2012.

(a) in subsection (1) by—

- (i) inserting the words “and has at least fifteen years’ experience in matters relating to management of university education” immediately after the words “in Kenya” appearing in paragraph (a);
- (ii) deleting the words “section 6(d), holds a masters degree from a university recognized in Kenya, and at least five years’ experience in leadership, management or academia” appearing in paragraph (b) and substituting therefor the words “section 6(e), (f) and (g) holds a masters degree from a university recognized in Kenya and has at least ten years’ experience in matters relating management of university education”.

(b) by deleting subsection (5).

7. Section 8 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (a)—

Amendment of section 8 of No.42 of 2012

“(aa) is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary.”

8. Section 11 of the principal Act is amended in subsection (1) by deleting the words “a doctorate degree” appearing in paragraph (a) and substituting therefor the words “a masters degree”.

Amendment of section 11 of No.42 of 2012

9. The principal Act is amended by inserting the following new section immediately after section 12—

Insertion of new section 12A into No.42 of 2012

Protection from
personal liability

12A (1) No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent or any person acting under the directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay lawful compensation or damages to any person for injury to the person or property.

10. Section 13 of the principal Act is amended in subsection (1) by inserting the words “or a Letter of Interim Authority” immediately after the word “Charter”.

Amendment of
section 13 of No. 42
of 2012

11. Section 15 of the principal Act is amended in subsection (2) by deleting the words “commence or” appearing in paragraphs (b) and (c).

Amendment of
section 15 of No. 42
of 2012

12. Section 20 of the Principal Act is amended—

Amendment of
section 20 of No.42
of 2012.

(a) in subsection (1) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) may develop its new academic programmes for approval by the Commission in accordance with this Act.”

(b) by inserting the following new subsection immediately after subsection (2)—

“(2A) Despite the provisions of Section (1) (d), a public university shall not establish a campus or a college in a foreign country without the approval of the Cabinet Secretary in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.”

13. Section 23 of the principal Act is amended by deleting the words “or Senate” appearing in subsection (1).

Amendment of
section 23 of No.42
of 2012.

14. Section 34 of the principal Act is amended by inserting the words “or Letter of Interim Authority” after the word “Charter”.

Amendment of
section 34 of No.42
of 2012.

15. Section 35 of the principal Act is amended in subsection (2) by inserting the words “with the approval of the Commission” immediately after the words “such a university may”.

Amendment of section 35 of No.42 of 2012

16. Section 36 of the principal Act is amended—

Amendment of section 36 of No.42 of 2012.

- (a) in subsection (1) by inserting the words “in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary” immediately after the word “process” in paragraph (d); and
- (b) by inserting the following new subsections immediately after section (2)—

“(3) In making appointments under this section the appointing authority shall have regard to the objectives of the development of university education, ensuring that there are balanced competencies, gender equity, and the inclusion of stakeholders, persons with disabilities, the marginalized and other minority groups.

(4) The provisions of section (8) relating to the vacancy of office of the chairperson and members of the Commission shall apply with necessary modifications to the chairperson and members appointed under subsection (1) (a) and (d).

(5) The members of the Council appointed under section 36(1) shall at their first meeting after appointment determine by lot which two of their number shall vacate office after a period of three and four years respectively to ensure continuity in the activities of the Council.

(6) The provisions of the First Schedule shall apply with necessary modifications, to the conduct of the business and affairs of the Council.”

17. Section 38 of the principal Act is amended in subsection (5) by inserting the words “for a period not exceeding three months” immediately after the word “Council”.

Amendment of section 38 of No.42 of 2012.

18. Section 41 of the principal Act is amended—

Amendment of section 41 of No.42 of 2012.

- (a) in subsection (1) by inserting the words “comprising of all students of the university” immediately after the word “association”;

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(b) by inserting the following new subsections immediately after subsection (1)—

(1A) A students' association shall be governed by a students' council comprising o—

- (a) a Chairperson;
- (b) a Vice Chairperson who shall be of opposite gender with the Chairperson;
- (c) a Treasurer;
- (d) a Secretary-General who shall be the secretary to the Council; and
- (e) three other members to represent special interests of students.

(1B) Every students' council shall be elected in accordance with this Act and its membership shall—

- (a) reflect national diversity; and
- (b) have not more than two-thirds of its members being of the same gender.

(1C) For purposes of conducting the election of the members of the student council referred to in subsection (1A), the students' association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate.

(1D) The students of each electoral college constituted under subsection (1C) shall elect three representatives—

- (a) from amongst persons who are not candidates under subsection (1A) ; and
- (b) of whom not more than two-thirds shall be of the same gender.

(1E) The representatives of each electoral college shall elect the members of the student council within thirty days of the election under subsection (1D).

(1F) A member of the student council shall hold office for a term of one year and may be eligible for re-election for one final term.

(1G) A person who has held office as a member of the student council of a University for two terms is disqualified from election as a member of the student council of any other University or constituent college in Kenya.

(1H) Every students' association shall, in consultation with the University, formulate and enact rules to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.

(1I) An election conducted pursuant to this section shall comply with the general principles of the Kenyan electoral system under Article 81 of the Constitution and the rules governing the election of members of the student council.

(c) by deleting subsection (3).

19. Section 51 of the principal Act is amended in section (2) (f) by —

Amendment of section 51 of No.42 of 2012.

- (a) inserting the words “or audit” immediately after the word “accreditation; and
- (b) deleting the words “state which shall not be published without the prior consent of the university concerned” and substituting therefor the words “which shall be published upon the Commission issuing notice to the university concerned”.

20. Section 54 of the principal Act is amended in subsection (4) by—

Amendment of section 54 of No.42 of 2012.

- (a) deleting the word “universities” appearing in paragraph (b) and substituting therefor the words “public universities and issue conditional grants to private universities;”
- (b) deleting the word “universities” appearing in paragraph (c) and substituting therefor the words “public universities and issuance of conditional grants to private universities;”
- (c) deleting the words “public universities, establish” appearing in paragraph (d) and substituting therefor the words “Chairpersons of Councils of public universities, propose and establish for

approval by the Cabinet Secretary and the Auditor-General”;

(d) deleting subsection (6); and

(e) deleting subsection (7).

21. The principal Act is amended by inserting the following new sections immediately after section 54—

Insertion of new sections into No.42 of 2012.

Director of the Fund.

54A. (1) There shall be a Director who shall be the chief executive officer of the Fund, appointed by the Cabinet Secretary on recommendation of the Board of Trustees of the Fund following a competitive recruitment process, and who shall serve for a term of five years, which may be renewed for one further term.

(2) The Director of the Fund shall be responsible for the day to day management of the affairs of the Fund.

(3) A person shall be qualified for appointment as a Director if such person—

- (a) is a Kenyan citizen;
- (b) holds a degree or its equivalent from a university recognized in Kenya in the field of banking, education, law, finance, economics or management;
- (c) has at least ten years’ relevant professional experience in the management of a public or private institution; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Staff of the Fund.

54B. (1) The Fund may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act.

(2) All appointments under this section shall take into account gender equity, ethnic and regional balance in accordance with the Constitution.

Financial provisions

54C. The provisions relating to the finances of the Commission as set out in sections 31, 32 and 33 shall apply, *mutatis mutandis* to the finances of the Fund.

22. The principal Act is amended by inserting the following new sections immediately after section 59—

Insertion of new section 59A into No.42 of 2012.

Meaning of the word “college”

No.29 of 2013

59A. In this Part, “college” means an institution established under the Technical and Vocational Education and Training Act, or any other public training institution of higher learning established under an Act of Parliament”.

23. Section 61 of the principal Act is amended in subsection (1) by inserting the words “in all its colleges and campuses” immediately after the words “its premises”.

Amendment of section 61 of No.42 of 2012

24. The principal Act is amended by inserting the following new section immediately after section 61 —

Insertion of new section 61A into No. 42 of 2012

Form of instrument of accreditation.

61A.The instruments of accreditation shall be in the form prescribed in the Third Schedule to this Act.

25. Section 69 of the principal Act is amended in subsection (2) by deleting the words “five hundred thousand” and substituting therefor the words “one million”.

Amendment of section 69 of No. 42 of 2012

26. The principal Act is amended by inserting the following new section immediately after section 69—

Insertion of new section 69A into No. 42 of 2012

Commission may issue a notice to comply.

69A. (1) The Commission may, by notice in writing, require an institution in default of any provision under this Act, regulation, standards and guidelines to comply therewith within a prescribed time and in a prescribed manner.

(2) If any institution served with a notice under sub-section (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice is complied with.

(3) Any person aggrieved by the decision of the Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.

27. Section 70 of the principal Act is amended in—

Amendment of section 70 of No. 42 of 2012.

(a) subsection (1) by inserting the words “with relevant stakeholders” immediately after the word “consultation”;

(b) subsection (2) by deleting the expression “foreign” appearing in paragraph (a).

28. The principal Act is amended by deleting section 84.

Amendment of section 84 of No. 42 of 2012.

29. The principal Act is amended in the First Schedule by deleting paragraph 4 and substituting therefor the following new paragraph 4—

Amendment of the First schedule of No. 42 of 2012.

“(4) The quorum for a meeting of the Commission shall be five members.”

30. The principal Act is amended by inserting the following new schedule immediately after the second schedule—

Insertion of a new schedule into No. 42 of 2012.

THIRD SCHEDULE

(s. 61A)

LETTER OF INTERIM AUTHORITY

Pursuant to section 14 of the Universities Act, this.....day of.....20.....the Cabinet Secretary has granted (name of university) a Letter of Interim Authority authorising the university to operate in accordance with the provisions of sections 15, 16 and 17 of this Act.

Signed

Cabinet Secretary.

CHARTER

Pursuant to section 13 of the Universities Act, this day of..... 20..... the Commission accredits (name of university) to be established as a university in accordance with the provisions of this Act.

Signed

Cabinet Secretary.

31. The provisions of paragraph (b) of section 2 of this Act shall not apply to an academic programme previously approved or accredited by the senate of a university granted a charter or by the Commission prior to the coming into force of this Act.

Transitional
provision.