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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION**No. 331****20 March 2009****HIGHER EDUCATION ACT, 1997 (ACT NO 101 OF 1997)****CALL FOR COMMENT ON THE DRAFT AMENDMENT REGULATIONS FOR THE REGISTRATION OF PRIVATE HIGHER EDUCATION INSTITUTIONS**

I, Grace Naledi Mandisa Pandor, Minister of Education, hereby publish the *Draft Amendment Regulations for the Registration of Private Higher Education Institutions* for comment.

Comments from all interested parties are invited and should reach the Department no later than 23 March 2009.

Comments should be directed to the Director-General, Private Bag X895, Pretoria, 0001, for attention: Professor MT Schoole. Comments may also be faxed to (012) 328 6029 or sent via e-mail to registrarphei@doe.gov.za

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

The Draft Amendment Regulations may also be obtained from the Department's website at: www.education.gov.za



**GRACE NALEDI MANDISA PANDOR, MP
MINISTER OF EDUCATION**

DATE: 10-03-2009

DEPARTMENT OF EDUCATION**HIGHER EDUCATION ACT, 1997 (ACT No.101 OF 1997)****DRAFT AMENDMENT REGULATIONS FOR THE REGISTRATION OF
PRIVATE HIGHER EDUCATION INSTITUTIONS****GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from the existing Regulations

——— Words underlined with a solid line indicate insertions into the existing Regulations.

The Minister of Education has, under section 69 of the Higher Education Act, 1997 (Act No.101 of 1997), made the regulations in the schedule.

SCHEDULE**Definitions**

1. In this schedule “the Regulations” means the Regulations for the Registration of Private Higher Education Institutions published in Government Notice No. R.1564 of 13 December 2002.

Amendment of Regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by:

- a) the substitution of the definition of accreditation with the following definition:

'accreditation' means accreditation **[or preliminary accreditation]** as determined by the HEQC;

- b) the insertion after the definition of 'amendment' of the following definition:

'applicant' means any person who submits an application contemplated in section 51 of the Act and these regulations;

- c) the insertion after the definition of 'condition' of the following definition:

'CHE' means the Council on Higher Education;

- d) the deletion of the definition of 'conversion':

['conversion' of provisional registration' means the action contemplated in section 54(6)(a) of the Act whereby a provisionally registered institution is registered;]

- e) the insertion after the definition of 'HEQC' of the following definition:

'HEQF' means the Higher Education Qualifications Framework;

- f) the insertion after the definition of 'HEQF' of the following definition:

'IRBA' means the Independent Regulatory Board for Auditors;

- g) the substitution of the definition of 'NQF' with the following definition:

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

- h) the substitution of the definition of 'programme' with the following definition:

'programme' means the purposeful and structured set of learning experiences that leads to a qualification which complies with the requirements of the HEQF[sequential learning activities, associated with curriculum implementation, leading to the achievement of a qualification] and which is registered at levels 5 to 10 [8] on the NQF;

- i) the substitution of the definition of 'qualification' with the following definition:

'qualification' means the formal recognition and certification of learning achievement awarded by an accredited institution [qualification] which complies with the requirements of the HEQF and which is registered at levels 5 to 10 [8] on the NQF; **[in terms of regulation 8 of the SAQA National Standards Bodies Regulations, 1998 (Regulation Gazette 452 of 28 March 1998)]**

- j) the substitution of the definition of 'registered programme' with the following definition:

'registered programme' means a programme approved by the registrar in terms of regulation 12[16](4) and 12 (5) and included in a registration certificate in terms of regulation 17 [22] (1);

- k) the substitution of the definition of 'site' with the following definition:

'site' means any learning site such as a campus, satellite campus or learning centre controlled and administered by **[an applicant or]** a **[n]** registered institution.

Amendment of Regulation 2 of the Regulations

3. Regulation 2 of the Regulations is hereby amended by:

a) the substitution of Regulation 2 with the following Regulation:

“2. Eligibility

2(1). A person proposing to provide higher education 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).

[“2(2). A person who purports to operate an institution is guilty of an offence in terms of section 66 of the Act, and is not eligible to apply for registration except in terms of regulation 7(4)”]

Amendment of Regulation 3 of the Regulations

4. Regulation 3 of the Regulations is hereby amended by:

a) the substitution of Regulation 3 with the following Regulation:

3. Application for registration

"3(1) A juristic person [Anyone that] contemplated in Regulation 2 which intends to establish and maintain a private higher education institution must apply to the registrar in terms of these regulations.

3(2) Sub-regulation 3(1) also applies to a juristic person established through a merger between institutions, with the resultant loss of the juristic personality of each of the [old] merging institutions and the creation of a new juristic person.

3(3) Registration is not transferable from one institution to another. Registration may only be sought in accordance with the requirements of section 52 of the Act and these regulations.

3(4) The registrar must acknowledge receipt of the application.

- 3(5) **[3(4)]** 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 with the application the full fee determined by the registrar by notice in the *Government Gazette*.
- 3(6) **[3(5)]** If an applicant does not comply with sub-regulation 3(5)(a) and (b) the registrar must [**decline to process the application**]request in writing that the applicant complies with sub-regulation 3(5)(a) and (b) by a date determined by the registrar.
- 3(6)**[3(5)]** The registrar may require an applicant to clarify information [**items**] in the application or submit additional information before the application is determined.
- 3(7)**[3(6)]** An applicant must promptly notify the registrar if there is any change in the information submitted in the application.
- 3(8) If an applicant fails to comply with the requirements of Regulation 3, the application must be returned by way of a letter bearing the signature of the registrar.

Amendment of Regulation 4 of the Regulations

5. Regulation 4 of the Regulations is hereby amended by:

a) the substitution of Regulation 4 with the following Regulation:

“4. Application for amendment

4(1) Regulation 3(3) to 3(7)~~[(5)]~~ applies to **[the submission of]** an application for amendment **[,except that it must be submitted at least twelve months before the proposed amendment is intended to come into effect.]** submitted in accordance with sections 58 and 59 of the Act”.

[“4(2) The registrar may for good reason permit a later submission if requested in writing by the applicant.”]

Amendment of Regulation 5 of the Regulations

6. Regulation 5 of the Regulations is hereby amended by:

a) the deletion of Regulation 5:

[“5. Application for conversion

Regulation 3(3) to 3(5) applies to the submission of a conversion application, except that it must be submitted by the date determined by the registrar in terms of regulation 16(4)(b)(ii).”]

Amendment of Regulation 6 of the Regulations

7. Regulation 6 of the Regulations is hereby amended by:

a) the deletion of Regulation 6:

[“6. Withdrawal of an application

[6(1) An application made in terms of regulations 3, 4 or 5 may be withdrawn by notice in writing to the registrar, but no notice of withdrawal is valid if it is submitted after the registrar has notified the applicant in writing of the result of the application.”]

[6(2) On receipt of a valid notice of withdrawal the registrar must forthwith return the application documents to the applicant.”]

Amendment of Regulation 7 of the Regulations

8. Regulation 7 of the Regulations is hereby amended by:

a) the substitution of Regulation 7 with the following Regulation:

5[7] Subsequent application for registration

[“7(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”.]

5(1)[7(2)] An applicant whose-

(a) application has been denied other than in terms of regulation 12(6) [16(6)]; or

[(b) provisional registration has lapsed; or]

(b)[(c)] registration has been cancelled;

may submit a subsequent application not less than **[36] 12** months after the date of denial **[lapsing]** or cancellation, respectively.

- 5(2)[7(3)] A person whose application has been denied in terms of regulation 12(6) [16(6)] may submit a subsequent application not less than 36 months after the notification of such denial of registration has been issued by the registrar.
- 5(3)[7(4)] Despite 5(1) [(2)] a person who has been found guilty of an offence in terms of section 66 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.
- 5(4)[7(5)] Regulation 3 applies to the submission of a subsequent application.”

Amendment of Regulation 8 of the Regulations

9. Regulation 8 of the Regulations is hereby amended by:

a) the substitution of Regulation 8 with the following Regulation:

“6[8] **Compliance with the Act**

In order to be registered an applicant must fulfil the requirements of the Act.”

Amendment of Regulation 9 of the Regulations

10. Regulation 9 of the Regulations is hereby amended by:

a) the substitution of Regulation 9 with the following Regulation:

“7[9] Name of applicant

An applicant must apply for registration in the same name under which it 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.”

Amendment of Regulation 10 of the Regulations

11. Regulation 10 of the Regulations is hereby amended by:

- a) the deletion of Regulation 10:

[“10. Prohibition of discrimination

An application must include a signed declaration by the applicant that the institution, if registered, will not discriminate on the basis of race and that it will comply with the provisions of section 9(4) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)”.]

Amendment of Regulation 11 of the Regulations

12. Regulation 11 of the Regulations is hereby amended by:

a) the substitution of Regulation 11 with the following Regulation:

“8[11] Programmes and qualifications

An applicant must propose to offer only programmes which are in compliance with the requirements of the HEQF and which lead [leading] to qualifications that are registered at levels 5-10 on the NQF.”

Amendment of Regulation 12 of the Regulations

13. Regulation 12 of the Regulations is hereby amended by:

a) the substitution Regulation 12 for the following Regulation:

“9[12] Quality assurance

“9(1)[12(1)] In the application contemplated in regulations 3 and 4, [and 5] an applicant must submit- [a signed declaration that]

(a) only those programmes that have been accredited by the [it has applied to the] HEQC; [for accreditation, listing the programmes for which it has applied for accreditation or preliminary accreditation]

[(b) if registered, it will comply with the requirements of the HEQC as contemplated in section 53(1)(b)(ii) or 53(1)(c) of the Act”.]

9(2)[(12)(2)] In the application contemplated in regulations 3 and 4, [and 5] an applicant must **[provide evidence]** submit a certified copy of a health and safety certificate issued by an independent auditor registered with IRBA which confirms that it complies with all regulations relating to the health and safety of persons on the premises.

[12 (3) In the application contemplated in regulations 3, 4 and 5, an applicant must provide a written declaration that it -

- (a)** will maintain the necessary academic and support staff with appropriate academic or professional qualifications and experience to achieve the objectives of each programme;
- (b)** will maintain a quality management system including assessment policies and procedures appropriate to each programme;
- (c)** will maintain sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;
- (d)** will not exceed the enrolment that the facilities and equipment can reasonably accommodate;
- (e)** will maintain full records of each student's admission, academic progress and assessment of learning in respect of each programme.”]

Amendment of Regulation 13 of the Regulations

14. Regulation 13 of the Regulations is hereby amended by:

a) the substitution Regulation 13 with the following Regulation:

“10[13] Finance

10(1)[13(1)] In the application contemplated in regulations 3 and 4, **[and 5]** an applicant must submit **[proof that]** -

(a) an original or certified copy of its most recent audited annual financial statements issued by an independent auditor registered with IRBA; and [income is or will be sufficient to sustain its programmes in an acceptable manner; and]

(b) if an applicant has not previously operated in any form whatsoever, [has or will have a stable financial position that will enable it to maintain operational continuity.] an original or certified copy of its most recent audited three-year financial forecast issued by an independent auditor registered with IRBA.

10(2)[13(2)] In the application contemplated in regulation[s] 3, an applicant must submit proof, in a format prescribed by the registrar, that it has established a financial surety or guarantees to ensure that the institution meets its obligations to its enrolled students.

Amendment of Regulation 14 of the Regulations

15. Regulation 14 of the Regulations is hereby amended by:

- a) the substitution Regulation 14 with the following Regulation:

“11[14] Foreign applicants

In the application contemplated in regulations 3 and 4,
[and 5] a foreign applicant must submit proof that-

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

Amendment of Regulation 15 of the Regulations

16. Regulation 15 of the Regulations is hereby amended by:

- a) the deletion of Regulation 15.

[“15. Monitoring and evaluation

In the application contemplated in regulations 3, 4 and 5, an applicant must submit a signed declaration that if registered or provisionally registered the institution will comply with-

- (a) a periodic evaluation of the institution by the registrar at intervals to be determined by the registrar;**
- (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 as imposed by the registrar in terms of section 60 of the Act.”]**

Amendment of Regulation 16 of the Regulations

17. Regulation 16 of the Regulations is hereby amended by:

- a) the substitution of Regulation 16 with the following Regulation:

12[16] Determination of an application.

12(1)[16(1)] The registrar must consider and determine an application for registration-

- (a) in accordance with section 54 of the Act and these regulations;
- (b) at least six months before the applicant intends to commence operations.

12(2)[16(2)] In determining an **[the]** application **[of a foreign applicant]**, the registrar may **[must]** independently verify the information **[contemplated in regulation 14(a)]** submitted by the applicant.

12(3)[16(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 accreditation report [advice] of the HEQC with respect to [on] the applicant's application for accreditation;

[(c)] whether, if registered, the applicant in all its higher education programmes will maintain acceptable standards that are not inferior to standards at a comparable public higher education institution;]

[(d)] whether, if registered, the applicant in all its higher education programmes will comply with the requirements of the HEQC in terms of section 53(1)(b)(ii) of the Act;]

(c)[(e)] whether the applicant complies with [has met] all [other relevant] the requirements for registration in terms of the Act and these regulations;

(d) [(f)] a determination by the Minister relating to the scope and range of operations of institutions in terms of section 3(3) of the Act;

(e) [(g)] the distinction between a foreign juristic person and a local juristic person in terms of section 54(1)(b) of the Act;

(f) [(h)] the proposed programmes and qualifications and the respective sites where they are to be offered;

(g) [(i)] section 54(3) and 54(4) (a),(b),(c) and (d) of the Act concerning provisional registration;

(h) [(j)] section 60 of the Act concerning conditions attached to registration or provisional registration;

(i) [(k)] regulation 16 [21] concerning the registration name;

(j) [(l)] the rights of the general public, the students and the applicant; and

(k) [(m)] the interests of the higher education system as a whole.

(l) [(n)] any other requirement prescribed by the Minister in terms of section 53(1)(c) of the Act.

12(4)**[(16)(4)]** In the light of sub-regulation 12(3) **[16(3)]** the registrar must determine whether to-

(a) register the applicant in terms of section 54(1)(c) **[and 54(2)(a)]** of the Act ;

(b) register the applicant provisionally. **[grant provisional registration]** in terms of section 54(3) **[and (4)]** of the Act; [, stating-

(i) **the terms of provisional registration;**

(ii) **the date by which the registrar must receive an application for the conversion of provisional registration;]**

(c) impose conditions in terms of section 60 of the Act; or

(d) deny the application in terms of section 54(2)(b) of the Act.

- 12(5)~~[16(5)]~~ In determining to grant registration or provisional registration, the registrar must, after due consideration of the advice as contemplated in sub-regulation 12 (3) ~~[(4)]~~, approve the programmes to be offered by the institution and the respective sites where they are to be offered.
- 12(6)~~[16(6)]~~ Despite sub-regulation 12(4), 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.”

Amendment of Regulation 17 of the Regulations

18. Regulation 17 of the Regulations is hereby amended by:

a) the deletion of Regulation 17:

[“17 (1) The registrar must consider and determine an application for the conversion of provisional registration submitted in terms of regulation 5 in accordance with section 54(6) of the Act and regulation 16(3).”

[17(2) The registrar must determine whether to-

(a) register the applicant in terms of section 54(6)(a) of the Act with effect from the expiry date;

(b) impose a condition in terms of section 60 of the Act, and if so state in writing what condition and the reasons why it has been imposed; or

(c) deny the application for conversion and, if denied, the provisional registration lapses in terms of section 54(6)(b) of the Act.

[17(3) If the registrar does not receive an application submitted in terms of regulation 5, or if registration is denied in terms of sub-regulation (2)(c), the registrar must notify the institution in writing that its provisional registration will lapse at the end of the academic year, giving reasons.]

Amendment of Regulation 18 of the Regulations

19. Regulation 18 of the Regulations is hereby amended by:

- a) substitution of Regulation 18 with the following Regulation:

13[18] Amendment of registration

13(1)[18(1)] The registrar must consider and determine an application for amendment in accordance with section 59 of the Act and regulation 12(3) [16(3)] at least three months before the amendment is to come into effect.

13(2)[(18)(2)] The registrar [**must determine whether to**] may -

- a) amend [**the**] an institution's registration [or provisional registration [; **or**] in accordance with section 61 of the Act; or

[(b) impose a condition in terms of section 60 of the Act. [; **or**]

[(c) **deny the application for amendment.**]

13(3)[18 (3)] In the case of sub-regulation 13(2) [18(2)] (a) and (b) [**or (c)**], the registrar must notify the institution in writing, giving reasons."

Amendment of Regulation 19 of the Regulations

20. Regulation 19 of the Regulations is hereby amended by:

- a) the substitution of Regulation 19 with the following Regulation:

“14[19] Cancellation of registration

14 (1)[19(1)] Subject to sections 62 and 63 of the Act, the registrar may [**must**] cancel the registration or provisional registration of an institution if-

(a) the institution ceases to-

- (i) provide higher education as contemplated in the Act;
- (ii) meet the criteria of eligibility contemplated in regulation 2;
- (iii) fulfil the requirements for registration contemplated in the Act and chapter 3 of these regulations;
- (iv) comply with any condition imposed by the registrar in terms of section 60 or 61 of the Act; or

- (v) operate or terminates all its programmes;
 - (vi) fails to execute any of the responsibilities of an institution required in terms of Chapter 6 of these regulations.
- (b) the institution is convicted of fraud in a court of law; [provides fraudulent, false or misleading information]-
- (i) to the registrar; or
 - (ii) in any of its public documents or advertising and marketing material;]
- (c) the institution is liquidated; or
- (d) the owner or director(s) is convicted of an offence in terms of section 66 of the Act.

14(2)[19(2)] If the HEQC withdraws accreditation from one or more of an institution's programmes, the registrar must review the institution's registration or provisional registration in terms of section 62(2) of the Act and determine whether reasonable grounds exist for cancellation.

14(3)**[19(3)]** If the registrar proposes to cancel an institution's registration or provisional registration, the registrar must-

(a) comply with section 63 of the Act;

[(b) publish the intention to cancel by notice, with reasons;]

b[(c)] consider any representation from the institution or [an] interested persons in relation to such action;

(c) taking into account the interests of the students at the institution, specify the date on which the cancellation will take effect;

(d) publish the final determination, with reasons.

14(4) **[19(4)]** If the final determination is to cancel **[a] an institution's** registration or provisional registration, the registrar must issue a notice in writing to the institution that its registration or provisional registration is cancelled and that the cancellation takes effect **[at the end of the academic year] on a date specified by the registrar.**"

Amendment of Regulation 20 of the Regulations

21. Regulation 20 of the Regulations is hereby amended by:

a) the substitution of Regulation 20 with the following Regulation:

“15[20] Publication of registration notices.

[20(1) The registrar must publish every decision made in terms of this chapter by notice in the Government Gazette.]

15(1)[20(2)] the registrar must keep a public record of registered or provisionally registered institutions, together with copies of the registration certificates.

15(2)[20(3)] 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.**

Amendment of Regulation 21 of the Regulations

22. Regulation 21 of the Regulations is hereby amended by:

a) the substitution of Regulation 21 with the following Regulation:

“16[21] Registration name

16(1)[21(1)] **[Subject to this regulation,]** If the registrar grants registration or provisional registration, the institution must be registered under its legal name, but the registrar may include in the registration certificate **[such] the** translation**[s]**, abbreviation**[s]**, acronym**[s]** or trade name**[s]** that uniquely identify the institution.

16(2)[21(2)] Despite 16(1) [21(1)], the registrar must not register an institution-

(a) under a name that the registrar considers to be fraudulent, false or misleading; or

(b) under the same name as another institution, or include in two certificates of registration the same translation, abbreviation, acronym or trade name.

16(3)[21(3)] In the case of sub-regulation 16[21](2)(a) or (b), the registrar must agree on an acceptable alternative with the applicant.

Amendment of Regulation 22 of the Regulations

23. Regulation 22 of the Regulations is hereby amended by:

- a) the substitution of Regulation 22 with the following Regulation:

17[22] Certificate of registration

17(1)[22(1)] The certificate of registration or provisional registration must include the following-

- (a) the registered name of the institution and, where applicable, any approved translation, abbreviation, acronym or trade name;
- (b) the institution's registration number as a private higher education institution;
- (c) registered programmes [;] and accreditation cycle;
- (d) the respective sites at which registered programmes 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 54(3) and (4) of the Act;

(e) the coat of arms of the Republic of South Africa;

(f) any condition imposed in terms of section 60 of the Act; and

(g) the registrar's **[name,]** signature and date of signature.

17(2) [(22)(2)] If an institution's registration is amended in terms of sections 58 or 59, or a new condition is imposed or a condition amended in terms of section 61 of the Act, the registrar must issue an amended certificate of registration to the institution.

17(3) [(22)(3)] On receipt of the amended certificate of registration, the institution must within 14 days, return the previous certificate of registration to the registrar.

- 17(4) the registrar may issue an institution with an addendum to its registration conditions if the institution is issued with new registration conditions which do not include an amendment of its legal name, registration number or accreditation cycle.
- 17(6) [(22)(4)] A certificate of registration or an addendum is not transferable from one institution to another.
- 17(7) If an institution requests the replacement of a lost registration certificate or an addendum, it must provide the registrar with an original affidavit signed by the South African Police Services stating that its registration certificate or addendum is lost."

Amendment of Regulation 23 of the Regulations

24. Regulation 23 of the Regulations is hereby amended by:

a) the substitution of Regulation 23 with the following Regulation:

“18[23] Maintenance of registration

In order to maintain its registration an institution must-

- (a) continue to fulfil the requirements for registration contemplated in the Act and chapter 3 of these regulations;
- (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 60 or 61 of the Act;
- (d) with respect to all its higher education programmes comply with the requirements of the HEQC in terms of section 53(1)(b)(ii) of the Act;

- (e) notify the registrar of any change in the administrative details **[information]** submitted in terms of the Act and these regulations;
- (f) undergo an evaluation by the registrar at intervals to be determined by the registrar. The registrar will determine the date of commencement of the first cycle by a notice in the *Government Gazette*;
- (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) ensure that it:
 - (i) maintains the necessary academic and support staff with appropriate academic or professional qualifications and experience to achieve the objectives of each programme;
 - (ii) maintains a quality management system including assessment policies and procedures appropriate to each programme;
 - (iii) maintains sufficient space, equipment and instructional material to provide education and training of sufficient standard to achieve the objectives of each programme;

(iv) does not exceed the enrolment that the facilities and equipment can reasonably accommodate;

(v) maintains full records of each student's admission, academic progress and assessment of learning in respect of each programme

(i) report immediately to the registrar :

(i) loss of any physical facility necessary for the proper conduct of a programme;

(ii) loss of any supporting service to a programme;

(iii) change in the site of delivery of a programme;

(iv) any significant reduction in the financial or personnel resources needed to sustain a programme; or

(v) the intent to acquire another entity or institution."

Amendment of Regulation 24 of the Regulations

25. Regulation 24 of the Regulations is hereby amended by:

- a) the substitution of Regulation 24 with the following Regulation:

“19[24] Display of registration status

Subject to section 55(1) 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 with the Department of Education as a private higher education institution under the Higher Education Act, 1997. Registration certificate no. [state number on certificate]”; or
- (ii) if the institution is provisionally registered, “Provisionally registered with the Department of Education until [expiry date] as a private higher education institution under the Higher Education Act, 1997. Provisional registration certificate no. [state number on certificate].”

Amendment of Regulation 25 of the Regulations

26. Regulation 25 of the Regulations is hereby amended by:

- a) the substitution of Regulation 25 with the following Regulation:

“20[25] Registered programmes

20(1)[25(1)] An institution must offer only such programmes on only such sites as are approved by the registrar and included in the registration certificate.

20(2)[25(2)] An institution must ensure that any registered 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;

(b) the institution must make reasonable arrangements to enable the affected students to complete the programme at a comparable public or private institution; and

- (c) despite (b), the institution must ensure that its students are appropriately reimbursed or compensated by utilising the financial surety or guarantee referred to in regulation 10(2) **[13(2)]** .

20(13)**[25(3)]** An institution must submit an application for amendment to the registrar in terms of regulation 4 if it intends to **[withdraw, indefinitely suspend or]** discontinue or add a programme or site.”

Amendment of Regulation 26 of the Regulations

27. Regulation 26 of the Regulations is hereby amended by:

a) the substitution of Regulation 26 with the following Regulation:

“(21)[26] Information for students and the public

An institution must publish at least once each year a calendar, prospectus 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;
- (c) the statement contemplated in regulation (19)(b) **[24(b)]** ;
- (d) mission statement;
- (e) legal status;
- (f) name(s) of director(s), chief executive and senior management;
- (g) names and qualifications of full-time and part-time academic staff employed by the institution;

- (h) admission requirements and procedures including recognition of prior learning;
- (i) language policy;
- (j) mode of instruction;
- (k) details of each registered programme by site;
- (l) accreditation status of each registered programme;
- (m) rules relating to assessment, academic credit accumulation, progression and qualification;
- (n) fees and charges including refund(s) in the case of cancellation [**or withdrawal**];
- (o) details of student financial aid;
- (p) details of student support services;
- (q) details of rules or code of conduct;
- (r) details about the student registration contract;
- (s) details about the procedures to be followed in case of student complaints and grievances".

Insertion of Regulation 22 into the Regulations

28. The Regulations are hereby amended by:

- a) the insertion of Regulation 22 into the Regulations.

“22 Student complaints and grievances

- 1) Student complaints and grievances shall be lodged and processed in accordance with the complaint and grievance procedure of an institution as contemplated in regulation 21(s).
- 2) If a student has a complaint against an institution at which he or she is enrolled, the student must lodge the complaint with the management of the institution.
- 3) A student may also lodge a complaint or grievance with the registrar for notification.
- 4) If the student and management of the institution are unable to resolve the complaint or grievance to the satisfaction of both parties, the management must submit to the registrar:

(i) a copy of the letter of complaint;

(ii) details of reasons for the non-resolution of the grievance or complaint; and

(iii) details of further action(s), if any, undertaken by the student or institution.

22(2) The documents contemplated in sub-regulation 22(4) (i),(ii) and (iii) must be provided in respect of complaints relating to, but not limited to the following:

a) Quality of teaching and learning;

b) refusal to write examinations;

c) certification;

d) closure of the institution without informing students;

e) unfair business practices;

f) contravention of the Bill of Rights as promulgated in the Constitution of the Republic of South Africa;

g) refunds; and

h) fees.

22(3) If an institution is unable to satisfactorily resolve a complaint lodged by a student, the registrar may, at his or her own discretion and depending on the nature of the complaint, refer the institution to the consumer protector, or any other organisation, for further advice and investigation.

22(4) If the dispute cannot be resolved through the consumer protector or any other organisation referred by the registrar, the student has the right to take the matter to court for adjudication."

Amendment of Regulation 27 of the Regulations

29. Regulation 27 of the Regulations is hereby amended by:

a) the substitution of Regulation 27 with the following Regulation:

23[27] Academic records

23(1)[27(1)] An institution must keep a comprehensive record of the academic achievement of each student enrolled in a registered programme.

23(2)[27(2)] An institution must make available to an enrolled student or past student on request, a transcript of his or her academic record which shows-

(a) full name;

(b) identity number or passport number and nationality if not a South African citizen;

- (c) student number;
- (d) courses taken by code number and name for each year in chronological order;
- (e) mark or grade for each course, with an explanatory note on the marking or grading system;
- (f) qualification awarded.

23(3)[27(3)] An institution must make available to an enrolled student or past student on request a copy of a certificate awarded to the student.

23(4)[27(4)] An institution must submit to the CHE such information from its academic records as SAQA requires for the National Learners' Records Database."

Amendment of Regulation 28 of the Regulations

30. Regulation 28 of the Regulations is hereby amended by:

- a) the substitution of Regulation 27 with the following Regulation:

“24[28] Official documents, marketing and advertising

24(1)[28(1)] With respect to all its official documents, advertising and marketing material, an institution must-

- (a) comply with regulation 19 [24(b)];
- (b) ensure that all information about its approved programmes and accreditation status is accurate; and
- (c) make no false, fraudulent or misleading statements.

24(2)[28(2)] An institution may not display on its letterhead, official documents, marketing or advertising material-

- (a) the national coat of arms of the Republic of South Africa;
- (b) the logo of the Department of Education;
- (c) the logo of the HEQC or the CHE.

[24(3)] An institution may advertise any programme of recreational or general public interest in the areas of its academic and professional competence provided that it does not purport to lead to a qualification registered on the NQF.]

[24(4)] An institution may not market programmes contemplated in sub-regulation 24(3) as being accredited or approved by the CHE or registered by the Department of Education.]

Amendment of Regulation 29 of the Regulations

31. Regulation 29 of the Regulations is hereby amended by:

- a) the substitution of Regulation 29 with the following Regulation.

“25[29] Information required by the registrar

An institution must submit such information as the registrar may reasonably require for the purpose of monitoring compliance with the Act and maintaining the higher education information management system, including but not restricted to-

25(1)[29(1)] An annual report to be submitted on or before 30 April of each year and comprising:

- i) audited annual financial statements as contemplated in section 57(1)(b) of the Act to be submitted by a date determined by the registrar in the form specified by the Department of Education;
- ii) an annual auditor's report as contemplated in section 57(2) of the Act to be submitted by a date determined by the registrar in the form specified by the Department of Education;

- iii) 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.
- iv) any other annual reporting information in a form specified by the registrar.

[29(2)] information required in respect of the monitoring and evaluation contemplated in regulation 15; and]

25(2)[29(3)] Any other information in a form specified by the registrar.

25(3) A provisionally registered institution must, on a date determined by the registrar, together with its annual report, submit proof of compliance with the requirements for registration in respect of which it was granted provisional registration."

Amendment of Regulation 30 of the Regulations

32. Regulation 30 of the Regulations is hereby amended by:

- a) the substitution of Regulation 30 with the following Regulation:

“26[30] [Lapse or] cancellation of registration

An institution that has been notified by the registrar that its provisional registration **[has lapsed in terms of regulation 17(3)]** or registration has been cancelled in terms of regulation 14 **[19]** 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 as contemplated in regulation 24 (2) **[27(2)]**;

- (c) reimburse or compensate any enrolled student who has a lawful claim on the institution as a consequence of its ceasing to operate from funds established as contemplated in regulation 10(2) **[13(2)]** ;

- (d) make adequate arrangements for affected students to complete their programmes at a comparable public or private institution; and

- (e) cease operating **[before or]** at a date specified by the registrar. [the end of the academic year,] **[and]** Any institution that fails to comply with this sub-paragraph is guilty of an offence in terms of section 66 of the Act."

Amendment of Regulation 31 of the Regulations

33. Regulation 31 of the Regulations is hereby amended by:

a) the substitution of Regulation 31 with the following Regulation:

“27 [31] Procedure

26(1)[31(1)] Subject to section 64 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.

26(2) [31(2)] An appeal document must specify-

(a) the decision being appealed;

(b) the grounds for the appeal;

(c) the remedy being sought.

26(3) [31(3)] The Minister must decide an appeal within 60 days of its being lodged unless there are compelling reasons for delay and the Minister has informed the appellant accordingly.

Amendment of Regulation 32 of the Regulations

34. Regulation 32 of the Regulations is hereby amended by:

a) the substitution of Regulation 32 with the following Regulation:

“28 [32] Conflict of interest

The registrar or any employee contemplated in section 50 of the Act must not-

(a) have a financial interest in any institution or applicant for registration;

(b) be a member of the governing body of any institution or applicant for registration;

(c) engage as a consultant to any institution or applicant for registration.

(d) receive any gifts from an institution or an applicant.”

Amendment of Regulation 33 of the Regulations

35. Regulation 33 of the Regulations is hereby amended by:

a) the substitution of Regulation 33 with the following Regulation:

“29 [33] **Transitional arrangements**

29 (1)[33(1)] Subject to the Act, institutions registered prior to these regulations must comply with the requirements for registration by 31 December 2004.

29(2)[33](2) Subject to the Act, applicants that lodge an application for registration prior these regulations and are registered or provisionally registered after 1 April 2003 and before 31 July 2003 must comply with the requirements for registration by 31 December 2004.”

29(3) Subject to the Act, applicants who have lodged their applications in accordance with regulations 3 and 4, prior to these amendment regulations, may be required by the Registrar to submit additional information for the purposes of compliance.

29 (4) Subject to the Act, institutions registered prior to these amendment regulations must comply with its requirements by 31 December 2014, with the exception of the requirement for institutions with existing programmes and qualifications to be fully compliant with the requirements of the HEQF which is subject to a date determined by the Minister of Education by notice in the Government Gazette. Institutions offering new higher education programmes and qualifications must, however, comply with the requirements of the HEQF from 1 January 2009 for the purposes of these regulations.

Amendment of Regulation 34 of the Regulations

36. Regulation 34 of the Regulations is hereby amended by:

- a) the substitution of Regulation 34 with the following Regulation:

“30 [34] Appendices

Amended appendices to these Amendment Regulations [1 to 11] will be published in the Government Gazette at a date determined by the Minister [28 February 2003]”

Amendment of Regulation 35 of the Regulations

37. Regulation 35 of the Regulations is hereby amended by:

- a) the substitution of Regulation 34 with the following Regulation:

“31[35] Short title and commencement

These regulations may be cited as **[are]** the Amendment Regulations for the Registration of Private Higher Education Institutions [, **2003**] and come into effect on 30 April 2009”