

THE HIGHER EDUCATION BILL

(No. XX of 2017)

Explanatory Memorandum

The object of this Bill is to repeal the Tertiary Education Commission Act and enact a reformed, modern and appropriate legislative framework so as to ensure better control and regulation of the higher education sector in Mauritius.

2. The Bill provides for a Higher Education Advisory Council which shall, inter alia, advise the Government on policies for the effective direction, promotion and development of higher education.

3. The Bill further provides for the establishment of a Higher Education Commission and a Quality Assurance Authority which will take over the functions and powers of the Tertiary Education Commission, as the case may be.

4. The Higher Education Commission shall, inter alia, monitor and oversee the higher education sector and be responsible for the registration of institutions offering higher education and for the accreditation of their programmes, whereas the Quality Assurance Authority shall, inter alia, promote and maintain quality and sound standards in higher education through appropriate quality assurance mechanisms.

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01 December 2017

THE HIGHER EDUCATION BILL
(No. XX of 2017)

ARRANGEMENT OF CLAUSES

Clause

- | | |
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| <p>PART I – PRELIMINARY</p> <ol style="list-style-type: none">1. Short title2. Interpretation3. Application of Act4. Higher Education Advisory Council <p>PART II – HIGHER EDUCATION COMMISSION</p> <p>Sub-Part A – Establishment of Commission</p> <ol style="list-style-type: none">5. Establishment of Commission <p>Sub-Part B – Objects, Functions and Powers of Commission</p> <ol style="list-style-type: none">6. Objects of Commission7. Functions of Commission8. Powers of Commission <p>Sub-Part C – Administration and Management of Commission</p> <ol style="list-style-type: none">9. Board of Higher Education Commission10. Meetings of Board of Higher Education Commission11. Commissioner12. Delegation of powers by Board of Higher Education Commission13. Staff of Commission14. Registrar of Commission <p>Sub-Part D – Establishment and Registration of Higher Education Institutions, Establishment of Overseas Institutions and Accreditation of Programmes</p> <ol style="list-style-type: none">15. Establishment of higher education institutions16. Registration of higher education institutions17. Establishment of overseas institutions18. Accreditation of programmes19. National Credit Value and Transfer System <p>Sub-Part E – Suspension or Revocation of Approval, Registration or Accreditation</p> <ol style="list-style-type: none">20. Suspension or revocation | <p>Sub-Part F – Names or Titles</p> <ol style="list-style-type: none">21. Use of names or titles <p>Sub-Part G – Student Affairs</p> <ol style="list-style-type: none">22. Enrolment of students23. Framework for welfare of students24. Code of Conduct for students <p>Sub-Part H – Funding of Higher Education Institutions</p> <ol style="list-style-type: none">25. Funding mechanism26. Enforcement process <p>Sub-Part I – Financial Provisions of Commission</p> <ol style="list-style-type: none">27. General Fund of Commission28. Estimate of income and expenditure of Commission <p>PART III – QUALITY ASSURANCE AUTHORITY</p> <p>Sub-Part A – Establishment of Authority</p> <ol style="list-style-type: none">29. Establishment of Authority <p>Sub-Part B – Objects, Functions and Powers of Authority</p> <ol style="list-style-type: none">30. Objects of Authority31. Functions of Authority32. Powers of Authority <p>Sub-Part C – Administration and Management of Authority</p> <ol style="list-style-type: none">33. Board of Quality Assurance Authority34. Meetings of Board of Quality Assurance Authority35. Executive Director36. Delegation of powers by Board of Quality Assurance Authority37. Staff of Authority <p>Sub-Part D – Quality Audits and Register of Qualifications</p> <ol style="list-style-type: none">38. Quality audits39. Register <p>Sub-Part E – Financial Provisions of Authority</p> <ol style="list-style-type: none">40. General Fund of Authority41. Estimate of income and expenditure of Authority <p>PART IV – MISCELLANEOUS</p> <ol style="list-style-type: none">42. Powers of Minister |
|--|---|

43. Protection from liability
44. Disclosure of interest
45. Confidentiality
46. Execution of documents
47. Annual report
48. Exemption
49. Donations

50. Appeal against decision of Commission or Authority
51. Offences
52. Regulations
53. Repeal
54. Consequential amendments
55. Transitional and saving provisions
56. Commencement

A BILL

To provide for a reformed, modern and appropriate legislative framework for the higher education sector in Mauritius

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Higher Education Act 2017.

2. Interpretation

In this Act –

“accreditation”, in relation to an institution or an education programme, means confirmation that the institution or the programme, as the case may be, satisfies the minimum criteria or standards for it to operate or be offered for a specified duration;

“Authority” means the Quality Assurance Authority established under section 29;

“Board of the Higher Education Commission” means the Board of the Higher Education Commission referred to in section 9;

“Board of the Quality Assurance Authority” means the Board of the Quality Assurance Authority referred to in section 33;

“Commission” means the Higher Education Commission established under section 5;

“Commissioner” means the Commissioner of the Commission appointed under section 11;

“Council” means the Higher Education Advisory Council referred to in section 4;

“equivalence”, in relation to an academic or professional qualification, means the recognition of 2 or more educational programmes or qualifications as being equal in terms of content or level, or comparable in value;

“Executive Director” means the Executive Director of the Authority appointed under section 35;

“higher education” means education offered by a higher education institution conferring qualification for an undergraduate certificate, an undergraduate diploma, a bachelor’s degree, a bachelor’s degree with honours, a postgraduate certificate, a postgraduate diploma, a master’s degree or a doctoral degree, or their respective equivalents;

“higher education institution” means –

- (a) any public university, established by an Act of Parliament, which offers any programme of higher education;
- (b) any private university registered under this Act to offer any programme of higher education;
- (c) a centre or branch campus of an overseas higher education institution, or a centre or branch campus which is separate from an overseas higher education institution, registered under this Act to offer any programme of higher education; or
- (d) any other public or private institution, other than a public or private university, registered under this Act to offer any programme of higher education;

“Minister” means the Minister to whom responsibility for the subject of education is assigned;

“Ministry” means the Ministry responsible for the subject of education;

“National Qualifications Framework” has the same meaning as in the Mauritius Qualifications Authority Act;

“public higher education institution” means any public university or public institution which receives funds from the Commission;

“quality assurance” includes internal quality assurance and external quality assurance;

“recognition”, in relation to an academic or professional qualification, means recognition that the qualification is of an acceptable quality at the specified level and may give access to further studies, employment or profession;

“supervising officer” means the supervising officer of the Ministry.

3. Application of Act

The Minister may, by regulations, exempt any institution offering higher education or any programme or qualification of that institution from the application of this Act.

4. Higher Education Advisory Council

(1) There shall be a Higher Education Advisory Council consisting of a chairperson and 12 other members, to be appointed by the Prime Minister.

(2) The Council shall –

- (a) advise the Government on policies for the effective direction, promotion and development of higher education; and
- (b) examine any matter relating to higher education referred to it by the Minister and make recommendations thereto.

(3) The Council shall regulate its meetings and proceedings in such manner as it may determine.

PART II – HIGHER EDUCATION COMMISSION

Sub-Part A – Establishment of Commission

5. Establishment of Commission

(1) There is established for the purposes of this Act the Higher Education Commission.

(2) The Commission shall be a body corporate.

Sub-Part B – Objects, Functions and Powers of Commission

6. Objects of Commission

The Commission shall –

- (a) monitor and oversee the higher education sector;
- (b) ensure –
 - (i) the availability of adequate human resources, physical infrastructure and other material resources;
 - (ii) the rationalisation of teaching programmes in public higher education institutions; and
 - (iii) the planning and implementation of research in higher education institutions;
- (c) promote the development of higher education, academic research and training facilities through equity of access, high quality learning and research outcomes, the efficient use of national resources and innovation;
- (d) foster the achievement of international standards of scholarship through a diversity of teaching and research;
- (e) identify and enhance good practice in higher education;
- (f) support and facilitate the implementation of the national higher education strategy of the Government; and
- (g) support the development of cultural life.

7. Functions of Commission

- (1) The Commission shall –
 - (a) formulate and publish policies and criteria for the registration and accreditation of institutions offering higher education;
 - (b) determine applications for the establishment and registration of institutions offering higher education;
 - (c) register institutions offering higher education and accredit their programmes;
 - (d) publish and maintain an annual list of higher education institutions and their accredited programmes;
 - (e) determine the recognition and equivalence of academic or professional qualifications in higher education obtained in or outside Mauritius;

- (f) undertake periodic accreditation audits of higher education institutions;
- (g) provide guidelines to public higher education institutions for preparing short, medium and long-term plans for the operation and development of higher education, research and training;
- (h) give effect to the Government's policy on funding of public higher education institutions by –
 - (i) providing guidance on the content of proposed plans and processes associated with seeking of funding;
 - (ii) determining the amount of funding provided to public higher education institutions by applying the appropriate funding mechanisms;
 - (iii) developing details of how to implement funding mechanisms, including for research purposes; and
 - (iv) monitoring the performance of public higher education institutions that receive funding from the Commission, including measuring their performance against specified outcomes;
- (i) make recommendations to the Minister on the development of the higher education sector; and
- (j) advise the Minister on policy matters relating, inter alia, to the provision of support services to students.

(2) The Commission shall, in the discharge of its functions under subsection (1), have regard to –

- (a) the educational, cultural, social and economic needs of Mauritius; and
- (b) the promotion of the most effective use of available resources.

8. Powers of Commission

The Commission shall have such powers as may be necessary to discharge its functions most effectively and may, in particular –

- (a) require a higher education institution to –
 - (i) provide information and data on any matter falling within the Commission’s functions and powers;
 - (ii) issue and enforce a Code of Conduct for its students;
 - (iii) submit short and long-term plans; and
 - (iv) submit financial estimates and accounts, and prepare periodic reports, in such form as the Commission may determine; and
- (b) appoint committees and co-opt such persons as it may determine to such committees.

Sub-Part C – Administration and Management of Commission

9. Board of Higher Education Commission

(1) There shall be a board which shall define the policy directions of the Higher Education Commission.

(2) The Board of the Higher Education Commission shall consist of –

- (a) a chairperson, to be appointed by the Prime Minister after consultation with the Minister; and
- (b) 8 other members, to be appointed by the Prime Minister, having wide experience in higher education, legal, administrative, economic, financial, engineering, scientific or technical matters.

(3) The members of the Board of the Higher Education Commission shall, amongst themselves, elect a vice-chairperson.

(4) Every member of the Board of the Higher Education Commission shall hold office for a period of 3 years and shall be eligible for reappointment.

(5) Every member of the Board of the Higher Education Commission shall be paid such fees as the board may, with the approval of the Minister, determine.

10. Meetings of Board of Higher Education Commission

(1) The Board of the Higher Education Commission shall meet as often as is necessary but at least 10 times a year and at such time and place and in

such manner as the chairperson may determine.

(2) At any meeting of the Board of the Higher Education Commission, 5 members shall constitute a quorum.

(3) The Board of the Higher Education Commission may co-opt such other persons as may be of assistance in relation to any matter before it.

(4) Any person co-opted under subsection (3) shall have no right to vote on any matter before the Board of the Higher Education Commission.

(5) Subject to this section, the Board of the Higher Education Commission shall regulate its meetings and proceedings in such manner as it may determine.

11. Commissioner

(1) There shall be a Commissioner of the Commission who shall be its chief executive officer.

(2) The Commissioner shall be appointed by the Board of the Higher Education Commission, with the approval of the Minister, on such terms and conditions as the Minister may determine.

(3) The Commissioner shall be responsible for the execution of the policy of the Board of the Higher Education Commission and for the control and management of the day to day business of the Commission.

(4) The Commissioner shall, in the discharge of his functions, act in accordance with such directions as he may receive from the Board of the Higher Education Commission.

(5) The Commissioner shall, unless otherwise directed by the Board of the Higher Education Commission, attend every meeting of the board and may take part in its deliberations but shall have no right to vote on any matter before the board.

12. Delegation of powers by Board of Higher Education Commission

(1) The Board of the Higher Education Commission may, subject to subsection (2) and to such conditions as it may impose, delegate to the Commissioner such of its powers under this Act as may be necessary to assist in the effective administration and management of the Commission.

(2) The Board of the Higher Education Commission shall not delegate its power to borrow money or raise loans.

13. Staff of Commission

(1) The Board of the Higher Education Commission may, on such terms and conditions as it may determine, appoint such officers as it considers necessary for the proper discharge of its functions under this Act.

(2) Every officer of the Commission shall be under the administrative control of the Commissioner.

(3) The Board of the Higher Education Commission may make provision in such form as it may determine to govern the conditions of service of the officers and, in particular, for –

- (a) the appointment, dismissal, discipline, pay and leave of the officers;
- (b) appeals by officers against dismissal and other disciplinary measures; and
- (c) the establishment and maintenance of a superannuation scheme and the contributions and benefits payable to or from the scheme.

14. Registrar of Commission

The Board of the Higher Education Commission shall appoint an officer to act as Registrar of the Commission and the Registrar shall perform such functions and exercise such powers as may be conferred on him by the Commissioner.

Sub-Part D – Establishment and Registration of Higher Education Institutions, Establishment of Overseas Institutions and Accreditation of Programmes

15. Establishment of higher education institutions

(1) Every person who intends to establish an institution offering higher education shall make an application to the Commissioner in such form and manner as may be prescribed.

(2) Every application made under subsection (1) shall be accompanied by such non-refundable fee as may be prescribed.

(3) The Commissioner may, in determining the application, require such other information or document as he may determine.

(4) The Commissioner may, subject to the approval of the Board of the Higher Education Commission, grant or reject an application under subsection

(1) and shall, within 5 working days of such decision, inform the applicant thereof.

(5) Where the Commissioner rejects an application under subsection (4), he shall state the reasons for such rejection.

(6) Where the Commissioner grants an application under subsection (4), he shall, on such terms and conditions as he may determine, register that institution as an approved higher education institution.

(7) This section shall not apply to a public higher education institution.

16. Registration of higher education institutions

(1) Every person who intends to operate an institution offering higher education shall make an application to the Commissioner in such form and manner as may be prescribed.

(2) Every application made under subsection (1) shall be accompanied by such non-refundable fee as may be prescribed.

(3) The Commissioner may, in determining the application, require such other information or document as it may determine.

(4) The Commissioner may grant or reject an application under subsection (1) and shall, within 5 working days of such decision, inform the applicant thereof.

(5) Where the Commissioner rejects an application under subsection (4), he shall state the reasons for such rejection.

(6) Where the Commissioner grants an application under subsection (4), he shall, on such terms and conditions as he may determine, register that institution as a higher education institution.

(7) A higher education institution shall not be registered unless –

(a) that institution has acquired the status of an approved higher education institution under section 15(6); and

(b) in the case of a centre, or a branch campus, of an overseas institution –

(i) the centre or branch campus complies with the requirements referred to in paragraph (a); and

- (ii) the overseas institution is an approved and accredited institution in accordance with the laws of its country.

(8) Where a person intends to operate a centre or branch campus in Mauritius as a separate entity from its overseas institution, he shall provide documentary evidence to the effect that strong academic linkages exist between the centre or branch campus and the institution.

(9) This section shall not apply to a public higher education institution.

17. Establishment of overseas institutions

Where a public higher education institution intends to operate a centre or branch campus outside Mauritius as a separate entity, it shall seek prior clearance from the Commissioner.

18. Accreditation of programmes

(1) No higher education institution shall offer any programme unless that programme is accredited by the Commission.

(2) An application for the accreditation of a programme shall be made to the Commission in accordance with such guidelines as it may issue.

(3) The Commission shall not accredit any programme that leads to a professional qualification for practice in Mauritius unless the relevant recognised professional body gives its approval.

19. National Credit Value and Transfer System

(1) The Commission shall develop and issue a National Credit Value and Transfer System in order to recognise qualifications and units by awarding credits.

(2) The units referred to in subsection (1) shall have credit value which shall be equal to such hours of learning as the Commission may determine for the purpose of obtaining a qualification by a learner.

(3) The credits awarded under the National Credit Value and Transfer System shall be transferable in such manner as the Commission may determine.

Sub-Part E – Suspension or Revocation of Approval, Registration or Accreditation

20. Suspension or revocation

(1) Subject to subsections (2) and (3), the Commission may, at any time, suspend or revoke the approval or registration of a higher education institution, or the accreditation of any of its programmes where, in its opinion, the institution has contravened this Act or any term or condition imposed by it.

(2) Where the Commission decides to suspend or revoke the approval or registration of a higher education institution, or the accreditation of any of its programmes under subsection (1), it shall give written notice of its decision to the owner, manager or person in charge of the institution, stating –

- (a) the reasons for such decision; and
- (b) the time, being not less than 14 days, within which the owner, manager or person in charge may make written representations to the Minister to object against the decision.

(3) (a) The Minister shall appoint an independent panel to consider any representations made under subsection (2).

(b) The independent panel shall make recommendations to the Minister in relation to the representations made under paragraph (a) and the Minister shall communicate his decision and the reasons therefor in writing to the owner, manager or person in charge of the higher education institution not later than 3 months from the date the notice is served under subsection (2).

Sub-Part F – Names or Titles

21. Use of names or titles

(1) No higher education institution shall, without an authorisation in writing from the Commissioner, use, in relation to its name, the word "Academy", "College", "College of Advanced Education", "College of Further Education", "College of Higher Education", "Institute of Higher Education", "Institute of Science and Technology", "Polytechnic", "University" or any word or words which, in the opinion of the Commission, is similar to, or closely resembles or resemble, those words.

(2) No centre, or branch campus, of an overseas institution shall include the name of that institution as part of its name unless that centre or branch campus has obtained the prior approval of the Commission.

(3) A private higher education institution may apply to the Commission to use the title "University" where the institution has offered courses leading to the award of a qualification leading to a bachelor degree or above and has awarded such qualification for the last 3 years.

Sub-Part G – Student Affairs

22. Enrolment of students

Every higher education institution wishing to enrol students, including international students, shall comply with such terms and conditions as may be prescribed.

23. Framework for welfare of students

The Commission shall issue, by publication in the Gazette, a framework for the welfare of students.

24. Code of Conduct for students

Every higher education institution shall, based on the model of Code of Conduct for students issued by the Commission, issue a Code of Conduct for its students.

Sub-Part H – Funding of Higher Education Institutions

25. Funding mechanism

(1) The supervising officer of the Ministry shall, from time to time, in consultation with the Commission –

- (a) determine the design of one or more funding mechanisms that the Commission shall use to fund public higher education institutions; and
- (b) set down criteria, conditions and requirements which shall be met by a higher education institution for it to receive funding from the Commission.

(2) The Commission shall allocate funds to public higher education institutions in accordance with the funding mechanism approved by the Ministry.

(3) Where a public higher education institution does not meet the criteria, conditions or requirements referred to in subsection (1)(b), the Commission may amend the level of funding to that institution.

26. Enforcement process

(1) The Commission may, for the purpose of obtaining relevant information or ascertaining the financial needs of a public higher education institution, after reasonable notification to the institution, cause an inspection of any department of that institution to be made.

(2) The Commission shall, further to the inspection made, inform the public higher education institution of its views or findings and may, after any comment from the institution, request it to take such action as it may determine.

(3) Every public higher education institution shall report to the Commission on the outcome of any action which it proposes to take or any action the Commission has requested it to take.

(4) Where a public higher education institution fails, within a reasonable time, to comply with any request made by the Commission under subsection (2), the Commission may, in ascertaining its financial needs and, after taking into consideration the cause, if any, shown by the institution for such failure, withhold the funding proposed under section 25.

Sub-Part I – Financial Provisions of Commission

27. General Fund of Commission

The Commission shall establish a General Fund –

- (a) into which all monies received from any source by it shall be paid; and
- (b) out of which all payments required to be made by it shall be effected.

28. Estimate of income and expenditure of Commission

(1) The Commission shall submit to the Minister, not later than 31 March in every year, an estimate of its income and expenditure in respect of the following financial year for his approval.

(2) Where the Minister gives his approval under subsection (1), he may –

- (a) approve only part of the expenditure under any item; and
- (b) direct the Commission to amend the estimate in respect of any item in such manner as he may determine.

PART III –QUALITY ASSURANCE AUTHORITY
Sub-Part A – Establishment of Authority

29. Establishment of Authority

(1) There is established for the purposes of this Act the Board of the Quality Assurance Authority.

(2) The Authority shall be a body corporate.

Sub-Part B – Objects, Functions and Powers of Authority

30. Objects of Authority

The Authority shall –

- (a) promote, maintain and enhance –
 - (i) quality assurance of higher education in line with international standards;
 - (ii) high quality standards in higher education through appropriate quality assurance mechanisms;
- (b) enhance and identify good practice in higher education.

31. Functions of Authority

- (1) The Authority shall –
 - (a) ensure that standards for qualifications in every higher education institution are met;
 - (b) carry out regular quality audits of higher education institutions;
 - (c) monitor, regularly review, and advise the Minister on, the standards for qualifications of higher education institutions, either generally or in relation to a particular institution or a particular programme of a higher education institution;
 - (d) work with every higher education institution to define academic standards and quality, and carry out and publish reviews against those standards;

- (e) ensure that the mechanisms in place to guarantee that higher education institutions have assessment and moderation procedures in place are fair, equitable and consistent, and comply with the appropriate standards;
- (f) ensure that research degrees are awarded by higher education institutions in a sound research environment;
- (g) monitor the delivery of online and inter-institutional programmes;
- (h) provide information, and reports, on quality and standards in higher education; and
- (i) ensure continuous improvement in the management of the quality of the higher education sector.

(2) The Authority shall, in the discharge of its functions under subsection (1), be responsible for –

- (a) safeguarding standards in an increasingly diverse and international context;
- (b) driving improvements in the higher education sector; and
- (c) increasing public understanding of higher education standards and quality in Mauritius.

32. Powers of Authority

The Authority shall have such powers as may be necessary to discharge its functions most effectively and may, in particular –

- (a) require a higher education institution to –
 - (i) provide information and data on any matter falling within the Authority’s functions and powers; and
 - (ii) submit financial estimates and accounts, and prepare periodical reports, in such form as the Authority may determine; and
- (b) appoint committees and co-opt such persons as it may determine to such committees.

Sub-Part C – Administration and Management of Authority

33. Board of Quality Assurance Authority

(1) There shall be a board which shall define the policy directions of the Authority.

(2) The Board of the Quality Assurance Authority shall consist of –

- (a) a chairperson, to be appointed by the Prime Minister;
- (b) the Commissioner; and
- (c) 7 other members, to be appointed by the Prime Minister, having wide experience in higher education, legal, administrative, economic, financial, engineering, scientific or technical matters.

(3) The members of the Board of the Quality Assurance Authority shall, amongst themselves, elect a vice-chairperson.

(4) Every member of the Board of the Quality Assurance Authority, other than a member referred to in subsection (2)(b), shall hold office for a period of 3 years and shall be eligible for reappointment.

(5) Every member of the Board of the Quality Assurance Authority shall be paid such fees as the board may, with the approval of the Minister, determine.

34. Meetings of Board of Quality Assurance Authority

(1) The Board of the Quality Assurance Authority shall meet as often as is necessary and at such time and place and in such manner as the chairperson of the board may determine.

(2) At any meeting of the Board of the Quality Assurance Authority, 5 members shall constitute a quorum.

(3) The Board of the Quality Assurance Authority may co-opt such other persons as may be of assistance in relation to any matter before it.

(4) Any person co-opted under subsection (3) shall have no right to vote on any matter before the Board of the Quality Assurance Authority.

(5) Subject to this section, the Board of the Quality Assurance Authority shall regulate its meetings and proceedings in such manner as it may determine.

35. Executive Director

(1) There shall be an Executive Director of the Authority who shall be its chief executive officer.

(2) The Executive Director shall be appointed by the Board of the Quality Assurance Authority, with the approval of the Minister, on such terms and conditions as the Minister may determine.

(3) The Executive Director shall be responsible for the execution of the policy of the Board of the Quality Assurance Authority and for the control and management of the day to day business of the Authority.

(4) The Executive Director shall, in the discharge of his functions, act in accordance with such directions as he may receive from the Board of the Quality Assurance Authority.

(5) The Executive Director shall, unless otherwise directed by the Board of the Quality Assurance Authority, attend every meeting of the board and may take part in its deliberations but shall have no right to vote on any matter before the board.

36. Delegation of powers by Board of the Quality Assurance Authority

(1) The Board of the Quality Assurance Authority may, subject to subsection (2) and to such conditions as it may impose, delegate to the Executive Director such of its powers under this Act as may be necessary to assist in the effective administration and management of the Authority.

(2) The Board of the Quality Assurance Authority shall not delegate its power to borrow money or raise loans.

37. Staff of Authority

(1) The Board of the Quality Assurance Authority may, on such terms and conditions as it may determine, appoint such officers as it considers necessary for the proper discharge of its functions under this Act.

(2) Every officer of the Authority shall be under the administrative control of the Executive Director.

(3) The Board of the Quality Assurance Authority may make provision, in such form as it may determine, to govern the conditions of service of the officers and, in particular, for –

- (a) the appointment, dismissal, discipline, pay and leave of the officers;
- (b) appeals by officers against dismissal and other disciplinary measures; and
- (c) the establishment and maintenance of a superannuation scheme and the contributions and benefits payable to or from the scheme.

Sub-Part D – Quality Audits and Register of Qualifications

38. Quality audits

(1) The Authority shall ensure that every higher education institution is subject to external quality audits against international yardsticks for benchmarking of performance.

(2) The external quality audit referred to in subsection (1) shall be conducted in cooperation with international quality assurance experts.

(3) Every higher education institution shall submit to the Authority a copy of the self-evaluation report within such time as the Authority may determine.

39. Register

(1) A qualification shall be registered in the appropriate register where that qualification is achieved –

- (a) through an academic programme, currently on offer, that has been fully accredited by the Commission; and
- (b) by accumulation of credits required for the qualification under the National Credit Value and Transfer System issued by the Commission.

(2) Where a qualification is removed from its appropriate register, any accreditation approved by the Commission in respect of that qualification shall lapse and the Authority shall inform the Commission accordingly.

Sub-Part E – Financial Provisions of Authority

40. General Fund of Authority

The Authority shall establish a General Fund –

- (a) into which all monies received from any source by it shall be paid; and
- (b) out of which all payments required to be made by it shall be effected.

41. Estimate of income and expenditure of Authority

(1) The Authority shall submit to the Minister, not later than 31 March in every year, an estimate of its income and expenditure in respect of the following financial year for his approval.

(2) Where the Minister gives his approval under subsection (1), he may –

- (a) approve only part of the expenditure under any item; and
- (b) direct the Authority to amend the estimate in respect of any item in such manner as he may determine.

PART IV – MISCELLANEOUS

42. Powers of Minister

(1) The Minister may give such written directions of a general character, not inconsistent with this Act, to the Board of the Higher Education Commission or Board of the Quality Assurance Authority, as he considers necessary in the public interest, and the Board of the Higher Education Commission or Board of the Quality Assurance Authority shall comply with those directions.

(2) The Minister may require the Board of the Higher Education Commission or Board of the Quality Assurance Authority to furnish such information in such a manner and at such time as he thinks necessary, in respect of its activities and the Board of the Higher Education Commission or Board of the Quality Assurance Authority, as the case may be, shall comply with those directions.

43. Protection from liability

No liability, civil or criminal, shall be incurred by the Commission, the Authority, a member of the Board of the Higher Education Commission, a member of the Board of the Quality Assurance Authority, an officer of the Commission, an officer of the Authority or a member of a committee, in respect of any act done or omitted in good faith in the discharge of its or his functions or exercise of its or his powers under this Act.

44. Disclosure of interest

Every member of the Board of the Higher Education Commission or officer of the Commission, or every member of the Board of the Quality Assurance Authority or officer of the Authority shall, in relation to any matter before the Board of the Higher Education Commission or the Board of the Quality Assurance Authority, as the case may be, in which he or any person related to him by blood or marriage has a pecuniary or other material interest –

- (a) disclose the nature of that interest in writing at or before the meeting convened to discuss that matter; and
- (b) not take part in any deliberations of the Board of the Higher Education Commission or the Board of the Quality Assurance Authority, as the case may be, relating to that matter.

45. Confidentiality

(1) Subject to subsection (2), every member of the Board of the Higher Education Commission, member of the Board of the Quality Assurance Authority, officer of the Commission, officer of the Authority or member of a committee shall, during or after his period of service with the Commission or Authority, as the case may be, maintain the confidentiality of any matter relating to this Act which comes to his knowledge.

(2) No person shall disclose to any other person any matter relating to this Act which comes to his knowledge in the discharge of his functions except –

- (a) for the purpose of administering this Act;
- (b) where he is required to do so by law; or
- (c) where he is authorised to do so by the Minister.

46. Execution of documents

No deed or other document shall be executed or signed by or on behalf of –

- (a) the Commission unless it is signed by –
 - (i) the chairperson of the Board of the Higher Education Commission or, in his absence, any other member designated by the Board of the Higher Education Commission; and

- (ii) the Commissioner or, in his absence, any other officer designated by the Board of the Higher Education Commission; or
- (b) the Authority unless it is signed by –
 - (i) the chairperson of the Board of the Quality Assurance Authority or, in his absence, any other member designated by the Board of the Quality Assurance Authority; and
 - (ii) the Executive Director or, in his absence, any other officer designated by the Board of the Quality Assurance Authority.

47. Annual report

(1) The Commission or Authority, as the case may be, shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Commission or Authority, in respect of every financial year.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of the Commission or Authority, as the case may be, before the Assembly.

(3) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

48. Exemption

(1) The Commission or Authority shall be exempt from the payment of any duty, levy, rate, charge, fee or tax.

(2) No stamp duty or registration fee shall be payable in respect of any document signed or executed by the Commission or Authority or under which the Commission or Authority is a beneficiary.

49. Donations

Article 910 of the Code Civil Mauricien shall not apply to the Commission or Authority.

50. Appeal against decision of Commission or Authority

(1) Any person who feels aggrieved by a decision of the Commission or Authority, as the case may be, may, within 21 days of the communication of the decision to that person, appeal to the Minister.

- (2) (a) An appeal under subsection (1) shall be –
- (i) in writing and provide a full and precise description of the grounds on which it is made;
 - (ii) lodged with the supervising officer; and
 - (iii) accompanied by such fee as may be prescribed.

(b) The fee referred to in subsection (2)(a)(iii) shall be refunded to the appellant where the appeal is allowed in whole or in part.

(3) The Minister may, on the determination of the appeal, vary or confirm the decision of the Commission or Authority, as the case may be.

51. Offences

Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 3 years.

52. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

- (2) Any regulations made under this Act may provide –
- (a) for the taking of fees or the levying of charges;
 - (b) for prescribing a Code of Practice for higher education institutions; and
 - (c) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding one year.

53. Repeal

The Tertiary Education Commission Act is repealed.

54. Consequential amendments

- (1) The Agricultural Chemists Act is amended –

- (a) in section 2 –
 - (i) by deleting the definitions “recognised university or institution” and “Tertiary Education Commission”, the semicolon at the end of the definition of “register” being deleted and replaced by a full stop;
 - (ii) by inserting, in the appropriate alphabetical order, the following new definition –

“higher education institution” has the same meaning as in the Higher Education Act 2017;
- (b) in section 6(1)(a)(i), by deleting the words “recognised university or institution” and replacing them by the words “higher education institution”.

(2) The Dental Council Act is amended, in section 12(f), by deleting the words “Tertiary Education Commission Act” and replacing them by the words “Higher Education Act 2017”.

(3) The Education Act is amended –

- (a) in section 2 –
 - (i) by deleting the definition of “post-secondary education”;
 - (ii) by inserting, in the appropriate alphabetical order, the following new definitions –

“higher education” has the same meaning as in the Higher Education Act 2017;

“higher education institution” has the same meaning as in the Higher Education Act 2017;
- (b) in section 5(3) –
 - (i) by repealing paragraph (c) and replacing it by the following paragraph –

(c) the Commissioner, Higher Education Commission;
 - (ii) by inserting, after paragraph (c), the following new paragraph –

- (ca) the Executive Director, Quality Assurance Authority;
 - (c) in section 33(5)(a), by deleting the words “approved tertiary” and replacing them by the words “higher”;
 - (d) in section 33A(3)(a), by deleting the words “approved tertiary” and replacing them by the words “higher”;
 - (e) in section 38(1)(c), by deleting the words “and the approval of the establishment of private institutions or branches, centres or campuses of overseas institutions offering post-secondary education in Mauritius”.
- (4) The Equal Opportunities Act is amended –
- (a) in section 2 –
 - (i) by deleting the definition of “tertiary education institution”;
 - (ii) by inserting, in the appropriate alphabetical order, the following new definition –

“higher education institution” has the same meaning as in the Higher Education Act 2017;
 - (b) in section 17(2), by deleting the word “tertiary” and replacing it by the word “higher”.
- (5) The Fashion and Design Institute Act is amended –
- (a) in section 2, by inserting, in the appropriate alphabetical order, the following definition –

“higher education institution” has the same meaning as in the Higher Education Act 2017;
 - (b) in section 13(3)(a)(iv), by deleting the word “tertiary”
- (6) The Financial Reporting Act is amended, in section 7(1)(f), by deleting the word “tertiary” and replacing it by the word “higher”.
- (7) The Fishermen Investment Trust Act is amended, in section 4(c), by deleting the word “tertiary” and replacing it by the word “higher”.

(8) The Income Tax Act is amended, in section 161A, in subsection 51(e)(i) –

- (a) by deleting the words “recognised tertiary educational” and replacing them by the words “higher education”;
- (b) in sub subparagraph (A), by deleting the words “an institution recognised by the Tertiary Education Commission established under the Tertiary Education Commission Act” and replacing them by the words “a higher education institution registered with the Higher Education Commission established under the Higher Education Act 2017”.

(9) The Licensing of Recruiting Agents for Overseas Educational and Training Institutions Act is amended, in section 2 –

- (a) in the definition of “overseas educational and training institution”, by deleting the word “post-secondary” and replacing it by the word “higher”;
- (b) by inserting, in the appropriate alphabetical order, the following new definition –

“higher education” has the same meaning as in the Higher Education Act 2017;

(10) The Local Government Act is amended, in the Tenth Schedule, in Part B, in item 2, by deleting the word “tertiary” and replacing it by the words “higher education”.

(11) The Mauritius Qualifications Authority Act is amended, in section 7(2) –

- (a) by repealing paragraph (e) and replacing it by the following paragraph –

(e) the Commissioner of the Higher Education Commission or his representative;

- (b) by inserting, after paragraph (e), the following new paragraph –

(ea) the Executive Director of the Quality Assurance Authority or his representative;

(12) The Occupational Safety and Health Act is amended, in the First Schedule, in Part I, by deleting the words “Tertiary Education Commission” and replacing them by the words “Quality Assurance Authority”.

(13) The Open University of Mauritius Act is amended –

(a) in section 2 –

(i) by deleting the definition of “Tertiary Education Commission”, the semicolon at the end of the definition of “Statutes” being deleted and replaced by a full stop;

(ii) by inserting, in the appropriate alphabetical order, the following new definition –

“Higher Education Commission” has the same meaning as in the Higher Education Act 2017”;

(b) in section 9(b)(i), by deleting the word “tertiary” and replacing it by the word “higher”;

(c) in section 21, in subsections (1) and (2), by deleting the words “Tertiary Education Commission” and replacing them by the words “Higher Education Commission”;

(d) in the Schedule, in paragraph 2(1) –

(i) by repealing sub subparagraph (b) and replacing it by the following sub subparagraph –

(b) the Commissioner of the Higher Education Commission or his representative;

(ii) by inserting, after sub subparagraph (b), the following new sub subparagraph –

(ba) the Executive Director of the Quality Assurance Authority or his representative;

(ii) in sub subparagraph (f), by deleting the words “tertiary level” and replacing them by the words “higher education”.

(14) The Pharmacy Council Act 2015 is amended, in section 7(1)(f), by deleting the word “tertiary” and replacing it by the word “higher”.

(15) The Private Secondary Education Authority Act is amended, in section 2, in the definition of “private secondary education”, in paragraph (b), by deleting the word “tertiary” and replacing it by the word “higher”.

(16) The Public Procurement Act is amended, in the Schedule, in Part II, in Column 1 –

(a) by deleting the following words –

Tertiary Education Commission

(b) by inserting, in the appropriate alphabetical order, the following new words –

Higher Education Commission

Quality Assurance Authority

(17) The Registration Duty Act is amended, in the First Schedule, in Part III, in item 25, by deleting the word “tertiary” and replacing it by the word “higher”.

(18) The Social Aid Act is amended –

(a) in section 2, in the definition of “child”, in paragraph (a)(ii), by deleting the word “tertiary” and replacing it by the word “higher”;

(b) in the First Schedule –

(i) in Part I, in item 3(f), by deleting the word “tertiary” and replacing it by the word “higher”;

(ii) in Part III, in item 2(f), by deleting the word “tertiary” and replacing it by the word “higher”.

(19) The Statutory Bodies (Accounts and Audit) Act is amended –

(a) in the First Schedule –

(i) by deleting the following item and its corresponding entry –

Tertiary Education Tertiary Education
Commission Commission Act

- (ii) by inserting, in the appropriate alphabetical order, the following new items and their corresponding entries –

Higher Education Higher Education Act
Commission 2017

Quality Assurance Higher Education Act
Authority 2017

- (b) in the Second Schedule, in Part I –

- (i) by deleting the following item and its corresponding entry –

Tertiary Education Tertiary Education
Commission Commission Act

- (ii) by inserting, in the appropriate alphabetical order, the following new items and their corresponding entries –

Higher Education Higher Education Act
Commission 2017

Quality Assurance Higher Education Act
Authority 2017

(20) The Statutory Bodies Pension Funds Act is amended, in the First Schedule –

- (a) by deleting the following item and its corresponding entry –

Tertiary Education Commission 15 August 1988

- (b) by inserting, in the appropriate alphabetical order, the following new items –

Higher Education Commission

Quality Assurance Authority

(21) The Université des Mascareignes Act is amended –

- (a) in section 2 –

- (i) by deleting the definitions “Tertiary Education Commission” and “tertiary education institution”;
- (ii) by inserting, in the appropriate alphabetical order, the following new definitions –
 - “Higher Education Commission” means the Higher Education Commission established under the Higher Education Act 2017;
 - “higher education institution” has the same meaning as in the Higher Education Act 2017;
- (b) in section 4(a), by deleting the word “tertiary” and replacing it by the word “higher”;
- (c) in section 5(b), by deleting the word “tertiary” and replacing it by the word “higher”;
- (d) in section 9(2)(c), by deleting the word “tertiary” and replacing it by the word “higher”;
- (e) in section 32(1), by deleting the words “Tertiary Education Commission” and replacing them by the words “Higher Education Commission”;
- (f) in the Schedule, in paragraph 5(1) –
 - (i) by deleting sub subparagraph (c) and replacing it by the following sub subparagraph –
 - (c) the Commissioner of the Higher Education Commission or his representative;
 - (i) by inserting, after sub subparagraph (c), the following new sub subparagraph –
 - (ca) the Executive Director of the Quality Assurance Authority or his representative;

(22) The University of Mauritius Act is amended, in section 7(3)(b)(vi), by deleting the words “Tertiary Education Commission” and replacing them by the words “Higher Education Commission”.

- (23) The University of Technology, Mauritius Act is amended –
- (a) in section 2 –
 - (i) by deleting the definitions of “Tertiary Education Commission” and “tertiary education institution”;
 - (ii) by inserting, in the appropriate alphabetical order, the following new definitions –
 - “Higher Education Commission” means the Higher Education Commission established under the Higher Education Act 2017;
 - “higher education institution” has the same meaning as in the Higher Education Act 2017;
 - (b) in section 4(2)(a), by deleting the word “tertiary” and replacing it by the word “higher”;
 - (c) in section 23(1), by deleting the words “Tertiary Education Commission” and replacing them by the words “Higher Education Commission”;
 - (d) in the Schedule, in paragraph 3(1) –
 - (i) by repealing sub subparagraph (d) and replacing it by the following sub subparagraph –
 - (d) the Commissioner of the Higher Education Commission or his representative;
 - (ii) by inserting, after sub subparagraph (d), the following new sub subparagraph –
 - (da) the Executive Director of the Quality Assurance Authority or his representative;
 - (iii) in sub subparagraph (e), by deleting the word “tertiary” and replacing it by the word “higher”.

55. Transitional and saving provisions

- (1) In this section –

“TEC” means the Tertiary Education Commission established under the repealed Tertiary Education Commission Act.

(2) (a) Notwithstanding any other enactment, every person employed by TEC shall be dealt with in accordance with this section.

(b) Subject to paragraph (g) every person who, before the commencement of this Act, is employed on the permanent and pensionable establishment of TEC shall, on the commencement of this Act, be entitled to be transferred to the permanent and pensionable establishment of the Commission or Authority, as the case may be, on terms and conditions which shall be not less favourable than those of his previous employment.

(c) The period of service of every person employed on the permanent and pensionable establishment of TEC who is transferred to the Commission or Authority under paragraph (b) shall be deemed to be an unbroken period of service with the Commission or Authority, as the case may be.

(d) Where a person employed on the permanent and pensionable establishment of TEC is transferred to the Commission or Authority under paragraph (b), his service with the Commission or Authority, as the case may be, shall be approved service for the purposes of the Pensions Act or the Statutory Bodies Pension Funds Act, and any regulations made thereunder, as the case may be.

(e) No person employed on the permanent and pensionable establishment of TEC shall, on account of his transfer to the Commission or Authority, as the case may be, or any resulting change in his job title, be entitled to claim that his employment has been terminated or adversely affected in breach of any enactment.

(f) Any person employed on the permanent and pensionable establishment of TEC who, within 28 days of the commencement of this Act, does not accept to be transferred to the Commission or Authority, as the case may be –

- (i) at his request, be redeployed, so far as is practicable, to another statutory body, where vacancies in a position similar to that held by him are available; or
- (ii) opt for retirement on the ground of abolition of office and be paid his pension benefits in accordance with the Pensions Act or the Statutory Bodies Pension Funds Act, and regulations made thereunder, as the case may be.

(g) (i) Subject to this subsection, any person employed on the permanent and pensionable establishment of TEC, against whom any disciplinary inquiry, investigation or proceeding is pending or in process on the commencement of this Act –

(A) who is interdicted, and where no disciplinary charge is subsequently found proved against him, may opt to –

(I) be transferred to the permanent and pensionable establishment of the Commission or Authority, as the case may be, on terms and conditions which shall be not less favourable than those of his previous employment; or

(II) retire on the ground of abolition of office and be paid pension benefits in accordance with the Pensions Act or Statutory Bodies Pension Funds Act, and regulations made thereunder, as the case may be;

(B) who is not interdicted, shall be transferred to the permanent and pensionable establishment of the Commission or Authority, as the case may be, on terms and conditions which shall be not less favourable than those of his previous employment.

(ii) For the purpose of subparagraph (i)(A)(II), the date of retirement on ground of abolition of office shall be deemed to be the date of the commencement of this section.

(h) Any disciplinary inquiry, investigation or proceeding, pending or in process on the commencement of this Act, against any person employed on the permanent and pensionable establishment of TEC, shall be taken up, continued or completed by the Commission or Authority, as the case may be, and any resulting order or decision shall have the same force and effect as if made by TEC.

(i) Notwithstanding any other enactment, every person employed on a fixed term performance contract by TEC before the commencement of this Act shall, on the commencement of this Act, continue to be employed on the terms and conditions of his previous contract and be deemed to have been employed by the Commission or Authority, as the case may be.

(3) The assets and funds of TEC shall, on the commencement of this Act, vest in the Commission or Authority, as the case may be.

(4) All rights, obligations and liabilities subsisting in favour of or against TEC shall, on the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the Commission or Authority, as the case may be.

(5) Any authorisation or clearance granted or issued, or any registration, accreditation, recognition or application granted by TEC, if applicable, which is valid and in force on the commencement of this Act, shall be deemed to have been granted or issued by the Commission or Authority, as the case may be, and shall remain valid for the period specified in the authorisation, clearance or any other document, as the case may be.

(6) Any application made to TEC, pending on the commencement of this Act, shall be deemed to have been made to the Commission or Authority, as the case may be, and shall be dealt with in accordance with this Act and any other relevant enactment.

(7) Any act or thing done, or any contract or agreement entered into, by TEC shall, on the commencement of this Act, be deemed to have been done or entered into by the Commission or Authority, as the case may be.

(8) All proceedings, judicial or otherwise, initiated before and pending on the commencement of this Act, by or against TEC, shall be deemed to have been initiated, and may be continued, by or against the Commission or Authority, as the case may be.

(9) Any regulations made under the repealed Tertiary Education Commission Act shall be deemed to have been made under this Act.

(10) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

56. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
