

WORKING PROCEDURES OF THE INSTITUTIONAL FORUM OF STELLENBOSCH UNIVERSITY

These procedures were approved by the Institutional Forum on 20 October 2011 (Based on the new US Statute applicable from 31 August 2011).

1. DEFINITIONS

- 1.1. In these procedures a term has the definition assigned to it in the Act or in the Institutional Statute, unless the context indicates otherwise.
- 1.2. **In these procedures**
 - 1.2.1. “the Act” means the Higher Education Act (Act No. 101 of 1997);
 - 1.2.2. “Council” means the body established in terms of paragraphs 11 and 12 of the Institutional Statute;
 - 1.2.3. “Exco (Council)” means the body established in terms of paragraph 17 of the Institutional Statute;
 - 1.2.4. “Executive Committee of the Institutional Forum” or “Exco (IF)” means the body established in terms of paragraph 45 of the Institutional Statute;
 - 1.2.5. “Institutional Forum” or “IF” means the body established in terms of section 31 of the Act and paragraphs 43 and 44 of the Institutional Statute;
 - 1.2.6. “Institutional Statute” means the Statute of Stellenbosch University promulgated by Government Notice No. 34576 of 31 August 2011;
 - 1.2.7. “stakeholder” means any person with an interest in the IF, the University, or matters concerning the University, who may be a natural or juristic person;
 - 1.2.8. “Task Group” means any body established in terms of paragraph 4 of these procedures;
 - 1.2.9. “University” means Stellenbosch University;
 - 1.2.10. “IF Council Member” means such member of the IF, elected from within its ranks, to serve in the Council of the University in terms of paragraph 12(1)(g) in consideration of paragraph 12(2) of the Statute.

2. THE INSTITUTIONAL FORUM

2.1. Functions and powers

The functions and powers of the IF are determined by section 31(1) of the Act and paragraph 43 of the Institutional Statute, namely –

- 2.1.1. the IF must advise the Council on matters affecting the University, including–
 - 2.1.1.1. the implementation of the Act and the national policy on higher education;
 - 2.1.1.2. race and gender equity policies;
 - 2.1.1.3. the selection of candidates for senior management positions;
 - 2.1.1.4. codes of conduct, mediation and dispute resolution procedures; and
 - 2.1.1.5. the fostering of an institutional culture that promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning; and
- 2.1.2. the IF must perform such other functions as and in a manner determined by the Council from time to time.
- 2.1.3. The consultation procedures in subparagraph (1) above are determined by the Council in consultation with the IF.
- 2.1.4. Advice by the IF to the Council is not limited only to policies or other matters on which the IF has been consulted. The IF must also assist in developing an institutional sensitivity and pro-actively highlight issues that require the Council's attention.
- 2.1.5. If consensus regarding such procedures cannot be reached, the procedures as set out in sections 5(3), (4) and (5) of the Act are applicable, with due allowance for the changes demanded by the context.

2.2. Composition

The composition of the IF is determined by paragraph 44 of the Institutional Statute, namely –

- 2.2.1. The IF consists of thirty two members – eight members from each of the following sectors: governance and management , staff , students and the community .
- 2.2.2. This sectors of the IF are composed as follows –
 - 2.2.2.1. Governance and management sector**
 - 2.2.2.1.1. Two members of the council elected by the council;
 - 2.2.2.1.2. Three members of the senate elected by the senate;
 - 2.2.2.1.3. The registrar or a person designated by him or her

- 2.2.2.1.4. The Senior Director: Community Interaction or a person designated by him or her;
- 2.2.2.1.5. The Director: Employment Equity or a person designated by him or her

2.2.2.2. Staff sector

- 2.2.2.2.1. Three members elected from the ranks of the permanent non-professorial academic staff;
- 2.2.2.2.2. Two members elected from the ranks of the administrative and academic support staff;
- 2.2.2.2.3. One member elected from the ranks of employees that qualify for membership of the employees' association
- 2.2.2.2.4. Two members elected from the ranks of the technical support staff

2.2.2.3. Student sector

- 2.2.2.3.1. Two members of the SRC elected by the SRC;
- 2.2.2.3.2. Two members of the Prim Committee elected by the Prim Committee, one from the residence sector and one from the PSO sector
- 2.2.2.3.3. One members appointed by the Societies' Council
- 2.2.2.3.4. Two members of the AAC elected by the AAC
- 2.2.2.3.5. One member from the Student Union appointed by the SRC, preferably from representatives of the SRC on the IF during the previous term.

2.2.2.4. Community sector

- 2.2.2.4.1. Two members of the convocation appointed by the president of the convocation; and
- 2.2.2.4.2. Six persons respectively appointed by bodies representative of civic society, without the exclusion of any sector thereof, as identified from time to time by the IF in co-operation with the Senior Director: Community Interaction.

2.3. Term of office

The term of office of the IF is determined by paragraph 46 of the Institutional Statute, namely –

- 2.3.1. The term of office of all members, excluding members elected by student bodies, is three years, and members are eligible for re-election. To ensure continuity, all members will not be elected or appointed in the same year.
- 2.3.2. The term of office of members elected by student bodies is one year.
- 2.3.3. Term of office commences on 1 October of the year in which a member is elected or appointed, and lasts for the period stated in 2.3.1. and 2.3.1.

2.4. **Chairperson, vice-chairperson and secretary**

The IF annually elects from its ranks the chairperson, the vice-chairperson and the secretary (see parr. 3.1 and 3.2).

2.5. **Convening of meetings**

2.5.1. The agenda is

2.5.1.1. Compiled by the chairperson and the secretary in accordance with the Exco (IF) meeting preceding the IF meeting; and

2.5.1.2. When necessary, compiled by applying paragraph 2.5.3 below;

2.5.1.3. Discussed and adopted at the commencement of the IF meeting;

2.5.2. The IF meets at least once per cycle of Council meetings, before closing of the agenda of the Exco (Council);

2.5.3. An extraordinary meeting of the IF must be convened –

2.5.3.1. At the discretion of the IF or the Exco (IF),

2.5.3.2. Upon written request of at least ten members of the IF,

2.5.3.3. Upon written request of the Council, or

2.5.3.4. Upon written request of a Task Group of the IF.

2.5.4. The secretary must notify IF members of the date of IF meetings at least 5 working days in advance; provided that in the event of an urgent matter, such notice may, at the discretion of the Exco (IF), be reduced to 3 working days.

2.5.5. Notwithstanding the aforementioned, the following exceptional procedure may be followed in urgent cases:

2.5.5.1. The Exco (IF) determines that the matter is urgent and formulates a resolution on which the members have to vote.

2.5.5.2. Without delay the Secretary gives notice, in writing or electronically, of the resolution to be voted on. He or she determines a voting period, which must be at least three days after the date of the notice. During the voting period members vote, in writing or electronically, following a procedure indicated by the Secretary.

2.5.5.3. The resolution must be accepted by a majority of voting members, provided that at least 10 members vote.

2.5.5.4. If, within 3 working days of voting, any 5 members request in writing that the IF meet to discuss the resolution, the resolution lapses and an extra IF meeting is to be arranged for the meeting to vote on the resolution.

2.5.5.5. Where the nature of the urgent matter is such that it is impossible for the Exco (IF) to formulate a resolution in terms of 2.5.5.1. on which to vote, the Exco (IF)

can create an *ad hoc* committee to formulate such resolution within a certain period of time, and notify the members of this procedure; after the committee has formulated such resolution the procedure in 2.5.5.2.-4 is followed.

2.6. Quorum

The quorum for an IF meeting is ten members, and must include a minimum of one member from each of the sectors.

2.7. Decision making at IF meetings

- 2.7.1. As point of departure decision making should be by way of consensus; or in the absence thereof –
- 2.7.2. Attempts should be made to obtain a two-thirds majority, in which event the opinions of both the majority and the minority must be reported, or in the absence thereof –
- 2.7.3. All viewpoints must be reported.

2.8. Forms of address

At their discretion members may address one another by their first names or more formally.

2.9. Observers

IF and Task Group meetings are open to observers but, when discussing a specific point on the agenda, may be closed at the discretion of the IF or the Task Group, as applicable, or under instructions from the Council.

2.10. Language policy

- 2.10.1. The secretariat will usually issue IF documents in Afrikaans and also in English when warranted by circumstances;
- 2.10.2. Members may speak English or Afrikaans during meetings;
- 2.10.3. Arrangements for the use of any official language other than Afrikaans or English must be made when necessary.

3. THE EXECUTIVE COMMITTEE OF THE INSTITUTIONAL FORUM

3.1. Membership

The composition of the Exco (IF) is determined by paragraph 45 of the Institutional Statute, namely –

The executive committee that is formed annually consists of –

- 3.1.1. the chairperson, the vice-chairperson and the secretary, and

3.1.2. one member from each of the sectors as set out in paragraph 44 of the Statute.

3.2. Election and term of office

3.2.1. The Exco (IF) holds the position for one year;

3.2.2. A special welcoming gathering is scheduled early in October each year where new and serving members can meet as preparation for the election of the Exco that takes place later. During the meeting the outgoing Exco will present a short introduction to the activities of the IF.

3.2.3. The election of the Exco (IF) usually occurs at the last ordinary IF meeting of the year and proceeds as follows:

3.2.3.1. The chairperson, the vice-chairperson, the secretary and the IF Council member (cf. par. 8) are elected by the IF after written nomination and voting per ballot; and

3.2.3.2. Each sector, as set out in paragraph 2.2 above, elects one additional member to the Exco (IF).

3.2.4. Voting procedures before and during election meeting:

3.2.4.1. Letters are circulated to all the members of the IF beforehand, inviting nominations for a chairperson, a vice-chairperson, a secretary and an IF Council member. In addition the nominees have to write brief mission statements. These are included with the agenda of the last meeting of the year (during which the election takes place).

3.2.4.2. Ballot papers with the names of the nominees for the position of Chairperson are given to members at the meeting.

3.2.4.3. The serving chairperson presides over the voting and appoints two persons to count the votes. If the serving chairperson is nominated again, the meeting appoints an interim electoral officer to handle the election of the chairperson.

3.2.4.4. A nominee must obtain an absolute majority of the members present and voting in order to be elected. More than one poll may be necessary to gradually eliminate the person(s) obtaining the fewest votes.

3.2.4.5. The vice-chairperson, the secretary and the IF Council member, in this order, are subsequently elected in the same manner.

3.2.4.6. The meeting splits up into the four sectors and each sector nominates one member from its ranks to serve in the Exco (IF).

3.2.4.7. The new chairperson takes the chair after all the elections have been completed and deals with the remainder (if any) of the agenda.

3.3. Functions

The Exco (IF) is responsible for –

3.3.1. Planning the agenda for IF meetings;

3.3.2. Logistics and the secretariat;

3.3.3. Planning and organising an annual planning session either after the last official meeting of the year, or early in the new year.

3.3.4. Liaison with Management;

3.3.5. Annual liaison with the Exco (C);

- 3.3.6. Finalising urgent matters in highly exceptional cases that cannot be held over until the next full IF meeting, and reporting in detail to the IF; and
- 3.3.7. Such other functions as the IF may delegate to the Exco (IF).

3.4. **Convening meetings**

- 3.4.1. Normally the Exco (IF) should meet ten days before every ordinary meeting of the IF;
- 3.4.2. Minimum notice of one week should preferably be given for an ordinary meeting of the Exco (IF); and
- 3.4.3. An extraordinary meeting of the Exco (IF) may be convened at the request of the chairperson, or at the written request of any three members of the Exco (IF), or the Council; provided that at least 24 hours' notice of such extraordinary meeting is given.

3.5. **Quorum**

The quorum for an Exco (IF) meeting is four members.

3.6. **Observers**

Exco (IF) meetings are open to observers but may be closed at the discretion of the Exco (IF), or on the instructions of the Council for discussion of a specific point on the agenda of a confidential nature, for example appointment of senior staff.

3.7. **Communication**

Exco (IF) members who act in their capacity as members of the Exco (IF) when circumstances demand, must inform the rest of the Exco (IF) of their actions in writing.

4. **TASK GROUPS**

- 4.1. Ad hoc Task Groups may be formed by the IF or the Exco (IF), and given a wide brief and/or a list of specific tasks.

4.2. **Task Groups may consist of –**

- 4.2.1. Task Group members who are members of the IF, appointed by the IF or the Exco (IF) in terms of their express preferences;
- 4.2.2. Additional (non-IF) Task Group members who are as a rule co-opted by reason of their representativity, expertise, availability and commitment; and
- 4.2.3. Temporary advisers co-opted to assist the Task Group with specific matters.

4.3. **Task Groups must –**

- 4.3.1. include in their agendas matters that form part of their broad or specific briefs;
- 4.3.2. elect their own chairpersons and secretaries;

- 4.3.3. keep minutes of their meetings; and
- 4.3.4. report in writing to every normal meeting of the IF according to the prescribed style and format.

5. LIAISON WITH THE COUNCIL

- 5.1. Following discussions at the IF meeting, the IF will give advice regarding a matter or documents in a formal Report to the Council via the Exco (Council) (and not the compilers of documents). Editorial recommendations, merely stating the actions in the Report to the Council, may be given to the compilers. The Council is at liberty to either follow or reject any advice thus given. The Council's decision regarding advice, with the reasons for rejection, if any, is relayed to the IF.
- 5.2. Current procedures for deliberations between the IF and the Council are set out in Council Resolutions of 26 June 2000, namely –
 - 5.2.1. “That, even though the Council values good communication between the Council and the IF, the Council is of the opinion that the existing processes in terms of which such communication is taking place, namely providing the IF with the full Council minutes (after approval) after every Council meeting, the provision of the Council's specific decisions regarding the IF reports themselves, feedback by the chairperson of the IF if he or she is a Council Member and by other IF members who are also Council Members, are sufficient but that, in addition, a regular Communication by the Council, as is customary in the Senate, should be relayed to the IF.”
 - 5.2.2. “That the Exco (Council) as a rule invite the chairperson of the IF to the Exco (Council) meetings to present and elucidate IF reports.”
 - 5.2.3. “That the Council confirm to its members that in the event of an IF recommendation being problematic for the Council, any Council member may request the Council to put into operation mechanisms (inter alia the appointment of small ad hoc committees for mutual consultation) to address such problems.”
 - 5.2.4. “That, when necessary, powers of finalisation be given to the Exco (Council) to deal with pressing cases in accordance with a mechanism as described in 5.2.3 above.”

6. INPUTS TO IF PROCESSES

6.1. Public discussions and written submissions

- 6.1.1. The IF and the Task Groups will consider any stakeholder's written submissions on any topic.
- 6.1.2. Any stakeholder may request a Task Group in writing to address the Task Group on any matter, provided that –
 - 6.1.2.1. The Task Group will decide on granting or rejecting such a request,
 - 6.1.2.2. The Task Group's rejection of such a request must be approved by the Exco (IF);

- 6.1.3. Any stakeholder may submit a written request to the IF to address the IF on a matter, and such a request may be granted at the discretion of the Exco (IF);
- 6.1.4. All written requests and submissions will be answered in writing.

6.2. Submission of agenda points, proposals and reports

- 6.2.1. A request by the university to the IF to give input, comment or advice must be addressed to the Exco (IF) via the secretariat, or preferably, the Chairperson. The document to be advised upon must be in its final form.
- 6.2.2. The Task Group of the IF to which the document has been referred must study the document and advise the IF accordingly, which advice should be accepted or amended by a duly convened meeting of the full IF, with a view to advise the Council in a formal Report.
- 6.2.3. Any task group may submit agenda point or items for discussion to the Exco (IF) for consideration and eventual discussion by the IF, and if necessary, for advice to the Council;
- 6.2.4. Agenda points, with supporting documentation, and reports to the IF should be submitted to the Exco (IF) seven working days prior to the Exco (IF) meeting; provided that, in extremely urgent cases, an agenda point or report may be submitted so that all Exco (IF) members receive it 24 hours prior to the Exco (IF) meeting preceding the applicable IF meeting; and
- 6.2.5. Written proposals, but not agenda points, to be tabled at an IF meeting may be submitted to the secretary up to 24 hours prior to the IF meeting.

7. DOCUMENTS

- 7.1. Upon request all documents of the IF, Exco (IF) and Task Groups will normally be open to inspection by any person;
- 7.2. Exceptions to paragraph 7.1 above may be made at the discretion of the IF, Exco (IF) or Task Group handling the document, or on the instructions of the Council – such instructions will normally relate to senior appointments.

8. REPRESENTATION

8.1. Representation in the Council

- 8.1.1. In terms of paragraph 12(1)(g) and in consideration of paragraph 12(2) of the Institutional Statute, the IF elects one member of the IF to serve as member of the Council;
- 8.1.2. The term of this IF council member is as set out in paragraph 13(4) of the Institutional Statute, that is, a term equal to the term he or she has been elected to the IF, and until the end of that calendar year;
- 8.1.3. The IF council member referred to above acts in his or her personal capacity and his/her opinions cannot be regarded as representative of those of the IF.

8.2. **Representation in committees, commissions or investigation groups**

When members of the IF are appointed at the request of the IF to represent the IF in particular committees, commissions or investigation groups, such nominees act in their personal capacity and their opinions may not be deemed to be those of the Institutional Forum. It may furthermore not be deemed to be sufficient consultation with the IF. In addition, the committee, commission or investigation group concerned has to present to the IF the final version of the document addressed to the Council. With a view to advising the Council, the IF only formulates viewpoints based on the final documents that such bodies have submitted.

**STELLENBOSCH UNIVERSITY LEGAL SERVICES NOTE ON:
HIGHER EDUCATION AMENDMENT ACT 9 OF 2016**

31 January 2017

1. Introduction:

The Higher Education Amendment Bill, 2015 was accepted by the National Assembly on 5 November 2015 with the intention to amend the Higher Education Act, 1997. The Bill was signed by the president on 16 January 2017, but no date has as yet been set for the act to become operational.

2. The amendments that made its way into the final bill, as signed by the president, is less severe than initially thought and did not include all the amendments included in earlier versions of the draft amendment bill that was provided for comment. Refer to the attached comparison for more detail.

3. The main provision of the Amended Act are highlighted and comments are provided.

3.1 DETERMINATION OF HIGHER EDUCATION POLICY

The minister must¹ consider the provisions of the Constitution and consult the Committee on Higher Education to determine policy which include but is not limited to²

- Transformation goals and oversight mechanisms for these goals;
- Articulation and recognition of prior learning frameworks across the education system; and
- Criteria for recognition as a university, university college, or higher education college.

The Minister must consult to establish these policies/goals and the Minister's decisions must be in line with the Constitution.

3.2 ESTABLISHMENT OF HIGHER EDUCATION INSTITUTIONS

3.2.1 One should however take note that the Minister may,³ with the concurrence of the council of a public higher education institution (hereafter the institution), convert that institution, or a subdivision of that institution, into a public university or a public university college.⁴

¹ The Minister must follow a prescribed route, taking the Constitution into consideration as well as consulting the relevant parties. He/she cannot act on own accord and must follow these guidelines.

² Section 3(1)(a) – (c)

³ Thus he/she has a discretion

⁴ Section 20(1)(b)

The Minister must approach the council of institution and the transition will be with the concurrence of the council. Should the Minister not follow this prescribe route his/her decision may be tested in a court of law.

3.2.2 The institution that is established, merged, converted, shall be deem to be established or declared as a public higher education institution under the Act and is a juristic person.⁵

Thus Higher Education Institutions will not lose their legal standing and will be able to approach a court to challenge any decisions by the Minister.

3.2.3 The Minister may expect of the council of another public higher education institution to supervise other newly established public higher education institutions and determine the terms, conditions and period applicable to such supervision.⁶

Stellenbosch University (SU) may be elected to perform such a function. If elected to act in a supervisory capacity it might have an impact on the administration of SU. SU will have to consider its position in line with the terms, conditions and period as issued by the Minister should this happen in future.

3.3 MERGER OF PUBLIC HIGHER EDUCATION INSTITUTIONS

3.3.1 There are certain mechanisms build into the Act to protect the autonomy of the higher education institutions since the legislator specifically list these mechanisms before the Minister makes a decision under subsection 23(1)⁷ of the Act. The Minister must⁸

- * Give written notice to the council of the public higher education institutions concerned of the intention to merge the institution and the reasons for the intended merger;
- * Publish a notice giving the reasons for the intended merger in one or more newspapers circulating in the area in which the public higher education institutions concerned are situated;
- * Give the council of the public higher education institutions concerned and other interested persons as opportunity to make representations within at least 90 days of the date of the notice that was published;
- * And must consider the representations.⁹

Should SU be identified as one of the higher education intuitions to merge or convert the Minister must give reasons and all interested parties can make representations that must be considered. One can also assume that such a decision could be challenged in court, should the council not be satisfied with the reasons for the merger.

3.4 COUNCIL OF PUBLIC HIGHER EDUCATION INSTITUTIONS

3.4.1 Section 27 states that the council, with the concurrence of the senate must¹⁰

- Determine the language policy of the public higher education institution concerned;

⁵ Section 20(4)

⁶ Section 20(5A)(a) and (b)

⁷ Section 23 deal with “**Merger of public higher education institutions**” and **23(1)** reads “(1) Subject to subsection (2), the Minister may, after consulting the CHE and by notice in the *Gazette*, merge two or more public higher education institutions into a single public higher education institution.”

⁸ The minister therefore cannot act on its own accord

⁹ Section 23(2)(a) – (d)

¹⁰ Council therefore does not have a discretion but must consult senate.

- Publish the policy; and
- Make the policy available on request.¹¹

In one of the previous versions of the bill, Section 27(2) stated that the language policy with due compliance of the relevant provision of the Use of Official Languages Act, 12 of 2012. This provision did not make it into the final Amendment Act signed by the President.

3.4.2 Section 27(3) The council, after consultation with the SRc, must provide for and establish structure to advise on the policy for student support services within the public higher education institution.¹²

SU will have to look at existing regulations to ensure compliance with this provision and to ensure consultation with the SRc.

3.4.3 Section 27(5B) provides that where the independent assessor makes an adverse finding against a member of council that council member will not be eligible for appointment, election, re-appointment or re-elections as a member of council of any public higher education institution.

3.4.4 The remainder of the section also focuses on council members and it states council members must, before assuming office and annually for as long as he/she holds the position, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict of interest with the public higher education institution concerned.

3.4.5 Conflict of interest of council members are also set out in section 27.

3.4.5.1 Any person may inform the chairperson of council, or committee concern, of a possible conflict of interest of a member of council.¹³

3.4.5.2 If there is a conflict or a possible conflict of interest, the member may not take part in any consideration of a decision and the matter must be dealt with by council¹⁴

3.4.5.3 The same principle applies to academic employees appointed by council after consultation with senate,¹⁵ they must declare possible conflict of interest.

The current SU Policy on Conflict of Interest must be reviewed against the amendments in the Act.

3.4.5.4 After consultation with the institutional forum, the council must adopt a code of conduct to which all the members of council, all the members of committees of the council and all other persons who exercise functions of the council must subscribe to in writing.¹⁶

¹¹ Section 27(2)(a) – (c)

¹² The SRc should be consulted on support services.

¹³ Section 27(7A)

¹⁴ Section 27(7C)

¹⁵ Section 34(2), 34(4)

¹⁶ Section 23(7E)

The existing SU regulations will have to be revisited and revised if necessary to be in line with the Act when it comes into operation. The Institutional forum must be consulted.

3.4.5.5 If council resigns¹⁷ a new council must be constituted in terms of the institutional statute of the institution concerned by the administrator appointed, and the new council must be appointed within six (6) months of the administrator's appointment.

3.4.6 INSTITUTIONAL FORUM

Section 31 that deals with the Institutional Forum was amended to include that the council must (a) consider the advice given by the Institutional Forum and (b) should council not follow that advice of the institutional forum they need to provide written reasons why the advice were not accepted by council.¹⁸

This provision brings about a change in the SU current protocol and will have to be adhered to once the Act becomes operational. The Council will have to provide written reasons if they do not follow the Institutional Forum's advice.

3.4.7 ALLOCATION OF FUNDS

3.4.7.1 Section 39 deals with the allocation of funds by the Minister. A further provision was inserted¹⁹ and states that should an institution fail to comply with any provisions in this Act, in which that institution receives money from Parliament or receives money on certain conditions, the Minister may, in writing, request the council to comply with the provision/conditions. If Council fails to comply,²⁰ payment may be withheld and the council will be informed by the minister accordingly in writing.

3.4.7.2 The Minister must give notice in writing to council of the intention to act²¹ in this way and council should receive a reasonable opportunity to make representations and the Minister must consider such representations.

3.4.7.3 The Minister must table a report in Parliament should he/she decide to withhold payment.²²

This provision might hold a severe risk for the SU and measures should be implemented to ensure that representations are made timeously to avoid these severe financial implications.

¹⁷ Section 27(8) If 75 per cent or more of the members of the council of a public higher education institution resign at a meeting of council, it is deemed that the council has resigned.

(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution.

¹⁸ Section 31(A1)

¹⁹ Section 39(3A)

²⁰ Section 39(3B)

²¹ Section 39(3C)(a) – (c)

²² Section 39(3D)

4 MINISTERIAL INTERVENTIONS IN HIGHER EDUCATION INSTITUTIONS

Chapter 6 deals with ministerial interventions in higher education institutions and during deliberation of the proposed amendments; this provision was debated thoroughly by the committee.

4.1 There are limited grounds for the Minister to issue directives to council and there has to be reasonable grounds to believe that the council or management of the institutions is:²³

- 4.1.1 Involved in financial improperly or the public higher education institution is being otherwise mismanaged;²⁴
- 4.1.2 Unable to perform its functions effectively;²⁵
- 4.1.3 Acted in an unfair, discriminatory or wrongful manner towards a person to whom it owes a duty under this Act or any other law;²⁶
- 4.1.4 Has failed to comply with any law;²⁷
- 4.1.5 Has failed to comply with any directive given by the Minister in performing a function in terms of this Act;²⁸
- 4.1.6 Has obstructed the minister or a person authorised by the minister in performing a function in terms of this Act.²⁹

4.2 Section 42(2) provides the detail that must be included in the Ministerial directive, issued to the institution.³⁰

4.3 Before the Minister makes a decision he/she must

- 4.3.1 Give notice to council of the intention to issue a directive;³¹
- 4.3.2 Provide council with the reasons for the intended directive;³²
- 4.3.3 Give the council a reasonable opportunity to make representations;³³
- 4.3.4 Consider these representations by council.³⁴

This provision makes it possible to make representations that might satisfy the Minister not to issue a directive.

4.4 Only in the event that the Minister has reasonable grounds to believe that the council of the institution has failed to comply with the directive or the steps taken fails to remedy the deficiency within a reasonable period the Minister may, depending on the circumstances³⁵

- 4.4.1 Appoint an independent assessor;
- 4.4.2 Appoint an administrator;

²³ Section 42

²⁴ Section 42(1)(a)

²⁵ Section 42(1)(b)

²⁶ Section 42(1)(c)

²⁷ Section 42(1)(d)

²⁸ Section 42(1)(e)

²⁹ Section 42(1)(f)

³⁰ Section 42(2)

³¹ Section 42(3)(a)

³² Section 42(3)(b)

³³ Section 42(3)(c)

³⁴ Section 42(3)(d)

³⁵ Section 42(4)

4.4.3 Take any other appropriate action allowed by the Act.

The Minister has to take several steps before taking over control of an institution.

4.5 APPOINTMENT OF INDEPENDENT ASSESSOR

4.5.1 Independent assessor³⁶ may be appointed if³⁷

4.5.1.1 The council request such an appointment in writing (here there are circumstances that involve financial or other maladministration of a serious nature or seriously undermine the effective function of the institution)³⁸

4.5.1.2 The council has failed to resolve these circumstances.³⁹

4.5.1.3 The appointment is in the best interest of the institution.⁴⁰

4.5.2 A specific section was inserted to deal with the powers of the independent assessor and what is expected from the assessor.⁴¹

4.6 APPOINTMENT OF ADMINISTRATOR

4.6.1 The circumstances where an administrator may be appointed is listed in section 49B but before the Minister makes such an appointment he/she must:

4.6.1.1 Give written notice to council of his/her intention to appoint an administrator⁴²

4.6.1.2 Provide the reason for the appointment⁴³

4.6.1.3 Give council a reasonable opportunity to make written representations⁴⁴ and

4.6.1.4 Consider these representations.⁴⁵

4.6.1.5 And may only appoint an administrator if it is in the best interest of the institution concerned and of higher education in an open and democratic society.⁴⁶

4.6.2 Section 49BA – 49J deals with the administrators mandate.

The appointment of an independent assessor or administrator will still be a last resort and will only happen if the institution does not comply with the directive.

5 NATIONAL INSTITUTE FOR HIGHER EDUCATION

Section 49K to 49W deals with the establishment of a national institute for higher education

6 REQUIREMENT FOR REGISTRATION

³⁶ Section 44

³⁷ Section 45

³⁸ Section 45(b)(aa) and (bb)

³⁹ Section 45(b)(ii)

⁴⁰ Section 45(d)

⁴¹ Section 45A-49A

⁴² Section 49(1A)(a)

⁴³ Section 49(1A)(b)

⁴⁴ Section 49(1A)(c)

⁴⁵ Section 49(1A)(d)

⁴⁶ Section 49B(2)

Section 53 deals with the requirements to register a private higher education institution.

7 WITHDRAWAL AND REVOCATION OF DEGREE, DIPLOMA, CERTIFICATE OR OTHER QUALIFICATION

7.1 The withdrawal and revocation of a degree, certificate or other qualification is dealt with in section 65BA:

7.2 Council may in consultation with senate withdraw or revoke any degree, diploma, certificate or other qualification that was awarded:⁴⁷

7.2.1 On the basis of a material error on the part of the public higher education institution concerned;⁴⁸

7.2.2 Such withdrawal and revocation may only take place within a period not exceeding two years after the conferment concerned or

7.2.3 As a result of a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification.⁴⁹

7.3 Prior to the council withdrawing the qualification council must

7.3.1 Notify the recipient of the qualification concerned that a revocation and withdrawal is considered;⁵⁰

7.3.2 Provide the recipient with the relevant information justifying the intended action;⁵¹

7.3.3 Provide the recipient with an opportunity to obtain assistance and present his/her case.⁵²

SU needs to revisit or establish rules to revoke or withdraw a degree, certificate or other qualification to ensure that SU align with the Act and SU specific processes and criteria. Currently SU would have to bring a high court application to revoke or withdraw a degree. The previous act did not include provisions for the withdrawal and revoking of degrees.

8. Impact on the SU

The impact of the amendments on the SU must be noted and rules, regulations and policies revisit to ensure compliance with the amendments. By implications line functions need to ensure compliance within their divisions with the amendments once it become operational.

⁴⁷ Section 65BA(1)

⁴⁸ Section 65BA(1)(a)

⁴⁹ Section 65BA(1)(b) – no time limit

⁵⁰ Section 65BA(2)(a)(i)

⁵¹ Section 65BA(2)(a)(ii)

⁵² Section 65BA(2)(a)(iii)

Schedule of differences between the first draft of the bill and the amended act signed by the President

Bill 9 November 2015	Amended Act 16 January 2017
<p>Section 3 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: “(3) The Minister may, in terms of the policy contemplated in subsection (1) and in the interest of the higher education system as a whole[,] (a) determine the scope and range of operations of— [(a)] (i) public higher education institutions; [(b)] (ii) private higher education institutions; and [(c)](iii) individual public or private higher education institutions; (b) determine transformation goals for the higher education system and institute appropriate oversight mechanisms; and (c) develop articulation and recognition of prior learning frameworks for the post school education and training system.”.</p>	<p>Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: “(1) The Minister must, taking into consideration the provisions of the Constitution and after consulting the CHE, determine policy on higher education, which policy includes, but is not limited to— (a) transformation goals and oversight mechanisms for these goals; (b) articulation and recognition of prior learning frameworks across the education system; and (c) criteria for recognition as a university, university college, or higher education college.”.</p>
<p><i>Section 20</i> (d) by the insertion of the following subsections after subsection (5): “(5A) Notwithstanding subsection (5), a higher education institution may invest its funds with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in securities listed on an exchange as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012), or in such other prudent investments in financial investments and assets as the Commissioner for the South African Revenue Service may determine for public benefit organisations. (5B) The Minister may, in the notice contemplated in subsection (1) and with the concurrence of the council of another public higher education institution, determine— (a) certain functions which the newly established or converted public higher education institution must perform under the supervision of the other public higher education institution; and (b) the terms, conditions and period applicable to such supervision.”.</p>	<p><i>Section 20</i> (d) by the insertion of the following subsection after subsection (5): “(5A) The Minister may, in the notice contemplated in subsection (1) and with the concurrence of the council of another public higher education institution, determine— (a) certain functions which the newly established or converted public higher education institution must perform under the supervision of the other public higher education institution; and (b) the terms, conditions and period applicable to such supervision.”.</p>
<p>Section 27 of the principal Act is hereby amended— (a) by the substitution for subsection (2) of the following subsection: “(2) Subject to the policy determined by the Minister, as contemplated</p>	<p>Section 27 of the principal Act is hereby amended— (a) by the substitution for subsection (2) of the following subsection: “(2) Subject to the policy determined by the Minister as contemplated</p>

<p>in section 3, and with due observance of the relevant provisions of the Use of Official Languages Act, 2012 (Act No. 12 of 2012), the council, with the concurrence of the senate, must—</p> <p>(a) determine the language policy of [a] the public higher education institution [and must] concerned;</p> <p>(b) publish the policy; and</p> <p>(c) make [it] the policy available on request.’’.</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The council, after consultation with the students’ representative council, must provide for and establish a suitable structure to advise on the policy for student support services within the public higher education institution;’’;</p> <p>(c) by the substitution for subsection (5B) of the following subsection:</p> <p>“(5B) Any person who has been a member of a council of a public higher education institution—</p> <p>(a) under circumstances contemplated in sections [49A(4)(a)] 49B(1)(a) and 49E; and</p> <p>(b) [who is implicated] against whom an independent assessor has made an adverse finding in the report [of the independent assessor] contemplated in section 47(1)(b), [is] shall not be eligible for appointment, election, re-appointment or re-election as a member of a council of [a] any public higher education institution unless the Minister, having regard to such representations as the person may make, determines that the finding is not of such a nature as to disqualify the person from becoming or continuing to be a member of the council of a public higher education institution;’’;</p>	<p>in section 3, the council, with the concurrence of the senate, must—</p> <p>(a) determine the language policy of [a] the public higher education institution [and must] concerned;</p> <p>(b) publish the policy; and</p> <p>(c) make [it] the policy available on request.’’.</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The council, after consultation with the students’ representative council, must provide for and establish a suitable structure to advise on the policy for student support services within the public higher education institution. ’’;</p> <p>(c) by the substitution for subsection (5B) of the following subsection:</p> <p>“(5B) Any person who has been a member of a council of a public higher education institution—</p> <p>(a) under circumstances contemplated in sections [49A(4)(a)] 49B(1)(a) and 49E;</p>
<p>Section 34 of the principal Act is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Notwithstanding subsection (1) the principal, any vice-principal and the academic employees of the public higher education institution must be appointed by the council after consultation with the senate;’’;</p> <p>(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:</p> <p>“(a) (i) before he or she assumes office;</p> <p>(ii) annually, while holding office; and</p> <p>(iii) whenever a new interest, not disclosed as contemplated in subparagraph (i) or (ii), arises,</p>	<p>Section 34 of the principal Act is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Notwithstanding subsection (1) the principal, any vice-principal and the academic employees of the public higher education institution must be appointed by the council after consultation with the senate;’’;</p> <p>(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:</p> <p>“(a) (i) before he or she assumes office; and</p> <p>(ii) whenever a new interest arises, declare any business, commercial or financial activities undertaken</p>

<p>declare any business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and”;</p>	<p>for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and”;</p>
<p>Section 39(3D) The Minister must table a report in Parliament, regarding any action taken under subsection (3B), as soon as reasonably practicable after such action.”.</p>	<p>Section 39(3D) The Minister must table a report in Parliament, regarding any action taken under subsection (3B), within a period of 30 days of the action.”.</p>
<p>Section 47 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: “(c) suggest in the report appropriate measures and provide the reasons why the measures are needed.”; and (b) by the insertion of the following subsection after subsection (1): “(1A) The Minister may, on good cause shown, at the request of the independent assessor extend the period in subsection (1).”</p>	<p>Section 47 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: “(c) suggest in the report appropriate measures and provide the reasons why the measures are needed.”; and (b) by the insertion of the following subsection after subsection (1): “(1A) The Minister may, on good cause shown, at the request of the independent assessor extend the period in subsection (1).”; and (c) by the substitution for subsection (2) of the following subsection: “(2) The Minister must [as soon as practicable] within 90 days of receiving the report referred to in subsection (1), provide a copy of the report [referred to in subsection (1)] to the council concerned, table the report before the National Assembly and publish such report in the <i>Gazette</i>.”.</p>
<p>Directive to council appointed by administrator 49I. (1) The Minister may— (a) after the term of office of an administrator is terminated as contemplated in section 49H(1)(a); (b) within the term of office of the first council of the higher education institution concerned appointed by the administrator; and (c) after consultation with that council, issue a directive to the council to take such action as specified by the Minister in the event that the Minister has reasonable grounds to believe that certain matters related to the effective and efficient functioning of the institution and the execution of its mandate require specific or continued attention of the council and the management. (2) The provisions of section 42(4) apply with the changes required by the context in instances of non-compliance by the council with the directive contemplated in subsection (1).</p>	<p>Directive to council appointed by administrator 49I. (1) The Minister, after taking into account the report of the administrator, may— (a) after the term of office of an administrator is terminated as contemplated in section 49H(1)(a); (b) within the term of office of the first council of the higher education institution concerned appointed by the administrator; and (c) after consultation with that council, issue a directive to the council to take such action as specified by the Minister in the event that the Minister has reasonable grounds to believe that certain matters related to the effective and efficient functioning of the institution and the execution of its mandate require specific or continued attention of the council and the management. (2) The provisions of section 42(4) apply with the changes required by the context in instances of non-compliance by the council with the directive</p>

<p>Section 51 of the principal Act is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Authority to provide private higher education”;</p> <p>(b) by the substitution for subsection (1) of the following subsection: “(1) No person [other than a public higher education institution or an organ of state] may perform one or more of the functions to provide higher education unless that person is— (a) [in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and] an organ of state with the statutory responsibility to provide higher education; (b) [registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act 61 of 1973), before such person is registered or conditionally registered in accordance with paragraph (a)] a public higher education institution merged, established or deemed to be established as a higher education institution under this Act; (c) declared as a public higher education institution under this Act; or (d) registered or provisionally registered as a private higher education institution under this Act.”; and (c) by the deletion of subsection (2).</p>	<p>contemplated in subsection (1).</p> <p>Section 51 of the principal Act is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Authority to provide higher education”;</p> <p>(b) by the substitution for subsection (1) of the following subsection: “(1) No local juristic person or foreign juristic person other than a public higher education institution or an organ of state may provide higher education unless that person is— (a) in the prescribed manner, registered or conditionally registered as a private higher education institution in terms of this Act; and (b) registered or recognised as a juristic person in terms of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 17 of 2008), before such person is registered or conditionally registered in accordance with paragraph (a).” ; and (c) by the substitution for subsection (2) of the following subsection: “(2) If the person contemplated in subsection (1) is a foreign juristic person, that person must ensure that any qualification or part-qualification offered within the Republic is registered on the [sub-framework] sub-frameworks for higher education and trades and occupations on the National Qualifications Framework contemplated in section 7(b) and (c) read with section 13(1)(h) of the National Qualifications Framework Act.”.</p>
<p>“Change of type and scope of higher education institution</p> <p>65AB. (1) The Minister may after consultation with the CHE and at the request of the council of the institution concerned, by notice in the <i>Gazette</i>, change the type of a higher education institution concerned or amend or remove any restrictions on the scope and operations of a public higher education institution contemplated in sections 3(3) and 20(5)(b).</p> <p>(2) The Minister must, before acting under subsection (1), comply with the provisions of section 23(2), with the changes required by the context.”.</p>	<p>“Change of type and scope of higher education institution</p> <p>65AB. (1) The Minister may, at the request of the council of the institution concerned, after consultation with the CHE, by notice in the <i>Gazette</i>, change the type of a higher education institution concerned or amend or remove any restrictions on the scope and operations of a public higher education institution contemplated in sections 3(1) and 20(4).</p> <p>(2) The Minister must, before acting under subsection (1), comply with the provisions of section 23(2), with the changes required by the context.</p> <p>(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.”.</p>

	<p>Amendment of section 65B of Act 101 of 1997, as substituted by section 24 of Act 23 of 2001</p> <p>36. Section 65B of the principal Act is hereby amended by the addition of the following subsection: “(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.”.</p>
<p>“Withdrawal and revocation of degree, diploma, certificate or other qualification</p> <p>65BA. (1) Subject to the provisions of subsection (2), the council of a public higher education institution may, in consultation with the senate, withdraw and revoke any degree, diploma, certificate or other qualification that was awarded—</p> <p>(a) on the basis of a material error on the part of the public higher education institution concerned: Provided that such withdrawal and revocation may only take place within a period not exceeding two years after the conferment concerned; or</p> <p>(b) as a result of a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification.</p> <p>(2) (a) Prior to the council of a public higher education institution withdrawing and revoking the conferment of a degree, diploma, certificate or other qualification, the council must—</p> <p>(i) notify the recipient of the qualification concerned that a revocation and withdrawal is being considered;</p> <p>(ii) provide the recipient with relevant information justifying the intended action;</p> <p>(iii) provide the recipient with an opportunity to obtain assistance and to present his or her case; and</p> <p>(iv) consider the submissions and representations of the recipient.</p> <p>(b) In the event that the withdrawal and revocation relates to circumstances contemplated in subsection (1)(b), the higher education institution must report the matter for criminal investigation as contemplated in section 66(2).”.</p>	<p>“Withdrawal and revocation of degree, diploma, certificate or other qualification</p> <p>65BA. (1) Subject to the provisions of subsection (2), the council of a public higher education institution may, in consultation with the senate, withdraw and revoke any degree, diploma, certificate or other qualification that was awarded—</p> <p>(a) on the basis of a material error on the part of the public higher education institution concerned: Provided that such withdrawal and revocation may only take place within a period not exceeding two years after the conferment concerned; or</p> <p>(b) as a result of a fraudulent or dishonest act in connection with the obtaining of such degree, diploma, certificate or other qualification.</p> <p>(2) (a) Prior to the council of a public higher education institution withdrawing and revoking the conferment of a degree, diploma, certificate or other qualification, the council must—</p> <p>(i) notify the recipient of the qualification concerned that a revocation and withdrawal is being considered;</p> <p>(ii) provide the recipient with relevant information justifying the intended action;</p> <p>(iii) provide the recipient with an opportunity to obtain assistance and to present his or her case; and</p> <p>(iv) consider the submissions and representations of the recipient.</p> <p>(b) In the event that the withdrawal and revocation relates to circumstances contemplated in subsection (1)(b), the higher education institution must report the matter for criminal investigation as contemplated in section 66(2).</p> <p>(3) The provisions of subsections (1) and (2) shall apply to registered private higher education institutions, subject to the necessary changes required by the context.</p> <p>(4) In the event that any degree, diploma, certificate or other</p>

	qualification that was awarded, is withdrawn or revoked, the relevant Quality Council responsible for the qualification or part-qualification and SAQA must be informed so as to amend the National Learner Record Database, if necessary.'’.
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