

Malawi

## National Council for Higher Education Act Chapter 30:12

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# Malawi

## National Council for Higher Education Act Chapter 30:12

Commenced on 23 April 2012

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to regulate higher education; to provide for the establishment, functions and powers of the National Council for Higher Education; and to provide for matters incidental thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the National Council for Higher Education Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**academic cycle**” means a period within which to complete a programme of study;

“**accreditation**” means the process of recognizing higher education institution’s programmes in accordance with [section 27](#);

“**accreditation certificate**” means a certificate issued under [section 27](#);

“**Chairperson**” means the Chairperson of the Council and includes any person acting in that capacity;

“**Charter**” means a document granted by the Minister under [section 20](#) describing the basis for establishment and legitimizing the existence of a private higher education institution;

“**Chief Executive Officer**” means the Chief Executive Officer of the Council appointed pursuant to [section 17](#);

“**Council**” means the National Council for Higher Education established under [section 3](#);

“**foreign higher education institution**” means a higher education institution registered outside Malawi;

“**higher education**” means all learning programmes leading to qualifications registered under the National Qualifications Framework but may not include vocational training by a vocational training centre under the Technical, Entrepreneurial and Vocational Education Act;

*[Cap. 55:06]*

“**higher education institution**” means any institution that provides higher education and which is—

- (a) established as a public higher education institution;
- (b) registered as a private higher education institution under this Act; or
- (c) an affiliate of a higher education institution;

“**institutional quality assurance standards**” means the standards referred to in [section 27](#);

“**member**” means a member of the Council appointed as such under [section 4](#);

**"National Qualifications Framework"** means a structured description which classifies and registers qualifications according to a set of national standards for levels of learning, obtained at different levels compatible with regional and international structures and standards;

**"private higher education institution"** means any institution registered or conditionally registered as a private higher education institution in terms of Part V;

**"provisional registration certificate"** means a certificate issued pursuant to [section 20](#);

**"public higher education institution"** means any institution that provides higher education and which is established by the Government or under any law and is wholly or partially funded by the Government; and

**"register"** means a register kept and maintained in terms of [section 20](#).

## Part II – The National Council for Higher Education

### 3. Establishment of the Council

There is hereby established a body to be known as the National Council for Higher Education (in this Act otherwise referred to as the "Council") which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) capable of suing and being sued in its corporate name;
- (c) capable of holding, purchasing or otherwise acquiring and disposing of any property, movable or immovable, for the purposes, or in the course, of carrying out its functions; and
- (d) capable of doing and performing all such acts and things as bodies corporate may, by law, do and perform.

### 4. Composition of the Council

(1) The Council shall consist of—

- (a) six persons appointed by the Minister on account of high professional standing, special knowledge, skills and expertise in matters of higher education:

Provided that such persons shall not be employees in the public service and two of whom shall be persons from the business community;

- (b) the following *ex officio* members—
  - (i) the Secretary for Education or his designated representative;
  - (ii) the Secretary to the Treasury or his designated representative;
  - (iii) the Comptroller of Statutory Corporations or his designated representative;
  - (iv) the Secretary for Human Resource Management and Development or his designated representative;
  - (v) two Vice-Chancellors to represent public universities; and
  - (vi) one Vice-Chancellor to represent private universities.

(2) An *ex officio* member of the Council or any person employed in the public service shall not be eligible to be elected Chairperson of the Council but shall have a right to vote on any matter at a meeting of the Council.

(3) Members of the Council shall not, by virtue of their appointment to the Council, be deemed to be officers in the public service.

- (4) The Minister shall publish in the *Gazette* names of all members of the Council as first constituted, and every change in the membership of the Council.

## 5. Tenure of office

- (1) A member of the Council, other than an *ex officio* member, shall hold office for a period of three years from the date of appointment and shall be eligible for re-appointment at the expiry of that period:

Provided that non-*ex officio* members shall not be appointed for more than two consecutive terms of office.

- (2) On the expiry of the period for which an appointed member of the Council has been appointed, he shall continue to hold office until he has been re-appointed or a successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

- (3) When making any appointment after the expiry of the three years, the Minister shall have regard to the need to maintain a reasonable degree of continuity on the membership of the Council, so that at least half of the appointed members shall be re-appointed for the next term of office.

## 6. Vacation of office of members

- (1) The office of a member, other than an *ex officio* Member, shall become vacant—

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Council, of which he has had notice, without a reasonable cause;
- (c) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;
- (d) if he becomes mentally or physically incapable of efficiently performing his duties as a member of the Council; and
- (e) if he is adjudged bankrupt.

- (2) A member may at any time resign his office by giving one month written notice to the Minister.

## 7. Filling of vacancies on the Council

- (1) A vacancy on the membership of the Council shall be filled by the appointment of a new member in accordance with the relevant provisions of [section 4](#) under which the former member was appointed.
- (2) A person appointed to fill the vacancy shall serve for the remainder of the term of office but no person shall be so appointed where the remainder of the term of office is a period of less than six months.

## 8. Co-opted persons

The Council may, at any time and for any period, invite any person and the Minister may, in like manner nominate any officer in the public service, to attend any meeting of the Council and take part in the deliberations of the Council, but such person or officer shall not be entitled to vote at any meeting.

## 9. Chairperson and Vice-Chairperson

- (1) There shall be a Chairperson of the Council appointed by the Minister.

- (2) There shall be a Vice-Chairperson of the Council who shall be elected by the Council from among the appointed members at the first meeting of the Council.
- (3) The Chairperson and Vice-Chairperson shall hold office as such until the expiry of their term of office as members of the Council.

## 10. Remuneration

A member of the Council shall be paid such honorarium for membership and such allowances as the Council shall reasonably determine, subject to approval by the Minister.

## 11. Disclosure of interest

If a member of the Council acquires any pecuniary interest, directly or indirectly, in any matter and is present at a meeting of the Council at which that matter is the subject of consideration by the Council, he shall, as soon as practicable, after the commencement of the meeting, disclose the fact to the Council, and shall not take part in the consideration or discussion of, or vote on any question with respect to the determination of the matter.

## 12. Meetings of the Council

- (1) Subject to subsection (2), the Council shall hold ordinary meetings for the dispatch of business at least four times a year.
- (2) An extraordinary meeting of the Council—
  - (a) may be convened by the Chairperson at any time;
  - (b) shall be convened by the Chairperson within seven days of receipt by him of a request in writing signed by not less than two members of the Council and specifying the purpose for which the meeting is to be convened.
- (3) At any meeting of the Council—
  - (a) the Chairperson shall preside or in his absence, the Vice-Chairperson shall preside;
  - (b) in the absence of both the Chairperson and the Vice-Chairperson, the members present and forming a quorum shall elect one of them to preside; and
  - (c) the quorum shall be formed by one-half ( $\frac{1}{2}$ ) of the members.
- (4) An *ex officio* member of the Council shall attend any meeting of the Council in person or designate another person in writing.
- (5) At any meeting of the Council, a decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.
- (6) The Council shall have powers to regulate its own procedure.
- (7) The Council shall cause minutes of every meeting of the Council or Committee to be kept.

## 13. Committees of the Council

- (1) The Council may, for the purpose of performing its functions under this Act, establish such committees and delegate to any such committee such functions of the Council as the Council may consider expedient.
- (2) Subject to subsection (1), the Council shall appoint the following committees—
  - (a) the Higher Education Quality Assurance and Accreditation Committee; and



- (b) the Higher Education Finance Committee.
- (3) The chairperson of each committee shall be appointed by the Council from amongst the members of the Council:
- Provided that the chairperson of the Higher Education Quality Assurance and Accreditation Committee shall be a Vice-Chancellor or former Vice-Chancellor.
- (4) Each committee may invite any person, not being a member of the Council, to attend a meeting of the committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.
- (5) The chairperson of a committee may, at any time and place, convene a meeting of the committee of which he is chairperson.
- (6) The Chairperson may, at any time, direct the chairperson of any committee to convene a meeting of such committee and such chairperson shall, as soon as practicable, comply with the direction.
- (7) At all meetings of a committee, the quorum shall be formed by a majority of the members.
- (8) At all meetings of a committee, each member present shall have one vote on a question before the committee and, in the event of an equality of votes, the chairperson of the committee shall have, in addition to a deliberative vote, a casting vote.
- (9) Every committee shall have power to regulate its own procedure.
- (10) Every committee shall keep minutes of its meetings, inform the Council of its activities and conduct its proceedings in such a manner as the Council may direct.
- (11) The Higher Education Quality Assurance and Accreditation Committee shall—
- (a) promote institutional quality assurance standards in higher education;
  - (b) audit the institutional quality assurance systems in higher education;
  - (c) develop and implement an accreditation and evaluation framework for learning programmes offered by higher education institutions;
  - (d) recommend to the Council the accreditation of higher education institutions and their programmes;
  - (e) recommend to the Council on the overall structure in terms of capacity, number of institutions, enrolments in higher education institutions and other areas that the Committee considers important;
  - (f) recommend to the Council on the capacity of individual higher education institutions and other areas that are considered important;
  - (g) recommend to the Council on optimal enrolments in individual higher education institutions, their programmes and classes;
  - (h) recommend to the Council varied levels of intellectual and conceptual knowledge, skills and attitudes needed to meet the requirements of a developing country;
  - (i) recommend to the Council on the development of professionals in different disciplines through different kinds of education; and
  - (j) recommend to the Council on matters of equity and access to higher education.
- (12) The Higher Education Finance Committee shall make recommendations to the Council on the following matters—
- (a) relevant information to advise the Minister on all aspects of funding and financing in public higher education institutions;

- (b) relevant information on policies, principles, formulae and criteria governing the allocation of public funds to public higher education institutions and to review periodically, such policies, principles, formulae and criteria;
  - (c) the basis for the Council to advise the Minister on funding for the development of physical infrastructure in public higher education institutions;
  - (d) the investment and management of funds of the Council;
  - (e) the incurring of, or the authorization of persons or bodies in the Council to incur expenditure from funds of the Council, including any income accruing to any section of, or body in the Council;
  - (f) the annual budget of the Council;
  - (g) examination of—
    - (i) the control of expenditure from budgetary allocations by means of financial regulations and such other conditions;
    - (ii) the preparation and presentation of annual accounts of the Council; and
  - (h) any other financial function as assigned by the Council from time to time.
- (13) The Council may delegate any or all of its executive functions with regard to the matters specified in subsection (12), subject to the general policy, control and guidance of the Council.

#### **14. Non-liability of members of the Council or of committees**

No member of the Council or of any committee of the Council shall be liable for any act or default of his or of the Council, done in the exercise in good faith of the functions or powers of the Council.

### **Part III – Functions and powers of the Council**

#### **15. Functions of the Council**

The functions of the Council shall be—

- (a) to promote and coordinate education provided by higher education institutions;
- (b) to register and de-register higher education institutions;
- (c) to determine a framework for funding public higher education institutions;
- (d) to harmonize selection of students to all public universities;
- (e) to regulate, determine and maintain standards of teaching, examinations, academic qualifications, academic facilities;
- (f) to develop a national qualifications framework which is compatible with regional and international standards;
- (g) to determine minimum criteria and procedures for registration and de-registration of higher education institutions;
- (h) to accredit both public and private higher education institutions;
- (i) to design and recommend an institutional quality assurance system for higher education;
- (j) to recommend to the Minister institutional quality assurance standards for the establishment, standardization and accreditation of higher education institutions including standards of—
  - (i) teaching and learning;

- (ii) infrastructure, physical plant and equipment;
  - (iii) the development of curricula;
  - (iv) libraries and learning resource centres;
  - (v) safety of teaching and learning facilities; and
  - (vi) student-transfer between programmes and higher education institutions.
- (k) to provide guidance for terms and conditions for awarding grants and scholarships to students of public higher education institutions;
- (l) to ensure that higher education institutions have high calibre members of staff by—
- (i) prescribing standards and maintaining minimum requirements for engagement of members of staff to all levels of higher education institutions;
  - (ii) advising on conditions of employment;
  - (iii) overseeing continuous professional development for members of staff of higher education institutions; and
  - (iv) from time to time, prescribing, maintaining and reviewing a code of professional ethics for members of staff in higher education institutions;
- (m) to assess, evaluate and recognize qualifications attained at a foreign higher education institution;
- (n) to represent interests of the Malawian higher education regionally and internationally;
- (o) to monitor the implementation of international agreements concerning higher education;
- (p) to promote international cooperation and facilitate exchanges in higher education; and
- (q) to advise the Minister on all matters of higher education.

## 16. Powers of the Council

For the better performance of its functions, the Council shall, subject to the provisions of this Act, have the power—

- (a) to employ professional, technical and administrative personnel as it may consider necessary and lay down conditions of service of such employees;
- (b) to enter into any contract or agreement;
- (c) to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property, which it considers necessary in the furtherance of its functions;
- (d) to manage, insure, let, sell, alienate, mortgage or otherwise deal with any property of the Council as it may consider necessary or expedient;
- (e) to sponsor, support or organize conferences, seminars, workshops and symposia on various aspects of higher education;
- (f) to determine the protection, standardization, homogeneity, equivalence and recognition of qualifications;
- (g) to share with higher education institutions best practices in improving and promoting higher education;
- (h) to require every higher education institution to provide the Council with such information as the Council may consider necessary for the performance of its functions;
- (i) to invest or deal with any of the moneys not immediately required in securities or in a manner as it may think fit and to vary or realize such investments;

- (j) to receive donations or gifts of money or other property from any person or body of persons for the furtherance of its objects;
- (k) to publish, from time to time information on higher education as it considers necessary or expedient for the promotion of its functions; and
- (l) to do all acts, matters and things as it considers necessary for the fulfillment of the functions of the Council.

#### **Part IV – Management of the Council**

##### **17. Appointment of Chief Executive Officer and other members of staff**

- (1) Subject to the provisions of this section, the Council—
  - (a) shall appoint a person to be designated as the Chief Executive Officer upon such terms and conditions as the Council shall determine;
  - (b) shall appoint Deputy Chief Executive officers; and
  - (c) may appoint such other employees as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.
- (2) The office of the Chief Executive Officer shall be held by a person who—
  - (a) is a distinguished academician and administrator in higher education; and
  - (b) has such other qualifications and experience as the Council may determine.
- (3) The Chief Executive Officer shall be the secretary to the Council and all committees and shall, on instructions of the Chairperson, convene meetings of the Council or committees.

##### **18. Duties of the Chief Executive Officer**

Subject to the general or special directions of the Council, the Chief Executive Officer shall be responsible for the day to day management of the Council and administrative control of other members of staff of the Council and, in that regard shall be answerable and accountable to the Council.

#### **Part V – Registration of private higher education institutions**

##### **19. Registration of private higher education institutions**

- (1) No person other than a public higher education institution or organ of state shall provide higher education unless that person is registered or provisionally registered as a private higher education institution in terms of this Act.
- (2) An application for registration of a private higher education institution shall be made to the Council by submitting to Chief Executive Officer in the prescribed form and be accompanied by the prescribed fee and such other further information and documentation in support of the application as the Council may request.
- (3) The Council shall evaluate and verify the suitability of an application in terms of the minimum standards for higher education set by the Council.

## 20. Provisional and final registration of private higher education institutions

- (1) The Council shall register an institution as a private higher education institution if the Council is satisfied—
  - (a) that the institution is a body corporate;
  - (b) that the institution or the facilities to be provided by that institution are suitable and meet the minimum standards for higher education set by the Council;
  - (c) that the institution is financially capable of satisfying its obligations to prospective students;
  - (d) that the teaching staff to be employed by the institution is sufficiently qualified;
  - (e) that the higher education to be provided by the institution is of a quality that it will enable the institution to provide a standard of education no less than the minimum standard set by the Council;
  - (f) that the institution shall ensure that no person is discriminated against on account of race, ethnic origin, political affiliation or opinion, religion, sex, or Human Immune Deficiency Virus or Acquired Immune Deficiency Syndrome status, gender, physical disability or other status in respect of—
    - (i) the admission of students;
    - (ii) the recruitment of staff; and
  - (g) that the establishment of a higher education institution is in the interest of higher education in Malawi.
- (2) The Council shall issue a provisional registration certificate to the applicant until such a time as it is finally registered in terms of subsection (8).
- (3) A provisional registration certificate will authorize a private higher education institution to—
  - (a) set up a governing body for the proposed institution;
  - (b) commence or continue to develop physical facilities and mobilize financial and human resources;
  - (c) commence or continue to assemble academic resources; and
  - (d) publicise the programmes of instruction expected to be offered at the institution.
- (4) Students shall not be admitted while a higher education institution holds a provisional certificate.
- (5) A provisional registration may be subject to any reasonable conditions as the Council may determine.
- (6) A provisional registration certificate shall be valid for one year cycle from the date it is issued or as the Council may determine.
- (7) Before the expiry of a provisional registration certificate, a private higher education institution shall apply to the Council for final registration by submitting to the Chief Executive Officer the application in the prescribed form accompanied by the prescribed fee and any documentation as may be requested.
- (8) If the Council, after considering the application and upon carrying out an inspection of the institution, is satisfied that the provisionally registered institution has fulfilled the terms and conditions under the provisional certificate, it shall make recommendations to the Minister for approval of final registration and further that a Charter be granted to the institution concerned.
- (9) If, after receiving the recommendations, the Minister considers that the establishment of the institution will further the development of higher education in Malawi, he may approve the final

registration and grant the institution a Charter, and thereafter, he shall publish a notice in the *Gazette*, the terms of the registration and the Charter.

- (10) The higher education institution concerned shall, on registration under this Act, be subject to and regulated by its Charter.
- (11) The Council shall keep and maintain a register of all private higher education institutions which shall be available for inspection by members of the public during normal working hours upon payment of a prescribed fee.

## 21. Contents of Charter of private higher education institutions

Every Charter of a private higher education institution shall contain the following—

- (a) the type and name of the institution;
- (b) the objects and functions of the institution;
- (c) membership and governance of the institution;
- (d) the administration of the institution;
- (e) the finances and business plan of the institution;
- (f) the general academic regulation of the institution;
- (g) the appointment, removal and conditions of service of members of the teaching staff;
- (h) the admission rights and discipline of students;
- (i) the establishment of faculties, departments, schools, institutes and centres;
- (j) the making of rules for the regulation of the institution; and
- (k) any other matter which is considered by the Council to be necessary or desirable for the proper functioning of the institution.

## 22. Application for amendment of the Charter

- (1) A private higher education institution may, at any time, apply to the Council, in the prescribed form, for approval of an amendment to the Charter.
- (2) An application in terms of subsection (1) shall be accompanied by—
  - (a) a draft of the proposed amendment;
  - (b) such information as the Council may request; and
  - (c) a prescribed fee.
- (3) The Council shall consider every application and after conducting such inquiry and carrying out an investigation into the matter, it shall submit the application together with its advice on the matter to the Minister.
- (4) If, after receiving an application for the amendment of the Charter, the Minister is satisfied that the amendment—
  - (a) will enable a higher education institution to carry out its functions more effectively; or
  - (b) will be in the interest of the development of higher education in Malawi, may, by proclamation in a statutory instrument, amend the Charter.

## 23. Revocation of a Charter

- (1) If, at any time, the Council is satisfied that a private higher education institution—
  - (a) has failed to carry out its objects; or
  - (b) has breached its Charter in any material respect; or
  - (c) is not carrying out its functions properly; and
  - (d) that it is in the interest of higher education in Malawi generally for the Charter of a higher education institution concerned to be revoked, the Council may advise the Minister that the Charter be revoked:  
Provided that—
    - (a) before submitting its advice to the Minister, the Council shall afford the governing body of the higher education institution concerned an opportunity to make representation on the matter and the Council shall forward any such representations made by the governing body to the Minister together with its advice; and
    - (b) before submitting such advice, representation and recommendations to the Minister, the Council may conduct an inquiry or carry out further investigations into the matter.
- (2) If, after receiving a recommendation for revocation of a Charter, the Minister is satisfied that it is in the interest of higher education in Malawi generally, for the Charter to be revoked, the Minister may, by Order published in the *Gazette*, revoke the Charter with effect from such date as he may specify in the Order.
- (3) With effect from the date specified in the proclamation in terms of subsection (2), the institution shall be de-registered and shall cease to exist:  
Provided that the revocation of the Charter shall not affect the validity of any certificate, diploma, degrees or other academic qualifications conferred or awarded by the higher education institution concerned prior to that date.

## Part VI – Public higher education institutions

### 24. Establishment of higher education institutions

The Council may advise the Minister either on his request or its own initiative, on the establishment of a public higher education institution.

### 25. Declaration of a public higher education institution

The Minister may, with the advice of the Council and by notice in the *Gazette*, declare as a public higher education institution any—

- (a) public education institution operating under the Education Act; or
- (b) statutory body, offering degrees.

[Cap. 30:01]

### 26. Closure, merger and splitting of public higher education institutions

- (1) If, at any time, the Council is satisfied that a public higher education institution has failed to discharge its functions in terms of the enactment under which it was established, and that it is in the interest of higher education in Malawi for the institution concerned to be merged with other

institutions or be closed, the Council may recommend to the Minister any one or more of the following—

- (a) a merger of a public higher education institution with any other higher education institution;
- (b) closure of a public higher education institution; or
- (c) a repeal of the enactment under which the public higher education institution was established:

Provided that, before submitting its advice to the Minister, the Council shall afford the governing body of the higher education institution concerned an opportunity to make representations on the matter.

- (2) The Council shall submit to the Minister any representations it receives together with its recommendations:

Provided that, before submitting any such recommendations and representations to the Minister, the Council may conduct such further inquiry or carry out an investigation on the matter as it finds necessary.

- (3) If the Minister is satisfied that it is in the interest of higher education in Malawi generally for a higher education institution to be merged or closed, the Minister may signify in writing his approval of the merger or closure of the higher education institution specifying the date from which a higher education institution shall merge or cease to operate:

Provided that the merger or closure of the higher education institution shall not affect the validity of any certificate, diplomas degrees or other academic qualifications conferred or awarded by the higher education institution prior to that date.

- (4) If, any time the Council is satisfied that a public higher education institution will efficiently and effectively discharge its functions in terms of the enactment under which it was established, and that it is in the interest of higher education in Malawi generally for the institution concerned to be split, the Council may recommend to the Minister any one or more of the following—

- (a) the institution concerned be split into units which will make separate higher education institutions; and
- (b) the repeal of the enactment under which the higher education institution was established:

Provided that, before making a recommendation to the Minister, the Council shall afford the governing body of the higher education institution concerned an opportunity to make representations on the matter.

- (5) The Council shall submit to the Minister any recommendations and representations received on the matter from the governing body of the higher education institution concerned:

Provided that, before submitting any such recommendations or representation to the Minister, the Council shall conduct any further inquiry or carry out further investigations on the matter as it considers necessary.

- (6) If the Minister is satisfied that it is in the interest of higher education in Malawi, generally, for the public higher education institution to be divided, the Minister may signify in writing his approval for the division:

Provided that, the division of the public higher education institution concerned shall not affect the validity of any certificates, diplomas, degrees or other academic qualifications conferred or awarded by the higher education institution concerned prior to that date.



## Part VII – Standards and accreditation

### 27. Institutional quality assurance standards and evaluation of higher education institutions

- (1) The Minister may, on the recommendation of the Council, prescribe the institutional quality assurance standards to govern the performance, operations and general conduct of higher education institutions.
- (2) The Council shall evaluate the performance of higher education institutions every academic cycle for purposes of accreditation.
- (3) After the evaluation, the Council may issue an accreditation certificate.
- (4) The Council shall publish the results of the accreditation process in the *Gazette* or any other media.
- (5) Where the Council has refused to grant an accreditation certificate, it shall indicate in writing the specific steps to be taken by higher education institution concerned towards the attainment of the standards referred to in subsection (1).

### 28. Basis of accreditation

- (1) A higher education institution shall be issued with a certificate of accreditation if it demonstrates the achievement of acceptable standards in terms of—
  - (a) physical, human, financial, teaching and learning resources;
  - (b) management and operational procedures; and
  - (c) an acceptable standard of academic life focusing on teaching, research, community service and expert service.
- (2) For each programme, the accreditation process may take into account—
  - (a) the academic qualifications of all members of staff employed by a higher education institution during the period of assessment including those expected to be employed by the higher education institution;
  - (b) the total number of students enrolled in each programme of instruction offered at a higher education institution and the standards attained by those that have graduated during the period of assessment;
  - (c) information and communication technology infrastructure and the provision for training;
  - (d) the size and quality of the library and other teaching and learning resources;
  - (e) the financial resources available for the exclusive use by a higher education institution, certified by its auditors;
  - (f) the physical facilities including land made available for the exclusive use by a higher education institution;
  - (g) student-staff ratio of a higher education institution; and
  - (h) the currency, relevance and frequency of review of the curriculum for each programme for comparability nationally and internationally.

### 29. Effect of accreditation

The qualifications awarded in respect of programmes of instruction by an accredited higher education institution shall be recognized as comparable and of equivalent merit to similar qualifications awarded

in respect of programmes offered by other accredited higher education institutions in Malawi and internationally.

### 30. Annual reports by higher education institutions

- (1) Every higher education institution shall prepare and submit to the Council—
  - (a) an annual report of its activities within six months after the end of each academic year in accordance with the format prescribed by the Council; and
  - (b) a detailed annual assessment report including achievements, as the Council may determine, of the steps it has taken towards the achievement of the aims and objectives for which that higher education institution was established.
- (2) The Council shall analyse all the reports submitted pursuant to subsection (1) and may make such comments or give such advice thereon for action by a higher education institution concerned.
- (3) If a higher education institution has failed to submit its report within the stipulated period, the Council may serve on the higher education institution an order—
  - (a) requiring the higher education institution to submit its report; and
  - (b) stipulating the period within which the report should be submitted.
- (4) The notice of the order shall be published by the Council in such manner as it considers appropriate to draw the attention of persons affected or likely to be affected by such order.
- (6) An order served in terms of subsection (3) may specify a penalty for each day that a higher education institution is in default.

*[Please note: numbering as in original.]*
- (7) The Council may institute civil proceedings for specific performance or the recovery of any penalty imposed in terms of subsection (4).

## Part VIII – Financial provisions

### 31. Funds, accounts and audit

- (1) The funds of the Council shall consist of—
  - (a) such sums as may be appropriated by Parliament for the purpose of the Council;
  - (b) any fees payable under this Act;
  - (c) such other moneys and assets as may vested in or accrue to the Council in the course of its functions;
  - (d) any civil penalties collected under this Act;
  - (e) such moneys or other assets as may accrue to or vest in, the Council by way of grants, bequests, donation or gifts from any other person; and
  - (f) other lawful sources of funding.
- (2) The Council shall keep proper accounts and other records relating thereto and shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

*[Cap. 37:01; Cap. 37:02; Cap. 37:03]*
- (3) The accounts of the Council shall be examined and audited annually by auditors appointed by the Council and approved by the Minister.

### 32. Investment of surplus sums of money

The Council may invest any sums of money which are not immediately required for its objectives in such manner as the Council may consider fit.

### 33. Financial year of the Council

The financial year of the Council shall be the period commencing on the date of commencement of this Act and ending on 30th June of the following year and thereafter, it shall be a period of twelve months ending on 30th June every year.

## Part IX – Miscellaneous provisions

### 34. Offences

- (1) Any person who, without the authority of the Council—
  - (a) offers or pretends to offer any higher education programme or part thereof;
  - (b) purports to confer a qualification granted by a higher education institution, or in collaboration with a higher education institution; or
  - (c) purports to perform an act on behalf of a higher education institution,commits an offence and on conviction, shall be liable to a fine of K2,000,000 and to imprisonment for fourteen years.
- (2) Any person who contravenes [section 19](#) commits an offence and on conviction, shall be liable—
  - (a) in case of an individual, to a fine of K2,000,000 and imprisonment for fourteen years; and
  - (b) in case of a body corporate, an organization or an association, to a fine of K10,000,000.

### 35. Regulations

- (1) The Minister, in consultation with the Council, may make regulations for the better carrying into effect the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may provide for—
  - (a) anything required to be prescribed under, or for the purposes of, this Act;
  - (b) fees payable in respect of any service provided by the Council;
  - (c) any forms required for the purposes of this Act;
  - (d) the manner in which an inquiry may be conducted on a higher education institution;
  - (e) minimum standards of instruction for the grant of any qualification;
  - (f) registration of higher education institution and maintenance of the register;
  - (g) accreditation of programmes in a higher education institution; and
  - (h) conditions governing use and protection of qualifications for higher education.

### 36. Transitional provisions

- (1) Any public or private higher education institution in existence at the commencement of this Act shall be deemed to be duly registered with the Council.

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- (2) A higher education institution shall be deemed to be in existence if it—
- (a) has been established by an Act of Parliament;
  - (b) holds a Charter granted by the Minister; or
  - (c) is otherwise registered with the Ministry responsible for higher education.
- (3) All higher education institutions deemed to be registered with the Council at the commencement of this Act, shall, not later than six months apply to the Council for accreditation.