

SPECIAL ISSUE

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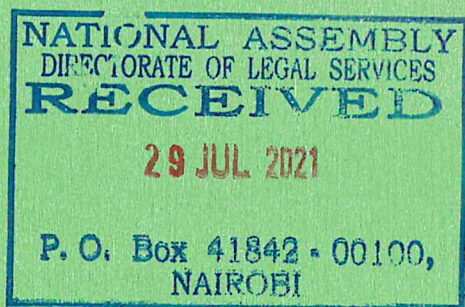
NATIONAL ASSEMBLY BILLS, 2021

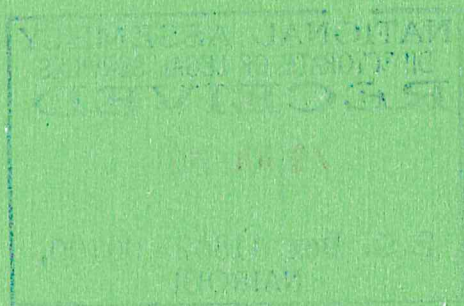
NAIROBI, 9th July, 2021

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THE UNIVERSITIES (AMENDMENT) BILL, 2021

A Bill for

AN ACT of Parliament to amend the Universities Act, 2012 and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be referred to as the Universities (Amendment) Act, 2021. Short title.

2. Section 2 of the Universities Act, 2012 (in this Act referred to as “the principal Act”) is amended by deleting the definition of “Trustees”. Amendment of section 2 of No. 42 of 2012.

3. Section 5A of the principal Act is amended in subsection (4)(b) by deleting the word “particular” appearing immediately after the words “of a” and substituting therefor the word “public”. Amendment of section 5A of No. 42 of 2012.

4. Section 10 of the principal Act is amended in subsection (1) by deleting the words “one or more” appearing immediately after the word “appoint” and substituting therefor the words “not more than two”. Amendment of section 10 of No. 42 of 2012.

5. Section 19 of the principal Act is amended in subsection (1) by inserting the following proviso immediately after paragraph (b)— Amendment of section 19 of No. 42 of 2012.

Provided that the Cabinet Secretary may, upon request by a University and if satisfied that it is appropriate in the circumstances to do so, extend the Letter of Interim Authority for such further period, not exceeding four years, as the Cabinet Secretary may determine.

6. Section 20 of the principal Act is amended in subsection (3) by deleting the words “in consultation with” appearing immediately after the words “Secretary may” and substituting therefor the words “upon recommendation of”. Amendment of section 20 of No. 42 of 2012.

7. Section 24 of the principal Act is amended by inserting the following new subsections immediately after subsection (2)— Amendment of section 24 of No. 42 of 2012.

(2A) The provisions of Part V of this Act shall apply with necessary modifications to the institutions established under this section.

(2B) A Charter granted to an institution under this section shall outline the conditions under which the institution shall operate and set out a clearly defined mandate with regard to specified academic programmes.

8. Section 25 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of
section 25 of
No. 42 of 2012.

(2) Where a declaration is made in respect of a public institution, it shall only apply where the institution is or was previously a National polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013, or is an institution with the requisite physical facilities and human resource appropriate for a technical university.

9. The principal Act is amended by repealing section 26 and replacing it with the following new section—

Repeal and
replacement of
section 26 of
No. 42 of 2012.

Universities in
counties.

26. The Commission shall ensure accessibility of public universities by all counties, giving priority to viability and equitability in the distribution of public universities across the country.

10. Section 28 of the principal Act is amended in subsection (4) by deleting the words “in at least three newspapers of national circulation” appearing immediately after the word “published” and substituting therefor the words “in at least two newspapers of national circulation and on the Commission’s website.”

Amendment of
section 28 of
No. 42 of 2012.

11. Section 35 of the principal Act is amended—

Amendment of
section 35 of
No. 42 of 2012.

(a) in subsection (1)(a)(ii) by deleting the words “and cause them to be published in the

Gazette” appearing immediately after the word “University” and substituting therefor the words “and submit them to the Cabinet Secretary for publication in the *Gazette*”;

- (b) by deleting subsection (1)(a)(v).

12. Section 36 of the principal Act is amended—

Amendment of
section 36 of
No. 42 of 2012.

- (a) by deleting subsection (2) and substituting therefor the following new subsection—

- (2) A person shall be qualified for appointment as a Chairperson or member of the Council if—

- (a) in the case of a chairperson, the person holds a Masters’ degree from a university recognized in Kenya and has at least fifteen years’ experience in a senior management position, or a bachelor’s degree from a university recognized in Kenya and has at least twenty years’ experience in a senior management position; or

- (b) in the case of a member, the person holds a Masters’ degree from a university recognized in Kenya and has at least ten years’ experience in a senior management position or a bachelor’s degree from a university recognized in Kenya and has at least fifteen years’ experience in a senior management position.

- (b) by deleting subsection (5) and substituting therefor the following new subsection—

- (5) The appointment of the members of the Council under subsection (1) shall be done at different times so as to ensure that their terms of office expire at different times.

13. The principal Act is amended by inserting the following new section immediately after section 36—

Insertion of new
section 36A in
No. 42 of 2012.

Cabinet secretary
may revoke
appointment etc.

36A. (1) As the designated appointing authority, the Cabinet Secretary shall have power to revoke any appointment to, or transfer or otherwise deploy the chairperson or any member of any Council.

(2) Councils enjoy and exercise delegated authority from the Cabinet Secretary who reserves the right to review or vacate a Council decision.

(3) A Council seeking to meet more than four times in a year must obtain written approval from the Cabinet Secretary.

14. Section 39 of the principal Act is amended—

Amendment of
section 39 of
No. 42 of 2012.

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

(a) in the case of a public university, by the Cabinet Secretary after a competitive process conducted in the manner provided in the Fourth Schedule.

(b) by deleting subsection (3) and substituting therefor the following new subsection—

(3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years upon satisfactory performance.

(c) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The provisions of this section shall apply with necessary modifications to the

appointment of Deputy Vice-Chancellors and Principals and Deputy Principals of University colleges and Constituent Colleges.

- (d) by inserting the following new subsection immediately after subsection (5)—

- (6) The Vice-Chancellor of a public university shall be supported in the execution of his or her duties by not more than three deputy vice-chancellors:

Provided that where at the commencement of this provision, any University has more than three Deputy Vice-Chancellors—

- (a) such Deputy Vice-Chancellors shall remain in office until the expiry of their terms of office after which appointments shall be made under this provision; and
- (b) the University shall, within six months after such commencement, amend its statutes so as to comply therewith.

15. Section 47 of the principal Act is amended in subsection (2) by deleting the word “four” appearing immediately after the word “Within” and substituting therefor the word “three”.

Amendment of
section 47 of
No. 42 of 2012.

16. Section 53 of the principal Act is amended—

Amendment of
section 53 of
No. 42 of 2012.

- (a) in subsection (3)(d) by deleting the word “Trustees” appearing immediately after the words “by the” and substituting therefor the word “Board”.
- (b) in subsection (4) by—
- (i) deleting the word “Trustees” appearing immediately after the words “by the” in

paragraph (a) and substituting therefor the word “Board”.

- (ii) deleting the word “Trustees” appearing immediately after the words “by the” in paragraph (b) and substituting therefor the word “Board”;
- (iii) deleting the word “Trustees” appearing immediately after the words “by the” in paragraph (c) and substituting therefor the word “Board”.

17. The principal Act is amended by inserting the following new section immediately after section 53—

Insertion of section 53A in No. 42 of 2012.

Administration of the Fund. **53A.** The Fund shall be administered by the Board established under section 54 in accordance with the provisions of the Fifth Schedule.

18. The principal Act is amended by repealing section 54 and replacing it with the following new section—

Repeal and replacement of section 54 of No. 42 of 2012.

Universities Fund Board. **54.** (1) There is established a Board to be known as the Universities Fund Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money and lending money;

- (d) entering into contracts; and
 - (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.
- (3) The Board shall be the successor to the Board of Trustees existing immediately before the commencement of this section, and all rights, duties, obligations, assets and liabilities of the Board of Trustees existing at such commencement shall be automatically and fully transferred to the Board.
- (4) The Board shall have all the powers necessary for the proper performance of its functions under this Act and, in particular but without prejudice to the generality of the foregoing, the board shall have power to—
- (a) formulate the policies of the Fund;
 - (b) carry out the objects and functions of the Fund;
 - (c) provide overall directions on effective coordination of operations of the Fund;
 - (d) receive donations or endowments on behalf of the Fund;
 - (e) borrow such monies from such sources and in such amounts as may be approved by the Cabinet Secretary with the concurrence of the National Treasury and to secure

such loans in such manner as they deem fit; and

- (f) invest any surplus funds not currently required for the purpose of the Fund in any investment of trust funds with power from time to time to vary or realize those investments.

(5) The Board shall consist of—

- (a) a chairperson being a person with at least ten years' experience in finance, education or investment, appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for Finance;
- (c) the Principal Secretary in the Ministry responsible for Education;
- (d) the Director of the Kenya Universities and Colleges Central Placement Service appointed under the Universities Act, 2012;
- (e) one person nominated competitively by the Kenya Private Sector Alliance;
- (f) one person nominated by the Federation of Kenya Employers;
- (g) one person nominated by public universities in a forum of chairpersons of the Councils of public universities convened by the Cabinet Secretary for that purpose;

- (h) one person nominated by private universities in a forum of chairpersons of the Councils of private universities convened by the Cabinet Secretary for that purpose; and
 - (i) an advocate of at least ten years' standing nominated by the Law Society of Kenya.
- (6) The Cabinet Secretary shall appoint the members referred to in subsection (5)(e), (f), (g), (h) and (i).
- (7) In making appointments under subsection (6) the Cabinet Secretary shall have regard to—
 - (a) the objects of the Fund;
 - (b) the need for balanced competencies among the members of the Board;
 - (c) gender equity; and
 - (d) the inclusion of persons with disabilities, minorities and other marginalized groups.
- (8) A member appointed to the Board under sub-section (5)(e), (f), (g), (h) and (i) shall hold office for a term of three years renewable once.
- (9) The functions of the Board shall be to—
 - (a) advise the Cabinet Secretary in matters relating to the funding for university education and related policy issues;

- (b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;
- (c) apportion funds allocated by the national government to public universities and issue conditional grants to private universities;
- (d) in consultation with the Chairpersons of Councils of public and private universities, propose and establish for approval by the Cabinet Secretary, the differentiated unit cost for the programmes offered by each subject area;
- (e) establish the minimum discipline differentiated remuneration for academic staff of public universities with the advice of the Salaries and Remuneration Commission, which shall be fair and competitive, and advise the Cabinet Secretary accordingly;
- (f) mobilize and receive funds for purposes of the Fund from the national government, donors, and from any other source;

and

- (g) exercise any other power for the better performance of its functions under this Act.

19. The principal Act is amended by repealing section 54A and replacing it with the following new section—

Repeal and replacement of section 54A in No. 42 of 2012.

Chief executive officer.

54A. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Board and whose terms and conditions of service shall be specified in the instrument of appointment.

(2) A person shall be qualified for appointment as a Chief Executive Officer if such person-

- (a) is a Kenyan citizen;
- (b) holds a masters' degree or its equivalent from a university recognized in Kenya; and
- (c) has at least ten years' experience in financial management.

(3) The Chief Executive Officer shall be the secretary to the Board and responsible to the Board for the day to day management of the affairs and staff of the Board.

20. The principal Act is amended by repealing section 54B and replacing it with the following new section—

Repeal and replacement of section 54B in No. 42 of 2012.

Staff of the
Board.

54B. The Board may employ such other officers and staff as may be necessary for the discharge of its mandate and performance of its function under this Act:

Provided that every person who at the commencement of this section is an employee of the Board of Trustees existing immediately before such commencement and not being under notice of dismissal or resignation shall become an employee of the Board under this Section 54A on the same or improved terms and conditions.

21. Section 55 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of
section 55 of
No. 42 of 2012.

(3) The Service shall be governed by the Placement Board which shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for higher education;
- (c) the Principal Secretary in the Ministry responsible for finance;
- (d) the Secretary of the Commission;
- (e) the Chief Executive of the TVETA; and
- (f) six other persons appointed by the Cabinet Secretary, being—
 - (i) one Vice-Chancellor representing public universities;
 - (ii) one Vice Chancellor representing private universities;
 - (iv) two members with experience in management of education; and
 - (v) the Director, who shall be an *ex-officio* member.

22. Section 56 of the principal Act is amended by inserting the following new subsections immediately after subsection (3)—

Amendment of section 56 of No. 42 of 2012.

- (4) Each participating university shall submit a list of the government and self-sponsored students enrolled in the university to the Placement Board, within thirty days from the date of closure of the enrollment of students to the University.
- (5) The Placement Board shall submit the information received under subsection (4) to the Universities Fund Board within fourteen days of receipt thereof.

23. The principal Act is amended by repealing section 61A.

Repeal of section 61A of No. 42 of 2012.

24. The principal Act is amended by repealing the Second Schedule and replacing it with the following new Schedule—

Repeal and replacement of Second Schedule to No. 42 of 2012.

SECOND SCHEDULE [section 38(1)]**PROCEDURE FOR THE APPOINTMENT OF THE
CHANCELLOR OF A PUBLIC UNIVERSITY**

1. Where a vacancy occurs in the office of Chancellor of a public university, the Senate of that university shall, in consultation with the respective alumni association, identify three suitable persons for appointment.

2. The Senate shall forward the names of the nominees to the Cabinet Secretary for onward transmission to the President, who shall select one of the persons so identified for appointment as Chancellor.

3. The appointment of Chancellor by the President shall be by notice published in the Gazette.

25. The principal Act is amended by repealing the Third Schedule.

Repeal of Third
Schedule of No.
42 of 2012.

26. The principal Act is amended by inserting the following new Schedules in proper numerical sequence—

Insertion of new
Schedules in
No. 42 of 2012.

FOURTH SCHEDULE [section

39(1)(a)]

**PROCEDURE FOR THE RECRUITMENT AND
APPOINTMENT OF VICE-CHANCELLORS,
DEPUTY VICE-CHANCELLORS, PRINCIPALS AND
DEPUTY PRINCIPALS**

1. Where a vacancy occurs in the Office of the Vice-Chancellor or the Deputy Vice-Chancellor of a public university or Principal or deputy Principal of a Constituent College, the Cabinet Secretary shall constitute a selection panel to conduct the recruitment.

2. (1) The selection panel referred to in subsection (2) shall comprise of persons appointed by the Cabinet Secretary as follows—

- (a) a chairperson being a scholar with at least ten years' experience in leadership and management of public or private institutions;
- (b) a representative of the Council;
- (c) a representative of the Principal Secretary of the Ministry for the time being responsible for university education;
- (d) two representatives, being one man and one woman, nominated by the respective University Senate;
- (e) one person to represent the body currently recognized as representing the interests of the private sector; and
- (f) two persons with a background in human resource and public finance management respectively.

2. Appointments under this paragraph shall be by notice in the *Gazette*.

3. The selection panel may regulate its own procedure.

4. The selection panel shall—

- (a) advertise for the vacancies and publicize the applicants and shortlisted candidates;**
- (b) conduct interviews of the shortlisted candidates;**
- (c) identify three qualified applicants for each vacant position; and**
- (d) forward names of the qualified applicants under paragraph (c) to the Cabinet Secretary.**

5. The Cabinet Secretary shall within fourteen days of receipt of the names forwarded under paragraph 4 (d) appoint a candidate from any of the three qualified applicants.

6. The selection panel shall stand dissolved after the appointment of a candidate under paragraph 5.

FIFTH SCHEDULE [section 53A]

ADMINISTRATION OF THE FUND

1. The Board may invest any unutilized balances in the Fund in such manner as the trustees may lawfully invest public funds.
2. Despite paragraph (1), the Board shall not invest more than twenty percent of the unutilized balances in the Fund in administrative costs or fixed capital investments.
3. The Board shall in each financial year, disburse funds without undue delay to a participating university for allocation to government-sponsored students.
4. For avoidance of doubt, any delay occasioned by the Board in disbursing the funds to a participating university shall not prejudice the provision of services to the proposed beneficiaries of such funds.
5. The Board shall notify each participating university in each financial year of the funds that have been apportioned to the university in respect of each student, the proposed date of disbursement of the funds and the total disbursements to be made to the university.
6. The Board shall apportion funds to a participating university in each financial year in addition to any disbursed funds that had been allocated to the participating university in the previous financial year.
7. Every university shall submit a report to the Board by the 30th April of each year on the status of the academic progress of the beneficiaries of the funds apportioned to the university by the Board.
8. The Board shall prescribe the form of the report to be submitted under paragraph (7) which shall include information on the amount apportioned to the university by the Board and the number of students who have received funds from the university.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The main object of this Bill is to amend the Universities Act in the provisions relating to the appointment of the members of University Councils, and the governance of universities, and also to make new provisions with respect to the Universities Fund.

Clause 2 of the Bill proposes to amend section 10 of the Act to limit the number of Deputy Secretaries of the Commission of University Education to two in order to streamline the management of the Commission.

Clause 3 of the Bill proposes to amend section 20 of the Act to empower that the Commission to recommend suitable institutions for declaration as constituent colleges of universities.

Clause 4 of the Bill proposes to amend section 24 of the Act to regulate the institutions offering specialized degrees.

Clause 5 of the Bill proposes to amend section 25 of the Act to provide for the declaration of institutions of the stature of National Polytechnics to be technical universities.

Clause 6 of the Bill proposes to replace section 26 of the Act in order to ensure attention to viability in the establishment of universities at county level.

Clause 7 of the Bill proposes to amend section 28 of the Act to allow the Commission to publish the names of accredited foreign universities on the Commission's website and two newspapers of national circulation to reduce costs.

Clause 8 of the Bill proposes to amend section 35 of the Act to clarify the procedure for the publication of university statutes through the Cabinet Secretary, and to harmonize the provisions on the appointment of certain members of the university administration.

Clause 9 proposes to amend section 36 of the Act to adjust the qualifications for appointment of chairpersons and members of university councils and to provide for staggered appointments for purposes of continuity.

Clause 10 of the Bill seeks to introduce a provision to empower the Cabinet Secretary with regard to the appointment and deployment of members of university councils.

Clause 11 of the Bill proposes to amend section 39 of the Act to harmonize the procedure for appointment of Deputy Vice-Chancellors and Principals and deputy principals of university colleges and constituent

colleges. It also seeks to limit the number of deputy vice chancellors to three.

Clause 12 of the Bill proposes to amend section 47 of the Act on the submission of accounts to the Auditor-General after the close of the financial year to harmonize them with the Public Finance Management Act, 2012.

The Bill also proposes to amend the Act in the provisions relating to the Universities Fund, its establishment and management and to restructure it for optimal achievement of its intended objectives.

Clause 20 of the Bill proposes to amend the Act to remove from the Act the formats for the Charter and the Letter of Interim Authority for a University in order to afford greater flexibility in their formulation.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative power or limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion the expenditure of public funds which shall be provided in the estimates.

Dated the 30th June, 2021.

AMOS KIMUNYA,
Leader of the Majority Party.

Section 2 of No. 42 of 2012 which it is proposed to amend—

Interpretation

2. In this Act, unless the context otherwise requires—

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

“academic staff” means any person appointed to teach, train or to do research at a university and any other employee designated as such by the university council;

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

“alumni” means a member of the convocation of a university;

“Board” means the Universities Funding Board established under section 54;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to university education;

“Charter” means the Charter granted to a university under sections 19, 24 or 25;

“Commission” means the Commission for University Education established under section 4;

“constituent college” means a constituent college of a university established under this Act;

“differentiated unit cost” means the annual per student cost of mounting a particular degree programme;

“discipline differentiated remuneration” means academic staff remuneration based on programme discipline clusters;

“distance learning” means the mode of delivering education through use of print, audio-visual, electronic or other technical media;

“foreign university” means a university legally established in a country outside Kenya, which intends to offer university education in Kenya;

“foreign university campus” means an extension of a foreign university, set up by the university pursuant to its statutes and established in accordance with section 28 of this Act;

“Fund” means the Universities Fund established under section 53;

“institution” means a public or private institution or facility used or to be used wholly or partly, for the conduct of university education;

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

“Open University” means the Open University established under section 24;

“Placement Board” means the Placement Board established under section 55(3);

“private university” means a university which is not established or maintained out of public funds;

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

“public university” means a university established and maintained out of public funds;

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

“Senate” means the senate of a university or any other equivalent body;

“sponsor” means any person including the government proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;

“stakeholder” means a person or group of persons involved in an education, training and research institution and with vested interests for the benefit of such an institution;

“statutes” means the statutes of a university made by a university council;

“student” means any person registered in a university or an institution offering university education;

“student with special needs” means a student with motor, hearing or visual or other impairment which requires adaptive support to access education;

“technical university” means a university, established in accordance with section 25 of this Act;

“Trustees” means the Board of Trustees of the Fund;

“TVET Funding Board” and “TVETA” shall have the meanings assigned to them under the Technical and Vocational Education and Training Act, 2012;

“university” means a university established in accordance with section 13 of this Act;

“university campus” means a extension of a university set up by the university pursuant to its statutes and established in accordance with section 20 of this Act;

“University Council” means the governing body of a University;

“visitation” means the visitation of a university directed by the Chancellor under section 38(3)(b).

(2) Notwithstanding subsection (1), until after the first general elections under the Constitution, the expressions “Cabinet Secretary” and “Principal Secretary” shall be construed to mean “Minister” and “Permanent Secretary” respectively.

Section 5A of No. 42 of 2012 which it is proposed to amend—

Conflicts with other Acts in approval of programmes

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

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

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

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

- (a) professional bodies and associations to carry out inspection of universities on its behalf;

- (b) the Auditor-General to offer the Commission professional opinion on management and financial positions of a particular university.

(5) A person who without the authority of the Commission under this Act purports to license, accredit, recognise, audit, inspect, index students or collect a fee or a charge from a university or a student commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding two years or both.

Section 10 of No. 42 of 2012 which it is proposed to amend—

Deputy Secretary

10. (1) The Commission shall appoint one or more Deputy Commission Secretaries who shall, under the general authority of the Commission Secretary, exercise such powers and perform such duties as may be assigned by the Secretary.

(2) A Deputy Commission Secretary shall hold office on such terms and conditions as may be specified in the instrument of appointment.

Section 19 of No. 42 of 2012 which it is proposed to amend—

Grant or refusal to grant a Charter

19. (1) The Cabinet Secretary shall consider the report and the recommendations submitted under section 18 and may—

- (a) if satisfied that the application meets the requirements for the establishment of a university, recommend to the President the grant of a Charter, either in the form of the draft Charter submitted with the application or in such other form as the Commission may consider appropriate;
- (b) extend the Letter of Interim Authority for a further and final period of four years; or
- (c) if satisfied that the proposed university does not meet the requirements for establishment of a university, reject the application.

(2) Where the Cabinet Secretary rejects an application under paragraph (1)(c)—

- (a) the Cabinet Secretary shall furnish the applicant with the reasons for the rejection of the application;
- (b) the Letter of Interim Authority issued under this Act shall, be revoked within one year;

Provided that the applicant may submit a fresh application in accordance with this Act; and

- (c) the Cabinet Secretary may, in consultation with the Commission appoint such person or persons to administer and manage the university for the better protection of the interests of the students and staff of the university as provided for in the regulations.

(3) Subsection (2) shall apply mutatis mutandis where a Letter of Interim Authority is revoked under section 17.

Section 20 of No. 42 of 2012 which it is proposed to amend—

Effect of a Charter

20. (1) A university granted a Charter in accordance with section 19—

- (a) shall be a body corporate, and as such shall continue the activities of the university as undertaken under the Letter of Interim Authority, including the employment of staff, except where activity is expressly altered under the Charter;
- (b) shall mobilize academic resources;
- (c) may develop its new academic programmes for approval by the Commission in accordance with this Act;
- (d) may establish campuses and colleges which must conform to standards established by regulations made under this Act; and
- (e) may award—
 - (i) degrees, including postgraduate degree and honorary degrees;
 - (ii) diplomas, including postgraduate diplomas; and
 - (iii) other academic certificates.

(2) Notwithstanding the generality of subsection (1), colleges and campuses of universities shall not share premises with incompatible businesses.

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

(3) The Cabinet Secretary may, in consultation with the Commission, by order published in the Gazette, establish or declare an institution of learning or higher education or other training establishment to be a constituent college of a university.

Section 24 of No. 42 of 2012 which it is proposed to amend—

Establishment of specialized degree awarding institutions

24. (1) The President, on the recommendation of the Commission through Cabinet Secretary, and with the approval of Parliament may by award of Charter, establish—

- (a) specialized degree-awarding or research institutions whose mandate shall be of strategic national importance; and
- (b) a national Open University as a specialized university under this section, to offer university programmes through distance and e-learning mode.

(2) The institutions established under this section shall be prioritized by the Commission with respect to accreditation and the development of the governing instruments.

(3) Despite subsection (1), the President may, on the recommendation of the Commission through the Cabinet Secretary, and on the advice of the National Security Council, establish a specialized degree awarding institution specializing in national security issues.

(4) The provisions of Part V of this Act shall apply to an institution established under this section with such modifications as may, with the approval of the Cabinet Secretary and the Commission, be specified in the respective Charter.

(5) A Charter granted to an institution established under this section shall stipulate the conditions under which the institution shall operate, and a clearly defined mandate with regard to specified academic programmes.

Section 25 of No. 42 of 2012 which it is proposed to amend—

Declaration of Technical Universities

25. (1) The President may, on the recommendation of the Cabinet Secretary, declare an institution to be a technical university subject to such conditions, standards and guidelines as may be specified by the Commission.

(2) Where a declaration under this section is made with respect to a public institution, it shall only apply where such institution is a National Polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013.

Section 26 of No. 42 of 2012 which it is proposed to amend—

Universities in Counties

26. The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.

Section 28 of No. 42 of 2012 which it is proposed to amend—

Accreditation of foreign universities

28. (1) A university established outside Kenya which intends to offer university education in Kenya, shall apply to the Commission for accreditation in accordance with the provisions of this Act.

(2) A foreign university may, subject to the provisions of this Act, enter into an arrangement with an institution in Kenya for purposes of offering its programmes or joint programmes of instruction in Kenya, with the prior approval of the Commission.

(3) Any foreign university approved under subsection (2) must first submit proof of accreditation from its country of origin to undertake university education in Kenya.

(4) The Commission shall, at the beginning of each year and thereafter each quarter of the year, cause to be published in at least three newspapers of national circulation, the list of universities accredited to undertake university education in Kenya.

(5) Any person who purports to offer a degree through a university that is not accredited commits an offence and shall be liable upon conviction, to a fine of not less than ten million shillings, or to imprisonment for a term of not less than three years, or to both.

Section 35 of No. 42 of 2012 which it is proposed to amend—

Governing organs of a university

35. (1) In addition to the provisions of its Charter, a university shall establish the following organs of governance or their equivalent—

(a) a Council, which shall—

(i) employ staff;

(ii) approve the statutes of the University and cause them to be published in the Kenya Gazette;

(iii) approve the policies of the University;

(iv) approve the budget;

- (v) in the case of public universities, appoint Vice Chancellor, Deputy Vice Chancellors and Principals and Deputy Principals of Constituent Colleges, in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission; and
 - (vi) undertake other functions set out under this Act and the Charter.
- (b) the Senate, which shall be in charge of all academic matters of the university and shall undertake the functions assigned to it in the Charter of the university.
- (c) the Management Board, which shall—
- (i) be responsible for implementation of the policies of the university;
 - (ii) assist in the day-to-day management of the university; and
 - (iii) undertake such other functions as shall be set out in the Charter.

(2) Notwithstanding the generality of the provisions of subsection (1), the Council of a private university shall be appointed in accordance with provisions of the Charter, and such a university may, with the approval of the Commission, establish additional governance organs, including a Board of Trustees or its equivalent, as the sponsor may deem appropriate.

(3) A Board of Trustees established pursuant to subsection (2) or the sponsor of a private university shall, in addition to any other functions set out in the charter of the university—

- (a) appoint members of the University Council;
- (b) raise funds for the benefit of the university in accordance with any written law or financing arrangement under section 51A;
- (c) promote the objects of the university; and
- (d) appoint the university Chancellor.

Section 36 of No. 42 of 2012 which it is proposed to amend—

Council of a public university

36. (1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—

- (a) chairperson;

- (b) the Principal Secretary in the Ministry for the time being responsible for the university education;
- (c) the Principal Secretary in the Ministry for the time being responsible for Finance;
- (d) five members appointed by the Cabinet Secretary through an open process in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary; and
- (e) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an *ex officio* member of the Council.

(1A) Notwithstanding subsection (1) the Vice-Chancellor of a public university shall be an *ex-officio* member of the councils of the constituent colleges of that university.

(2) The provisions relating to the qualifications of the chairperson and members of the Commission in section 7 shall apply, with necessary modifications, to the chairperson and members appointed under subsection (1)(d).

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

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

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

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

Section 39 of No. 42 of 2012 which it is proposed to amend—

The Vice-Chancellor

39. (1) The Vice-Chancellor of a university shall be appointed—

- (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council; and
- (b) in the case of a private university, by the respective university Council in accordance with the provisions of the Charter.

(1A) The qualifications for appointment as a Vice-Chancellor of a public university shall be as prescribed in regulations.

(2) The Vice-Chancellor shall be the chief executive of the university and shall—

- (a) be the academic and administrative head of the university;
- (b) have the overall responsibility for the direction, organization, administration and programmes of the university; and
- (c) have such responsibilities and duties as may be provided for in the Charter.

(3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years.

(4) The term of the Vice-Chancellor of a private university shall be as provided in the Charter.

(5) The provisions of this section shall apply *mutatis mutandis* to the Principal of a constituent college.

Section 47 of No. 42 of 2012 which it is proposed to amend—

Accounts and audit

47. (1) A public university shall cause to be kept all proper books of records of accounts of the income, expenditure and the assets of the university.

(2) Within four months from the end of each financial year, a public university shall submit to the auditor general corporations the accounts of the university together with—

- (a) a statement of the income and expenditure of the university during the financial year; and
- (b) a balance sheet of the university on the last day of the year.

(3) The accounts of a public university shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (No. 12 of 2003).

Section 53 of No. 42 of 2012 which it is proposed to amend—

Establishment of Fund

53. (1) There shall be established a Fund to be known as the Universities Fund.

(2) The object and purpose of the Fund shall be to provide funds for financing universities.

(3) There shall be paid into the Fund—

- (a) monies provided by Parliament;
- (b) such sums of money as may be received by the Board in the form of donations;
- (c) such sums of money as may be specifically designated for the Fund by the Board out of its own Funds;
- (d) income generated by investments made by the Trustees; and
- (e) endowments, grants and gifts from whatever source designated for the Fund.

(4) There shall be paid out of the Fund—

- (a) any expenditure approved by the Trustees for the funding of the public universities;
- (b) any expenditure approved by the Trustees for conditional grants and loans to private universities; and
- (c) any expenditure authorized by the Trustees to be incurred in connection with the administration of the Fund.

Section 54 of No. 42 of 2012 which it is proposed to amend—

Board of Trustees

54. (1) The Fund shall be managed by a Board of Trustees which shall consist of nine members appointed by the Cabinet Secretary as follows—

- (a) a chairperson who has knowledge and experience in matters related to finance, investment and fundraising;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Principal Secretary in the Ministry for University Education;
- (d) six persons who have proven knowledge and experience in Financial matters of which at least two and not more than three will be of the same gender.

(2) In appointing the members referred to in subsection (1)(d) the Cabinet Secretary shall have regard to—

- (a) the objects of the Fund;
- (b) the need for balanced competencies among the Trustees;
- (c) gender equity; and
- (d) the inclusion of persons with disabilities, minorities and other marginalized groups.

(3) The provisions relating to the appointment of the members of the Commission as set out in section 6 shall apply, *mutatis mutandis*, to the Trustees.

(4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to—

- (a) advise the Cabinet Secretary in matters of university education funding and related policy issues;
- (b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;
- (c) apportion funds to public universities and issuance of conditional grants to private universities in accordance with criteria established;
- (d) in consultation with the Chairpersons of Councils of public universities, propose and establish for approval by the Cabinet Secretary and the Auditor-General the maximum differentiated unit cost for the programmes offered;
- (e) establish the minimum discipline differentiated remuneration for academic staff of universities, which shall be fair and globally competitive, and advise the Government accordingly;
- (f) mobilize and receive funds for purposes of the Fund from the Government, donors, and from any other source; and
- (g) exercise any other power for the better performance of its functions under this Act.

(5) The Trustees may invest any unutilized balances in the Fund in such manner as trustees may lawfully invest public funds.

(6) *Deleted by Act No. 48 of 2016, s. 20.*

(7) *Deleted by Act No. 48 of 2016, s. 20.*

Section 54A of No. 42 of 2012 which it is proposed to amend—

Director of the Fund

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

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

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

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

Section 54B of No. 42 of 2012 which it is proposed to amend—

Staff of the Fund

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

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

Section 55 of No. 42 of 2012 which it is proposed to amend—

Establishment of a Kenya Universities and Colleges Central Placement Service

55. (1) There shall be a Service to be known as the Kenya Universities and Colleges Central Placement Service.

(2) The Service shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) purchasing, disposing and disposing of movable and immovable property; and

- (c) doing all such other things or acts as may be done by a body corporate.

(3) The Service shall be governed by the Placement Board which shall consist of thirteen members appointed by the Cabinet Secretary as follows—

- (a) a chairperson;
- (b) the Secretary of the Commission;
- (c) the chief executive of the Higher Education Loans Board;
- (d) the chief executive of the TVET Funding Board;
- (e) the chief executive of the TVETA;
- (f) two Vice-Chancellors representing Public Universities;
- (g) two Vice-Chancellors representing Private Universities;
- (h) two representatives of the Kenya Association of Technical Institutions;
- (i) the Principal Secretary in the Ministry responsible for higher education; and
- (j) the Principal Secretary in the Ministry responsible for finance.

(4) The Service shall establish a Secretariat in such manner as it may deem appropriate, which shall be at such place as the Service shall determine.

(5) The Placement Board shall in the performance of its functions under this Act uphold equity and balanced access to University and College education and develop suitable criteria to promote affirmative action, and other strategies as may be approved by the Government.

Section 56 of No. 42 of 2012 which it is proposed to repeal—

Functions of Placement Board

56. (1) The functions of the Board shall be to—

- (a) co-ordinate the placement of the government sponsored students to universities and colleges;
- (b) disseminate information on available programmes, their costs, and the areas of study prioritized by the Government;
- (c) collect and retain data relating to university and college placement;
- (d) advise the Government on matters relating to University and college student placement;

(e) develop career guidance programmes for the benefit of students; and

(f) perform any other function assigned to it under this Act.

(2) The Placement Board shall in the performance of its functions promote equity and access to university and college education, by among other things, developing criteria for affirmative action for the marginalized, the minorities and persons with disabilities.

(3) The placement Board shall establish criteria to enable students access the courses for which they applied taking into account the students' qualifications and listed priorities.

Section 61A of No. 42 of 2012 which it is proposed to repeal—

Form of instrument of accreditation

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

The Second Schedule to No. 42 of 2012 which it is proposed to amend—

SECOND SCHEDULE

[Section 38(1), Act No. 18 of 2018, Sch.]

1. Where a vacancy occurs in the office of the Chancellor of a public university, the senate of that university shall, in consultation with key stake holders, identify suitable persons for appointment.
2. Five names shall be proposed to the Senate and submitted to the Public Service Commission for shortlisting and identification of three suitable candidates, ranked in order of merit.
3. The Public Service Commission shall forward, the names of the top three candidates to the Cabinet Secretary for onward transmission to the President, who shall pick one of the persons for appointment as the Chancellor.
4. The appointment of the Chancellor by the President shall be by notice published in the *Gazette*.

The Third Schedule to No. 42 of 2012 which it is proposed to repeal—

THIRD SCHEDULE

[Section 61A, Act No. 48 of 2016, s. 30.]

LETTER OF INTERIM AUTHORITY

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

Signed

Cabinet Secretary.

CHARTER

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

Signed

Cabinet Secretary.