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THE KENYA NATIONAL QUALIFICATIONS FRAMEWORK ACT

CAP. 214

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Kenya National Qualifications Framework Act

Cap. 214

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Kenya National Qualifications Framework Act (Cap. 214)
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KENYA NATIONAL QUALIFICATIONS FRAMEWORK ACT

CAP. 214

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An Act of Parliament to establish the Kenya National Qualifications Authority; to provide for the development of a Kenya Qualifications Framework and for connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya National Qualifications Framework Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"accreditation" means procedure by which institutions offering education and training are formally recognized as having met the standards set out in various laws of Kenya;

"Authority" means the Authority established under section 6(1);

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to education;

"Council" means the Council established under section 10(1);

"Director-General" means the Director-General of the Authority appointed under section 13(1); and

"National Qualifications Framework" means the national system for the articulation, classification, registration, quality assurance, and the monitoring and evaluation of national qualifications as developed in accordance with this Act;

"qualifications" means qualification in education and training as recognized by the Authority in accordance with this Act;

"training" means any activity aimed at imparting skills, knowledge, competences, values, attitudes and information towards assisting the recipient improve their performance.

3. Guiding Principles

The guiding principles for the framework shall be, among others, to promote access to and equity in education, quality and relevance of qualifications, evidence based competence, and flexibility of access to and affordability of education, training assessment and qualifications.

4. Objects of the Act

The object of this Act is to—

(a) establish the Kenya National Qualifications Authority;

(b) establish standards for recognising qualifications obtained in Kenya and outside Kenya;

(c) develop a system of competence, life-long learning and attainment of national qualifications;

(d) align the qualifications obtained in Kenya with the global benchmarks in order to promote national and trans-national mobility of workers;

(e) strengthen the national quality assurance systems for national qualifications; and

(f) facilitate mobility and progression within education, training and career paths.

5. Award of national qualification

(1) An institution shall not award national qualifications unless such an institution is—

(a) recognised or accredited in accordance with this Act; or

(b) a university accredited in accordance with the Universities Act (Cap. 210).

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred thousand shillings or to both.

Part II – THE KENYA NATIONAL QUALIFICATIONS AUTHORITY

6. Establishment of the Authority

(1) There is established an authority known as the Kenya National Qualifications Authority.

(2) The Authority 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 and disposing of movable and immovable property; and

(c) doing or performing such other things or acts as may be necessary for the proper performance of its functions under this Act as may be properly performed by a body corporate.

7. Headquarters of the Authority

(1) The headquarters of the Authority shall be in Nairobi.

(2) The Authority may establish such other offices in Kenya as the Council may deem necessary.

8. Functions of the Authority

The functions of the Authority shall be to—

(a) co-ordinate and supervise the development of policies on national qualifications;

(b) develop a framework for the development of an accreditation system on qualifications;

(c) develop a system for assessment of national qualifications;

(d) develop and review interrelationships and linkages across national qualifications in consultation with stakeholders, relevant institutions and agencies;

(e) maintain a national database of national qualifications;

(f) publish manuals, codes and guidelines on national qualifications;

(g) advise and support any person, body or institution which is responsible for the award of national qualifications;

(h) publish an annual report on the status of national qualifications;

(i) set standards and benchmarks for qualifications and competencies including skills, knowledge, attitudes and values;

(j) define the levels of qualifications and competencies;

(k) provide for the recognition of attainment or competencies including skills, knowledge, attitudes and values;

(l) facilitate linkages, credit transfers and exemptions and a vertical and horizontal mobility at all levels to enable entry, re-entry and exit; and

(m) conduct research on equalization of qualifications;

(n) establish standards for harmonization and recognition of national and foreign qualifications;

(o) build confidence in the national qualifications system that contributes to the national economy;

(p) provide pathways that support the development and maintenance of flexible access to qualifications;

(q) promote the recognition of national qualifications internationally; and

(r) perform such other functions as may be provided under this Act.

9. Powers of the Authority

(1) The Authority shall have all the power necessary for the performance of its functions under this Act.

(2) Despite subsection (1), the Authority shall have power to—

(a) manage, control and administer the assets of the Authority in such manner and for such purposes that promote the purposes for which the Authority is established;

(b) receive gifts, grants, donation, endowments or any other monies made to, and in respect of, the Authority and make any disbursements from such monies in accordance with this Act;

(c) enter into association with such other bodies or organisations in Kenya or outside Kenya as it may consider appropriate to promote the purposes for which the Authority is established;

(d) open and maintain a bank account or account for the funds of the Authority; and

(e) offer services to any person upon such terms as the Council may determine.

10. The Council

(1) The management of the Authority shall vest in a Council which comprises of—

(a) a Chairperson appointed by the Cabinet Secretary;

(b) the Principal Secretary responsible for matters relating to education;

(c) the Principal Secretary responsible for matters relating to labour;

(d) the Principal Secretary responsible for matters relating to finance;

(e) six persons appointed by the Cabinet Secretary as follows—

(i) one person representing the Commission for University Education;

(ii) one person representing the Technical and Vocational Education and Training Authority;

(iii) one person representing the Education Standards and Quality Assurance Council;

(iv) one person nominated by an organization representing professional associations in Kenya;

(v) one person nominated by the Federation of Kenya Employers;

(vi) one person nominated by an organization representing workers unions; and

(f) the Director-General who shall be the secretary.

(2) The members referred to in subsection (1)(b), (c) and (d) may designate in writing an officer in the respective Ministry to sit in the Council.

(3) At the first meeting of the Council, the members shall elect one of their members to be the vice-Chairperson.

(4) In the absence of the Chairperson and the vice-Chairperson, the members shall elect one of their members to preside at that meeting.

(5) The Cabinet Secretary shall ensure that not more than two-thirds of the members of the Council are of the same gender and that the Council reflects the regional and ethnic diversity of Kenya.

(6) The Chairperson and members appointed under section 10(1)(e) shall serve for a term of three years and shall be eligible for re-appointment for one further term.

11. Vacancy in the Council

(1) The office of a member appointed under section 10(1)(e) falls vacant, if that member—

(a) is absent from three consecutive meetings of the Council without good cause;

(b) resigns by notice in writing to the Cabinet Secretary;

(c) is adjudged bankrupt;

(d) violates any of the provisions of the Constitution or any other law;

(e) is unable to perform the functions of the office by reason of prolonged physical or mental incapacity; or

(f) dies.

(2) Where there is a vacancy in the Council, the Cabinet Secretary, subject to the provisions of this Act, shall appoint another person to fill the vacancy for the remaining period of the term of such member.

12. Procedure of the Council

The Schedule shall apply with respect to the conduct of the business and affairs of the Council but subject thereto, the Council shall regulate its own procedure.

13. Director-General

(1) The Council shall appoint a qualified person to be the Director-General of the Authority through an open and competitive process.

(2) A person is qualified to be appointed as the Director- General, if that person—

(a) holds a masters degree from a university recognised in Kenya;

(b) has at least ten years professional experience in the management of a public or private institution; and

(c) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General shall be—

(a) the chief executive officer of the Authority;

(b) responsible for the day-to-day management of the Authority;

(c) the custodian of the records of the Authority; and

(d) responsible for—

(i) implementing the decisions of the Council;

(ii) facilitating, co-ordinating and ensuring the performance of the functions of the Authority;

(iii) implementing, with the approval of the Council, programmes of work for performance of the functions of the Authority;

(iv) the general discipline of the staff of the Authority; and

(v) the performance of such other duties as may be assigned by the Council, this Act or any other written law.

(4) The Director-General shall hold office for a period of five years and shall be eligible for appointment for one further period of five years.

(5) The Council may only remove the Director-General from office for—

(a) inability to perform the functions of the office because of physical or mental incapacity;

(b) gross misconduct;

(c) bankruptcy; or

(d) incompetence.

(6) Before the Council removes a Director-General from office, the Council shall—

(a) inform the Director-General in writing of the intended removal and the reasons therefor; and

(b) give the Director-General an opportunity to challenge the intended removal in person or represented by an advocate.

(7) Where the office of the Director-General falls vacant, the Council shall appoint a senior officer of the Authority to serve in an acting capacity until the vacancy is filled.

14. Staff of the Authority

(1) The staff of the Authority shall comprise of—

(a) such professional, technical, administrative and support staff as may be necessary for the performance of the Authority who shall be appointed by the Council; and

(b) such public officers as may be seconded to the Authority by the Public Service Commission upon the request of the Council.

(2) In appointing the staff of the Authority, the Council shall ensure that—

(a) not more than two-thirds of the appointees are of the same gender;

(b) the appointments reflect the regional and ethnic diversity of Kenya; and

(c) persons with disabilities are afforded adequate and equal opportunities in the appointments.

15. Delegation by the Council

Subject to this Act, the Council may, generally or in any particular case, delegate to a member of the Council or to an employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions of the Authority.

16. Code of Conduct

The members of the Council, the Director-General and the staff of the Authority shall subscribe to a code of conduct as may be prescribed by the Cabinet Secretary in consultation with the Council.

17. Seal of the Authority

(1) The common seal of the Council shall be kept in the custody of the Director-General, and shall not be used except upon the order of the Council.

(2) The common seal of the Council, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Council under this section shall be presumed to have been duly given.

(3) The common seal of the Council shall be authenticated by the signature of the Chairperson of the Council, or the person acting as the Chairperson at the time and the Director-General.

(4) In the absence of either the Chairperson or the Director-General, the Council shall nominate one member of the Council to authenticate the seal of the Council, in any particular matter, on behalf of either the Chairperson or the Director-General, as the case may be.

(5) A deed, instrument, contract or other document executed in accordance with this section binds the Authority.

18. Signification of documents

All documents, other than those required to be under seal, made on behalf of the Council shall be signified by the hand of the Chairperson, or any other member authorised by the Council, or the Director-General.

Part III – FINANCIAL PROVISIONS

19. Funds of the Authority

The funds of the Authority shall consists of—

(a) monies payable to the Authority appropriated by Parliament for the purposes of the Authority;

(b) monies payable to the Authority in the course of the exercise of its powers or in the performance of its functions;

(c) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or in the performance of its functions under this Act; and

(d) such monies as may be lawfully granted, donated or lent to the Authority with the approval of the Cabinet Secretary and the Cabinet Secretary for the time being responsible for matters relating to finance.

20. Financial year

The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

21. Annual estimates

(1) The Council shall cause to be prepared estimates of the revenue and expenditure of the Authority for each year at least three months before the commencement of each financial year.

(2) The estimates shall provide for the estimated expenditure of the Authority for the financial year and in particular, the—

(a) payment of salaries, allowances and other charges in respect of the staff of the Authority;

(b) payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;

(c) maintenance of the assets of the Authority; and

(d) creation of such reserves to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings, installations or equipment of the Authority and in respect of such other matters as the Authority may think fit.

(3) The Council shall approve the estimates before the commencement of the relevant financial year and submit the estimates to the Cabinet Secretary for approval.

(4) Where the Cabinet Secretary has given approval on the estimates submitted by the Authority, the Council shall not alter the sum provided for in the estimates without the approval of the Cabinet Secretary.

(5) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3).

22. Accounts and audit

(1) The Council shall cause to be kept and maintained proper books of account of the income, expenditure, assets and liabilities of the Authority.

(2) The Authority shall submit to the Auditor-General, within three months after the end of the financial year, the accounts of the Authority in respect of that financial year which shall include a statement of the—

(a) income and expenditure of the Authority during that financial year; and

(b) assets and liabilities of the Authority as at the final day of that financial year.

(3) The accounts of the Authority shall be audited in accordance with the Public Audit Act (Cap. 412B).

Part IV – MISCELLANEOUS

23. Protection from liability

A member of the Council, or an officer, employee or agent of the Authority or any person acting under their direction is not liable for any matter or thing if that matter or thing is done in good faith for executing the functions, powers or duties of the Authority.

24. Annual report

(1) The Council shall prepare and submit to the Cabinet Secretary an annual report on the operations of the Authority for the preceding year, within three months after the end of the financial year.

(2) An annual report shall include—

(a) the financial statements of the Authority for the previous financial year; and

(b) a detailed report of the activities of the Authority.

(3) The Cabinet Secretary shall submit the annual report of the Authority to the relevant Committee of Parliament within thirty days of receiving the report.

25. Access to information

(1) A citizen of Kenya may make a request for information held by the Authority and such a request—

(a) shall be in writing;

(b) shall be addressed to the Director-General or such person as the council may designate for the purpose;

(c) may be subject to the payment of a reasonable fee as the Council may prescribe; and

(d) may be subject to restrictions on the ground of confidentiality.

(2) A request for information held by the Authority may be denied where—

(a) the request is unreasonable in the circumstances;

(b) the information being requested is still being considered by the Council;

(c) a prescribed fee has not been paid; or

(d) the person requesting the information is unable to meet the requirements for the protection of confidentiality where it is necessary to do so.

26. Fees

The Authority may charge fees for any service rendered by it under this Act.

27. Conflict of interest

(1) A member of the Council who is present at a meeting of the Council at which a matter under consideration is one in which that member or that member's spouse is directly or indirectly interested in their private capacity shall declare such interest as soon as practicable after the meeting commences and shall not, unless the Council permits, take part in the consideration, discussion of, or vote on any question regarding that matter.

(2) A declaration of interest shall be recorded in the minutes of the meeting at which it is made.

(3) A person who fails to declare an interest as required under this section commits an offense and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(4) A member of the Council or a member of staff of the Authority in their private capacity is not permitted to transact any business with the Authority.

28. Protection of name

Any person who uses the words "Kenya National Qualification Authority" in furtherance of or in connection with any advertisement without the written permission of the Authority commits an offence and is liable on conviction to a fine of not exceeding five hundred thousand shillings or imprisonment for a term of not exceeding six months or to both.

29. Regulations

(1) The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying out of the purposes of this Act.

(2) Despite subsection (1), regulations made under this section may provide for—

(a) the imposition and payment of fees;

(b) the manner and forms of accreditation or certification of qualification awarding bodies;

(c) the responsibilities and control of the staff of the Authority; or

(d) any other matter prescribed under this Act.

30. Transitional Clause

The Examining Bodies which were established under various Acts immediately prior to the coming into force of this Act shall continue to operate and shall seek accreditation under this Act from the Authority within a period of two years from the date of the commencement of the Act.

31. Power to dissolve Council

Despite any other provision in this Act, the Cabinet Secretary may dissolve the Council by notice in the *Gazette* if the Council performs its functions in a manner that is not consistent with this Act.

SCHEDULE [s. 12]

THE CONDUCT OF THE BUSINESS OF THE COUNCIL

1. The Council shall meet as often as necessary for the transaction of the business of the Authority but the period between meetings shall not exceed four months.
2. The Chairperson on the written request of a majority of members may call for a special meeting of the Council at any time.
3. The quorum for a meeting of the Council shall be seven persons who shall include at least two of the members appointed under section 10(1)(e).
4. The Chairperson shall preside at every meeting of the Council at which the Chairperson is present but in the absence of the Chairperson, the members present shall elect one of their numbers to preside at that meeting.
5. Decisions of the Council shall be by consensus but in the absence of consensus, decisions shall be by a simple majority vote of the members present and in the case of an equality of votes, the cChairperson or the member presiding at that meeting shall have a casting vote.
6. The Council shall maintain a record of the minutes of its meetings which shall be signed by the Chairperson or the person presiding at the meeting.