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NATIONAL ASSEMBLY BILLS, 2023

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CONTENT

Bill for Introduction into the National Assembly —	PAGE
The Universities (Amendment) (No. 5) Bill, 2023	2199





THE NATIONAL AGRICULTURAL UNIVERSITY

MEMORANDUM OF THE SUPPLEMENT

TO THE ANNUAL REPORT FOR 1900-1901

PRESENTED TO THE BOARD OF TRUSTEES

AT THE ANNUAL MEETING HELD AT WASHINGTON, D. C.

ON THE TWENTY-NINTH DAY OF JANUARY, 1901

THE UNIVERSITIES (AMENDMENT) (No. 5) BILL, 2023**A Bill for****AN ACT of Parliament to amend the Universities Act**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Universities (Amendment) (No. 5) Act, 2023.

Short title.

2. Section 5 of the Universities Act (hereinafter referred to as “the principal Act”) is amended in subsection (1) (g) by deleting the words “diplomas and certificates” and substituting therefor the words “postgraduate diplomas and postgraduate certificates”.

Amendment of section 5 of No. 42 of 2012.

3. Section 5A of the principal Act is amended in subsection (2) by deleting the words “diplomas including postgraduate diplomas and other academic certificates” and substituting therefor the words “postgraduate diplomas and postgraduate certificates”.

Amendment of section 5A of No. 42 of 2012.

4. Section 20 of the principal Act is amended—

Amendment of section 20 of No. 42 of 2012.

(a) in subsection (1) (e) —

(i) by deleting sub-paragraph (ii) and substituting therefor the following new sub-paragraph—

“(ii) postgraduate diplomas; and”

(ii) by deleting sub-paragraph (iii) and substituting therefor the following new sub-paragraph—

“(iii) postgraduate certificates”.

(b) by inserting the following new subsection immediately after subsection (1) —

“(1A) Notwithstanding the provisions of subsection (1) (e), a university may continue to offer diploma and certificate courses to a student undertaking a certificate or diploma course before the commencement of this Act.”

5. Section 38 of the principal Act is amended in subsection (3) (a) by deleting the words “diplomas, certificates” and substituting therefor the words “postgraduate diplomas, postgraduate certificates”.

Amendment of section 38 of No. 42 of 2012.

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

Amendment of section 56 of No. 42 of 2012.

“(4) Notwithstanding subsection (3), the Placement Board shall not place any student in a university to undertake a diploma or certificate course.”

7. Section 70 of the principal Act is amended in subsection (2) (h) by deleting the words “diplomas and certificates” and substituting therefor the words “postgraduate diplomas and postgraduate certificates”.

Amendment of section 70 of No. 42 of 2012.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Universities Act, 2012 to end the practice of universities offering certificate and diploma courses. This is informed by the fact that currently there are two bodies certifying certificate and diploma courses, that is, the Technical and Vocational Education and Training Authority for technical and vocational colleges and the Commission for University Education for the universities. This leads to inconsistencies in the content and duration of the courses.

Universities are intended to be institutions of higher learning and academic research. In this regard, they should focus on degree and postgraduate programmes as opposed to certificate and diploma courses.

Further, limiting certificate and diploma courses to technical and vocational colleges will increase enrollment in these institutions. The technical and vocational colleges usually record low enrolment numbers despite the government investing heavily in these institutions.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill proposes to amend section 5 of the Act to provide that the function of the Commission for University Education will be to recognise and equate postgraduate certificates and postgraduate diplomas conferred by foreign universities and institutions as opposed to basic certificate and diplomas.

Clause 3 of the Bill proposes to amend section 5A of the Act to provide that the provisions of this Act supercede those of any other Act with regard of the mandate of the Commission for University Education recognising postgraduate certificates and postgraduate diplomas offered by universities.

Clause 4 of the Bill proposes to amend section 20 of the Act to provide that universities may offer postgraduate certificate and postgraduate diploma courses and not basic certificate and diploma courses.

Further, the clause provides for the saving of a student already undertaking a certificate or diploma course to enable such student complete his or her studies.

Clause 5 of the Bill proposes to amend section 38 of the Act to provide that a chancellor of a university may only award postgraduate certificate and postgraduate diploma courses and not basic certificate and diploma courses.

Clause 6 of the Bill proposes to amend section 56 of the Act to provide that the Placement Board shall not place any student in a university to undertake a diploma or certificate course.

Clause 7 of the Bill proposes to amend section 70 of the Act to provide that the Commission may make regulations providing for the procedure of equating postgraduate and diploma courses conferred by foreign universities.

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

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for purposes of the Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 13th December, 2023.

MEJJADONK BENJAMIN GATHIRU,
Member of Parliament.

Section 5 of the Universities Act which it is proposed to amend—

Functions of the Commission

- (1) The functions of the Commission shall be to—
- (a) promote the objectives of university education;
 - (b) advise the Cabinet Secretary on policy relating to university education;
 - (c) promote, advance, publicise and set standards relevant in the quality of university education, including the promotion and support of internationally recognised standards;
 - (d) monitor and evaluate the state of university education systems in relation to the national development goals;
 - (e) licence any student recruitment agencies operating in Kenya and any activities by foreign institutions;
 - (f) develop policy for criteria and requirements for admission to universities;
 - (g) recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the standards and guidelines set by the Commission from time to time;
 - (h) undertake or cause to be undertaken, regular inspections, monitoring and evaluation of universities to ensure compliance with the provisions of this Act or any regulations made under section 70;
 - (i) collect, disseminate and maintain data on university education;
 - (j) accredit universities in Kenya;
 - (k) regulate university education in Kenya;
 - (l) on regular basis, inspect universities in Kenya;
 - (m) promote quality research and innovation; and
 - (n) deleted by Act No. 18 of 2014, Sch.

(2) The Commission may where it deems appropriate, delegate any of its functions in this section to any suitably qualified person or body.

(2A) The Commission shall have all the powers as may be necessary for the proper discharge of its functions under this Act.

(2B) (1) The Commission shall, in approving and inspecting university academic programmes—

(a) analyse and consider the following factors—

- (i) learning content of a programme;
- (ii) purpose and objectives of a programme;
- (iii) structure of a programme;
- (iv) delivery mode of a programme;
- (v) availability of academic resources to implement a programme;
- (vi) mode of assessment of the programme;
- (vii) learning environment of a university;
- (viii) learning facilities of a university; and
- (ix) extra-curricular activities offered by a university;

(b) ensure openness, maintain objectivity and consistency in arriving at its decision.

(2) Despite subsection (1), the Commission may consider any other factor as it may deem fit and may rank each factor assessed to indicate the level of compliance.

(3) For the avoidance of doubt, the Commission shall be the only body with the power to perform the functions set out in this section.

Section 5A of the Universities Act which it is proposed to amend—

Conflicts with other Acts in approval of programmes

(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.

(5) *Section 20 of the Universities Act which it is proposed to amend—*

Effect of a Charter

(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

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 38 of the Universities Act which it is proposed to amend—

The Chancellor

(1) Every university shall have a Chancellor, who shall be appointed—

- (a) in the case of a public university, by the President in accordance with the procedure set out in the Second Schedule; and
- (b) in the case of a private university, in accordance with the Charter of that University.

(2) The Chancellor of a public university shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(3) The Chancellor—

- (a) shall be the titular head of the university and shall, in the name of the University, confer degrees and grant diplomas, certificates and other awards of the University;
- (b) may from time to time, recommend to the Cabinet Secretary in the case of a public university and the Board of Trustees in the case of a private university, a visitation of the University;
- (c) may from time to time give advice to the Council which the Chancellor considers necessary for the betterment of the University;
- (d) shall enjoy such powers and privileges and perform such other functions as may be provided in the Charter.

(4) A person shall only be appointed as a Chancellor where the person is a person of high moral character and integrity in accordance with Chapter Six of the Constitution.

(5) The functions of the Chancellor under subsection (3) may in the absence or incapacity of the Chancellor be performed by the Chairperson of the Council for a period not exceeding three months.

Section 56 of the Universities Act which it is proposed to amend—

Functions of Placement Board

- (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 70 of the Universities Act which it is proposed to amend—

Regulations

(1) The Cabinet Secretary may in consultation with relevant stakeholders make regulations prescribing anything which under this Act may be prescribed and generally for the better carrying out of the objects of and purposes of this Act.

(2) Without prejudice to the generality of the foregoing, regulations under this section may make further provisions on the—

- (a) establishment of public and private universities, technical universities, open universities, university campuses and university constituent colleges;
- (b) issuance, revocation and variation of University Charters;
- (c) implementation of differentiated unit costs, and discipline differentiated remuneration the academic year for the universities;

- (d) continuous accreditation and quality assurance, including programme accreditation;
- (e) procedure for the revoking a Letter of Interim Authority, varying or revoking a Charter and for winding up of Universities; and
- (f) registration of agents of foreign universities.
- (g) procedure for approval of academic programmes by the Commission;
- (h) procedure for recognizing and equating degrees, diplomas and certificates conferred by foreign universities;
- (i) criteria for evaluating internal tools developed by universities for the purpose of assessing quality assurance.