

THE OFFICIAL GAZETTE **5TH APRIL, 2019**
LEGAL SUPPLEMENT — C

BILL No. 5 of 2019

Friday 5th April, 2019

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

5TH April, 2019.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



BILL No. 5 of 2019

THE NATIONAL ACCREDITATION COUNCIL (AMENDMENT) BILL 2019

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 4 of Principal Act.
4. Insertion of new Part IIIA in the Principal Act.
5. Amendment of section 17 of the Principal Act.
6. Insertion of new section 17A in the Principal Act.
7. Amendment of section 18 of the Principal Act.
8. Amendment of section 19 of the Principal Act.
9. Amendment of Schedule to the Principal Act.

**A Bill
Intituled**

AN ACT to amend the National Accreditation Council Act 2004.

A.D. 2019 Enacted by the Parliament of Guyana:-

Short title. 1. This Act, which amends the National Accreditation Council Act 2004, may
No.12 of 2004 be cited as the National Accreditation Council (Amendment) Act 2019.

Amendment
of section 2 of
the Principal
Act.

2. Section 2 of the Principal Act is amended as follows –

(a) by the substitution for the definition of “accredit” of the following definition–

“ “accredit” means to assess and determine whether an institution or a provider or a course or programme offered by an institution or a provider and its awards meet internationally acceptable standards;”;

(b) by the deletion of the definition of “accreditation”;

(c) by the insertion immediately after the definition of “award” of the following definition –

“ “Caribbean Community” means the Community established by Article 2 of the Revised Treaty of Chaguaramus and includes the Caribbean Single Market and Economy established by the provisions of that Treaty;”;

(d) in the definition of “programme”, by the substitution for the words “certification in such form as a certificate diploma, associate degree or bachelor’s degree” of the word “award”;

(e) by the insertion immediately after the definition of “provider” of the following definition -

“ “qualifications” includes award;”;

(f) by the substitution for the definition of “re-accredit” of the following definition –

“ “re-accredit” means to appraise in order to determine whether an institution or a provider or a course or programme offered by an institution or a provider and its awards that have been accredited continue to meet the recognised standards for accreditation;”;

(g) by the insertion immediately after the definition of “re-accredit” of the following definitions-

“ “recognise” means to evaluate and approve;

“register” means to confer legal authority to provide post-secondary or tertiary level education in accordance with standards and criteria established under this Act;

“Register” means the Register of Institutions, Providers and

Post-secondary and Tertiary Courses and Programmes kept and maintained pursuant to section 15B;

“Revised Treaty of Chaguaramas” means the treaty establishing the Caribbean Community including the Caribbean Single Market and Economy signed in Nassau, The Bahamas on the 5th day of July, 2001;

“technical institute” includes a polytechnic or a technical college;”.

Amendment
of section 4 of
the Principal
Act.

3. Section 4(3) of the Principal Act is amended as follows—

(a) in paragraph (a), by the insertion immediately after the word “institutions” of the words “and providers”;

(b) by the substitution for paragraph (b) of the following -

“(b) to keep and maintain a Register of registered and accredited institutions and providers operating in Guyana and their accredited courses, programmes and awards;”;

(c) by the substitution for paragraph (c) of the following -

“(c) to accredit and re-accredit institutions and providers operating in Guyana and their courses, programmes and awards;”;

(d) by the substitution for paragraph (p) of the following-

“(p) to undertake audits, reviews and evaluations of registered institutions and providers operating in Guyana and their approved or recognised courses and programmes, independently or in co-operation with other bodies as the Council may consider

necessary for the discharge of its functions;”;

(e) in paragraph (q), by the insertion immediately before the word “requirements” of the words “criteria, standards or other”.

Insertion of
new Part IIIA
in the
Principal Act.

4. The Principal Act is amended by the insertion immediately after section 15, of the following Part as Part IIIA—

“ PART IIIA

INSTITUTIONS AND PROVIDERS

Registration
of
institutions
or providers.

15A. (1) An institution or a provider shall not provide post-secondary or tertiary education in Guyana unless the institution or provider holds a valid certificate of registration issued by the Council under this Act.

(2) An institution or a provider which fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.

Register of
institutions,
providers,
courses and
programmes
registered and
accredited.

15B. (1) Subject to subsection (2), there shall be kept and maintained by the Council, in such manner as may be prescribed, a register to be called the Register of Institutions, Providers and Post-secondary and Tertiary Courses and Programmes.

(2) The Register may be maintained in an electronic form in a computer-based system.

(3) The Council shall cause to be recorded in the Register the name and other particulars of every institution and provider registered or accredited in Guyana and their accredited courses, programmes and awards.

Power to
impose fees.

15C. (1) The Council, with the approval of the Minister, may make regulations to provide for the payment of fees for the services that it renders under this Act.

(2) Where any fees payable under regulations are not paid at the time prescribed for the payment of the fees, the institution or provider in default shall pay, in addition to the fees payable, an administrative penalty not exceeding ten percent of the fees payable:

Provided that if the fees payable are paid within one month of the date on which it was due and payable, the institution or provider in default shall, in addition to the fees payable, pay an administrative penalty equal to five percent of the fees due and payable.

Confidentiality.

15D. (1) Any information obtained from an institution or a provider by the Council or an officer, agent, or employee of the Council in the course of the conduct of any official duty under this Act is confidential information.

(2) An officer, agent or employee of the Council shall not disclose confidential information obtained under subsection (1).

Restrictions
and
prohibitions.

15E. (1) An institution or a provider shall not use the words “university”, “college”, “tertiary college”, “polytechnic”, “community college”, “technical college”, “technical institute” or “technical university” in its name unless the institution or provider is authorised to do so by the Council, an internationally recognised body or any other law.

(2) An institution or provider shall not-

- (a) offer to the public any course or programme that is not approved by the Council; or
- (b) misrepresent to the public the recognition claimed for the institution or provider or the courses, programmes or awards of the institution or provider.

(3) Where the Council has reason to believe that an institution or a provider is in breach of subsection (1) or (2), the Council shall, in writing -

- (a) inform the institution or provider of the nature of the breach; and
- (b) request the institution or provider to comply with the relevant subsection within a stipulated time period.

(4) Where an institution or provider fails to comply with the Council’s request within the time stipulated, the Council -

- (a) may, in the case of a registered institution or

provider, remove the name of the institution or provider from the Register; and

- (b) shall, upon the removal of the name, cause that information to be published in the *Gazette* and in at least two daily newspapers circulating in Guyana on at least two consecutive occasions.

(5) An institution or provider which fails to comply with subsection (1) or (2) commits an offence and in addition to any other penalty imposed by this section, is liable on summary conviction to a fine of two hundred thousand dollars.

Duty to act in accordance with the principles of natural justice.

15F. Where the Council is required to make any decision under this Act in respect of any institution, provider or course, programme or award of an institution or a provider, the Council shall make the decision in accordance with the principles of natural justice.

Administrative fines and penalties.

15G. (1) Subject to subsection (2), the Council may require an institution or a provider to pay an administrative fine not exceeding two hundred thousand dollars in respect of a non-prosecutable breach committed under Regulations made under this Act.

(2) Before imposing an administrative fine on an institution or a provider for a non-prosecutable breach, the Council shall, in accordance with subsections (3) and (4), serve on the institution or provider a notice of its intention to impose the administrative fine.

(3) Subject to subsection (4), the notice referred to in subsection (2) shall be served before the end of the period of six months beginning the first day on which the Council has sufficient evidence of the commission of the non-prosecutable breach.

(4) The Council shall, in the notice -

- (a) specify the amount of the intended administrative fine and the reasons for its intended action;
- (b) request the institution or the provider to submit to the Council responses in writing respecting the intended action of the Council; and
- (c) inform the institution or the provider of the right of appeal under section 15K.

(5) Where the Council requires a registered institution or provider to pay an administrative fine under subsection (1), the Council shall, by electronic means or otherwise—

- (a) submit to the institution or provider an administrative fine notice—
 - (i) specifying the nature of the act constituting the non-prosecutable breach and the amount of the fine required to be paid;
 - (ii) requiring the institution or provider to pay the administrative

fine within fifteen working days
from the date of the notice;

- (iii) giving the institution or provider a reasonable opportunity to submit its responses in writing in relation to the non-prosecutable breach and the administrative fine; and

(b) update the Register to reflect—

- (i) the commission of the non-prosecutable breach by the registered institution or provider; and
- (ii) the imposition of the administrative fine on the registered institution or provider.

(6) Where the Council has reasons to believe that the non-prosecutable breach is likely to remain a continuing breach on the date on which the administrative fine notice is to be issued, the Council may in the notice additionally request the registered institution or provider committing the breach to comply with the requirements of the notice within the period specified in the notice.

(7) An institution or a provider that is in receipt of an administrative fine notice shall -

- (a) pay the amount of the administrative fine specified in the notice to the Council by cash, bank cheque, money order or credit

card authority; and

- (b) comply with any additional requirement contained in the administrative fine notice on or before the date specified in the notice.

(8) Where an institution or a provider fails to pay the administrative fine or to comply with any additional requirement contained in an administrative fine notice within the period specified in the notice-

- (a) the institution or provider commits a non-prosecutable breach of this section; and
- (b) the institution or provider is punishable by suspension or revocation of its certificate of registration, certificate of accreditation or any other authorisation granted by the Council.

(9) The Minister may by order, amend the administrative fine payable under Regulations.

Amendment
and revocation
of decisions.

15H. (1) Subject to section 15I, the Council may, on an application or on its own motion, amend or revoke any decision it has made or taken in respect of any person under this Act, if the Council has reasons to believe that-

- (a) any condition respecting the decision is not fulfilled; or
- (b) the person to whom the decision is addressed fails to fulfil an obligation imposed on the person by the decision.

(2) Where the Council amends or revokes a decision under subsection (1)-

- (a) the Council shall cause every person to whom the decision was addressed to be notified of its amendment or its revocation; and
- (b) the amendment or the revocation of the decision shall take effect from the date of the notification of the amendment of the decision or the revocation of the decision.

(3) Notwithstanding subsection (2)(b), the Council may, in exceptional circumstances where the legitimate interests of the person to whom the decision was addressed so require, defer the date on which the amendment or revocation takes effect.

Annulment of decisions.

15I. (1) The Council may, on an application or on its own motion, annul any decision it has made or taken in respect of an applicant, if the Council has reasons to believe that-

- (a) the decision was based on incorrect or incomplete information provided by the applicant;
- (b) the applicant knew or should reasonably have known that the information was incorrect or incomplete; and
- (c) the decision could not have been made or taken on the basis of incorrect or incomplete information.

(2) Where the Council annuls a decision under subsection (1)-

- (a) the Council shall cause every person to whom the decision was addressed to be notified of its annulment; and
- (b) the annulment shall take effect from the date on which the annulled decision was made or taken.

Recovery of fees, administrative fines, etc.

15J. (1) This section applies if a person does not pay the whole or any part of a fee or an administrative fine which the person is liable to pay, in accordance with this Act or its Regulations.

(2) Without prejudice to any other action that may be taken or instituted, any fee or other sum of money respecting services, or any administrative fine payable to the Council under this Act or its Regulations, constitutes immediately on becoming due and payable, a debt due to the Council.

(3) Notwithstanding anything to the contrary in any other law, proceedings for the recovery of any fee, administrative penalty or other sum of money respecting services payable to the Council under this Act or its Regulations may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a magistrates' court in the name of the Council.

(4) In proceedings before the magistrates' court for the recovery of a debt under this Act or its Regulations, a certificate which—

(a) is signed by the Executive Director or issued by the Council; and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(5) A certificate to that effect and purporting to be so signed or issued is to be treated as being so signed or issued unless the contrary is proved.

Appeals
Committee.

15K. (1) There is established an Appeals Committee which shall comprise three persons appointed by the Minister for the purpose of hearing appeals pursuant to subsection (2).

(2) An institution or a provider aggrieved by a decision of the Council may appeal the decision to the Appeals Committee on any of the following grounds-

(a) that the Council failed to comply with the procedures specified in this Act or any Regulations or Rules made under this Act and that the failure amounted to a significant breach of the procedures; or

(b) that the decision of the Council is-

(i) arbitrary or unreasonable;

(ii) inconsistent with or unsupported by the policies of the Council; or

(iii) based on information that is substantially incorrect or is of insufficient weight to support the decision.

(3) An appeal under this section does not suspend the decision of the Council.

(4) Hearings before the Appeals Committee shall be conducted in such manner and in accordance with such rules as may be prescribed.

(5) After hearing an appeal under this section-

(a) the Appeals Committee may quash, confirm or vary the decision of the Council; and

(b) the Council shall refund the appeal fees, if the decision of the Council is quashed.

(6) The decision of the Appeals Committee shall be final.

(7) The Appeals Committee may, with the approval of the Minister, make rules prescribing the matters required by this section to be prescribed.””

Amendment
of section 17
of the
Principal Act.

5. Section 17 is amended as follows-

(a) by the deletion of subsection (2);

(b) by the re-numbering of subsection (3) as subsection (2).

Insertion of
new section
17A in the
Principal Act.

6. The Principal Act is amended by the insertion immediately after section 17 of the following new section -

“Translation
of
documents.

17A. The Council may require any person who, in accordance with this Act furnishes the Council with any statement, certificate or other document whatsoever in a language other than the English language to provide a translation of that document in the English language at that person’s expense.”.

Amendment
of section 18
of the
Principal Act.

7. Section 18 of the Principal Act is amended by the insertion immediately after subsection (1) of the following subsection -

(1A) Regulations made under this section may create—

(a) non-prosecutable breaches punishable by an administrative fine not exceeding two hundred thousand dollars, the suspension or revocation of a relevant certificate; and

(b) offences punishable on summary conviction by fines not exceeding two hundred thousand dollars.”.

Amendment
of section 19
of the
Principal Act.

8. Section 19 of the Principal Act is amended by the insertion of the following subsection -

“(3) Without prejudice to the generality of subsection (1), the Council shall periodically review or cause to be reviewed the criteria, standards or other requirements established under section 4(3)(q).”.

Amendment
of Schedule to
the Principal
Act.

9. The Schedule to the Principal Act is amended by the insertion in paragraph 4 of the following subparagraphs -

“(3) Where the Council appoints a committee under

subparagraph (1), the Council shall determine the—

- (a) qualifications necessary to be appointed to the committee;
- (b) number of members of the committee;
- (c) terms of appointment of the members;
- (d) quorum of the committee;
- (e) functions of the committee as a whole and of individual members; and
- (f) area and scope of the committee's authority.

(4) A member of the staff of the Council is eligible for appointment as a member of a committee if the member is qualified to be so appointed.”.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the National Accreditation Council Act 2004 to improve the effective administration and enforcement of the Act.

Clause 2 of the Bill seeks to amend section 2 of the Principal Act to improve existing definitions and insert new definitions as well, for example, “qualifications”, “recognise” and “register”.

Clause 3 of the Bill seeks to amend section 4 of the Principal Act to incorporate consequential amendments as a result of amendments made to definitions under the Act.

Clause 4 of the Bill seeks to amend the Principal Act by inserting a new Part IIIA which provides for various matters related to institutions and providers. It seeks to provide for the registration of institutions and providers and makes it an offence for an institution or a provider to provide post-secondary and tertiary education without holding a valid certificate of registration issued by the Council.

Part IIIA also provides for the Council to maintain a Register of institutions or providers registered or accredited in Guyana and their accredited courses, programmes and awards under new section 15B.

It provides for restrictions and prohibitions in respect of institutions and providers under new section 15E. New section 15F provides that where the Council is required to make any decision in respect of any institution, provider or course, programme or award of an institution or a provider, the Council shall do so in accordance with the principles of natural justice. In the similar vein of promoting due process and natural justice, Part IIIA provides transparent procedures for the imposition of administrative fines and penalties in respect of non-prosecutable breaches committed under Regulations under new section 15G. It also provides transparent procedures for the amendment, revocation or annulment of decisions of the National Accreditation Council under new sections 15H and 15I, respectively. In addition, it establishes an appeals committee under new section 15K and provides the procedure for the appeal of any decision of the Council by aggrieved institutions or providers.

Clause 5 of the Bill seeks to amend section 17 of the Principal Act by the deletion of subsection (2) which created offences under the Act, reason being, that these offences have been restated and expanded under new sections I5A and I5E of new Part IIIA.

Clause 6 of the Bill seeks to amend the Principal Act by the insertion of new section 17A which provides for the translation of documents. Clauses 7, 8 and 9 of the Bill amend section 18, 19 and the Schedule to the Principal Act respectively.

Clause 7 seeks to amend section 18 of the Principal Act to provide that regulations made under the Act may create offences punishable on summary conviction by fines not exceeding two hundred thousand dollars and non-prosecutable breaches punishable by an administrative fine not exceeding two hundred thousand dollars or the suspension or revocation of a relevant certificate.

Clause 9 seeks to amend the Schedule to the Principal Act and provides that where the Council appoints a committee under paragraph (4), the Council shall determine the qualifications for appointment to the Committee, the numbers, quorum, terms, and functions of the Committee and the scope of the Committee's authority. It also provides that a member of staff of the Council is eligible for appointment as a member of a committee if the member is qualified to be appointed.


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Dr. the Hon. Nicolette Henry, M.P.
Minister of Education