

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004



BERMUDA

2004 :38

THE NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

Date of Assent: 17 December 2004

Operative Date: 1 April 2005

ARRANGEMENT OF CLAUSES

1	Short title	10	Renewal of certificate
2	Interpretation	11	Use of the expression "nationally certified"
3	Establishment of National Certification Program	12	Appeal to the Minister
4	Compulsory Certification	13	Appeal to the Supreme Court
5	Functions of Occupation Advisory Committees under this Act	14	Designation and power of enforcement officer
6	Functions of the Board under this Act	15	Regulations
7	Application for certificate	16	Offences
8	Grant of certificate	17	General penalty
9	Cancellation and suspension of certificate	18	Commencement
		19	Consequential amendments

WHEREAS it is expedient to make provision for a National Occupational Certification Program for the purpose of regulating

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

occupational standards of technical competence and for the designation of occupations which shall require compulsory certification:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the National Occupational Certification Act 2004.

Interpretation

2 In this Act, unless the context otherwise requires —

"Act" means the National Training Board Act 1997;

"appeal" means an appeal referred to in section 12;

"apprenticeship" means an apprenticeship arranged pursuant to Part III of the Act;

"Board" means the National Training Board established under section 3 of the Act;

"designated occupation" means an occupation which is designated under this Act as an occupation that requires compulsory certification;

"employer" means a person who has entered into a contract of apprenticeship or training as employer with an apprentice or trainee, and includes the employer's agent, representative, foreman or manager who is placed in authority over the apprentice or trainee;

"Minister" means the Minister for the time being responsible for the National Training Board;

"national occupational certificate" means, in respect of a designated occupation —

(i) a certificate that is granted under this Act to a person who has met the requirements established under this Act for a person to be granted that certificate; or

(ii) a document that is issued by a board, an institution or other body in an overseas jurisdiction and is recognised under this Act as being the equivalent of a national occupational certificate granted under this Act;

"occupation" includes a trade or vocation which a person pursues to earn a livelihood;

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

"Occupation Advisory Committee" means an Occupation Advisory Committee appointed by the Board under section 5(1)(a) of the Act;

"premises" includes buildings, parts of buildings, any other structures and land; and

"training scheme" means a scheme formulated under section 24 of the Act.

Establishment of National Occupational Certification Program

3 (1) The National Occupational Certification Program is hereby established.

(2) The Board and the Occupation Advisory Committee shall perform the functions assigned to them under this Act and by any other statutory provision.

Compulsory certification

4 (1) The Minister may by regulation, on the recommendation of the Board, designate an occupation as an occupation which requires compulsory certification.

- (2) An occupation may be designated under subsection (1) if —
- (a) it is deemed by the Minister to be essential to the economy; and
 - (b) there is a degree of risk of physical harm to a worker or other person from the improper application of the materials and methodology of the occupation.

(3) A person shall not work or be employed in a designated occupation which requires compulsory certification unless that person has been granted a national occupational certificate in that occupation.

(4) Notwithstanding subsection (3), a person may work in a designated occupation if that person —

- (a) is an apprentice or a trainee in the training scheme in that occupation;
- (b) is a student in a work training program in that occupation;
- (c) holds a certificate or other document granted by a board, an institution or other body in an overseas jurisdiction in that occupation, and —
 - (i) has filed an application under this Act to have that certificate or other document recognised as being equivalent to a national occupational

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

- certificate in that occupation and that application is subsisting; and
- (ii) that person's work in the occupation is, during the time that the application is subsisting, carried out under the same conditions as that of an apprentice in that occupation;
- (d) that person is registered in a program of training that is provided in an overseas jurisdiction, which is recognised by the Board as being equivalent to an apprenticeship program in that occupation and, subject to any directions given or conditions prescribed by the Board, that person's work in the occupation is carried out under the same conditions and subject to the same supervision as that of an apprentice in the occupation; or
- (e) that person has filed an application under this Act for a national occupational certificate and that person's work in the occupation is, during the time that the application is subsisting, carried out under the same conditions and subject to the same supervision as that of an apprentice in that occupation.

Functions of Occupation Advisory Committees

5 The functions of Occupation Advisory Committees under this Act are —

- (a) to advise the Board —
 - (i) on all matters pertaining to the designation of occupations; and
 - (ii) on all aspects of training and certification in respect of designated occupations including standards and requirements for training and certification;
- (b) to make arrangements for examinations and other methods of ascertaining the standards for persons engaged in training in a designated occupation; and
- (c) to determine the criteria for the recognition of occupational certification from other jurisdictions.

Functions of the Board

6 The functions of the Board under this Act are —

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

- (a) to determine the standards and requirements for training and certification in respect of a designated occupation;
- (b) to identify, on the recommendation of the occupation advisory committee, occupations that require certificates that can be renewed; and
- (c) to evaluate or recognise, or provide for the evaluation or recognition of, the knowledge and levels of skill of persons who have certificates, training or experience in designated occupations.

Application for certificate

7 An application to the Minister for the grant or renewal of a national occupational certificate shall be made in writing on the prescribed form and shall be accompanied by such fee as may be prescribed therefor under the Government Fees Act 1965.

Grant of certificate

8 The Minister shall grant a national occupational certificate to a person who successfully meets the requirements established by the Board pursuant to section 6(a) in respect of a designated occupation.

Cancellation and suspension of certificate

9 The Board may cancel or suspend a person's national occupational certificate —

- (a) if, in the opinion of the Board, the person has not maintained or is not maintaining the prescribed standard of skill in the practice of the designated occupation; or
- (b) if the Board is satisfied that the certificate —
 - (i) has been improperly altered in any manner;
 - (ii) was obtained by means of a misrepresentation;
 - (iii) was obtained in a fraudulent manner or by means of fraud; or
 - (iv) has been used for any purpose by a person other than the person to whom the certificate was granted; or
- (c) if the Board is satisfied that there has been an irregularity in the taking of an examination required under this Act.

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

Renewal of certificates

10 (1) Unless suspended or cancelled under this Act a national occupational certificate granted to a person under section 8 —

- (i) shall remain in force for the period of 5 years next succeeding the date of the issue of the certificate; and
- (ii) may be renewed every 5 years with the applicant for renewal being required to pass any further examination or undertake any further training as may be required by the Board.

(2) Applications for renewal shall be made to the Board in the prescribed form.

Use of the title "nationally certified"

11 (1) A person who has been granted a national occupational certificate shall be entitled to use the title "nationally certified" to describe the nature of his occupation, where that occupation is the occupation in respect of which he is certified.

(2) Any person —

- (a) who uses, either alone or in conjunction with other words, the words "nationally certified" to describe the nature of his occupation and has not been granted a national occupational certificate in respect of that occupation; or
- (b) who takes or uses any name, title, addition or description falsely implying, or who otherwise pretends, that he has been granted a national occupational certificate,

commits an offence.

Appeal to the Minister

12 (1) A person who is aggrieved by a decision of the Board may appeal to the Minister against the decision of the Board —

- (a) to cancel or suspend a certificate under section 9; or
- (b) to refuse to renew a certificate under section 10.

(2) On an appeal under this section the Minister may confirm, reverse, vary or modify the decision of the Board.

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

Appeal to the Supreme Court

13 (1) An appeal under this section shall lie at the instance of the person aggrieved by the decision of the Minister and shall be commenced by notice of motion filed in the Registry of the Supreme Court and served on the Attorney-General within twenty-one days of the date when the decision of the Minister took effect.

(2) Rules of Court may be made under section 62 of the Supreme Court Act 1905 for the purpose of regulating the practice and procedure of appeals under this section.

Designation and powers of enforcement officer

14 (1) The Minister may, after consultation with the Board, designate a public officer to be an enforcement officer for the purposes of this Act.

(2) An enforcement officer may, for the purposes of determining whether the provisions of this Act are being complied with—

- (a) at any reasonable time, enter and inspect any premises in which he has reasonable grounds for believing that a person is, or has been within the previous six months, working in a designated occupation;
- (b) examine any person whom he finds on premises entered under paragraph (a) whom he has reasonable grounds for believing is or has been, within the preceding six months, employed or working on such premises;
- (c) require any person whom he has reasonable grounds for believing is or has been, within the preceding six months, employed or working in a designated occupation to appear before him at a prescribed place for the purpose of being questioned;
- (d) require the production or delivery up of any of the records and of any document relating to the business of any person whom he has reasonable grounds for believing is, or was within the preceding six months, the employer of a person working in a designated occupation; and
- (e) examine and make extracts from copies of any documents produced or delivered up under paragraph (d).

(3) An enforcement officer—

- (a) shall not enter or inspect a private dwelling-house without the consent of the occupier thereof;
- (b) shall on the occasion of a visit or inspection, notify the employer or his representative of his presence, and

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

produce if required so to do, appropriate identification;
and

(c) shall, if required by the employer, be accompanied during any inspection or examination by the employer or his representative.

(4) A person who—

(a) assaults or obstructs an enforcement officer in the performance of his functions under this section;

(b) uses indecent, abusive or insulting language to an enforcement officer in the performance of his functions;
or

(c) fails to comply with any requirement made by an enforcement officer under this section,

commits an offence.

Regulations

15 (1) The Board may, with the approval of the Minister, make regulations —

(a) prescribing the tasks, activities and functions that come within a designated occupation;

(b) prescribing the form of notices and certificates granted under this Act;

(c) governing the designation or rescinding the designation of an occupation;

(d) establishing a program of transition with respect to the designation of an occupation;

(e) providing for the establishment or recognition of and governing the operation of Occupation Advisory Committees in respect of designated occupations;

(f) prescribing the powers of committees referred to in paragraph (e);

(g) establishing the requirements to be met in order to be granted a certificate under this Act;

(h) prescribing the form of applications for and renewal of national occupational certificates; and

(i) generally for giving effect to the provisions of this Act.

(2) Regulations made under this section shall be subject to the affirmative resolution procedure.

NATIONAL OCCUPATIONAL CERTIFICATION ACT 2004

Offences

16 A person who —

- (a) in respect of a national occupational certificate —
 - (i) improperly alters the certificate in any manner;
 - (ii) obtains the certificate by means of a misrepresentation;
 - (iii) obtains the certificate in a fraudulent manner or by means of fraud; or
 - (iv) obtains the certificate which has been granted to another person and uses it for any purpose;
 - (b) contravenes a provision of this Act or of any regulation made thereunder; or
 - (c) omits, refuses or neglects to fulfill, perform, observe or carry out a duty or obligation created or imposed by this Act or any regulation,
- commits an offence.

General Penalty

17 A person guilty of an offence under this Act is liable on conviction by a court of summary jurisdiction to a fine not exceeding \$10,000.

Commencement

18 This Act shall come into operation on a day to be appointed by the Minister by notice published in the Gazette.

Consequential amendments

19 Regulations 25, 26 and 28 of the Public Garage and Filling Station Regulations 1952 are repealed.