

**Kenya Gazette Supplement No.111 (Acts No.14)**

**REPUBLIC OF KENYA**

**KENYA GAZETTE SUPPLEMENT**

**ACT, 2003**

**NAIROBI, 9th January 2004**

**CONTENT**

Act-	PAGE
The Persons with Disabilities Act, 2003.....	283

# **THE PERSONS WITH DISABILITIES ACT, 2003**

**No. 14 of 2003**

*Date of Assent: 31<sup>st</sup> December, 2003*

*Date of Commencement: By Notice*

## **ARRANGEMENT OF SECTIONS**

Section

### **PART I PRELIMINARY**

- 1- Short title and commencement.
- 2- Interpretation.

### **PART II NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES**

- 3- Establishment.
- 4- Membership.
- 5- Tenure of office.
- 6- Director.
- 7- Functions of the Council.
- 8- Funds of the Council.
- 9- Annual accounts.
- 10 -Annual report.

### **PART III RIGHTS AND THE PRIVILEGES OF PERSONS WITH DISABILITIES**

- 11- Realization of rights of persons with disabilities.
- 12- Employment.
- 13- Reservation of employment.
- 14- Apprenticeship
- 15- Discrimination by employers prohibited.
- 16- Incentives to employers.
- 17- Records for job placement.
- 18- Education.
- 19- Special and non-formal education.
- 20- Health.
- 21- Accessibility and mobility.
- 22- Public buildings.

- 23- Public service vehicles.
- 24- Adjustment orders.
- 25- Denial of admission into premises, etc.
- 26- Offences, Adjustment orders and discrimination.
- 27- Adjustment orders against Government institutions.
- 28- Sports and recreation.

#### **PART IV CIVIC RIGHTS**

- 29- Voting.
- 30- Polling stations.
- 31- Registration of organizations.

#### **PART V NATIONAL DEVELOPMENT FUND FOR PERSONS WITH DISABILITIES**

- 32- Establishment of the Fund.
- 33- Sources of and payments from Fund.
- 34- Trustees to manage Fund.

#### **PART VI RELIEF AND INCENTIVES**

- 35- Exemptions.
- 36- Incentives.
- 37- Credit.

#### **PART VII MISCELLANEOUS**

- 38- Legal system.
- 39- Television programmes.
- 40- Telephone services.
- 41- Postal charge exemption.
- 42- Exemptions and deductions, general requirements.
- 43- Inspectorate units and Council inspectors.
- 44- Regulations.

#### **PART VIII OFFENCES AND PENALTIES**

- 45- Concealment of persons with disabilities.
- 46- Negligence by doctor.
- 47- Giving false information to get registered.
- 48- General penalty.
- 49- Request for legal action by Attorney General.

**SCHEDULE:** Provisions as to the Conduct of Business and Affairs of the Council

## Preamble

**An Act of Parliament to provide for the rights and rehabilitation of persons with disabilities; to achieve equalisation of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities; and for connected purposes**

**ENACTED by the Parliament of Kenya as follows:**

## PART 1- PRELIMINARY

- Short title and commencement. I. This Act may be cited as [the Persons with Disabilities Act](#), 2003 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.
- Interpretation. Cap. 253. 2. In this Act, unless the context otherwise requires -  
**"adjustment order"** means an order made by the Council under section 24;  
**"aged person"** includes a person with a disability who has been forced into retirement from employment due to his disability;  
**"assistive devices and services"** means implements, tools and specialised services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities;  
**"Council"** means the National Council for Persons with Disabilities established under section 3;  
**"disability"** means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation;  
**"discriminate"** means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalise or embarrass a person with a disability;  
**"doctor"** means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act;  
**"Fund"** means the National Development Fund for Persons with Disabilities established under section 32;  
**"organizations for persons with disabilities"** means associations or societies formed for the purposes of rendering services to persons with disabilities;  
**"organizations of persons with disabilities"** means associations or

societies formed by persons with disabilities for their welfare and protection;

**"usual day-to-day activities"** means the activities of daily living which an ordinary person would reasonably be expected to carry out.

## **PART II NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES**

- Establishment. **3.**(1) There is hereby established a council to be known as the National Council for Persons with Disabilities.
- (2) The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of suing and being sued, and acquiring, holding and disposing of movable and immovable property.
- Membership. **4.**(1)The Council shall consist of the following members appointed by the Minister –
- (a) not more than eight persons nominated in a manner approved by the Minister, by organisations representing persons with various categories of disabilities;
- (b) three members appointed from a panel of names submitted to the Minister by organizations for persons with disabilities;
- (c) eight members representing the Ministries responsible for the following –
- (i) culture and social services;
  - (ii) local government;
  - (iii) health;
  - (iv) education;
  - (v) economic planning;
  - (vi) housing;
  - (vii) transport; and
  - (viii) labour;
- (d) one member representing the Attorney General;
- (e) one member appointed from a list of not less than three persons submitted by an organization which the Minister responsible for labour deems to be representative of employers in Kenya;
- (f) one member appointed in consultation with the organization for the

time being recognized by the Government as the umbrella organization representing the interests of workers in the country; and

(g) such other members as may be co-opted by the Council with the approval of the Minister

Provided that –

- (i) the membership of the Council shall not exceed twenty-seven persons, out of whom at least twenty members shall be persons with disabilities;
- (ii) the members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
- (iii) one of the members of the Council shall be from a rural-based organization.

(2) The Minister shall appoint one of the members appointed under subsection (1) (a) as the chairman.

(3) The Minister shall appoint one of the members, other than a member appointed under subsection (1)(c) or (d), as the vice-chairman.

(4) The member appointed under subsection (1) (c) to represent the Ministry of Education shall be a child psychologist.

Tenure of office. **5.**(1)The chairman, vice-chairman and members appointed under paragraphs (a), (b), (e), (f) and (g) of section 4 (1) shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

(2) The provisions of the Schedule shall have effect with respect to the membership and procedures of the Council.

Director. **6.**(1) There shall be a Director of the Council who shall be employed by the Council on such terms as the Council may determine.

(2) The functions of the Director shall be –

(a) to consult with Ministries and local authorities to secure the implementation of measures recommended under this Act by the Council for the benefit of persons with disabilities;

(b) to work together with institutions, associations and organizations

concerned with the educational, social and cultural circumstances of persons with disabilities; and

(c) to do such other things as he may be directed by the Council under this Act.

(3) The Council shall employ such other staff in its secretariat as may be necessary for the discharge of its functions under this Act, on such terms and conditions as the Council may determine.

Functions of the Council.. 7.(1),The functions of the Council shall be-

(a) to issue adjustment orders under section 24 of this Act;

(b) to formulate and develop measures and policies designed to –

- (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
- (ii) co-operate with the Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning;
- (iii) advise the Minister on the provisions of any international treaty or agreement relating to the welfare or rehabilitation of persons with disabilities and its benefits to the country;
- (iv) recommend measures to prevent discrimination against persons with disabilities;
- (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
- (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
- (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities; and
- (viii) co-ordinate services provided in Kenya for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling;

(c) to register –

- (i) persons with disabilities;

- (ii) institutions, associations and organizations, including those controlled and managed by the Government and local authorities, that provide services for the rehabilitation and welfare of persons with disabilities;
- (iii) place's at which services for the rehabilitation of persons with disabilities are provided; and
- (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;

(d) to provide, to the maximum extent possible –

- (i) assistive devices, appliances and other equipment to persons with disabilities; and
- (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the Government;

(e) to consult with the Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities;

(f) to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;

(g) to assess and report to the Minister on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;

(h) to consult with the Government in the provision of suitable and affordable housing for persons with disabilities;

(i) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act;

(j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Council may deem necessary; and

(k) to perform such other functions as may be assigned to the Council under this or any [other Act](#).

(2) Without prejudice to the provisions of subsection (1), the Council shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and in particular –

(a) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;

(b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the Minister;

(c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Council as the Council may with the approval of the Minister determine; and

(d) with the approval of the Minister, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.

Funds of the Council.

**8.** The funds of the Council shall consist of the following -

(a) funds voted by Parliament; and

(b) funds the Council may receive as a result of public and private appeal from local and; international donors or agencies for the purposes of carrying out its functions.

Annual accounts.

**9.**(1) The financial year of the Council shall be from the 1st July of one year to the 30th June of the following year.

(2) The Council shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Council and ensure that, within three months of the end of each financial year of the Council, a statement of accounts of the Council is prepared and audited by an external auditor appointed by the Council and approved by the Minister.

Annual report.

**10.** The Council shall prepare an annual report of its activities which shall be presented to the Minister and all other Government agencies involved in the work of the Council.

### **PART III RIGHTS AND THE PRIVILEGES OF PERSONS WITH DISABILITIES**

- Realisation of rights of persons with disabilities. **11.**The Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities set out in this Part.
- Discrimination by employers prohibited. **12.**(1)No person shall deny a person with a disability access to opportunities for suitable employment.
- (2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.
- (3) An employee with a disability shall be entitled to exemption from tax on all income accruing from his employment.
- Reservation of employment. **13.**The Council shall endeavour to secure the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities.
- Apprenticeship **14.**Subject to the provisions of [the Employment Act](#), persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.
- Discrimination by employers prohibited. **15.**(1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to –
- (a) the advertisement of employment;
  - (b) the recruitment for employment;
  - (c) the creation, classification or abolition of posts;
  - (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
  - (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
  - (f) the provision of facilities related to or connected with employment;

or

(g) any other matter related to employment.

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if -

(a) [the act](#) or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;

(b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned; or

(c) special facilities or modifications, whether physical, administrative or otherwise, are required at the work place to accommodate the person with a disability, which the employer cannot reasonably be expected to provide.

(3) A complaint by a person with a disability that his employer has discriminated against him in a way which is contrary to this Act may be presented to the Industrial Court through the appropriate trade union.

(4) Any contract for employment or for provision of goods, facilities or services, or any other agreement, shall be void insofar as it purports to deny any person any rights or privileges conferred under this Act or in any other way to limit the operation of this Act.

(5) An employer shall provide such facilities and effect such modifications, whether physical, administrative or otherwise, in the workplace as may reasonably be required to accommodate persons with disabilities.

(6) The minimum retirement age for persons with a disability shall be sixty years.

Incentives to employers.

**16.(1)** A private employer who engages a person with a disability with the required skills or qualifications either as a regular employee, apprentice or learner shall be entitled to apply for a deduction from his taxable income equivalent to twenty five percent of the total amount paid as salary and wages to such employee:

Provided that –

- (i) such an employer shall present proof certified by the Ministry responsible for labour that the persons with disabilities in respect of whom he claims the deduction are under his employ; and
- (ii) the persons with disabilities so employed are accredited

with the Council as to their disabilities, skills and qualifications.

(2) A private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities shall be entitled to apply for additional deductions from his net taxable income equivalent to fifty percent of the direct costs of the improvements, modifications or special services.

Records for job placement.

**17.**The Council shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and training and shall update such records regularly for the purposes of job placement.

Education.

**18.**(1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxilliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and self-reliance.

Special and non-formal education.

**19.**The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Health.

**20.**The Council shall be represented in the implementation of the national health programme under the Ministry responsible for health for the purpose of –

(a) prevention of disability;

(b) early identification of disability;

- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public and privately owned health institutions;
- (e) availing essential health services to persons with disabilities at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities; and
- (g) prompt attendance by medical personnel to persons with disabilities.

Accessibility and mobility. **21.**Persons with disabilities are entitled to a barrier- free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Public buildings. **22.**(1) A proprietor of a public building shall adapt it to suit persons with disabilities in such manner as may be specified by the Council.  
(2) All proprietors of public buildings shall comply with subsection (1) within five years after this section comes into operation.

Public service vehicles. **23.**(1) An operator of a public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Council.  
  
(2) All operators of public service vehicles shall comply with subsection (1) within two years after this section comes into operation.

Adjustment orders. **24.**(1) This section shall apply to –  
(a) any premises to which members of the public are ordinarily admitted whether on payment of a fee or otherwise; and  
(b) any services or amenities ordinarily provided to members of the public.  
  
(2) Without prejudice to the provisions of section 22, if the Council considers that any premises, services or amenities are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Council may, subject to this section, serve upon the owner of the premises or the

provider of the services or amenities concerned an adjustment order –

(a) setting out –

- (i) a full description of the premises, services or amenities concerned; and
- (ii) the grounds upon which the Council considers that the premises, services or amenities are inaccessible to persons with disabilities;

(b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by persons with disabilities to the premises, services or amenities concerned; and

(c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

(3) Before serving an order under subsection (2) the Council shall serve notice upon the person concerned –

(a) specifying the ground upon which the adjustment order is to be issued and the nature of the action which the Council considers necessary to rectify the situation which has given rise to the proposed order;

(b) stipulating the maximum period that the Council considers reasonable for the implementation of the action it proposes to order; and

(c) calling upon the person concerned, if he wishes to do so, to make representations to the Council within thirty days from the date of the service of the notice.

(4) After considering any representations described in subsection (3) (c) the Council may issue, or refrain from or defer the issuing of, an adjustment order.

(5) Within thirty days after an adjustment order is confirmed or issued under subsection (4), the person concerned may appeal against the confirmation or issue to the High Court in the prescribed manner on any grounds including on the grounds that –

(a) he cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order;

(b) the period stipulated for implementing the adjustment order is unreasonable;

(c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or

(d) adequate access to the premises, services or amenities concerned may be secured without recourse to the action required by the adjustment order.

(6) Upon hearing an appeal under subsection (5) the Court may –

(a) confirm, vary or set aside the adjustment order appealed against; and

(b) make such order as to the costs of the appeal as it thinks fit.

Denial of admission into premises, etc.

**25.(1)** No person shall, on the ground of disability alone, deny a person with a disability –

(a) admission into any premises to which members of the public are ordinarily admitted; or

(b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

(2) The proprietor of premises referred to in subsection (1) (a) shall not have the right, on the ground of a person's disability alone, to reserve the right of admission to his premises against such a person.

(3) A person with a disability who is denied admission into any premises or the provision of any service or amenity contrary to subsection (1) shall be deemed to have suffered an injury and shall have the right to recover damages in any court of competent jurisdiction.

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

Offences- Adjustment orders and discrimination

**26.(1)** A person is guilty of an offence if he –

(a) fails to comply with an adjustment order served under section 24;

(b) contravenes section 12(1) or discriminates against a person

contrary to section 12;

(c) discriminates against a person contrary to section 15 (1);

(d) contravenes section 25 (1) or discriminates against a person contrary to section 25; or

(e) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the Court be ordered to pay the person injured by the offence such sums of money in compensation as the Court may deem appropriate.

Adjustment  
orders against  
Government  
institutions. Cap.  
242.  
Cap. 211.

**27.**(1) The Council shall not serve an adjustment order upon –

(a) any hospital, nursing home or clinic controlled or managed by the Government or registered under [the Public Health Act](#) except with the consent of the Minister responsible for health; or

(b) any school or educational or training institution controlled or managed by the Government or registered under [the Education Act](#) except with the consent of the Minister responsible for the administration of the institution or Act concerned.

(2) Within sixty days after being requested to consent under subsection (1) the Minister shall either give or refuse his consent and if he fails to do so within that period the Council may proceed to serve the adjustment order as though the Minister had consented.

Sports and  
recreation.

**28.**(1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the Government during social, sporting or recreational activities.

(2) Persons with disabilities shall be entitled to participate in all national and international sports events.

(3) For the purpose of subsection (2) the Ministry responsible for sports shall, in consultation with the Council, provide the necessary

suitable environment including –

- (a) architectural infrastructure;
- (b) apparatus and equipment;
- (c) training and medical personnel; and
- (d) transportation facilities for the participants.

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

#### **PART IV CIVIC RIGHTS**

Voting

**29.**(1) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections.

(2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter

(3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.

(4) A person who contravenes subsection (2) is guilty of an offence.

Polling stations.

**30.** Polling stations shall be made accessible to persons with disabilities during elections, and such persons shall in addition be provided with the necessary devices and assistive devices and services to facilitate the exercise of this right under this section.

Registration of organizations.  
No. 19/1991  
Cap. 108.

**31.**(1) The Council shall register all organizations of or for persons with disabilities.

(2) All existing organizations of or for persons with disabilities shall, within twelve months after this section comes into operation, apply in the prescribed manner to the Council for registration.

(3) Notwithstanding the provisions of any other law, organizations of or for persons with disabilities that are registered under this Act shall be exempt from registration under the Non-Governmental Organizations Co-ordination Act and [the Societies Act](#).

## **PART V NATIONAL DEVELOPMENT FUND FOR PERSONS WITH DISABILITIES**

Establishment of the Fund.

**32.(1)** There shall be established a Fund to be known as the National Development Fund for Persons with Disabilities.

(2) The Fund shall be established as a permanent fund and the income therefrom shall be used for the benefit of persons with disabilities in Kenya.

(3) The Fund shall be administered by the Council through a board of trustees as hereunder provided under Section 34.

Sources of and payments from Fund.

**33.(1)** The sources of the Fund shall be –

(a) such moneys as may be appropriated thereto by Parliament;

(b) income generated by investments made by the trustees; and

(c) any other donations which the Council may receive for purposes of the Fund.

(2) Without limiting the generality of section 32 (2), the Board of Trustees may, out of the Fund –

(a) contribute to the expenses, including capital expenses, of organizations of or for persons with disabilities;

(b) contribute to the expenses, including capital expenses, of institutions that train persons in the care of persons with disabilities;

(c) contribute to the capital expenses of projects undertaken by the Government for the benefit of persons with disabilities;

(d) provide or contribute to the cost of assistive devices and services;

(e) pay allowances to persons with disabilities falling in the following categories and who have no other source of income –

(i) persons with severe disabilities and who are therefore not trainable in any skills;

(ii) aged persons with disabilities; and

(iii) single parents with children with disabilities and who cannot therefore seek employment; and

(f) make payments or contributions for such purposes as may be prescribed by the Council.

Trustees to manage Fund.

**34.(1)** The Fund shall be managed by a Board of Trustees which shall consist of -

- (a) the Chairman of the Council;
- (b) the Director of the Council who shall be the secretary to the Board;
- (c) a representative of the Minister appointed by the Minister;
- (d) a representative of the Ministry responsible for finance appointed by the Minister responsible for finance;
- (e) four representatives appointed by the Council consisting of –
  - (i) one representative nominated by organizations of persons with visual disabilities;
  - (ii) one representative nominated by organizations of persons with hearing disabilities;
  - (iii) one representative nominated by organizations for persons with mental disabilities; and
  - (iv) one representative nominated by organizations for persons with physical disabilities; and
- (f) not more than three persons co-opted by the Council to represent the donors that in its opinion have substantially supported the welfare of persons with disabilities.

(2) The Minister shall appoint one of the persons appointed under subsection (1) (e) to be the treasurer to the Fund.

(3) The Board shall conduct its affairs in accordance with regulations prescribed by the Council subject to any law relating to trustees.

## **PART VI RELIEF AND INCENTIVES**

Exemptions.

**35.(1)** All persons with disabilities who are in receipt of an income may apply to the Minister responsible for finance for exemption from income tax and any other levies on such income.

(2) The Minister responsible for finance shall, in consultation with the Council, assess all applications received under subsection (1) and make such order thereon, if any, as he deems fit, exempting the applicant wholly, or to the extent provided by the order, from income tax or other levies specified therein, and any such order shall,

notwithstanding the provisions of any [other Act](#), have effect according to its terms.

(3) Materials, articles and equipment, including motor vehicles, that are modified or designed for the use of persons with disabilities shall be exempt from import duty, value added tax, demurrage charges, port charges and any other government levy which would in any way increase their cost to the disadvantage of persons with disabilities.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disabilities shall be exempt from import duties, value added tax, demurrage charges, port charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

Incentives.

**36.**(1) Any donations, bequest, subsidy or financial aid which may be made to government agencies involved in the rehabilitation of persons with disabilities or to organisations involved in such rehabilitation and registered with the Council for the purposes of this section shall, subject to the provisions of [the Income Tax Act](#), be allowed as deductions from the donor's gross income for the purpose of computing taxable income.

(2) The Minister responsible for finance or other appropriate authority shall endeavor to provide, subject to the provisions of any other relevant law, incentives to local manufacturers of technical aids and appliances used by persons with disabilities including, but not limited to, the following –

- (a) additional deductions for labour expenses;
- (b) tax and duty exemptions on imported capital equipment;
- (c) tax credits on domestic capital equipment;
- (d) simplified customs procedures;
- (e) unrestricted use of consigned equipment;
- (f) employment of foreign nationals;
- (g) exemptions from taxes and duties on raw materials; and
- (h) access to bonded manufacturing systems.

Credit.

**37.**It shall be the duty of the Minister responsible for matters relating to credit unions, co-operatives and other lending institutions to encourage the extension by such institutions of credit to persons with disabilities.

## PART VII MISCELLANEOUS

Legal system.

**38.**(1) The Attorney-General, on consultation with the Council and the Law Society of Kenya, shall make regulations providing for free legal services for persons with disabilities with respect to the following –

- (a) matters affecting the violation of the rights of persons with disabilities or the deprivation of their property;
- (b) cases involving capital punishment of persons with disabilities; and
- (c) such matters and cases as maybe prescribed in the regulations made by the Attorney-General.

(2) The Chief Justice shall make rules providing for-

(a) the exemption, for persons with disabilities, from the payment of fees in relation to matters or cases described in subsection (1); and

(b) the provision, to persons with disabilities who attend court, of free sign language interpretation, Braille services and physical guide assistance.

(3) Accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister.

(4) The Chief Justice shall endeavour to ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

Television programmes.

**39.**All television stations shall provide a sign language inset or subtitles in all newscasts and educational programmes, and in all programmes covering events of national significance.

Telephone services.

**40.**All persons providing public telephone services shall as far as possible install and maintain telephone devices or units for persons with hearing disabilities and tactile marks on telephone sets to enable persons with visual disabilities to communicate through the telephone system.

Postal charge exemption.

**41.**The following shall be exempt from postal charges –

- (a) printed and recorded literature, articles, equipment and other devices for the use of persons with disabilities which are sent by mail

within and outside Kenya; and

(b) aids and orthopaedic devices for persons with disabilities sent outside Kenya by mail for repair:

Provided that the aforesaid items are for personal or institutional purposes and are recommended for this exemption by the Council, and that the person with a disability or the organization is registered with the Council.

Exemptions and deductions-general requirements.

**42.**(1) The following apply with respect to exemptions and deductions described in subsection (2)-

(a) no person is eligible for an exemption or deduction unless the exemption or deduction has been recommended by the Council and approved by the appropriate government authority;

(b) no person is eligible for an exemption or deduction unless any additional requirements or conditions prescribed in the regulations made by the Minister are satisfied;

(c) an exemption or deduction may be refused on the basis that it has not been provided for in the allocation of public resources.

(2) The exemptions and deductions referred to in subsection (1) are the exemptions and deductions under the following –

- (a) section 12;
- (b) section 16;
- (c) section 35;
- (d) section 36 (1); and
- (e) section 40.

Inspectorate units and Council inspectors.

**43.**(1) All Government ministries shall, under the provisions of this Act, establish and maintain an inspectorate unit for the purpose of ensuring the implementation and compliance with the provisions of this Act.

(2) The Council shall appoint an inspector who shall be empowered to investigate and recommend prosecution or other remedy against infringement of this Act.

(3) The inspector appointed under subsection (2) shall report, to the Council or the relevant committee of the Council, any person or persons whose conduct is in violation of this Act or the regulations made thereunder.

- Regulations. **44.**The Minister may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations –
- (a) prescribing the procedures, forms and fees applicable under this Act;
  - (b) specifying and describing the nature of acts of discrimination against persons with disabilities; and
  - (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act.

### **PART VIII OFFENCES AND PENALTIES**

Concealment of persons with disabilities. **45.**(1) No parent, guardian or next of kin shall conceal any person with a disability in such a manner as to deny such a person the opportunities and services available under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding twenty thousand shillings.

Negligence by doctor.

**46.**(1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) The Court may order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate.

Giving false information to get registered.

**47.**A person is guilty of an offence if he knowingly gives false information to the Council for the purpose of being registered or for the purpose of acquiring any privilege due to persons so registered.

General penalty.

**48.**Any person found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding ten thousand shillings or imprisonment for a term not exceeding one year, or both such fine and imprisonment

Request for legal action by Attorney-General.

**49.(1)** The Council may request the Attorney- General to take appropriate legal action if the Council believes that –

(a) a person or group of persons is engaged in a practice which is discriminatory under this Act; and

(b) the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest.

(2) Any person or group of persons aggrieved by an order made in a legal action commenced pursuant to a request under subsection (1) may within sixty days after the making of such order apply in the prescribed form to the High Court for the review of such order.

### **SCHEDULE (s. 5 (2)) PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL**

1. A member of the Council may –

(a) resign his office by notice in writing to the Minister; or

(b) be removed by the Minister by notice in writing if he –

- (i) is subject to a vote calling for his removal by a two thirds majority of all members of the Council;
- (ii) has been absent from five consecutive meetings of the Council without permission of the chairman;
- (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
- (iv) is an undischarged bankrupt;
- (v) is convicted by a Court of an offence punishable by a term of imprisonment;  
or
- (vi) is otherwise unable or unfit to discharge his functions.

2. Where the office of a member becomes vacant the vacancy may with the approval of the Minister be filled through the majority vote of the members for the remainder of the term.

3. The Council shall pay to its members such remuneration as the Minister may approve.

4. The Council shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

5. A meeting of the Council shall be held on such date and at such time as the Council shall decide, or in the absence of such a decision if the chairman decides that a meeting is necessary, on a date and at a time determined by the chairman.

6. Unless otherwise decided by a two-thirds majority of the members of the Council, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

7. The quorum of a meeting of the Council shall be fifteen members.

8. (1) The chairman, or in his absence, the vice-chairman, shall preside at every meeting of the Council.

(2) in the absence of both the chairman and vice-chairman, the members present may choose one of their number to preside at the meeting.

9. A decision of the majority of members of the Council present at any meeting of the Council shall be deemed to be the decision of the Council and if upon any question the voting shall be equal, the chairman, vice-chairman or other person presiding shall have a second and casting vote.

10. No act, decision or proceedings of the Council shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Council being defective.