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Act

No. 4 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
31st January, 2024

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—MALAWI COUNCIL FOR DISABILITY AFFAIRS

3. Establishment of Malawi Council for Disability Affairs
4. Functions of the Council
5. Powers of the Council
6. Composition of the Council
7. Tenure of office and vacancies
8. Meetings of the Council
9. Committees of the Council
10. Disclosure of interest
11. Allowances and expenses
12. Common seal

PART III—ADMINISTRATION

13. Secretariat
14. Director General
15. Duties of the Director General
16. Removal of Director General
17. Other employees of the Council

PART IV—FUNDS AND PROPERTY OF THE COUNCIL

18. Funds and property of the Council

SECTION

19. Accounting and audit
20. Establishment and management of the Disability Trust Fund

PART V—REGISTRATION OF PERSONS WITH DISABILITIES AND INSTITUTIONS, ASSOCIATIONS AND ORGANIZATIONS IMPLEMENTING DISABILITY PROGRAMMES

21. Registration of persons with disabilities
22. Registration of institutions, associations, etc., implementing disability programmes

PART VI—RIGHTS OF PERSONS WITH DISABILITIES

23. Respect, promotion and protection of fundamental rights and freedoms of persons with disabilities
24. Prohibition of inhuman and degrading treatment
25. Health care and rehabilitation services
26. Education and training
27. Work and employment
28. Access to a physical environment
29. Provision of parking space and access to public transport
30. Access to information, communication and technology
31. Adequate standard of living
32. Access to justice
33. Participation in political, and public life
34. Cultural, sporting and recreational services
35. Economic activity
36. Research

PART VII—ENFORCEMENT

37. Complaints
38. Compliance orders

PART VIII—MISCELLANEOUS

39. Incentives to local manufacturers
40. Judicial review
41. Civil remedies
42. Offences and penalties
43. Oath of secrecy
44. Protection from liability
45. Annual reports
46. Regulations

SECTION

PART IX—TRANSITIONAL PROVISIONS

47. Repeal and savings
48. Transfer of assets and liabilities
49. Transfer of licences
50. Legal proceedings
51. Transfer of employees

Schedule

An Act to provide for the promotion and protection of the fundamental rights and freedoms of persons with disabilities; obligations of duty bearers in the promotion and protection of rights of persons with disabilities; a simplified and cost-effective mechanism for redress in cases of a breach of the fundamental rights and freedoms of persons with disabilities; the establishment of the Council for Disability Affairs; the establishment of the Disability Trust Fund; the registration of persons with disabilities, institutions, associations and organizations implementing disability programmes; the repeal of the Handicapped Persons Act and the Disability Act and matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Persons with Disabilities Act, 2024, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

"assistive products" means appropriate aids, appliances, technologies or other support systems that facilitate the better functioning of persons with disabilities;

"Chairperson" means the Chairperson of the Council appointed under section 6(1) (*a*);

"communication" means disseminating information to a person with disabilities using a means or format that makes the information accessible and comprehensible to the person and includes the use of languages, display of text, braille, tactile communication, sign language, signs, large print, accessible multimedia whether in written, audio or plain language, human-reader in augmentative or alternative modes, formats of communication;

"compliance order" means an order issued by the Council under section 39;

"Council" means the Council for Disability Affairs established under section 3;

"disability" means a long-term physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairment which in interaction with various barriers may hinder full and effective participation in society of a person on an equal basis with others;

"discriminate" means to accord different treatment to a person solely or mainly on the basis of a disability of the person, and includes using words, gestures or caricatures that demean, scandalise or embarrass a person with a disability;

"reasonable accommodation" means the provision of necessary and appropriate facilities including modifications and adjustments, where necessary, to ensure persons with disabilities effective enjoyment or exercise of their fundamental rights and freedoms, on an equal basis with others;

"rehabilitation" means inpatient or outpatient health care services such as physical therapy, occupational therapy, speech-language pathology and psychiatric rehabilitation services that help a person with disabilities to keep, restore or improve skills and functioning for daily living;

"universal design" means a design of a building that makes the building usable by all persons, to the greatest extent possible, without the need for adaptation, and includes accommodation for the use of assistive products; and

"Vice-Chairperson" means the Vice-Chairperson of the Council appointed pursuant to section 6 (1)(*a*).

PART II—MALAWI COUNCIL FOR DISABILITY AFFAIRS

Establishment of Malawi Council for Disability Affairs

3.—(1) There is hereby established the Malawi Council for Disability Affairs (in this Act otherwise referred to as the "Council").

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall be capable, by that name, of—

(*a*) doing or performing all such acts as may be necessary or expedient for the furtherance of the provisions of this Act; and

(*b*) subject to this Act, doing or performing all such acts as a body corporate may, by law, do or perform or such as are incidental or appertain to a body corporate.

Functions of the Council

4. The functions of the Council shall be to—

(*a*) develop standards and guidelines on a rights-based approach to the provision of services to persons with disabilities;

(*b*) promote activities aimed at prevention, early identification, assessment and the mitigation of the impact of various forms of disabilities;

(*c*) promote multi-sectoral collaboration and coordination in the planning, provision and evaluation of disability programmes and services at national, local council and community levels;

(*d*) promote research on disability matters to inform the development of programmes concerning persons with disabilities;

(*e*) promote measures and interventions aimed at promoting the realization of the rights of persons with disabilities;

(*f*) facilitate the operation of schemes for employment of, or generation of income by persons with disabilities;

(*g*) register and maintain a database of—

(i) persons with disabilities;

(ii) institutions, associations and organizations implementing disability programmes, including provision of specialized services to persons with disabilities; and

(iii) places at which services for the rehabilitation of persons with disabilities are provided;

(*h*) provide vocational skills training to persons with disabilities through community and institutional based approaches;

(*i*) facilitate access to appropriate rehabilitation and other support services by persons with disabilities;

(*j*) provide assistive products to persons with disabilities;

(*k*) create awareness on disability matters;

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

(*m*) do all such acts and things as are necessary or incidental to the implementation of this Act.

Powers of the Council

5. The Council shall, in the discharge of its functions, have the power to—

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

(*b*) inspect any household and institution for compliance with provisions under this Act;

(*c*) issue, review, approve, suspend or revoke a certificate of registration issued in accordance with this Act;

(*d*) issue compliance orders in accordance with Part VII;

(*e*) impose administrative sanctions and penalties for breach of this Act;

(*f*) require the production by any person, of any document or information which, in the opinion of the Council, is necessary for the execution of its functions under this Act;

(*g*) carry out consultations regarding any matter under its consideration and for the general conduct of its work and determine the procedure for carrying out such consultations; and

(*h*) do and perform all such things or acts as are necessary or expedient for the execution of its functions under this Act.

Composition of the Council

6.—(1) The Council shall consist of eleven members, who shall be citizens of Malawi, comprising—

(*a*) six members appointed by the Minister, at least three of whom shall be persons with disabilities, as follows—

(i) the Chairperson;

(ii) Vice-Chairperson;

(iii) one legal practitioner who possesses a valid practising licence in accordance with the Legal Education and Legal Practitioners Act;

No. 31 of 2018

(iv) two members from Non-Governmental Organizations working with persons with disabilities; and

(v) one religious leader nominated by an association of religious organizations; and

(*b*) *ex-officio* members as follows—

(i) the Secretary responsible for disability affairs, or his or her designated representative;

(ii) the Secretary responsible for health, or his or her designated representative;

(iii) the Secretary responsible for labour, or his or her designated representative;

(iv) the Secretary responsible for education, or his or her designated representative; and

(v) the Chairperson of the Human Rights Commission.

(2) A person shall not be qualified for appointment as a member of the Council, other than an *ex-officio* member, if that person—

(*a*) does not possess—

(i) a minimum academic qualification of a bachelor's degree or its equivalent obtained from an institution recognized or accredited under the National Council for Higher Education Act; and Cap. 30:12

(ii) expertise and experience in a field relevant to the functions and responsibilities of the Council;

(*b*) holds a political office;

(*c*) is an officer or employee in the public service;

(*d*) is an undischarged bankrupt; or

(*e*) would for any other reason be disqualified by law from serving as a director of a company or as a trustee.

(3) A member of the Council, other than an *ex-officio* member, shall not, by reason only of the appointment as a member of the Council, be deemed to be an employee in the public service.

(4) The appointment of members of the Council under subsection (1)(*a*) shall comply with the provisions of the Gender Equality Act. Cap. 25:06

(5) The Minister shall publish, in the *Gazette*, the names of all members of the Council, as first constituted, and every subsequent change in the membership.

(6) The Council may co-opt not more than three persons to assist it for such purposes and such period as the Council may determine, depending on the need of the Council and expertise of the appointees, but the persons so co-opted shall not be eligible to vote.

Tenure of office and vacancies

7.—(1) A member of the Council, other than an *ex-officio* member, shall hold office for a term of three years, and shall be eligible for re-appointment for a further term of three years.

(2) The office of a member of the Council, other than an *ex-officio* member, shall become vacant—

(*a*) on the expiry of the term of office of the member;

(*b*) if the member resigns from office in accordance with subsection (3);

(*c*) if the member is absent, without a valid reason, from three consecutive meetings of the Council of which the member has had notice;

(*d*) upon the member becoming mentally or physically ill, whereupon three suitably qualified medical practitioners certify that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Council;

(*e*) upon the member being removed from a position of trust by a court of law;

(*f*) upon the member being convicted of an offence and sentenced to a term of imprisonment without the option of a fine;

(*g*) upon the member being removed from office in accordance with subsection (4);

(*h*) if a situation arises that if the member had not been appointed, the member would have been disqualified from appointment as a member of the Council; or

(*i*) upon the death of the member.

(3) A member of the Council, other than an *ex-officio* member, may, at any time, resign from his or her office by giving thirty days written notice to the Chairperson.

(4) The Minister may remove any member of the Council, except an *ex-officio* member, on any of the following grounds—

(*a*) incompetence in the execution of the functions of the office of member;

(*b*) failure to declare a conflict of interest relating to any matter under consideration by the Council;

(*c*) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Council obtained in the course of duty or otherwise;

(*d*) misconduct that brings the Council into disrepute; or

(*e*) being compromised to the extent that his or her ability to impartially and effectively exercise the duties of his or her office is seriously in question.

(5) A vacancy in the membership of the Council shall be filled, within sixty days of the occurrence of the vacancy, by the appointment of a new member by the Minister in accordance with section 6.

(6) A person appointed to fill a vacancy under subsection (5) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(7) The period served by a person appointed under subsection (5) shall not be regarded as a term for purposes of subsection (1) unless the period is two years or more.

Meetings of the Council

8.—(1) The Council shall meet for the transaction of its business once every three months, at a place and at a time as the Chairperson may determine after consulting the Director General.

(2) The Chairperson shall convene ordinary meetings of the Council by giving the members of the Council not less than fourteen days written notice.

(3) The Chairperson may, on his own motion, convene an extraordinary meeting of the Authority at a place and time as the Chairperson may determine after consulting the Director General.

(4) The Chairperson shall, after consulting the Director General, convene an extraordinary meeting of the Council, within seven days of receipt of a request, in writing, signed by not less than five members, specifying the purpose for which the meeting is to be convened.

(5) The quorum, at every meeting of the Council, shall be constituted by six members.

(6) A member of the Council, other than an *ex-officio* member, shall not attend a meeting of the Council by proxy and where a member of the Council is unable to attend any meeting of the Council, the member may request that his or her apology for failure to attend the meeting be recorded.

(7) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson, shall preside at all meetings of the Council and in the absence of both the Chairperson and Vice-Chairperson, the members of the Council present and forming a quorum shall elect one of their number to preside over the meeting.

(8) A decision of the Council on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to that person's deliberative vote.

(9) The Council may, where necessary, taking into account the nature of the matter to be deliberated, invite any person to attend a meeting of the Council and participate in the deliberations or to make a presentation or to be asked questions, on any matter, but the person so invited shall not be entitled to vote.

(10) The Director General shall serve as secretary at meetings of the Council and shall record and keep minutes of each meeting of the Council and the minutes shall be confirmed at the subsequent meeting.

(11) Where in a meeting, the deliberations of the Council concern the Director General or any officer designated by the Director General to attend the meeting, the Council may exclude the Director General or the officer from the meeting.

(12) Subject to the provisions of this Act, the Council may make rules to regulate its proceedings and business.

Committees of the Council

9.—(1) The Council may establish such number of committees as the Council may determine necessary for the performance of its functions and responsibilities under this Act.

(2) A committee may consist of either members of the Council only or members of the Council and such other suitably qualified persons as the Council may determine.

(3) The Council shall appoint the chairperson of each committee from amongst the members of the Council appointed under section 6(1)(*a*).

(4) The Director General shall serve as secretary at meetings of each committee of the Council or may, with the approval of the Chairperson, delegate a senior member of staff to serve as secretary at meetings of a committee.

(5) Every committee shall act in accordance with any directions given to it, in writing, by the Council.

Disclosure of interest

10.—(1) A member of the Council or its committee, a person invited to attend a meeting of the Council or any of its committees who has a direct or indirect interest in any matter before the Council or any committee of the Council, as the case may be, shall disclose the interest as soon as is practicable before or soon after the commencement of the meeting and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a person fails to disclose an interest in accordance with subsection (1) and the Council or committee of the Council makes a decision that benefits that person, a close relative, professional or business partner of that person, the decision shall, to the extent that it benefits that person, the close relative, professional or business partner, be null and void.

(4) For purposes of this section, "close relative" means spouse, brother, sister, parent, child, child of the spouse and the spouse of any of these relations.

Allowances and expenses

11.—(1) Members of the Council and its committees shall be paid such allowances and on honoraria, as the Minister may determine, on recommendation of the Government department responsible for human resource development and management.

(2) The Council may reimburse any reasonable expenses incurred by a member of the Council, a member of its committee or a person invited to attend a meeting pursuant to section 8(9).

Common seal

12.—(1) Subject to this section, the common seal of the Council shall be kept by the Director General and shall not be used, except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered to be duly executed by, or on behalf of, the Council—

(*a*) where they are required to be under seal, if sealed with the common seal and authenticated by the Chairperson or any other member nominated on that behalf by the Council and the Director General or any other officer authorized by the Council; or

(*b*) where they are not required to be under seal, if executed on that behalf by a member authorized by the Council for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Council, its assignees and its successors and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Council affixed to any document and shall presume, unless otherwise proven, that it was duly affixed.

PART III—ADMINISTRATION

Secretariat

13. There shall be a secretariat of the Council which shall consist of the Director General and other employees of the Council appointed in accordance with this Act.

Director General

14.—(1) The Council shall appoint a Director General, who shall be the chief executive officer of the Council and shall, subject to the general direction of the Council, be responsible for the day-to-day operations of the Council.

(2) The Director General shall be appointed by the Council, through an open and competitive process, and on such terms and conditions as the Council shall determine after consulting the Government department responsible for human resource development and management.

(3) A person shall not be appointed as Director General, unless the person—

(*a*) possesses a minimum qualification of a master's degree obtained from an institution accredited or recognized under the National Council for Higher Education Act; Cap. 30:12

(*b*) has proven and demonstrable experience of not less than ten years in disability affairs, human rights or in a field relevant to the functions and responsibilities of the Council;

(*c*) has not less than five years experience in executive management; and

(*d*) does not hold a political office.

(4) The Director General shall hold office for a term of five years and shall, subject to satisfactory performance, be eligible for re-appointment for one further term of five years.

(5) The office of the Director General shall be a public office.

Duties of the Director General

15. Subject to the general and special directions of the Council and without prejudice to the generality of section 14(1), the Director General shall be responsible for—

(*a*) the day-to-day operations of the Council;

(*b*) the effective management of the funds, property and business of the Council;

(*c*) the administration, organization and control of the other employees of the Council; and

(*d*) the effective administration and implementation of the provisions of this Act.

Removal of Director General

16.—(1) The Council may terminate the appointment of a Director General on the following grounds—

(*a*) incompetence in the execution of the functions of the office;

(*b*) incapacity to perform the functions of his or her office by reason of physical or mental illness;

(*c*) being declared or adjudged bankrupt by a competent court of law;

(*d*) failure to declare a conflict of interest relating to any matter under consideration by the office or the Council;

(*e*) if he or she is convicted of an offence against any written law and sentenced to a term of imprisonment without the option of paying a fine;

(*f*) misbehaviour or misconduct that brings the office of the Director General into disrepute; or

(*g*) is found guilty of misconduct punishable by dismissal under his or her employment contract.

(2) The Council shall not remove a Director General from office unless the Director General is given an opportunity to be heard.

Other employees of the Council

17.—(1) The Council shall employ such other members of staff, subordinate to the Director General, as it considers necessary for the efficient discharge of the functions of the Council.

(2) The Council may delegate to the Director General, the appointment, discipline and dismissal of members of staff in specified junior ranks and the Director General shall report to the Council, at its next meeting, every appointment, disciplinary decision or dismissal made pursuant to this subsection.

(3) The members of staff of the Council appointed under subsection (1) shall be appointed on terms and conditions as the Council shall determine, after consulting the Government department responsible for human resource management and development.

(4) Section 16 shall apply, with the necessary modifications, to the dismissal of a member of staff employed in accordance with this section.

PART IV—FUNDS AND PROPERTY OF THE COUNCIL

Funds and property of the Council

18.—(1)The funds and property of the Council shall consist of such sums of money and property—

(*a*) as may, from time to time, be payable to the Council from moneys appropriated by the National Assembly;

(*b*) as may accrue to or be received by the Council by way of fees, subsidies, contributions, subscriptions, charges, penalties,

rents, interest or royalties from the Government or any person; and

(*c*) sums of money and property as may be donated to the Council by a foreign Government, international agency, or other external body of persons or individuals.

(2) The funds and assets of the Council shall exclusively be under the control of the Council and shall be utilized solely for the purposes of this Act, in accordance with the written directions of the Council and for no other purpose.

Cap. 37:01
No. 4 of 2022
Cap. 37:03

(3) The Council shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

Accounting and audit

No. 4 of 2022

19.—(1) The Council shall cause to be kept proper books and records of accounts of the income, expenditure and assets of the Council, in accordance with the Public Finance Management Act.

Cap. 37:01

(2) The accounts of the Council shall be audited at the end of each financial year in accordance with the Public Audit Act.

(3) The financial year of the Council shall be a period of twelve months beginning in line with the Government financial year.

(4) The first financial year of the Council may be such shorter or longer period than twelve months as the Council shall determine, but being not less than six months nor more than eighteen months.

Establishment and management of the Disability Trust Fund

20.—(1) There is hereby established a fund to be known as the Disability Trust Fund (hereinafter referred to as the "Fund").

(2) The Fund shall consist of—

(*a*) sums of money as appropriated by the National Assembly, from time to time;

(*b*) sums of money as may be advanced to the Fund by way of bequests, donations and grants;

(*c*) sums of money realised from any investment under subsection (3); and

(*d*) such other sums of money as may, in any manner, become payable to, or vested in, the Fund.

(3) The Council may, upon approval of the Minister responsible for finance and subject to the Public Finance Management Act, invest any moneys in the Fund.

(4) The Fund shall be used for—

(*a*) research and training which promotes the objects of this Act and the protection of persons with disabilities;

(*b*) the acquisition of land, equipment, materials and other assets for the benefit of persons with disabilities;

(*c*) the support of the implementation of, or provision of, any activity, programme, service or amenity which benefits persons with disabilities;

(*d*) meeting any expenses arising from the establishment and operation of the Fund; and

(*e*) any purpose which the Council considers to be in the interest of persons with disabilities.

(5) The Minister responsible for finance shall prescribe operational guidelines for the utilization and accountability of the Fund.

PART V—REGISTRATION OF PERSONS WITH DISABILITIES, INSTITUTIONS, ASSOCIATIONS AND ORGANIZATIONS IMPLEMENTING DISABILITY PROGRAMMES

Registration of persons with disabilities

21.—(1) Any person wishing to be registered as a person with a disability shall make or cause to be made on his or her behalf an application in the prescribed form, to the Council.

(2) The Council shall, within fourteen days of receiving the application submitted pursuant to subsection (1), assess the person and, where the Council is—

(*a*) satisfied that the person complies with the prescribed criteria, register the person as a person with a disability; or

(*b*) not satisfied that the person complies with the prescribed criteria, refuse to register the person and give reasons for the refusal.

(3) Where the Council decides to register the applicant in accordance with subsection (2)(*a*), the Council shall issue a registration certificate, in the prescribed form.

(4) The Council shall keep and maintain a register of persons with disabilities in the prescribed form.

(5) Where the Council determines that a person, who is registered pursuant to this section, no longer possesses the disability on the basis of which he or she was registered, the Council shall strike-off the name of the person from the register.

Registration of institutions, associations, etc., implementing disability programmes

22.—(1) A group or body of persons, corporate or unincorporated, other than any body corporate established by an Act of Parliament expressly enacted for that purpose, formed or operating within Malawi and implementing programmes for the benefit of persons with disabilities, including providing specialized services for persons with disabilities, shall make an application for registration as a registered institution under this Act, in the prescribed form, to the Council.

(2) The Council shall, within fourteen days of receiving the application submitted pursuant to subsection (1)—

(*a*) register the applicant; or

(*b*) refuse to register the applicant and give reasons for the refusal.

(3) Where the Council decides to register the applicant in accordance with subsection (2)(*a*), the Council shall issue a registration certificate, in the prescribed form.

(4) Where the Council refuses to register the applicant in accordance with subsection (2)(*b*), the applicant may, at any time, re-apply for registration upon addressing the shortfalls contained in the communication from the Council.

(5) The Council shall keep and maintain a register of institutions registered under this section, in the prescribed form.

(6) The Council may suspend or cancel the registration of an institution registered under this section, where the Council establishes that the institution—

(*a*) failed to comply with a provision of this Act;

(*b*) made a misleading or false representations at the time of registration; or

(*c*) any other reasonable grounds the Council may deem appropriate.

(7) The Council shall not suspend or cancel the registration of an institution registered under this section, unless the institution has been given an opportunity to show cause why the registration should not be suspended or cancelled, as the case may be.

PART VI—RIGHTS OF PERSONS WITH DISABILITIES

Respect, promotion and protection of fundamental rights and freedoms of persons with disabilities

23.—(1) A person with a disability shall enjoy the fundamental rights and freedoms enshrined in the Constitution.

(2) The Government and all natural and legal persons in Malawi shall take all appropriate steps to promote, protect and fulfil the human rights of persons with disabilities.

Prohibition of inhuman and degrading treatment

24.—(1) The dignity of a person with a disability shall be inviolable.

(2) A person shall not subject a person with a disability to—

(*a*) any form of torture or any kind of cruel, inhuman or degrading treatment;

(*b*) a harmful cultural practice; or

(*c*) forced sterilisation.

(3) A person shall not subject a person with a disability to any medical or scientific experimentation without the informed consent of the person with a disability or, where the person with a disability is not capable of giving consent, the consent of the parent or legal guardian of the person with a disability.

(4) A person who contravenes this section commits an offence and shall, upon conviction, be liable to imprisonment for twenty-one years.

Health care and rehabilitation services

25.—(1) A person with a disability has the right to access health care and rehabilitation services on an equal basis with other persons.

(2) A health establishment shall—

(*a*) not discriminate against a person with a disability in the provision of health care and rehabilitation services;

(*b*) provide appropriate assistive products to enable a person with a disability to access health services at the facility;

(*c*) where a disability or potential disability is detected, provide timely treatment and rehabilitation or, where the establishment is not able to provide the required service, refer the person with a disability to a health establishment with the capacity to provide the required service;

(*d*) inform a person with a disability or, where the person with a disability is unable to comprehend the information, his or her parent or guardian, on the habitation and rehabilitation services available for the particular disability; and

(*e*) provide accessible health services suitable for the specific needs of a person with a disability who visits the establishment.

(3) A health establishment set up to provide institutional care to persons with disabilities shall have in its employment suitably qualified personnel to provide the service it is set up to provide.

(4) For the purposes of this section, "health establishment" means a hospital, clinic or facility providing a health service, established by the Government or a private entity.

Education and training

26.—(1) A person with a disability has the right to education and training including lifelong learning, on the basis of equal opportunity.

(2) An education or skills training institution shall not—

(*a*) 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;

(*b*) expel a person with a disability from the education or skills training institution by reason only of the disability, if the person has the ability to pursue the course the person is enrolled in;

(*c*) discriminate against, discipline, segregate or deny a person with a disability participation in any event or activity that the person is capable of participating in; or

(*d*) withhold from, or deny, a person with a disability any benefit or service on the basis of a disability of that person.

(3) An education or skills training institution which enrols a person with a disability shall—

(*a*) provide an inclusive education system;

(*b*) provide qualified personnel, appropriate assistive products to enable a person with a disability to exercise his or her right to education;

(*c*) take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, use of school facilities, class schedules, physical education requirements and other similar considerations; and

(*d*) put in place policies and mechanisms for the use of appropriate modes of communication to enable persons with disabilities full and equal participation in the teaching and learning process.

(4) A parent or guardian of a child with a disability has the responsibility to enrol the child in an institution of learning.

(5) The Council shall promote the establishment of special education and skills training institutions for persons with disabilities requiring specialized facilities or education and training modalities to cater for formal education, skills development and self-reliance of persons with disabilities requiring such special facilities or education and training.

(6) For the purposes of this section, "inclusive education" means an education system which takes into account the diversity of needs of learners and promotes effective participation of learners with disabilities.

Work and employment

27.—(1) A person with a disability has a right to work and employment which includes—

(*a*) the right to earn a living through work that is freely chosen or accepted in a labour market; and

(*b*) a working environment that is open, inclusive and accessible to persons with disabilities.

(2) An employer shall not discriminate against an employee on the basis of disability, with regard to all matters concerning employment, including—

(*a*) conditions of recruitment;

(*b*) hiring and restructuring of employment;

(*c*) continuation of employment;

(*d*) career advancement; and

(*e*) safe and healthy working conditions.

(3) An employer shall—

(*a*) where appropriate, in any advertisement for a job, encourage persons with disabilities to apply for the job;

(*b*) provide a person with a disability who applies for a job, reasonable accommodation necessary to undertake the job interview;

(*c*) provide an employee with a disability access to just and favourable conditions of work, including—

(i) reasonable accommodation in the performance of the job;

(ii) equal opportunities and equal remuneration for work of equal value;

(iii) safe and healthy working conditions;

(iv) an environment enabling a person with a disability to exercise labour and trade union rights, on an equal basis with others;

(v) protection from discrimination and harassment by other employees; and

(vi) a mechanism for redress of grievances; and

(*d*) where possible, enable an employee who acquires a disability while in employment to retain his or her job or reassign him or her to other duties, taking into account the disability.

(4) An employer with more than ten employees shall, by 31st December each year, submit to the Council in writing information relating to employees with disabilities in the employment of the employer during that year in such form as may be prescribed by the Council.

(5) The Council shall, by 28th February of the following year, publish in at least two newspapers of wide circulation and other accessible formats a summary, as it may determine appropriate, of the information provided under subsection (4).

(6) The register of persons with disabilities maintained by the Council under section 21 shall contain qualifications, training and skills of the registrants for the purpose of job placements and the Council shall update the register regularly.

(7) For the purposes of this section, "employer" means any person, body corporate, undertaking, public authority or body of persons who or which employs an employee and includes heirs, successors and assignees of the employer.

Access to physical environment

28.—(1) A person with a disability has the right to access and use a building, facilities, amenities and services open or provided to the public, on an equal basis with other persons.

(2) A person who provides a facility, amenity or service to the public shall put in place the appropriate features that make the facility, amenity or service accessible to a person with a disability.

(3) An owner or occupier of a building to which the public is allowed access shall, subject to the relevant laws on building standards, provide appropriate facilities to facilitate access to and into the building by persons with disabilities.

(4) An owner of a building to which the public has access shall, within five years of this Act coming into operation, adapt the building to conform to standards of universal design to facilitate access and use of the building by persons with disabilities.

(5) A local government authority or the Commissioner for Physical Planning shall not grant development permission under the Physical Planning Act for the development of a building to which the public will have access, unless the intended development conforms to standards of universal design to facilitate access and use of the development by persons with disabilities.

No. 17 of 2016

Provision of parking space and access to public transport

29.—(1) An owner or occupier of a building to which the public is allowed access shall provide a suitable parking space for a vehicle used by a person with a disability.

(2) A person who parks or causes to be parked a vehicle being used by a person without a disability in a parking space reserved for persons with disabilities, commits an offence and shall be liable to a fine of K20,000 on the spot and where the offence continues to an additional fine of K5,000 for every thirty minutes the vehicle remains in the parking space.

(3) An operator of a passenger service vehicle shall—

(*a*) not unreasonably refuse to transport a person with a disability; and

(*b*) not require a passenger with a disability who uses an assistive product, to pay an extra charge for the carriage of the assistive product.

Access to information, communication and technology

30.—(1) A person with a disability has the right to access information and communication technologies on an equal basis with other persons.

(2) A person who publishes information to the public shall also publish the information in a format which is accessible to persons with disabilities, including using sign language, braille, augmentative and other modes and formats of communication accessible to persons with disabilities.

(3) The Council shall promote the use of sign language, braille, augmentative and other modes and formats of communication accessible to persons with disabilities.

Adequate standard of living

31.—(1) A person with a disability has the right to an adequate standard of living for himself or herself and his or her family, including continuous improvement of his or her standard of life, on an equal basis with other persons.

(2) A person who provides a social service or implements a social protection programme shall prioritize and give special consideration to the needs of persons with disabilities, commensurate with the special needs of the persons with disabilities.

(3) The Council shall develop and disseminate guidelines for the provision of social services to persons with disabilities and the implementation of social protection programmes for persons with disabilities to enhance the enjoyment of the right to an adequate standard of living by persons with disabilities.

Access to justice

32.—(1) A person with a disability has the right to access justice commensurate with his or her needs.

(2) Where a person with a disability is a party or a witness in any proceedings before a court or a tribunal, or is required to avail

himself or herself in any inquiry, the court, tribunal or body conducting the inquiry shall—

(*a*) conduct the proceedings at a place which is accessible to the person with a disability;

(*b*) provide reasonable accommodation to facilitate the participation of that person in the proceedings including providing for the use of sign language, braille, augmentative and other modes and formats of communication accessible to the person with a disability; and

(*c*) make orders for, or adjustments to, the conduct of the proceedings as shall be necessary to enable the person with a disability to fully participate in the proceedings.

Participation in political, public life

33.—(1) A person with a disability has the right to participate in political and public life, on an equal basis with other persons, directly or indirectly through a freely chosen representative, including the right and opportunity to vote and be elected into political office.

(2)The Malawi Electoral Commission shall, during Presidential, Parliamentary and Local Government elections—

(*a*) make provision for appropriate, voting procedures, materials and facilities which are accessible, easy to understand and use, by persons with disabilities;

(*b*) make voter registration centres and polling stations accessible to persons with disabilities; and

(*c*) provide persons with disabilities with necessary assistive products and services to facilitate the exercise of the right to vote.

(3) The Council may develop and implement programmes to encourage persons with disabilities to participate in the conduct of public affairs, including—

(*a*) joining and taking part in activities of organizations of their choice; and

(*b*) participating in the planning, organization, management, monitoring and evaluation of development programmes and activities at community and national levels.

Cultural, sporting and recreational services

34.—(1) A person with a disability has the right to participate in cultural and sporting activities and access recreational services.

(2) A provider of a cultural, sporting or recreational service shall make reasonable accommodations to facilitate the participation of a person with a disability in the cultural or sporting activity or accessing the recreational service.

(3) The Malawi National Council for Sports shall—

(*a*) develop and promote various disability-specific sporting activities, based on the capability of persons with a particular disability;

(*b*) promote the development of disability-specific sporting facilities;

(*c*) make reasonable accommodations to enable persons with disabilities to have access to sporting facilities owned by the Government;

(*d*) facilitate the participation of persons with disabilities able to and interested in participating in various sporting activities;

(*e*) facilitate acquisition and distribution of disability-specific sports equipment;

(*f*) facilitate the introduction of disability-specific sporting activities by national sports associations;

(*g*) organize and promote the organization of disability-specific sporting competitions; and

(*h*) encourage the participation of persons with disabilities in disability-specific sporting activities and other sporting activities, based on the capability of each person with a disability.

(4) The Council shall work with providers of cultural or recreational services to—

(*a*) promote the provision of disability-friendly recreational services;

(*b*) promote the participation of persons with disabilities in various cultural or recreational activities; and

(*c*) make reasonable accommodations to enable persons with disabilities to access cultural and reactional services provided to the public.

Economic activity

35.—(1) A person with a disability has the right to engage in any economic activity on an equal basis with other persons.

(2) The Council shall—

(*a*) develop and implement programmes to enhance opportunities for persons with disabilities to undertake economic activities of their choice without undue hindrance; and

(*b*) work with appropriate institutions to support persons with disabilities intending to or undertaking economic activities.

(3) A financial institution shall—

(*a*) process an application for a loan or credit facility by a person with a disability, on an equal basis with an application by a person without a disability;

(*b*) give special consideration to the needs of a person with a disability in processing an application for a loan or credit facility by the person with a disability; and

(*c*) not reject an application for a loan or credit facility by a person with a disability on the basis of the disability.

(4) A financial institution shall, by 31st January each year, submit to the Council, information on persons with disabilities granted loans or credit facilities in the preceding year in such form as the Council may prescribe.

(5) The Council shall, by 31st March each year, consolidate and publish, the information provided under subsection (3) in two newspapers of wide circulation and other accessible formats as the Council may determine appropriate.

(6) For the purposes of this section "financial institution" has the meaning ascribed thereto under the Financial Services Act.

Cap. 44:05

Research

36.—(1) The Council shall—

(*a*) facilitate the development of national guidelines based on universal standards to ensure inclusive research on social, economic and participation issues affecting persons with disabilities and their families;

(*b*) promote regular and appropriate research on social, economic and participation issues affecting persons with disabilities and their families; and

(*c*) ensure integration of disability-focused and general research, through the establishment of relevant fora for stakeholders to exchange information related to disability and research.

(2) A person who conducts any research on social, economic and participation issues affecting persons with disabilities and their families or any matter with respect to persons with disabilities shall, within sixty days of completing the research, submit a copy of the research report to the Council.

PART VII—ENFORCEMENT

Complaints

37.—(1) A person with a disability who—

(*a*) is aggrieved by an action or inaction by a person on whom an obligation is placed under this Act, or

(*b*) believes that his or her right specified in this Act has been violated by any other person,

may lodge a complaint with the Council.

(2) A guardian of a person with a disability or any other person with sufficient interest in any matter concerning a person with a disability, who believes that a right of a person with a disability has been violated may lodge a complaint with the Council.

(3) The Council shall investigate any complaint lodged pursuant to subsection (1) or subsection (2) and communicate the results of the investigation to the person who lodged the complaint within thirty days of completing the investigation.

(4) The Council may, of its own accord, initiate an investigation where it has reason to believe that a person on whom an obligation has been placed under Part VI, has or is likely to contravene a provision of this Act or violate a right of a person with a disability and communicate results of the investigation to the person under investigation and the affected person with a disability within thirty days of completing the investigation.

(5) The Council may, for the purpose of an investigation, order any person to—

(*a*) attend at a specific time and place for the purpose of being examined orally, in relation to a complaint;

(*b*) produce such document, record or article in the custody of that person as may be required with respect to any matter relevant to the investigation; or

(*c*) furnish a statement in writing made under oath or an affirmation setting out all information which may be required.

(6) Where a document, record or article requested by the Council under subsection (5)(*b*) is stored in any format which is not accessible to the Council, the Council may require the person to produce the document, record or article in a format which is accessible to the Council.

(7) Where the Council is of the opinion that a complaint lodged under subsection (1) or any matter which the Council intends to investigate pursuant to subsection (4) can appropriately be addressed by the Ombudsman, Human Rights Commission or any other public body, the Council may refer the matter to the Ombudsman, Human Rights Commission or other public body, as the case may require.

Compliance orders

38.—(1) Where upon conclusion of an investigation under section 37, the Council is satisfied that the person under investigation has contravened or is likely to contravene this Act, the Council shall make an appropriate compliance order against that person.

(2) The Council may, in the exercise of its powers under subsection (1), order the person against whom the order is made to—

(*a*) comply with an obligation imposed on the person under this Act;

(*b*) cease and desist or refrain from doing an act stipulated in the order;

(*c*) pay compensation to the person with a disability affected by the action or inaction of the offending person;

(*d*) make any such physical adjustment to a building as specified in the order; or

(*e*) any other order considered appropriate by the Council.

(3) An order made under this section shall be in writing and shall specify—

(*a*) particulars of the person to whom the order is addressed;

(*b*) the provision of this Act that the person against whom the order is made has contravened or is likely to contravene;

(*c*) in the case of inaccessibility of premises, service or amenity to a person with a disability—

(i) a full description of the premises, service or amenity concerned; and

(ii) the grounds upon which the Council considers that the premises, service or amenity is inaccessible to the person with a disability;

(*d*) the specific measures to be taken by the person against whom the order is made at his or her own cost; and

(*e*) a period within which the measures specified in the order should be implemented.

(4) A person who fails to comply with any order, other than an order to pay compensation made under this section, commits an offence and shall, upon conviction, be liable—

(*a*) in the case of a natural person, to a fine of K10,000,000 and to imprisonment for two years; or

(*b*) in the case of a body corporate, to a fine of K20,000,000.

(5) Where pursuant to this section, the Council orders a person to pay compensation to an aggrieved person or imposes a fine and the compensation is not paid or the person on whom the fine has been imposed fails to pay that fine, for a period exceeding thirty days from the date the fine is imposed or order of compensation is made, the Council may recover the fine or compensation as a civil debt due to the aggrieved person or the Council, as the case may be.

(6) A person aggrieved by an order of the Council under this section may, within thirty days of receiving the order, apply to the High Court for review of the decision.

(7) The High Court shall, upon hearing a matter brought pursuant to subsection (4)—

(*a*) confirm, vary or set aside the order; and

(*b*) make any other order as the court would consider fair and just.

PART VIII—MISCELLANEOUS

Incentives to local manufacturers

39. The Minister responsible for finance may, subject to relevant tax laws, grant incentives to local manufacturers of assistive products used by persons with disabilities.

Power to inspect

40. A member of the Council, officer of the Council or any other person authorized by the Council may, at any reasonable time, enter any institution registered under section 22 and inspect the premises and the facilities provided therein, for compliance with this Act.

Civil remedies

41.—(1) Without prejudice to section 37, a person with a disability, a guardian of a person with a disability or any other person with sufficient interest in the promotion of rights of persons with disabilities who believes that any other person has violated any provision under Part VI, may commence legal action against that other person before the High Court.

(2) In granting a remedy for violation of any provision in Part VI, the High Court may award the person with a disability any of the following remedies—

(*a*) equitable relief that the court considers appropriate in accordance with the gravity of the violation; and

(*b*) any other relief that the court considers appropriate, including monetary damages payable to the person with a disability.

Offences and penalties

42. A person who—

(*a*) without reasonable excuse, refuses to produce any information or documentation when required by the Council to do so under this Act;

(*b*) makes any statement knowing it to be false, or provides any information or documentation that is materially incorrect with the intention of misleading the Council;

(*c*) conceals a person with a disability; or

(*d*) hinders or obstructs any person duly authorized to inspect an institution, association or organization in accordance with section 40,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

Oath of secrecy

43. Every—

(*a*) member of the Council;

(*b*) member of a committee of the Council;

(*c*) member of staff of the Council;

(*d*) co-opted member of the Council pursuant to section 6(6); or

(*e*) person invited to attend a meeting pursuant to section 8(9),

shall, upon assumption of his or her office or before attending a meeting, as the case may be, take an oath or affirmation of secrecy in the form set out in the Schedule.

Protection from liability

44.—(1) A court action or other proceedings shall not be brought personally against any member of the Council, a member of a committee of the Council or a member of staff of the Council, in respect of any act or omission done in good faith, in the course of carrying out the provisions of this Act.

(2) Where, in any proceedings, a question arises on whether or not an act or an omission was done in good faith, in the course of carrying out the provisions of this Act, the burden of proving that the act or the omission was not done in good faith in the course of carrying out the provision of this Act shall be on the person alleging that it was not so done.

Annual reports

45.—(1)The Council shall cause to be prepared and submitted to the Minister, within three months after the end of each financial year, an annual report on the general conduct of the affairs of the Council and the activities carried out during that financial year.

(2) The report submitted under subsection (1) shall be in the format prescribed by the Minister, and there shall be appended to the report—

(*a*) an audited statement of financial position;

(*b*) an audited statement of income and expenditure; and

(*c*) such other information as the Minister may consider appropriate.

(3) The Minister shall, as soon as practicable, but not later than six months after the end of the financial year, lay before the National Assembly a copy of the annual report.

Regulations

46.—(1) The Minister may, on the recommendation of the Council, make regulations as are necessary or expedient for the purpose of giving full effect to this Act and prescribing all matters which are necessary or convenient to be prescribed.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for—

(*a*) the registration of persons with disabilities;

(*b*) the registration of institutions, associations and organizations implementing disability programmes, including the provision of specialized services to persons with disabilities;

(*c*) the registration of places at which services for the rehabilitation of persons with disabilities are provided;

(*d*) forms of registers required under this Act;

(*e*) procedure for receiving and handling complaints under Part VII;

(*f*) minimum standards of universal design applicable to public buildings; and

(*g*) anything required to be prescribed under this Act.

Cap. 1:01

(3) Notwithstanding the provisions of section 21(*e*) of the General Interpretation Act, the regulations made under subsection (1), may provide for offences the contravention of which may attract a penalty of a fine of K5,000,000 and to imprisonment for twelve months.

PART IX—TRANSITIONAL PROVISIONS

Repeal and savings

47.—(1) The Handicapped Persons Act and Disability Act are hereby repealed.

Cap. 33:02
Cap. 33:06

(2) Any subsidiary legislation made under the Handicapped Persons Act or the Disability Act repealed under subsection (1), in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(*b*) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Cap. 33:02
Cap. 33:06

(3) Anything done in accordance with the Handicapped Persons Act or the Disability Act, prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.

Cap. 33:02
Cap. 33:06

(4) Any person who immediately before the commencement of this Act is a person registered under the Handicapped Persons Act shall on the commencement of this Act, be deemed to be registered under this Act.

(5) Any association which immediately before the commencement of this Act is an association registered under the Handicapped Persons Act shall on the commencement of this Act, be deemed to be registered under this Act.

Transfer of assets and liabilities

48.—(1) Property, assets, funds, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred, or entered into, by or on behalf of, the Malawi Council for the Handicapped shall, on the commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Council and shall become enforceable by, or against, the Council to the same extent as they were enforceable by, or against, the Malawi Council for the Handicapped.

(2) Where the transfer of any property transferred to, or vested in, the Council under subsection (1) is required by any written law to be registered, the Council shall, within one year from the commencement of this Act or within a period that the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Council or any person by way of registration fees, stamp or other duties—

(*a*) make entries in the appropriate register as shall give effect to the transfer;

(*b*) where appropriate, issue to the Council a certificate of title or other statutory evidence of ownership of the property or make the certificates or in the appropriate register as may be necessary; and

(*c*) make any necessary endorsement on the deeds or other documents as may be presented by the registering authority relating to the title, right or obligation concerned.

Transfer of licences

49.—(1) Any licence or registration certificate issued or permission granted in accordance with the Handicapped Persons Act or the Disability Act shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued or granted by the Council or the Minister, as the case may be, under this Act.

Cap. 33:02
Cap. 33:06

(2) Any approval for equipment given under the Handicapped Persons Act or the Disability Act shall continue to be in force and be deemed to have been made under this Act.

Cap. 33:02
Cap. 33:06

(3) Members of the Malawi Council for the Handicapped, as constituted immediately before the coming into force of this Act, shall continue to hold office as members until the appointment of new members of the Council in accordance with this Act.

(4) All licences, certificates or authorizations issued or permissions granted under the Handicapped Persons Act or the Disability Act shall be deemed to have been transferred to the Council.

Cap. 33:02
Cap. 33:06

Legal proceedings

50. Any legal proceedings commenced immediately before the coming into force of this Act by, or against, the Malawi Council for the Handicapped, shall be deemed to have been commenced by, or against, the Council.

Transfer of employees

51. Unless the Council otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Malawi Council for the Handicapped, shall, on the commencement of this Act, be deemed to have been transferred to the employment of the Council, on terms and conditions of service not less favourable than their previous terms and conditions of service and, for the purpose of determining their rights thereunder, their services shall be regarded as being continuous from the time they were employed, by the Malawi Council for the Handicapped.

SCHEDULE (s.43)

OATH/AFFIRMATION OF SECRECY

I,……., being a member of the Council/member of a committee of the Council/co-opted member of the Council/member of staff of the Council/having been invited to attend a meeting of the Council, do hereby swear/affirm that I will freely without fear or favour, affection, or ill-will, discharge the functions of a member/co-opted member/member of staff/invitee of the Council and that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. so, help me God/Allah.

SWORN/AFFIRMED at ……..… this .....day of ……., 20…

Signature: ……

Before me:

……
Commissioner for Oaths

Passed in Parliament this Fifth day of December, two thousand and twenty-three.

FIONA KALEMBA
Clerk of Parliament