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THE PERSONS WITH DISABILITIES ACT, 2018

(Act No. 16 of 2018)



I ASSENT

MSWATI III
King of Eswatini

28th June, 2018-

AN ACT
ENTITLED

AN ACT to provide for the protection of rights and welfare of persons with disabilities and to provide for incidental matters.

ENACTED by the King and the Parliament of Eswatini.

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**PART I
PRELIMINARY**

Short title and commencement

1. (1) This Act may be cited as The Persons with Disabilities Act, 2018.

(2) This Act shall come into force on a date to be appointed by the Minister by notice in the Gazette, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Interpretation

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

“communication” includes languages, display of text, Braille, tactile communication, large print, signal, accessible multimedia as well as written, audio, plain-language, human reader and argumentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Constitution” means the Constitution of the Kingdom of Eswatini Act No. 001 of 2005;

“Council” means the National Advisory Council for Persons with Disabilities established under section 3 of this Act;

“Director” means the head of the Secretariat appointed in terms of section 19;

“Disability Card” means the card issued under section 24;

“Fund” means the National Fund for Persons with Disabilities established under section 46;

“Government” means the Government of Eswatini;

“independent living” means a philosophy which postulate that persons with disabilities have the right to control their lives by making informed choices that enable them to actively participate in all aspects of society;

“language” includes spoken and sign language, Swazi Sign Language and other forms of non-spoken languages;

“Minister” means the Minister responsible for issues of persons with disabilities;

“persons with disabilities” include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

“prescribed” means prescribed by regulations made under this Act;

“private healthcare service provider” means the provider of a private healthcare facility under section 33;

“private sector” means any person or body whether corporate or unincorporated other than the Government, agencies, bodies or organization of the Government, but excludes any reference to non-governmental organizations;

“reasonable accommodation” means necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of the quality of life and wellbeing on an equal basis with persons without disabilities;

“register” means the Register of persons with disabilities, voluntary organizations and institutions kept and maintained under section 20;

“Registrar” means the Registrar or Deputy Registrar of persons with disabilities, voluntary organizations and institutions appointed under sections 20;

“rehabilitation” means a process aimed at enabling persons with disabilities to attain and maintain their full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life;

“Secretariat” means the Secretariat established in terms of section 17;

“universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design and shall include assistive devices for particular groups of persons with disabilities where this is needed.

PART II
THE NATIONAL ADVISORY COUNCIL
FOR PERSONS WITH DISABILITIES

Establishment of the National Advisory Council for Persons with Disabilities

3. (1) There is established a body to be known as National Advisory Council for Persons with Disabilities.

(2) The Council shall, subject to the provisions of this Act, be independent of the control of any person, including but not limited to any Statutory Body, Advisory Council, Government or any other entity, in the discharge of its functions.

Objects of the National Advisory Council

4. The objects of the Council are to-
- (a) improve the socio-economic status of men and women, girls and boys with disabilities;
 - (b) ensure that all persons with disabilities have equal access and opportunities to education, health and other services at all levels;
 - (c) ensure that all buildings and infrastructure are accessible to persons with disabilities;
 - (d) promote inclusiveness and ensure that all institutions provide services to persons with disabilities in the same manner as they provide to the non-disabled except where necessary;
 - (e) ensure that policies in general do not have a negative impact on the status of persons with disabilities, and in particular vulnerable groups.

Composition of the National Advisory Council

5. (1) The Council shall be composed of not more than (9) nine persons, one of whom shall be Chairperson, appointed by the Minister responsible for disability comprising of persons having special knowledge or interest in matters related to issues of persons with disabilities.

(2) The Minister shall publish by notice in the Gazette, the names of members of the Council appointed under subsection (1), the date on which appointment takes effect and the period of appointment.

(3) The members of the Council may be paid allowances to be determined by the Minister in consultation with the Minister of Finance.

(4) A Member of the Council appointed under section (1) -

- (a) shall hold office for a term not exceeding three years;
- (b) shall be eligible for reappointment for a term not exceeding two consecutive terms; and
- (c) may resign or vacate office, by giving one month written notice to the Minister.

Revocation of appointment

6. The Minister shall revoke the appointment of a member of the Council where -

- (a) the conduct of that member, whether in connection with the duties of that member as a member of the Council or otherwise, has been such as to bring discredit on the Council;
- (b) that member has been convicted of -
 - (i) an offence involving fraud, dishonesty or moral turpitude;

- (ii) an offence under a law relating to corruption; or
- (iii) any other offence punishable with imprisonment;
- (c) that member becomes bankrupt; or
- (d) that member becomes of unsound mind or is otherwise incapable of discharging duties of the Council.

Cessation of membership

7. A member of the Council appointed under section 3 shall cease to be a member if –

- (a) that member is absent from three consecutive meetings of the Council without leave of the Chairperson;
- (b) the appointment of that member is revoked;
- (c) that member dies; or
- (d) that member resigns from office by giving a one month notice in writing to the Minister.

Meetings of the Council

8. (1) The Council shall meet at least four times a year for the performance of its functions, at a time and place determined by the Chairperson.

(2) The quorum of any meeting of the Council shall be three (3) members, including the Chairperson and decisions of Council shall be by majority.

(3) The chairperson shall preside over all its meetings.

(4) If the Chairperson is unable, for any reason, to preside in any meeting of the National Advisory Council, the meeting shall elect a member to be a Chairperson.

(5) The Council may invite any person to attend any meeting or deliberation of the Council for the purpose of advising it on any matter under discussion, but that person shall not be entitled to vote at the meeting.

(6) At any meeting of the Council, the Chairperson presiding over a meeting shall have a deliberative vote and shall, in the event of an equality of votes, have a casting vote.

(7) A person invited under subsection (5) may be paid an allowance as the Minister may determine.

(8) Subject to the provisions of this Act, the Council may determine its own procedures for regulating its meetings and proceedings.

Functions of the Council

9. The functions of the Council shall be to-

- (a) co-ordinate, monitor and oversee the implementation of the National Policy and National Plan of action relating to persons with disabilities with relevant ministries, government agencies, bodies or organizations and the private sector;
- (b) make recommendations to the Government on all aspects of persons with disabilities including matters relating to the support, care, protection, habilitation and rehabilitation, development and wellbeing of persons with disabilities;
- (c) initiate and implement schemes for, the promotion of the welfare of, and protection of the rights of persons with disabilities;
- (e) monitor and evaluate the impact of policies, programmes and activities designed to achieve full and effective participation of persons with disabilities and in doing so may enter into arrangement with relevant ministries, government agencies, bodies or organizations and the private sector as it deems necessary;
- (f) recommend to the Government changes to the existing law as well as propose new legislation in order to secure full and effective participation in society of persons with disabilities, including to facilitate accessibility;
- (g) develop programmes and strategies aiming at educating the society and raise awareness throughout society, including at the family level, regarding persons with disabilities including their capabilities and contributions in order to promote positive perceptions and greater social awareness and to foster respect for the rights and dignity of persons with disabilities;
- (h) adapt effective and appropriate measures to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
- (i) foster at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
- (j) ensure the adoption of, and compliance with, the relevant international declarations and conventions relating to persons with disabilities;
- (k) collect and collate data and information, and undertake and promote research relating to persons with disabilities;
- (l) promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services for persons with disabilities;
- (m) promote employment opportunities and career advancement for persons with disabilities in the labour market, and assist in funding or obtaining employment on equal basis with persons without disabilities;
- (n) establish and maintain institutions to accommodate and care for persons with disabilities and provide educational and vocational training for persons with disabilities;

- (o) encourage Government and private individuals to establish and maintain institutions to accommodate persons with disabilities and to provide educational and vocational training to persons with disabilities;
- (p) guide, support, co-ordinate and monitor the activities of institutions established for the care of persons with disabilities;
- (q) introduce programmes to make the environment accessible to persons with disabilities and implement schemes to provide access to information and communication by persons with disabilities;
- (r) perform any other function as directed by the Minister for the proper implementation of this Act; and
- (s) do all other acts or things as may be necessary for the discharge of any of the above functions.

Powers of the Council

10. The National Advisory Council may exercise the following powers --

- (a) on behalf of government, may receive movable or immovable property in consultation with the Minister and the Minister responsible for Finance;
- (b) recommend the employment of officers using a reasonable quota system in giving preference to persons with disabilities as may be necessary for the purpose of discharging the functions of the Council;
- (c) enter into and perform directly or through any officer or agent authorized in that behalf, all contracts as may be necessary for the discharge of the functions and the exercise of the powers of the Council;
- (d) inquire into any systemic violation of rights of persons with disabilities;
- (e) intervene in proceedings involving allegations of violation of rights of persons with disabilities pending before a court with the approval of court;
- (f) address grievances that raise systemic issues pertaining to full and effective realization of rights of persons with disabilities;
- (g) advise government where it finds that any law, policy or practice directly or indirectly discriminates against or violates the rights of persons with disabilities, to take measures to address the alleged discrimination or violation;
- (h) recommend opening of current, savings or deposit accounts in any bank or banks for specific objective;
- (i) investigate the use of allocated sums of money as may be necessary for discharging its functions;
- (j) on behalf of government, accept and receive, grants, donations and bequests both movable and immovable, from sources in and outside Eswatini for the discharge of its functions;

- (k) make rules in respect of the management of the affairs of the Council; and
- (l) generally, to do all things which are necessary to facilitate the proper discharge of the functions of the Council.

Powers of the Minister

11. The Minister may give directions of a policy nature to the Council to guide the Council in the exercise and performance of its functions as may appear to the Minister to be requisite in the national interest.

Committees of the Council

12. (1) The Council may establish committees as it deems necessary to assist it in the performance of its functions and the exercise of its powers under this Act.

(2) A committee established under subsection (1) -

- (a) shall be chaired by any member of the Council;
- (b) shall conform to acts in accordance with directions given to it by the Council; and
- (c) may determine its own procedure.

(3) Members of the committees established under subsection (1) may be appointed from amongst members of the Council or other persons as the Council thinks fit.

(4) Except for members of the committee appointed from amongst members of the Council, a person appointed as member of the committee shall be paid allowances as the Minister shall determine in consultation with the Council.

(5) A member of the committee shall hold office for a term as may be specified in the letter of appointment of that member and shall be eligible for reappointment.

(6) A member of a committee may, at any time, resign by giving one month notice in writing to the chairperson of the committee.

(7) The Council may, at any time, discontinue or alter the composition of a committee.

(8) A committee shall hold its meeting at a time and place as the chairperson of the committee may determine.

(9) A committee may invite any person to attend a meeting of the committee for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting.

(10) A person invited under subsection (9) shall be paid an allowance as the Minister shall determine in consultation with the Council.

Delegation of powers and functions.

13. (1) The Council may, subject to conditions, limitations or restrictions as it deems fit delegate any of its functions and powers, except the power to make regulations under section 49, to -

- (a) the Chairperson of the Council;
- (b) any member of the Council appointed under section 3;
- (c) a committee established under section 12; and
- (d) the Secretary to the Council.

(2) A person to whom or committee to which functions and powers have been delegated shall conform and have regard to all conditions and restrictions imposed by the Council and all requirements, procedures and matters specified by the Council.

(3) A function or power delegated under this section shall be performed and exercised in the name and on behalf of the Council.

(4) The delegation under this section shall not preclude the Council itself from performing or exercising at any time any of the delegated functions and powers.

Responsibility of Government and other persons

14. (1) The responsibility and obligation to be discharged by the Government under this Act shall be in furtherance of its policy relating to persons with disabilities and shall be discharged-

- (a) by taking into consideration the available financial and human resources and other relevant factors; and
- (b) in compliance with the provisions of the Constitution and other relevant laws.

Cooperation with the Council

15. All Government Ministries, agencies, bodies or organizations, private sector and non-governmental organizations shall -

- (a) co-operate with and assist the Council in the performance of its functions under this Act;
- (b) give due consideration to the national policy and national plan of action of the Government relating to persons with disabilities; and
- (c) undertake steps, measures or actions required to be taken by it in a form or manner provided for under any other law or otherwise relating to persons with disabilities.

Submission of reports

16. (1) The Council may require the relevant Ministries, Government agencies, bodies or organizations to -

- (a) submit reports on steps, measures and actions required to be undertaken by them in complying with the provisions of this Act at intervals to be specified by Council; and
- (b) provide explanation if the Council is of the opinion that the progress of steps, measures or action is inadequate or unsatisfactory.

(2) The relevant Ministries, government agencies or bodies or organizations referred to in subsection (1) shall submit full reports regarding the progress of steps, measures or actions undertaken by them and the reports shall be given until the conclusion of the steps, measures or actions.

PART III
SECRETARIAT OF THE COUNCIL

Establishment of the Secretariat

17. There is established a Secretariat which shall be responsible for the day to day management of the affairs of the Council and for the implementation of the National Policy, National Plan of Action and decisions of the Council, and for the carrying out, on behalf of the Council, of duties that may be assigned to it by the Council.

Functions of the Secretariat

18. The Secretariat shall co-ordinate and facilitate the National multi-sectoral programmes for the promotion and protection of the rights of persons with disabilities and in particular shall -

- (a) advise the Council on initiatives and programmes for the promotion and protection of the rights of persons with disabilities;
- (b) recommend a comprehensive disability policy;
- (c) coordinate with GOs and NGOs for disability programme management and resource programming;
- (d) initiate the formulation and development of measures to improve and implement the Swaziland Plan of Action for disability;
- (e) monitor and analyze disability and related socio-economic data for a periodic statement on the country's disability situation;
- (f) monitor and evaluate the Swaziland Plan of Action for disability;
- (g) develop and implement a comprehensive advocacy, information and education strategy for the Swaziland Plan of Action for disability; and
- (h) provide technical, financial, and logistics support to local government units and agencies for the development and implementation of disability programmes and projects.

Appointment of Director and other staff

19. (1) The Minister shall appoint a Director in consultation with the Council under the terms and conditions of service applicable to the civil service.

(2) The Director shall be -

- (a) head of the Secretariat;
- (b) Secretary to Council;

(c) responsible for the day to day administration and organization of the Council and the Secretariat.

(d) report to the Principal Secretary of the responsible ministry for issues of persons with disability.

(3) The Secretariat shall, for the purposes of carrying out its functions under this Act be staffed by civil servants.

PART IV
REGISTRATION OF PERSONS WITH DISABILITIES, VOLUNTARY
ORGANISATIONS AND INSTITUTIONS

Establishment of the office of the Registrar

20. (1) There is established the Registry of persons with disabilities, voluntary organizations and institutions, which shall form part of the Secretariat.

(2) The Registry shall be headed by a Registrar of persons with disabilities, voluntary organizations and institutions on recommendation of the Council.

(3) The Registrar shall be assisted by an officer to be known as a Deputy Registrar.

(4) There shall be officers to be known as the Assistant Registrars of persons with disabilities, voluntary organizations and institutions in each Region.

(5) The Assistant Registrar shall head the office of the Registrar of persons with disabilities, voluntary organizations and institutions in that Region.

(6) The Registrar shall be under the general direction and supervision of the Director and shall exercise general control and supervision over all matters relating to the registration of persons with disabilities under this Act.

(7) The Deputy Registrar and Assistant Registrar shall be under the general direction and supervision of the Registrar.

(8) The Registrar shall have the powers and exercise the functions conferred on him by this Act, and in his absence, such powers and functions may be exercised by the Deputy Registrar.

(9) Subject to the direction, control and supervision of the Registrar, the Deputy Registrar may exercise all the powers and functions conferred on the Registrar under this Act.

(10) Subject to the direction and supervision of the Deputy Registrar, an Assistant Registrar shall assist the Deputy Registrar in the exercise of the powers of the Deputy Registrar and the performance of the functions of the Deputy Registrar.

Register of persons with disabilities, voluntary organizations and institutions

21. (1) The Registrar shall establish, keep and maintain in the prescribed form a Register of Persons with Disabilities, voluntary organizations and institutions.

(2) The Minister may make regulations for the keeping and maintenance of the Register.

Application for registration as a person with disabilities

22. (1) An application for registration as a person with disabilities and issuance of a disability card shall be made to the office of the Registrar.

(2) The Minister may make regulations for the registration of persons with disabilities and for all incidental matters.

(3) Without prejudice to the generality of subsection (2), the regulations may prescribe –

- (a) the procedure to be followed in making an application for registration;
- (b) the form and manner in which an application may be made;
- (c) who may be registered as a person with disabilities and who ceases to be registered as a person with disabilities;
- (d) the manner of issuance and cancellation of a Disability card;
- (e) how the register may be updated to make changes to the particulars of persons with disabilities;
- (f) how a person ceases to be a person with disabilities; and
- (g) generally how entries may be made in the register.

Power of Registrar to call for additional document or information

23. (1) The Registrar may, in relation to any application made under section 22, call for any additional documents or information to be supplied by the applicant within the period to be prescribed by the Registrar.

(2) Where a person making an application fails to supply the additional document or information called for within the specified period or other period as may be extended by the Registrar, the application shall be deemed to have been withdrawn without prejudice, to a fresh application being made.

Registration and refusal to register

24. (1) After considering an application under section 22 and any additional document or information supplied pursuant to section 23, the Registrar shall –

- (a) register a person to be a person with disability if the Registrar is satisfied that the person who is the subject of the application is a person with disability; or
- (b) refuse to register a person as a person with disability if the Registrar is satisfied that the person is not a person with disability.

(2) A person aggrieved by the decision of the Registrar under subsection (1) (b) may appeal to the Minister, who shall within sixty (60) days make a decision, which decision shall be final.

Issuance of disability card

25. (1) The Registrar shall issue a person registered as a person with disability, with a Disability Card.

(2) A Disability Card issued under subsection (1) shall, unless proved to have been cancelled, be conclusive evidence for all purposes that the person has been duly registered as a person with disability under this Act.

(3) The Disability Card shall be surrendered to the Registrar when a person ceases to be a person with disability.

Registration of voluntary organizations and institutions

26. (1) A voluntary organization or institution shall not engage in providing services or assistance in any form or manner to persons with disabilities either directly or through an institution or other body or organization, unless that voluntary organization or institution is registered under this Act.

(2) Notwithstanding the provisions of subsection (1), a voluntary organization or institution which, on the day preceding the appointed date, was engaged in the provision of such services or assistance, shall register that organization within three months of the appointed date.

(3) The Minister may make regulations for the registration of voluntary organizations or institutions providing services or assistance to persons with disabilities and for incidental matters.

(4) Without prejudice to the generality of sub-section (3), the regulations may prescribe:

- (a) the procedure to be followed in making an application for registration;
- (b) the form and manner in which an application may be made;
- (c) the type of voluntary organizations or institutions that may be registered as providing services or assistance to persons with disabilities.
- (d) how the register may be updated to make changes to the particulars of voluntary organizations or institutions providing services or assistance to persons with disabilities;
- (e) how voluntary organizations or institutions providing services or assistance to persons with disabilities shall cease to be registered as voluntary organizations or institutions providing services or assistance to persons with disabilities; and
- (f) generally how entries may be made in the register.

Application for registration of voluntary organization

27. (1) An application for registration as a voluntary organization or institution providing services or assistance to persons with disabilities under this Act shall be made to the Registrar in the prescribed form and manner.

(2) On receipt of an application made under subsection (1), the Registrar shall, having regard to the services and assistance provided by that voluntary organization, grant registration to such organization and issue a certificate to that effect where the Registrar deems fit.

(3) The Minister may make regulations for the registration of voluntary organizations for persons with disabilities and for incidental matters.

PART V INSPECTION AND SEARCH

Power of Council to authorize any officer to enter and inspect premises

28. (1) The Council may, where it considers it necessary for the purpose of discharging the functions of the Council, authorize in writing an officer to enter and inspect at all reasonable hours of the day, premises of a voluntary organization which is engaged in providing services to persons with disabilities.

(2) An officer who is authorized under this section shall be referred to as an "authorized officer".

Powers of inspection and search

29. An authorized officer may-

- (a) enter and inspect the premises of a voluntary organization engaged in providing services or assistance to persons with disabilities;
- (b) enter and inspect any place where the officer has reason to believe that a voluntary organization is engaged in providing services or assistance to persons with disabilities without being registered under this Act.
- (c) examine or make extracts or copies from any books, registers or records maintained by that organization; and
- (d) interrogate any person in such premises for the purpose of ascertaining whether the provisions of this Act are being complied with.

PART VI PROMOTION AND DEVELOPMENT OF THE QUALITY OF LIFE AND WELLBEING OF PERSONS WITH DISABILITIES.

Access to assistance

30. (1) Persons with disabilities shall have the right to assistance on equal basis and recognition with persons without disabilities in situation of risk and humanitarian emergencies, including armed conflicts and the occurrence of natural disasters.

(2) The Government shall take all necessary measures to ensure persons with disabilities to have the right of assistance in situations of risk and humanitarian emergencies by way of legal as well as administrative mechanism.

Access to public facilities, amenities and services and buildings

31. (1) Persons with disabilities shall have the right to access and use of, public facilities, amenities, services and public buildings open or provided for the public on equal basis with persons without disabilities, but subject to the existence or emergence of such situations that may endanger the safety of persons with disabilities.

(2) For the purpose of subsection (1), the Government and the providers of such public facilities, amenities, services and buildings shall give appropriate consideration and take necessary measures to ensure that such public facilities, amenities, services and buildings and the improvement of the equipment related thereto conform to universal design in order to facilitate their access and use by persons with disabilities.

Access to transport facilities provided to the public

32. (1) Person with disabilities shall have the right to access to and use of transport facilities, amenities and services open or provided to the public on equal basis with persons without disabilities.

(2) For the purposes of subsection (1), the Government and providers of transport facilities, amenities and services provided to the public shall give appropriate consideration and take necessary measures to ensure that such facilities, amenities and services conform to universal design in order to facilitate access and use by persons with disabilities.

Access to health

33. (1) Persons with disabilities have the right to the enjoyment of health on an equal basis with persons without disabilities.

(2) The Council, the private sector and non-governmental organizations shall take appropriate measures to ensure that persons with disabilities have access to health services, including health related and gender sensitive rehabilitation.

(3) The Government and private healthcare service providers shall make available essential health services to persons with disabilities which shall include the following -

- (a) prevention of further occurrence of disabilities, immunization, nutrition, environmental protection and preservation and genetic counseling; and
- (b) early detection of disabilities and timely intervention to arrest disabilities and treatment for rehabilitation.

(4) In taking measures to prevent further occurrences of disabilities, the Government shall -

- (a) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of such disabilities; and
- (b) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information on causes of disabilities and the preventive measures to be adopted and on general hygiene, health and sanitation.

(5) A private sector and non-governmental organization providing institutional care for persons with disabilities shall have in its employ a speech therapist, physiotherapist and occupational therapist, or such health personnel as the Minister may deem necessary after taking into account the requirements and capabilities of that private institution, frequency of services and other relevant factors.

(6) For the purposes of subsection (5) a private institution-

- (a) registered under any other Act shall within six months of coming into operation of that Act, submit to the Council the number of therapists, physiotherapists and occupational therapists, or health personnel in their employment; or
- (b) applying to be registered under any other Act shall on and after the coming into operation of this Act, before commencing operation, submit to the Council the number of therapists, physiotherapists and occupational therapists, or such health personnel in their employment.

(7) Notwithstanding subsection (5), the Minister may exempt a private sector or non-governmental organization providing institutional care for persons with disabilities, as he deems fit, from having in-home health personnel in their employ and instead may allow periodic visit of health personnel to that private institution.

Access to education

34. (1) Persons with disabilities shall not be excluded or prevented from the general education system on the basis of disabilities, and children with disabilities shall not be excluded or prevented from pre-school, primary, secondary, and higher education and special needs education, but shall be treated on equal basis with persons with or children without disabilities, including vocational training and lifelong learning.

(2) The Government and private educational providers shall, in order to enable persons and children with disabilities to pursue education, provide reasonable accommodation suitable with the requirements of persons and children with disabilities in terms of, among others, infrastructure, equipment and teaching materials, teaching methods, curricula, assessment, certification and other forms of support that meet the diverse needs of persons or children with disabilities.

(3) The Government and private educational providers shall take appropriate steps and measures to enable persons and children with disabilities to learn life and social development skills in order to facilitate their full and equal participation in education including but not limited to the following –

- (a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills;
- (b) facilitating the learning of Swazi Sign Language and the promotion of the linguistics identity of the deaf community;
- (c) ensuring that the education of persons with disabilities, and in particular children, who are blind, deaf or deaf-blind, have autistic spectrum disorder, or albinism is delivered in the most appropriate languages and for the individual, and in environments which maximize academic and social development.

Access to employment

35. (1) Persons with disabilities shall have the right to employment on equal basis with persons without disabilities.

(2) An employer shall protect the rights of persons with disabilities, on equal basis with persons without disabilities, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment and the redress of grievances.

(3) An employer shall, in performing their social obligation endeavour to promote stable employment for persons with disabilities by properly evaluating their abilities, providing suitable places of employment and conducting proper employment management.

(4) The Government shall, in order to promote employment of persons with disabilities in the public and private sectors, formulate appropriate policies and measures which may include affirmative action programmes and other measures.

(5) The Government shall promote opportunities for training for persons with disabilities in the labour market as well as opportunities for self-employment, entrepreneurship, the development of co-operatives and creating opportunities to work from home.

(6) For the purpose of this section, "employer" includes the Government.

Access to information, communication and technology

36. (1) Persons with disabilities shall have the right to access information, communication and technology on equal basis with persons without disabilities.

(2) The Government and the provider of information, communication and technology shall in order to enable persons with disabilities to have access, provide the information, communication and technology in accessible formats and technologies appropriate to different kind of disabilities in a timely manner and without additional cost.

(3) The Government and the private sector shall accept and facilitate the use of Swazi Sign Language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication by persons with disabilities in official transactions.

Access to cultural life

37. (1) Persons with disabilities have the right to access cultural life on an equal basis with persons without disabilities.

(2) Persons with disabilities shall have the right to enjoy access to—

- (a) cultural materials in accessible formats;
- (b) television programmes, films, theatre and other cultural activities, in accessible formats; and
- (c) places for cultural performances or services such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, to monument and sites of national cultural importance.

(3) The Council shall take appropriate measures to enable persons with disabilities to have the opportunities to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

(4) Persons with disabilities shall be entitled on equal basis with persons without disabilities to recognition and support of their specific cultural and linguistic identity, including Swazi Sign Language and deaf culture.

Access to recreation, leisure and sport

38. (1) Persons with disabilities have the right to participate in recreational, leisure and sporting activities on an equal basis with persons without disabilities but subject to the existence or emergence of situations that may endanger the safety of persons with disabilities.

(2) The Council shall take appropriate measures to encourage and promote the participation of persons with disabilities in mainstream sporting activities at all levels to the fullest extent possible.

(3) The Council shall ensure that persons with disabilities have –

- (a) an opportunity to organize, develop and participate in disability specific sporting and recreational activities, and, to this end, encourage the provision, on an equal basis with persons without disabilities, of appropriate instruction, training and resources;
- (b) access to sporting, recreational and tourism venues;
- (c) equal access with other children without disabilities to participate in play, recreation and leisure and sporting activities, including those activities in the school system; and
- (d) access to services from those involved in the organization of recreational, leisure, sporting activities and tourism.

PART VII
HABILITATION AND REHABILITATION

Habilitation and rehabilitation

39. The Council, private healthcare service providers and non-governmental organizations shall -

- (a) take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life.
- (b) organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes begin at the earliest possible stage and are based on the multidisciplinary assessment of individual needs and strengths.
- (c) promote the availability, knowledge, and use of assistive devices and technologies designed for persons with disabilities as they relate to habilitation and rehabilitation.

- (d) promote and strengthen community and home based habilitation and rehabilitation programmes to provide primary and early intervention, habilitation and rehabilitation and training for persons with disabilities in their own community through active community participation.

In-home, residential and other community support services

40. The Council, the private sector and non-governmental organizations shall take appropriate measures to encourage and promote the provision of a range of in-home residential and other community support services to prevent isolation or segregation of persons with disabilities from the community.

PART VIII
PROTECTION OF PERSONS WITH SEVERE DISABILITIES

Lifelong protection and social support system

41. (1) The Government shall provide the necessary lifelong protection and social support system including ensuring that the welfare of persons with severe disabilities remain unaffected after the death of their parents or their caregivers in order to enable the persons with severe disabilities to lead a better quality of life.

(2) Any non-governmental organization intending to provide or providing institutional care for persons with severe disabilities or the caregivers for persons with severe disabilities may make an application for an incentive for providing such care to the Council in a form and manner as may be prescribed.

(3) The Council may, if it is satisfied that the application of the non-governmental organization or caregivers referred to in subsection (2) should be considered, grant an incentive as it deems appropriate with the approval of the Minister responsible for finance.

Meaning of "persons with severe disabilities"

42. For the purpose of this part, "a person with severe disabilities" means a person suffering from one or more disabilities who is dependent on others for basic daily living activities.

PART IX
OFFENCES AND REMEDY

Offences by persons

43. (1) A person who-

- (a) willfully hides a person with disabilities or fails to make an application to register a person with disabilities in terms of section 22;
- (b) fails to furnish any return or information in compliance with any requirement imposed on that person under this Act;
- (c) knowingly makes any false statement in any return or information furnished by that person;
- (d) willfully omits any matter in any return or information furnished by that person;

(e) resists or obstructs any authorized officer in the exercise of any powers conferred on that person under section 29;

(f) contravenes the provisions of this Act or any regulation made under this Act,

commits an offence and shall on conviction be liable to a fine not exceeding E10 000.00 (Ten thousand Emalangeni) or to imprisonment for a period not exceeding four (4) years or both.

Offences by bodies of persons

44. (1) In the case of any offence under this Act committed by a body of persons -

(a) where the body of persons, is a body corporate, every director, secretary and officer of that body corporate commits offence shall on conviction be liable to a fine not exceeding E20 000.00 (twenty thousand Emalangeni) or to imprisonment for a period not exceeding eight (8) years or both.

(b) where the body of persons is a firm, every partner of that firm commits an offence shall on conviction be liable to a fine not exceeding E50 000.00 (fifty thousand Emalangeni) or to imprisonment for a period not exceeding twenty (20) years or both.

(2) A body of persons referred to in subsection (1) (a) and (b) commits no offence under this Act, if that person proves that the offence was committed without the knowledge of that person or that, that person exercised all diligence to prevent the commission of the offence.

Remedy for contravention of Part VI, VII and VIII

45. (1) Where there has been a contravention of the provisions of Part VI, VII and VIII of this Act, any person affected by such contravention or the Council on behalf of such person may apply to the High Court for relief or redress.

(2) Every application under subsection (1) shall be made by application to the High Court in accordance with the procedure laid down by rules made under Article 142 of the Constitution.

(3) The High Court shall have power to grant relief or make directions as it may deem just and equitable in the circumstances.

**PART X
FINANCIAL PROVISIONS**

The National Fund for Persons with Disabilities

46. (1) There is established a Fund to be called the National Fund for Persons with Disabilities.

(2) There shall be paid into the Fund-

(a) all such sums of money as may be allocated from time to time by Parliament for the use of the Council;

(b) all such sums of money as may be received by the Council by way of aid, grants, donations or requests from any source in Eswatini and subject to the approval of the Minister of Finance, from any source outside Swaziland;

- (c) all such sums of money as may be received by the Council on behalf of government.
 - (d) all such sums of money as may be required for the provision of social grants for persons with disabilities.
 - (e) all such sums to provide or contribute to the cost of assistive devices and services;
 - (f) all sums of money to pay allowances to persons with disabilities to cater for persons who have no other source of income such as —
 - (i) persons with severe disabilities and who are therefore not trainable in any skills;
 - (ii) aged persons with disabilities; and
 - (iii) parents, guardians and caregivers of children and persons with disabilities and who cannot, as a result thereof, seek employment or who lack means of livelihood.
- (3) There shall be paid out of the Fund-
- (a) all such sums of money as are required to defray any expenditure the incurred by the Council, in the exercise, performance and discharge of its powers, duties and functions under this Act;
 - (b) all such sums of money as are recommended by the Council to make any ex gratia payment to any individual or organization in recognition of any exceptional or outstanding contribution made by such individual or organization towards the upliftment or improvement of the status of persons with disabilities; all such sums of money as are required to be paid out of such Fund, by or under this Act.

Audit and accounts

47. (1) The Council shall cause proper books accounts to be kept of the income and expenditure, assets and liabilities and all other transactions for the Council.

(2) The financial year of the Council shall be a period commencing on the date of commencement of this Act ending on 31st March and thereafter it shall be a period of 12 (twelve) months ending on 31st March every year.

(3) The accounts of the Council shall be audited by the Auditor General or on the recommendation of the Minister by an independent auditor.

PART XI MISCELLANEOUS

Immunity against suit and legal proceedings

48. (1) No action, suit, prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against -

- (a) The Government;
- (b) The Minister;

(c) Council;

(d) any member of the Council or any member of a committee of Council; or

(e) any other person lawfully acting on behalf of the Council.

in respect of any act, neglect or default done or committed or omitted by that person in good faith in the exercise or purported exercise of the functions under this Act.

Power to make regulations

49. The Minister may make regulations to give effect to any provisions of this Act prescribing anything which is required to be prescribed or for any purpose for the better carrying out of this Act.

Power of the Council to make rules

50. (1) The Council may make such rules as it may consider necessary in relation to any matter affecting or connected with or incidental to, the exercise, discharge and performance of its powers, functions and duties.

(2) Every rule made by the Council shall be approved by the Minister and notification of such approval shall be published in the Gazette.

Disclosure of interest

51. (1) Where a member of the Council has any interest, direct or indirect, in any matter in which his private capacity conflicts with his duties as a member of the Council and which matter is the subject of consideration by the Council, the member shall, as soon as practicable after becoming aware of the interest in the matter, disclose that interest to the Council.

(2) A member referred to in subsection (1) of this section shall not, unless the Council otherwise, take part in the consideration or discussion of the matter or if allowed to take part in the consideration or discussion of, or vote on any question relating to that matter.

(3) A disclosure made pursuant to the provisions of subsection (1) of this section shall be recorded in the minutes of the Council.

Assistance for research etc

52. The Council may, with the approval of the Minister, give financial or other assistance as it thinks fit, to persons undertaking, on behalf of the Council, research or other activities as are necessary or advantageous in connection with the carrying out of the functions of the Council under this Act.

Transitional provisions

53. (1) All acts and things done on behalf of the Government or Council in preparation for or in anticipation of the enactment of this Act, which are consistent with the general intention and purpose of this Act, and any expenditure incurred in relation to those acts or things, shall be deemed to have been authorized under this Act.

(2) All rights and obligations acquired or incurred as a result of the acts or things specified in subsection (1) including any expenditure in relation those acts or things shall on the coming into force of this Act be deemed to be the rights and obligations of the Government or the Council.