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*Ministry of Gender, Children, Disability and Social Welfare
Persons with Disabilities, 2019 (Subject to change)*

8th November, 2019

PERSONS WITH DISABILITIES BILL, 2019

PERSONS WITH DISABILITIES BILL, 2019

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A BILL
entitled

An Act to make provision for the equalization of opportunities for persons with disabilities through the promotion and protection of their rights; to provide for the establishment of the Council for Disability Affairs; to provide for a Disability Trust Fund; and to provide for connected and incidental matters

ENACTED by the Parliament of Malaŵi as follows—

PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as the Persons with Disabilities Act, 2019, and shall come into operation on a date to be appointed by the Minister by notice published in the *Gazette*.

Interpretation

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

“accessibility” means enabling or allowing a person with disability to have access to all services in various spheres of society and includes access to information communication and physical environment such as tactile and sign language, interpretation for deaf and deaf-blind persons, audio tapes, braille, large print, low vision facilities, computerised information and programmes and making physical environment in buildings, public transport, roads and streets accessible respectively;

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

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

“Council” means the Council for Disability Affairs established under section 20 of the Act;

“disability” means a long term physical, mental, intellectual or sensory impairment, which, in interaction with various barriers, may hinder the full and effective participation in society of a person on equal basis with other persons;

“disability mainstreaming” means a strategy for making the needs, concerns and experiences of persons with disabilities an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in the political, economic and societal spheres to ensure that persons with disabilities benefit equitably or equally;

“Disability Trust Fund” means a fund established by the Minister pursuant to section 42;

“discrimination” has the meaning ascribed to it in the Constitution and includes denial of reasonable accommodation;

“equalization of opportunities” means a process through which the various systems of society and the environment, including services, activities, information and documentation, are made available and accessible to persons with disabilities;

“impairment” means any full or partial loss or limitation of psychological, physiological or anatomical structure or function of the human body;

“inclusive education” means a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities and reducing exclusion from and within education;

“institution” means any organization carries on work for the empowerment of persons with disabilities, and includes premises where persons with disabilities live and are supported by such organizations;

“National Advisory and Coordinating Committee on Disability Issues” means a Committee to be established by the Minister pursuant to section 51;

“person with disability” includes a person who has physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairments which in interaction with environmental, attitudinal or other barriers hinder their full and effective participation in society on an equal basis with others;

“reasonable accommodation” means necessary and appropriate modifications and adjustments that ensure that persons with disabilities enjoy or exercise all human rights and fundamental freedoms on equal basis with other persons, without imposing disproportionate or undue burden on the other persons;

“rehabilitation” means a goal-oriented process aimed at enabling a person with a disability to reach an optimum mental, physical or social functional level, by providing such person with tools to improve his life; and

“universal design” means the designing of products, programmes, environments and services to be used by all persons to the greatest extent possible, without the need for adaptation and specialised design.

PART II — RIGHTS OF PERSONS WITH DISABILITIES

Health care
services

3.—(1) Government shall provide appropriate health care services to persons with disabilities, including prevention, early identification, intervention and other services designed to minimize and prevent the occurrence of further disabilities or aggravation of disabilities.

(2) The Minister shall—

(a) undertake or initiate surveys, investigations and research concerning the cause and occurrence of disabilities;

(b) create awareness on the occurrence of disabilities and their preventive measures;

(c) provide persons with disabilities the same range, quality and standard of accessible, free or affordable health care services as provided to other persons, including sexual and reproductive health services and population based public health programmes;

(d) where appropriate, provide accessible, free or affordable health services, in particular those needed by persons with disabilities because of their specific needs;

- (e) formulate and implement a programme to enable persons with disabilities have access to free or affordable medical and rehabilitation services in public hospitals and, where there is need for a referral to a private hospital, put mechanisms in place for the persons with disabilities to access the medical and rehabilitation services;
- (f) provide medical personnel specializing in the early detection, treatment and rehabilitation of disabilities, to district hospitals; and
- (g) develop national guidelines, minimum norms and standards for the provision of assistive devices to persons with disabilities.

Access to health care and rehabilitation services

4. A person with disability is entitled to health care and rehabilitation services in any health establishment and shall not be required to pay a higher fee for such services, on the basis of disability.

Accessibility

5.—(1) A person with disability is entitled to have access to the physical environment, transportation, information and communications, including information and communication technologies and systems, and other facilities and services available or provided to the public.

(2) The Minister shall take appropriate measures to ensure that persons with disabilities enjoy accessibility by—

- (a) developing, promulgating and monitoring the implementation of universal standards and guidelines for the accessibility of all facilities and services available or provided to the public;
- (b) ensuring that private entities that offer facilities and services which are available or provided to the public, take into account all aspects of accessibility for persons with disabilities;
- (c) raising awareness and providing appropriate training on accessibility issues facing persons with disabilities;

- (d) ensuring the attainment of a barrier free environment that enables persons with disabilities to have access to public and private buildings and establishments and such other places in line with universal designs;
- (e) certifying architectural drawings for public and institutional buildings to comply with the standards of universal designs; and
- (f) developing a Malaŵi sign language as a national language for persons with hearing impairments and recognizing it as an official language.

Access to premises and the provision of services or amenities

6. A person shall not be denied access or admission to any premises or the provision of any service or amenity, on the basis of disability.

Education and training

7.—(1) A person with disability has the right to education and training on the basis of equal opportunity.

(2) The Minister shall ensure an inclusive education and training system and lifelong learning by—

- (a) ensuring that persons with disabilities are not excluded from the general education system at all levels and have access to quality early childhood development, primary, secondary and tertiary education;
- (b) taking into consideration the special requirements of persons with disabilities in the formulation of educational and training policies and programs, including the provision of assistive devices, teaching aids and learning support assistants;
- (c) establish resource centres for screening, identification, assessment and programming for learners with special needs in education; and
- (d) providing financial assistance to the less privileged and deserving students with disabilities who are pursuing education or training in public institutions at any level, in the form of scholarship grants, student loan programmes, subsidies, and other incentives and

ensure that a minimum of ten per cent of the allocation for students' financial assistance programmes as created by Local Government is set aside for the students with disabilities.

Education or
training institutions

8. An education or training institution shall not—

(a) deny any person admission into or expel the person from the institution;

(b) discipline, segregate or deny the person participation in any event or activity; or

(c) deny any benefits or services to the person,

on the basis of disability of that person.

Work and
employment

9.—(1) A person with disability has a right to work and employment, which rights shall include—

(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) The Minister shall safeguard and promote the realization of the right to work and employment by—

(a) prohibiting discrimination on the basis of disability, with regard to all matters concerning all forms of employment, including—

(i) conditions of recruitment;

(ii) hiring and restructuring of employment;

(iii) continuation of employment;

(iv) career advancement; and

(v) safe and healthy working conditions;

(b) providing persons with disabilities access to just and favourable conditions of work, including—

- (i) equal opportunities and equal remuneration for work of equal value;
 - (ii) safe and healthy working conditions;
 - (iii) protection from harassment; and
 - (iv) redress of grievances;
- (c) providing persons with disabilities effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- (d) providing persons with disabilities employment opportunities and career advancement in the labour market, as well as assistance in finding, obtaining, maintaining and retaining employment;
- (e) creating a conducive environment for persons with disabilities for self-employment, entrepreneurship, and the development of cooperatives; and
- (f) promoting the employment of qualified persons with disabilities in the public and private sector, through appropriate policies and measures, which shall include affirmative action programmes and incentives.

Social protection

10.—(1) A person with disability has the right to, without discrimination on the basis of disability, an adequate standard of living, for himself and his family, including—

- (i) access to adequate food, water, clothing and housing; and
- (ii) the continuous improvement of living conditions.

(2) The Minister shall—

- (a) ensure equal access by persons with disabilities to appropriate and affordable social services;

(b) ensure access by persons with disabilities to social support programmes; and

(c) develop national guidelines to enable persons with disabilities that are receiving social benefits to move into self or open labour market employment.

Right to associate and representation

11. A person with disability has the right to—

(a) form or join any group of persons or association of his choice;

and

(b) be represented at any level in the group or association.

Participation in political and public life

12.—(1) A person with disability has the right to participate in political and public life in a conducive environment for persons with disabilities to effectively and fully exercise his political rights, directly or through their freely chosen representatives.

(2) The Minister shall ensure that—

(a) voting procedures, facilities and materials are appropriate, accessible, fair and easy to understand and use for a person with disability;

(b) a person with disability may stand for election, effectively hold office and perform all public functions at all levels of government; and

(c) the free expression of the will of a person with disability as a voter and, where necessary and at his request, allowing a person of his own choice to assist them in voting;

(d) persons with disabilities are encouraged to participate fully in the conduct of public affairs, by—

(i) taking membership in public bodies; and

(ii) forming or joining organizations of persons with disabilities to represent them at local, regional and international levels; and

(iii) participating in planning, organization, management, monitoring and evaluation of all development programs and projects at community and national levels.

Cultural and sporting activities, and recreational services

13.—(1) A person with disability is entitled to take part in cultural and sporting activities, and access recreational services.

(2) The Minister shall ensure that persons with disabilities have access to—

(a) cultural materials available in television and radio programmes, films, theatre and other cultural activities, in accessible formats;

(b) places of cultural performances or services, and, as far as possible, to monuments and sites of national and cultural importance; and

(c) specific development programmes for sports, both in and out of school including sporting facilities and equipment.

Housing

14.—(1) A person with disability has a right to land tenure, housing and property rights.

(2) The Minister shall take into account the needs of persons with disabilities by ensuring that persons with disabilities have—

(a) equal access to secure land tenure, housing, financing, and property rights;

(b) access to housing, through elimination of prejudice and discrimination in housing transactions and in the provision of services under any public schemes; and

(c) disability friendly housing.

Economic empowerment

15. A person with disability has the right to economic empowerment through access to—

- (a) loans and credit facilities for purposes of carrying out income generating activities; or
- (b) any benefits or services.

Access to technologies

16. A person with disability has the right to access any technologies, including information and communication technologies, commensurate with his needs, at an affordable cost or without additional cost.

Research

17.—(1) The Minister 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 data collection on the living conditions of persons with disabilities in order to determine the amount of resources required to deal with those conditions;
- (c) ensure integration of disability-focused and general research, through establishment of relevant fora for stakeholders to exchange information related to disability and research;
- (d) network with local, regional and international research institutions, and promote development of appropriate rehabilitation technology; and
- (e) promote the design, development, production and distribution of accessible information and communications technologies and systems, and ensure that the same are available to persons with disabilities at an affordable cost.

(2) Subject to any written law, a person with disability shall not be forced to participate in any research, including medical research, without his consent.

Access to justice

General provisions relating to this Part

18. A person with disability has the right to access justice, commensurate with his needs, at an affordable cost including the right to—

- (a) fully and effectively participate in legal proceedings and obtain full and effective remedies;
- (b) equal recognition before the law; and
- (c) recognition of his legal capacity.

19.—(1) In the enjoyment of the rights prescribed under this Part or under any written law, any person shall ensure—

- (a) reasonable accommodation to persons with disabilities;
- (b) there is no discrimination against a person with disabilities;
- (c) provision and access to support services and mechanisms including personal assistants, assistive devices and technologies; and
- (d) that a person with disabilities has dignity, individual autonomy and the ability to express his free will, make own choices and express personal preferences.

(2) A person with disability has the right to exercise, in addition to the rights in this Part, all the rights set out in the United Nations Convention on the Rights of Persons with Disabilities with appropriate modifications to suit the circumstances in Malaŵi that are not specifically mentioned in this Act.

(3) A person who contravenes the provisions of this Part, commits an offence and is liable to—

- (a) in the case of a natural person, a fine of K5,000,000 or imprisonment for five years; or
- (b) in the case of a body corporate, a fine of K10,000,000.

(4) For every day that the violation of a right under this Part continues, a court shall impose a penalty of one half per centum (½%) of the penalty imposed for the offence.

(5) Notwithstanding the provisions of subsection (3), a court may, in addition to any penalty imposed under the subsection, —

- (a) order the person or body corporate, to take reasonable steps or undertake reasonable accommodation to facilitate access for persons with disabilities to the premises or the provision of the service or amenity; or
- (b) make any other order.

PART III — COUNCIL FOR DISABILITY AFFAIRS

Establishment of
Council for
Disability Affairs

20. There is hereby established a Council to be known as the Council for Disability Affairs (hereinafter referred to as the “Council”) which shall be a body corporate with perpetual succession and a common seal and be capable of—

- (a) acquiring, holding and disposing of real and personal property;
- (b) suing and being sued in its own name; and
- (c) doing or performing all such acts and things as bodies corporate may by law do or perform.

Composition

21.—(1) The Council shall consist of the following persons appointed by the Minister—

- (a) a chairperson and six other members, at least two of whom shall be persons with disabilities, in consultation with relevant disability, professional or other bodies;
- (b) the following *ex-officio* members—
 - (i) the Secretary responsible for disability affairs, or his designated representative;
 - (ii) the Secretary for Local Government, or his designated representative;
 - (iii) the Secretary to the Treasury, or his designated representative; and

(iv) the Executive Secretary of the Human Rights Commission.

(2) The appointment of members of the Council under subsections 1 (a) and (b) shall be confirmed by the Public Appointments Committee of the National Assembly.

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

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

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

(a) does not possess—

(i) a minimum academic qualification of a bachelor's degree or its equivalent obtained from a reputable accredited or recognized academic institution; and

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

(b) holds a political office or is an active member of a political party;

(c) is an officer, member or employee in a public institution;

(d) is adjudged or declared bankrupt; and

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

(6) 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 or any of its committees 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.

(7) The appointment of members to the Council under section 4 (1) shall comply with the Gender Equality Act.

Tenure of office

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

(2) When making an appointment after the expiry of three years, the Minister shall have regard to the need for continuity in the membership of the Council so that at least half of the appointed members shall be re-appointed for the next term of office.

Vacancies

23.—(1) A vacancy in the office of a member of the Council, other than an *ex-officio* member, shall occur if the member—

(a) dies;

(b) is adjudged or declared bankrupt;

(c) is convicted and sentenced for an offence against any written law to a term of imprisonment without the option of a fine;

(d) fails, without good and justifiable reasons, to attend three consecutive meetings of the Council of which he had notice;

(e) is certified by a medical practitioner to be incapacitated by reason of illness;

(f) resigns in accordance with subsection (2);

(g) is removed by the Minister in accordance with subsection (3);

(h) if a situation arises that if the person was not appointed, would have disqualified him from being appointed as a member of the Council.

(2) A member of the Council other than an *ex-officio* member may at any time resign his office by giving one month written notice to the Chairperson, who shall then forward the resignation to the Minister.

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

(a) misconduct or misbehaviour that brings his office into disrepute;

(b) incompetence in the execution of the functions of his office as a member of the Council;

(c) in circumstances where the member is compromised to the extent that his ability to impartially and effectively exercise the duties of his office is seriously in question.

(4) A vacancy in the membership of the Council shall be filled by the appointment of a new member by the Minister in accordance with section 4 (1) (b).

(5) A person appointed to fill a vacancy shall serve for the remainder of the term of office but no person may 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.

(6) The period served by a person appointed under subsection (4) shall not be regarded as a term for the purposes of section 5 (1).

(7) Subject to section 12(4), a vacancy in the membership of the Council shall not affect its decisions, the performance of its functions or the exercise of its powers under this Act or any other written law.

Committees of the
Council

24.—(1) For the better carrying into effect of its functions, the Council may establish such number of committees as may be considered necessary to perform the functions and responsibilities as may be determined by the Council.

(2) A committee may consist of either members of the Council only or members of the Council and other suitably qualified persons other than members of staff of the Council as the Council may deem fit.

(3) The Council shall appoint the chairperson and deputy chairperson of each committee from only amongst the members of the Council.

(4) The provisions of this Act relating to the meetings of members of the Council shall apply *mutatis mutandis* to the meetings of its committees.

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

Allowances and expenses

25.—(1) Members of the Council and of any of its committees shall be paid sitting and other allowances as the Minister responsible for finance may determine.

(2) The Council may make provision for the reimbursement of any reasonable expenses incurred by a member of the Council or a member of a committee or a person invited under section 21 (6) in connection with the business of the Council or a committee.

Collaboration with other bodies

26. The Council shall, in the performance of its functions and exercise of its powers provided for in this Act, collaborate with other public institutions, State-owned and other enterprises and individuals, as the case may be.

Functions of the Council

27. The functions of the Council shall be to—

(a) develop and implement standards and guidelines to ensure the successful implementation of rights based approaches to disability and development of persons with disabilities;

(b) promote and co-ordinate activities aimed at the prevention, early identification, assessment and intervention of various forms of impairments and disabilities;

- (c) promote multi-sectoral collaboration and co-ordination in the planning, provision and evaluation of disability programs and services;
- (d) promote, advocate and recommend research to inform program development to Government and other stakeholders;
- (e) evaluate and review measures for promoting realization of the rights of persons with disabilities in the light of relevant developments;
- (f) facilitate the operation of schemes and projects for the employment of or generation of income by persons with disabilities who are unable to secure employment elsewhere;
- (g) maintain a harmonized Management Information System for Persons with Disabilities at national level;
- (h) estimate, and report to the Minister on the cost of proposed measures for the empowerment of persons with disabilities on the relative priorities to be given to the implementation of those measures;
- (i) coordinate the provision of vocational skills training to persons with disabilities through community as well as institutional based approaches;
- (j) mobilize resources for investment in programmes and services for empowerment of persons with disabilities;
- (k) build capacity of local councils to undertake disability mainstreaming including through prescribed means;
- (l) identify and assess persons with disabilities for purposes of registration by the Council;
- (m) register persons with disabilities in a prescribed manner;

- (n) facilitate access of persons with disability to rehabilitation and all other support services based on thorough assessment of their needs;
- (o) regulate disability organisations and service providers in a prescribed manner;
- (p) inspect any institution or facility registered under this Act or purporting to pursue any activities related to this Act or its objectives;
- (q) issue adjustment orders for premises, services and amenities; and
- (r) manage the Trust Fund established under this Act.

Powers of the Council

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

- (a) prescribe a minimum percentage for employment of persons with disabilities in Malaŵi;
- (b) engage persons of suitable qualifications and experience as consultants to the Council;
- (c) request 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;
- (d) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organisation of conferences, workshops or meetings;
- (e) receive donations of funds, materials and technical assistance for the furtherance of its work;

(f) 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

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

Meetings

29.—(1) The Council shall meet at least once every three months at a place and at a time as the Chairperson may determine.

(2) The Chairperson shall convene ordinary meetings of the Council by giving the members of the Council not less than fourteen days written notice and may, on his own motion, convene an extraordinary meeting of the Council at a place and time as he may determine in consultation with the Director General.

(3) The Chairperson or in the absence of the Chairperson, the Deputy Chairperson shall at the written request of more than three members of the Council and within seven days of a request, call for an extraordinary meeting of the Council, at a place and time as the Chairperson or Deputy Chairperson may determine, in consultation with the Director General.

(4) The quorum at every meeting of the Council or a committee shall be half of the members of the Council or committee plus one member other than *ex-officio* members.

(5) The Chairperson or, in his absence, the Deputy Chairperson, shall preside at all meetings of the Council:

Provided that in the absence of both the Chairperson and Deputy Chairperson at a particular meeting of the Council, the members of the

Council present and forming a quorum shall elect one of their number to preside over the meeting of the Council.

(6) At any meeting of the Council, the decision of the Council on any matter shall be that of the majority of the members of the Council present and voting, and at all the meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to a deliberative vote.

(7) Minutes of each meeting of the Council or a committee shall be kept by the Director General and shall be confirmed at the subsequent meeting of the Council or committee, as the case may be.

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

Personal attendance of meetings

30. A member of the Council or committee shall not attend a meeting of the Council or committee by proxy and where a member of the Council is unable to attend any meeting of the Council, he may request that his apologies for failure to attend be recorded.

Disclosure of interest

31.—(1) If a member of the Council or a committee is present at a meeting of the Council or at a meeting of a committee at which any matter which is the subject of consideration is a matter in which that member or his immediate family member or his professional or business partner is directly or indirectly interested, he shall, as soon as practicable, after the commencement of the meeting, disclose his interest and that member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) A disclosure of interest by a member of the Council or a committee shall be recorded in the minutes of the meeting at which it is made.

Oath of secrecy

32. Every—

(a) member of the Council;

(b) member of a committee;

(c) member of staff or service provider of the Council,

shall, upon assumption of his office, before attending a meeting, take an oath of secrecy in the form set out in the Schedule to this Act and the oath shall be administered by a Commissioner for oaths.

Protection
from liability

33.—(1) A court action or other proceedings shall not be brought personally against any member, a member of a committee or 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.

PART IV — ADMINISTRATION OF THE COUNCIL

Secretariat

34. The secretariat of the Council shall consist of the Director General and other employees of the Council appointed under this Act.

Director General

35.—(1) The Director General shall be appointed by the Council through an open, strenuous and competitive process on terms and conditions as the National Remuneration Commission may determine.

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

(3) The Director General shall be the chief executive officer of the Council and the chief adviser to the Council on all matters pertaining to disability affairs.

(4) A person shall not be appointed as Director General, unless he—

(a) possesses a minimum qualification of a master's degree or its equivalent subsequent to a bachelor's degree obtained from a recognized and reputable educational institution;

(b) has proven and shown demonstrable expertise and experience in disability affairs, human rights, executive management or administration, or in a field relevant to the functions and responsibilities of the Council; and

(c) does not hold a political office.

(5) The Director General shall hold office for a term of five years and shall be eligible for re-appointment for one final term of five years.

Duties and
responsibilities of
Director General

36.—(1) Subject to the general and special directions of the Council and without prejudice to the generality of section 35(3), the Director General shall be responsible for—

(a) the day to day operations and management 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 officers and staff of the Council; and

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

(2) The Director General shall devote his full time to the duties of his office and shall ensure that the Council is provided with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Council of its functions and responsibilities under this Act or any other written law.

Removal of
Director General

37.—(1) The Council may remove the Director General from office on the following grounds—

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

(b) incompetence in the execution of his functions as Director General;

(c) incapacity by reason of illness as certified by a medical practitioner or medical board;

(d) if he is declared or adjudged bankrupt by a competent court;

(e) if he is sentenced for an offence against any written law to any term of imprisonment without the option of a fine.

(2) The Council shall notify the Minister in writing of its decision to remove the Director General from office under subsection (1) and the reason or reasons therefor.

Secretary to the
Council

38.—(1) The Director General shall be the secretary to the Council.

(2) The Director General shall have custody of the common seal of the Council.

(3) The Director General may, with the approval of the Chairperson, delegate senior members of staff of the Council to act as secretaries to the committees of the Council.

Other staff of
the Council

39.—(1) There shall be employed in the service of the Council, subordinate to the Director General, other management, professional, research, technical, administrative and other support staff as the Council shall consider necessary for the exercise of its powers and performance of its duties and functions, who shall be officers in the public service.

(2) The staff of the Council referred to in subsection (1) shall be appointed by the Council on terms and conditions as the National Remuneration Commission shall determine:

Provided that the Council may, by directions in writing, delegate to the Director General, the appointment of its staff in specified junior ranks and the Director General shall report to the Council every appointment made pursuant to this subsection.

(3) Every member of staff of the Council shall, on first appointment, take an oath of office in the form set out in the Schedule to this Act and a Commissioner of oaths shall administer the oath.

(4) The Director General or other officer of the Council as the Council or the Director General may designate, may attend meetings of the Council and of any of its committees and may address the meetings, but shall not vote on any matter.

(5) Where, in any meeting, the deliberations of the Council or any of its committee concerns the Director General or any officer of the Council designated to attend the meeting, the Council or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

(6) Section 31 shall apply *mutatis mutandis*, to the Director General and any other officer referred to in this section.

PART V — FINANCIAL PROVISIONS

Funds of the
Council

40.—(1) The funds of the Council shall consist of—

- (a) sums appropriated by Parliament for purposes of the Council;
- (b) sums or assets that may accrue to or vest in the Council, whether in the course of the performance by the Council of its functions or the exercise of its powers or otherwise;
- (c) sums or assets that may accrue to or vested in the Council by way of grants, subsidies, bequests, donations, gifts and subscriptions;
- (d) sums that are derived from the sale of any real or personal property;
- (e) sums that are received by the Council by way of voluntary contributions; and
- (f) sums or assets as may be donated to the Council by any foreign government, international agency or other external body of persons.

(2) The Council may receive the sums or assets referred to in subsection (1) from a source other than the Government provided that no sums or assets shall jeopardise or compromise the independence of the Council.

(3) The Council shall, within a reasonable period not exceeding one month, provide the Secretary to the Treasury in writing details of the sums or assets received by the Council under subsection (1) from a source other than the Government.

(4) For the purposes of this section, “an external body of persons”, means any body of persons, incorporated or unincorporated, formed under or by virtue of the laws of any country other than Malaŵi.

(5) Government shall adequately fund the Council to enable it exercise its powers and perform its functions and duties so as to ensure its independence.

(6) 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.

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

Accounting
and audit

41.—(1) The Council shall be liable to account to the National Assembly in the manner applicable to Government departments.

(2) The accounts of the Council shall be liable to audit annually by the Auditor General or by independent professional auditors appointed by the Council in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Council.

PART VI — DISABILITY TRUST FUND

Disability Trust Fund

42.—(1) There is hereby established a fund to be known as the Disability Trust Fund (in this Act otherwise referred to as the “Fund”).

(2) The Fund shall consist of—

(a) sums appropriated by Parliament for the purposes of the Fund;

(b) advances made to the Fund;

(c) Disability Trust levies on products, industries and activities that adversely affect the Disability Trust as the Minister responsible for finance may, in consultation with the Council, impose;

(d) sums or other assets received for the purposes of the Fund, by way of voluntary contributions or donations; and

(e) sums paid by way of fees or other penalties in respect of licenses issued under this Act.

Objects of the Fund

43. The purpose of the Disability Trust Fund shall be to support the implementation of disability programmes and services under this Act.

Vesting of the Fund
Cap.37:02

44.—(1) The Fund shall vest in trustees appointed by the Minister and, subject to this Act and the Public Finance Management Act, shall be administered in accordance with the direction of the Council.

(2) The Minister shall prescribe the criteria for the appointment, tenure and removal of trustees.

Advances to the Fund

45. If, in any financial year, the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance shall make advances to the Fund in order to meet the deficiency or any part thereof and the advances shall be made on terms and conditions, whether as to repayment or otherwise, determined by the Minister responsible for finance.

Application of the Fund

46.—(1) Without derogation from the generality of section 43, the Fund may be applied to—

(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 and the construction of buildings in order to promote the functions of the Fund;

(c) the cost of any activity, service or amenities which the Fund considers to be in the interest of persons with disabilities;

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

(e) any purpose which the Trustees consider to be in the interest of the objects of the Fund.

(2) The Council shall, in consultation with relevant agencies and departments, prescribe operational guidelines for the distribution and monitoring utilization of the funds under the Fund.

Books and other records of account, audit and reports of the Fund
Cap. 37:02

47.—(1) The Council shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the Public Finance Management Act.

(2) The accounts of the Council and the Fund shall be audited by the Auditor General.

(3) The Council shall cause to be prepared, as soon as practicable, but not later than six (6) months after the end of the financial year, an annual report on all the financial transactions of the Council.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of the Fund

48.—(1) All sums received for the purposes of the Fund shall be paid into a bank account and no amount shall be withdrawn there from except by means of cheques signed by persons authorized in that behalf by the Council.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Council, be invested in a manner the Council may, after consulting with the Minister responsible for finance, determine.

PART VII — MISCELLANEOUS

Adoption of policies and legislation on equalization of opportunities

49.—(1) The Minister shall initiate policies and legislation on equalization of opportunities for persons with disabilities in order to—

- (a) promote and protect the rights of persons with disabilities;
- (b) ensure that persons with disabilities are protected from the impact of disasters and emergencies and where the disaster or emergency occurs, it is mitigated against persons with disabilities; and
- (c) fully include them in all aspects of life, to enhance their dignity and well-being.

(2) The Minister shall—

- (a) recognize the role of the private sector and civil society organizations in promoting and protecting the rights of persons with disabilities; and
- (b) encourage partnerships in programmes that address the needs and concerns of persons with disabilities by advocating removal of social, cultural, economic, environmental and attitudinal barriers and facilitating the inclusion of persons with disabilities.

Responsibilities of the Minister

50. The Minister shall be responsible for the proper administration of this Act, including—

- (a) coordinating policy formulation and review;
- (b) implementing, monitoring and evaluating programmes;
- (c) promoting disability mainstreaming in all sectors;
- (d) mobilizing resources, both from within and outside Malaŵi, for policy development and implementation; and
- (e) strengthening the capacity of persons with disabilities as well as organizations of and organizations for persons with disabilities, in order to enhance advocacy and facilitate the effective and efficient implementation of policies, programmes and services.

Powers of the Minister

51.—(1) The Minister shall have powers to establish institutions and committees for purposes of the proper and effective administration of this Act.

(2) Notwithstanding the generality of subsection (1), the Minister shall establish a National Advisory and Coordinating Committee on Disability Issues which shall—

(a) provide a forum for all key stakeholders on disability issues to receive, discuss and review reports from ministries and departments and other relevant stakeholders on disability mainstreaming;

(b) make recommendations to Government on best practices regarding the formulation of policies, legislation and programmes, with respect to disability; and

(c) oversee the implementation, monitoring and evaluation of disability-related programmes.

Monitoring
mechanism

52.—(1) The Minister designates the Human Rights Commission as the independent mechanism to promote, protect and monitor implementation of the Convention of the Rights of Persons with Disabilities.

(2) The Human Rights Commission shall have powers to investigate any violation of this Act, and shall periodically review compliance with this Act by all the relevant authorities or institutions.

Civil remedies

53.—(1) Where any person has reason to believe that any other person or entity has violated any provision in Part III of this Act, the aggrieved person may commence legal action against that person or entity in any competent court of law.

(2) In seeking a remedy for violation of any provision in Part III of this Act, the court may award the aggrieved person any of the following remedies—

- (a) equitable relief that the court may consider appropriate in accordance with the gravity of the violation;
- (b) the provision of auxiliary aid or services; or
- (c) any other relief that the court may consider appropriate, including monetary damages to the aggrieved person.

Administrative
penalties

54.—(1) If the Minister is satisfied on reasonable grounds that a person or an institution has contravened this Act or any regulations made under it, he may impose administrative penalties on such person or institution by—

- (a) giving the person or institution a written warning;
- (b) directing the person or institution to do a specified act, or refrain from doing a specified act, in order to—
 - (i) remedy the effects of the contravention;
 - (ii) compensate the person who has suffered loss because of the contravention; or
 - (iii) ensure that the person or institution does not commit further contraventions.

(2) The direction referred to in subsection (1) (b) may require the establishment of compliance programs, corrective advertising, or, in the case of a direction to an institution, changes in the management of the institution.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the penalty, commits an offence and is liable to—

- (a) in the case of a natural person, a fine of K2,000,000 and imprisonment for twelve months; or
- (b) in the case of a body corporate, a fine of K10,000,000.

(4) Where the administrative penalty imposed under subsection (1) is a monetary penalty and the person on whom the penalty has been imposed does not pay the penalty for a period of

more than thirty days from the date the penalty was imposed, the penalty shall be recoverable as a civil debt.

Duty to co-operate

55. Every relevant or competent public officer and public or private entity shall accord the Council, any assistance or co-operation as may be reasonably required for the exercise of its powers and performance of its functions and responsibilities and for the protection of its independence.

General offences

56. 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) without a written permission of the Council, publishes or discloses to any unauthorized person or otherwise than in the course of duty, the contents of any document, communication or information of any kind which has come to his knowledge in the course of his duty under this Act,

commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for five years.

Annual reports

57.—(1) The Council shall—

(a) from time to time and in consultation with the Minister, apprise the Cabinet, Members of Parliament, Secretaries and Local Government Authorities and Councillors on the work of the Council and in particular on matters that could affect the national development policy and on the priorities to be set by the Council;

(b) prepare and submit to the Minister within three months after the end of every financial year, a comprehensive annual report on the general conduct of the affairs of the Council and the activities it has carried out during that financial year;

(c) prepare and submit to the Minister within four months after the end of every financial year a comprehensive annual report to Parliament on the general conduct of the affairs of the Council and the activities it has carried out during that financial year.

(2) The Minister shall lay a copy of every annual report referred to in subsection (1)(c) in Parliament.

Regulations

58.—(1) The Minister may, by notice published in the *Gazette*, on the recommendation of the Council,—

(a) make regulations for the better carrying out of the provisions of this Act; and

(b) amend any Schedule to this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe any matter which under this Act is required or permitted to be prescribed.

Cap. 1:01

(3) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of up to K10,000,000 and imprisonment for five years, for an offence committed in contravention of the regulations.

Repeals and savings
Cap. 33:02
Cap. 33:06

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

(2) Any subsidiary legislation made under the Handicapped Persons Act and Disability Act repealed by 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.

(3) Anything done in accordance with the Handicapped Persons Act and 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.

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

Transfer of assets
and liabilities

60.—(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 Malaŵi 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 Malaŵi 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 Institution 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 on the registering authority relating to the title, right or obligation concerned.

Transitional provisions

61.—(1) Any license issued or permission granted in accordance with the repealed Acts 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 Authority or the Minister, as the case may be, under this Act.

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

(3) Members of the Malaŵi 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) The Council shall, within twenty-four months from the commencement of this Act, transfer all licences and certificates issued or granted under the repealed Acts, as if the licenses had been granted under this Act and the Council may extend the twenty-four months period by a period not exceeding six months after the expiry of the twenty-four months period.

Legal proceedings

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

Transfer of employees

63. Unless the Council otherwise determines, all persons who, immediately before the commencement of this Act, were employed by the Malaŵi Council for the Handicapped established under the repealed Act, shall, on the commencement of this Act, be deemed to have been

transferred to the employment of the Council established under this Act, 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 Malaŵi Council for the Handicapped established under the repealed Act.

SCHEDULE