

CHAPTER 17:01

Disabled Persons Act¹

Act 5/1992, 6/2001 (s. 151), 22/2001 (s. 4)².

ARRANGEMENT OF SECTIONS

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AN ACT to make provision for the welfare and rehabilitation of disabled persons; to provide for the appointment and functions of a Director for Disabled Persons' Affairs and the establishment and functions of a National Disability Board; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 26th June, 1992.]

1 Short title

This Act may be cited as the Disabled Persons Act [Chapter 17:01].

2 Interpretation

In this Act—

“Board” means the National Disability Board established in terms of section *four*;

“Director” means the Director for Disabled Persons' Affairs referred to in section *three*;

“disabled person” means a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society;

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may from time to time assign the administration of this Act.

3 Director for Disabled Persons' Affairs

(1) There shall be a Director for Disabled Persons' Affairs whose office shall be a public office and form part of the Public Service.

(2) The functions of the Director shall be—

- (a) to formulate proposals for measures referred to in paragraph (b) of subsection (1) of section *five* for submission to the Board;
- (b) through liaison with the Ministries and local and other authorities involved, to secure the implementation of measures which have been recommended by the Board in terms of paragraph (b) of subsection (1) of section *five* and approved by the Minister;
- (c) to co-ordinate the activities of institutions, associations and organizations concerned with the welfare and rehabilitation of disabled persons;
- (d) to do such other things as may be prescribed by or in terms of this Act.

(2) In the performance of his functions, the Director shall comply with any general directions or instructions that the Minister or the Board may give him.

4 National Disability Board

(1) There is hereby established a board to be known as the National Disability Board which shall consist of—

- (a) the Director, *ex officio*; and
- (b) ten members appointed by the Minister from a panel of names submitted to him by organizations or associations which he considers represent disabled persons; and
- (c) one member appointed by the Minister in consultation with the Minister responsible for local government; and
- (d) one member appointed by the Minister in consultation with the Minister responsible for health; and
- (e) one member appointed by the Minister in consultation with the Minister responsible for education; and
- (f) one member appointed by the Minister from a list of not fewer than three persons submitted by an association or organization which the Minister, in consultation with the Minister responsible for the administration of the Labour Relations Act [Chapter 28:01], considers represents employers in Zimbabwe; and

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² See note on amendments at the end of this print-out.

- (g) one member appointed by the Minister from a list of not fewer than three persons submitted by an association or organization which the Minister, in consultation with the Minister responsible for the administration of the Labour Relations Act [Chapter 28:01], considers represents trade unions in Zimbabwe; and
- (h) one member appointed by the Minister from among the persons employed in his Ministry; and
- (i) a member or members co-opted by the Board after consultation with the Minister:

Provided that the membership of the Board shall not exceed twenty.

(2) If any organization or association referred to in paragraph (b), (f) or (g) of subsection (1) fails to submit a list of persons within a reasonable time after being called upon by the Minister to do so, the Minister may appoint as members in terms of the paragraph concerned any person whom he considers will adequately represent the interests of the organization or association which failed to submit the list.

(3) The Minister shall appoint as chairman and deputy chairman of the Board two of the members referred to in paragraph (b) of subsection (1), and the deputy chairman shall exercise the functions of chairman during any period the chairman is unable to do so.

(4) Members of the Board shall hold office for such period not exceeding five years and on such terms and conditions, whether in relation to remuneration or otherwise, as may be prescribed or as the Minister may fix for members generally.

(5) Subject to subsection (6), the Board shall—

- (a) hold its meetings at such times and places and in accordance with such procedure; and
 - (b) keep and furnish to the Minister such records of its meetings;
- as may be prescribed or as may be directed by the Minister.

(6) At any meeting of the Board a majority of its members shall constitute a quorum.

(7) The Minister may assign persons employed in his Ministry to perform such secretarial and administrative functions in connection with the Board as may be necessary for the performance of its functions.

5 Functions of the Board

(1) The functions of the Board shall be—

- (a) to issue adjustment orders in terms of section seven; and
- (b) to formulate and develop measures and policies designed—
 - (i) to achieve equal opportunities for disabled persons by ensuring, so far as possible, that they obtain education and employment, participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services;
 - (ii) to enable disabled persons, so far as possible, to lead independent lives;
 - (iii) to give effect to any international treaty or agreement relating to the welfare or rehabilitation of disabled persons to which Zimbabwe is a party;
 - (iv) to prevent discrimination against disabled persons resulting from or arising out of their disability;
 - (v) to encourage and put into operation schemes and projects for the employment of or generation of income by disabled persons who are unable to secure employment elsewhere;
 - (vi) to encourage and secure the rehabilitation of disabled persons within their own communities and social environment;
 - (vii) to encourage and secure the establishment of vocational rehabilitation centres, social employment centres and other institutions and services for the welfare and rehabilitation of disabled persons;
 - (viii) to co-ordinate services provided in Zimbabwe for the welfare and rehabilitation of disabled persons;
 - (ix) to register—
 - A. disabled persons; and
 - B. institutions, associations and organizations, including those controlled and managed by the State and local authorities, that provide services for the rehabilitation of disabled persons; and
 - C. places at which services for the rehabilitation of disabled persons are provided;
 - (x) to provide, so far as possible, orthopaedic appliances and other equipment to disabled persons;
 - (xi) to provide, so far as possible, all institutions, associations and organizations concerned with the welfare and rehabilitation of disabled persons, including institutions, associations and organizations controlled and managed by the State and local authorities, with access to available information and technical assistance;
 - (xii) to provide, so far as possible, skilled staff for the successful implementation of measures for the welfare and rehabilitation of disabled persons;
 - (xiii) generally, to improve the social and economic status and condition of disabled persons and to advance their interests;
- and
- (c) to estimate, and report to the Minister on, the likely cost of proposed measures for the welfare and rehabilitation of disabled persons and to advise the Minister on the relative priorities to be given to the implementation of those measures; and
- (d) to keep measures for the welfare and rehabilitation of disabled persons under constant review and to re-assess and evaluate those measures in the light of experience; and
- (e) to perform such other functions in relation to the welfare and rehabilitation of disabled persons as may be prescribed.

(2) Subject to subsection (3), the Board shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and, in particular—

- (a) may conduct inquiries, including public inquiries, into any matter relating to the welfare and rehabilitation of disabled persons;
- (b) may appoint committees consisting of such persons, whether or not they are members of the Board, and on such terms and conditions, as the Board may determine;

- (c) may vest in or impose on any committee appointed in terms of paragraph (b) such of the functions of the Board as the Board, with the approval of the Minister, may determine;
- (d) may, on behalf of the State, engage or make other arrangements with any other person to carry out research for, or supply information or make submissions to, the Board on any matter relating to the welfare and rehabilitation of disabled persons.

(3) The Board shall not incur any expenditure on behalf of the State except with the approval of the Minister given with the concurrence of the Minister responsible for finance.

6 Reports of Board

- (1) The Board—
 - (a) shall submit to the Minister such reports as the Minister may require; and
 - (b) may submit to the Minister such other reports as the Board considers advisable; in regard to any matter relating to the welfare and rehabilitation of disabled persons.
- (2) The Minister may lay a report submitted to him by the Board in terms of subsection (1) before Parliament.

7 Adjustment orders by Board

- (1) This section shall apply to any—
 - (a) premises to which members of the public are ordinarily admitted, whether on payment of a fee or otherwise; and
 - (b) services or amenities ordinarily provided to members of the public;
 including premises owned or services or amenities provided by any statutory corporation or local authority.
- (2) Where the Board considers that any premises, services or amenities referred to in subsection (1) are inaccessible to disabled persons by reason of any structural, physical, administrative or other impediment to such access, the Board may, subject to this section, serve upon the owner of the premises or the provider of the service or amenity concerned an adjustment order—
 - (a) setting out—
 - (i) a full description of the premises, service or amenity concerned; and
 - (ii) the grounds upon which the Board considers that the premises, service or amenity is inaccessible to disabled persons; and
 - (b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by disabled persons to the premises, service or amenity concerned; and
 - (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.
- (3) Before serving an order in terms of subsection (2) the Board shall serve notice upon the person concerned—
 - (a) specifying the grounds upon which the adjustment order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order; and
 - (b) stipulating the maximum period that the Board considers reasonable for the implementation of the action it proposes to order; and
 - (c) calling upon the person concerned, if he wishes to make representations, to make them to the Board within thirty days from the date of the service of the notice.
- (4) After considering any representations made in terms of subsection (3), the Board may issue, or refrain from or defer issuing, an adjustment order.
- (5) A person upon whom an adjustment order is served in terms of subsection (2) may, within thirty days of the service of the adjustment order, appeal to the Administrative Court against such order on the ground that—
 - (a) the person concerned cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order; or
 - (b) the period stipulated for implementing the adjustment order is unreasonable; or
 - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or
 - (d) adequate access to the premises, service or amenity concerned may be secured without recourse to the action required by the adjustment order;
 or on any other ground.
- (6) Upon hearing an appeal in terms of subsection (5) the Administrative Court may—
 - (a) confirm, vary or set aside the adjustment order appealed against; and
 - (b) make such order as to the costs of the appeal as it thinks fit.
- (7) The Board shall not serve an adjustment order in terms of subsection (2) upon—
 - (a) any hospital, nursing home or clinic controlled or managed by the State or registered in terms of the Health Professions Act [Chapter 27:19] or the Psychological Practices Act [Chapter 27:11], except with the consent of the Minister responsible for health;
 - (b) any school or educational or training institution controlled or managed by the State or registered in terms of the Education Act [Chapter 25:04], or the Manpower Planning and Development Act [Chapter 28:02], except with the consent of the Minister responsible for the administration of the institution or Act concerned
- (8) Any person who contravenes an adjustment which has been served on him in terms of this section and with which it is his duty to comply shall be guilty of an offence and liable to a fine not exceeding level seven.

8 Prohibition of denial to disabled persons of access to public premises, services and amenities

- (1) No disabled person shall, on the ground of his disability alone, be denied—
 - (a) admission into any premises to which members of the public are ordinarily admitted; or
 - (b) the provision of any service or amenity ordinarily provided to members of the public;

unless such denial is motivated by a genuine concern for the safety of the disabled person concerned.

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

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

(4) Any person who, in contravention of subsection (1), denies a disabled person admission into any premises or the provision of any service shall be guilty of an offence and liable to a fine not exceeding level seven.

9 Prohibition of discrimination against disabled persons in employment

(1) Subject to subsection (2), no employer shall discriminate against any disabled person in relation to—

- (a) the advertisement of employment; or
- (b) the recruitment for employment; or
- (c) the creation, classification or abolition of jobs or posts; or
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits; or
- (e) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

(2) An employer shall not be deemed to have discriminated against a disabled person in terms of subsection (1) if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the disabled person; or
- (b) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned; or
- (c) special facilities or modifications, whether physical or administrative or otherwise, are required at the workplace to accommodate the disabled person which the employer cannot reasonably be expected to provide.

(3) Subsection (4) of section 5 of the Labour Relations Act [Chapter 28:01], shall apply to a disabled person discriminated against in relation to any matter specified in subsection (1).

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven.

10 Offences and penalty

Any person who—

- (a) fails to comply with an adjustment order served in terms of section seven; or
- (b) wilfully denies to a disabled person, on the ground of his disability alone—
 - (i) admission to any premises to which members of the public are ordinarily admitted; or
 - (ii) the provision of any service or amenity ordinarily provided to members of the public;
 for any reason other than one motivated by a genuine concern for the safety of the disabled person concerned; or
- (c) discriminates against a disabled person in relation to the matters specified in subsection (1) of section nine:

Provided that paragraph (a), (b) or (c) of subsection (2) of that section shall avail as a defence to a charge in terms of this section;

shall be guilty of an offence and liable to a fine not exceeding four thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

11 Regulations

(1) Subject to this Act and any other enactment, the Minister, after consultation with the Board, may make regulations providing for—

- (a) the co-ordination of services provided in Zimbabwe for the welfare or rehabilitation of disabled persons;
- (b) the registration of—
 - (i) disabled persons;
 - (ii) institutions, associations and organizations, including those controlled and managed by the State and local authorities, that provide services for the rehabilitation of disabled persons;
 - (iii) places at which services for the rehabilitation of disabled persons are provided;
- (c) effect to be given to Zimbabwe's obligations under any international convention treaty or agreement concerning disabled persons;
- (c1) penalties for contraventions of the regulations:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment;

- (d) any other matter which in terms of this Act is required or permitted to be prescribed.

(2) The Minister shall not make regulations in terms of subsection (1) providing for the registration of—

- (a) any hospital, nursing home or clinic controlled or managed by the State or registered in terms of the Health Professions Act [Chapter 27:19] or the Psychological Practices Act [Chapter 27:11], except with the consent of the Minister responsible for health;
- (b) any school or educational or training institution controlled or managed by the State or registered in terms of the Education Act [Chapter 25:04], or the Manpower Planning and Development Act [Chapter 28:02], except with the consent of the Minister responsible for the administration of the institution or Act concerned

Note on amendments since commencement of revised edition (1996)

This version of the Act includes all amendments made to the principal Act up to the 1st December, 2002, that is, the amendments made by the Health Professions Act [*Chapter 27:19*] and the Criminal Penalties Amendment Act, 2001 (No. 22 of 2001).

The Health Professions Act made minor consequential amendments to sections 7(7)(a) and 11(2)(a) of the principal Act, replacing references to the repealed Medical, Dental and Allied Professions Act [*Chapter 27:08*]. References in the same provisions to the Psychological Practices Act [*Chapter 27:11*], also repealed by the Health Professions Act, should have been, but were not, deleted at the same time.

The Criminal Penalties Amendment Act amended sections 7, 8, 9 and 11 of the principal Act, inserting new penalty provisions therein – sections 7(8), 8(4), 9(4) and 11(1)(c1). Section 10 of the principal Act, having been rendered otiose by those amendments, should also have been repealed, but was not; it should be disregarded.