

H.B. 1, 2011.

Gazetted: Friday 23rd September 2011.

OLDER PERSONS BILL, 2011

MEMORANDUM

The purpose of this Bill is to provide for the well-being of older persons, to provide for the appointment of a Director for Older Persons affairs, the establishment of an Older Person Board, to create an Older Persons Fund and to provide for matters connected therewith, or incidental thereto.

In more detail, the individual clauses of the Bill provide as follows—

Clause 1

This clause gives the short title of the Bill and provide for the fixing of date of operation by President through a statutory instrument.

Clause 2

The terms used in this Bill are defined in this clause.

Clause 3

This clause establishes the office of Director for Older Persons Affairs who will be responsible for co-ordinating the activities of the Older Persons Board. The Director will perform his duties in accordance with such general directions as the Minister may issue from time to time.

Clause 4

This clause establishes the Older Persons Board and also provides for the appointment of members of the Board by the Minister. This clause also provide for the appointment of the Chairperson and Vice-Chairperson of the Board, the conditions of service for members of the Board and the procedure at meetings of the board.

Clause 5

This clause deals with disqualification for appointment as a member of the Board. In particular, persons not ordinarily resident in Zimbabwe will not qualify for appointment.

Clause 6

Termination of appointment as members of the Board is provided for by this clause. A member of the Board may resign voluntarily. The Minister is also empowered to terminate the appointment of any Board member in circumstances outlined in this clause.

Clause 7

The functions of the Older Persons Board are provided for by this clause. Basically the Board will be responsible for formulating and designing policies meant to ensure the well-being, care and protection of older persons. This clause also empowers the Board to set up committees to which certain of its functions may be delegated.

Clause 8

This clause provides for the submission of annual reports to the Minister by the Board.

Clause 9

This clause empowers the Director or any person acting on his or her behalf to determine whether an older person is eligible for social welfare assistance.

Clause 10

This clause provides for the establishment of the Older Persons Fund and its application. The Fund shall be vested in the Minister as trustee and be administered by the Director in accordance with the Board's instructions.

Clause 11

This clause empowers the Board to issue adjustment orders in respect of premises or amenities which are inaccessible to older persons by reason of any structural, physical or administrative impediments. This clause also provides the procedure for serving such adjustment orders to the person concerned and the procedure for appealing to the Administrative Court if the person concerned is aggrieved by the adjustment order.

Clause 12

This clause provides for the protection of older persons against discrimination with regard to access to public premises, services and amenities. It also provides for the protection of the rights, freedoms, dignity, privacy and autonomy of older persons resident in homes, hospitals and other institutions.

Clause 13

Offences and penalties are provided for under this clause.

Clause 14

This clause will empower the Minister to make regulations dealing with the co-ordination of services provided for the welfare and protection of older persons in Zimbabwe and the registration and supervision of institutions at which services for the care and protection of older persons are provided. In making the regulations, the Minister is required to consult the Board.

OLDER PERSONS BILL, 2011

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PRESENTED BY THE MINISTER OF LABOUR AND SOCIAL WELFARE

BILL

To provide for the well-being of older persons; to provide for the appointment of a Director for Older Persons affairs, the establishment of an Older Persons Board; to create an Older Persons Fund; and to provide for matters connected therewith, or incidental thereto.

ENACTED by the President and Parliament of Zimbabwe.

PART 1

PRELIMINARY

1 Short title and date of commencement

- (1) This Act may be cited as the Older Persons Act, 2011.
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

In this Act—

- “adjustment order” means an adjustment order served in terms of section 11;
- “Board” means Older Persons Board established in terms of section 4;
- “destitute or indigent”, in relation to an older or other person, has the meaning given to that term by the Social Welfare Assistance Act [*Chapter 17:05*];
- “Director” means the Director of Older Persons Affairs referred in section 3;
- “home” means any premises specifically provided for the residence of older persons;
- “Minister” means the Minister of Labour and Social Services or any other Minister to whom the President may assign the administration of this Act;
- “older person” means a citizen of Zimbabwe aged sixty five years or above, who is ordinarily resident therein;
- “ordinarily resident” means, in relation to an older person, an older person who resides in Zimbabwe for not less than one hundred and eighty one days in any calendar year.

PART II

OLDER PERSONS BOARD

3 Director for Older Persons’ Affairs

- (1). There shall be a Director for Older Persons Affairs who shall be the person for the time being, holding the office of the Director of Social Welfare or lawfully acting in that capacity.

(2) The functions of the Director shall be—

- (a) to formulate proposals for measures which promote the general and specific provisions of the Act and enable the Board to fulfil its functions;
- (b) through liaison with other relevant ministries, local authorities and other organisations, to secure the implementation of measures which have been recommended by the Board in terms of section 7(1)(b) and approved by the Minister;
- (c) to co-ordinate the activities of homes, associations and organisations concerned with the care and protection of older persons;
- (d) to account to the Board for resources expended in activities meant for the care and protection of older persons;
- (e) to do such other things as may be prescribed by or in terms of this Act.

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

4 Older Persons Board

(1) There is hereby established a Board to be known as the Older Persons Board which shall consist of the Director and the following members, who shall be chosen by the Minister with the approval of the President, on the basis of the skills they have that are relevant to the Board's functions—

- (a) one member appointed by the Minister from a list of three persons provided by private voluntary organisations involved in the care of older persons; and
- (b) two members appointed by the Minister from a list of three persons provided by one or more associations representing churches or religious organisations in Zimbabwe; and
- (c) one member appointed by the Minister from a list of three persons provided by an association or body considered by the Minister to be representative of urban councils; and
- (d) two members appointed by the Minister from a list of six persons provided by registered employers' organisations and trade unions; and
- (e) one member appointed by the Minister from a list of three persons provided by an association or body considered by the Minister to be representative of rural district councils; and
- (f) one representative from the Council of Chiefs established in terms of section 37 of the Traditional Leaders Act [*Chapter 29:17*] (No. 25 of 1998) and nominated by the Council of Chiefs; and
- (g) one representative each nominated by the Ministers responsible for health and justice; and
- (h) two older persons appointed by the Minister from a list of six persons recommended by any association or body considered by the Minister to be representative of pensioners, or older persons, or both; and
- (j) two representatives nominated by the Minister or Ministers responsible for tertiary and lower education.

(2) The Board may, with the approval of the Minister, co-opt as members of the Board four other persons whom it considers will assist in advancing the objectives of the Act.

(3) If any organisation, association or body referred to in subsection (1)(a), (b), (c), (d) or (e) fails to submit a list of persons for appointment to the Board within a reasonable period 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 or she considers will adequately represent the

interests of the organisation, association or body which failed to submit the list.

(4) The Minister shall appoint two of the members of the Board as Chairperson and Vice Chairperson of the Board, respectively, and the Vice Chairperson shall exercise the functions of the Chairperson during any period the Chairperson is unable to do so.

(5) A member of the Board shall hold office for a term of three years and shall be eligible for reappointment for another term of office not exceeding three years.

(6) The Board shall—

- (a) hold its meetings at such times and places and in accordance with such procedure as it shall determine; and
- (b) keep and furnish the Minister with such minutes of its meetings.

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

5 Disqualification for appointment as members

A person shall not be appointed as a member and no person shall be qualified to hold office as a member who—

- (a) is not ordinarily resident in Zimbabwe; or
- (b) has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;

or

- (c) has, within the period of five years immediately preceding the date of his or her proposed appointment, been sentenced in any country to a term of imprisonment of or exceeding six months imposed without the option of a fine and has not received a free pardon; or
- (d) is a member of another statutory body.

6 Termination of appointment as members

(1) A member of the Board shall vacate his or her office and his or her office shall become vacant—

- (a) after giving the Minister such period of notice of intention to resign as may be fixed in his conditions of appointment or, if no such period has been fixed, after the expiry of one month after the date he gives such notice or after the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) on a date he or she begins to serve a sentence of imprisonment the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine in any country; or
- (c) if he or she becomes disqualified in terms of paragraph (a) (b) or (c) of section 5 (a), (b) or (d) to hold office as a member; or
- (d) if he or she is required to vacate office by the Minister for misconduct or inability to exercise his or her functions arising out of physical or mental incapacity; or
- (e) if he or she is absent without the permission of the Board from three consecutive meetings of the Board, of which he or she had been given not less than seven days' notice.

(3) The Minister may terminate the appointment of the members of the Board if such

members no longer represent the interests of organisations, associations or bodies which they were appointed to represent.

7 Functions of Board

- (1) The functions of the Board shall be—
 - (a) to issue adjustment orders; and;
 - (b) in liaison with local authorities and organisations with interest in research on ageing issues, to formulate and develop measures and policies designed to improve the general welfare of older persons;
 - (c) to achieve equal opportunities for older persons by ensuring so far as possible that they obtain adequate basic needs, participate fully in recreational and cultural activities and are afforded full access to community, health and social services;
 - (d) to enable older persons, so far as possible, to lead independent lives;
 - (e) to give effect to any international treaty that directly affects the well-being, welfare, care and protection of older persons to which Zimbabwe is a signatory;
 - (f) to prevent discrimination against older persons based on their age;
 - (g) to encourage and put into operation schemes and projects for the generation of income by older persons;
 - (h) to give effect to all such measures that shall ensure the offering of social services and protection to older persons, including housing as and when possible;
 - (i) to encourage the care of older persons within their own communities and social environment;
 - (j) to encourage and secure the establishment of care centres, social centres and other services for the welfare of older persons;
 - (k) to co-ordinate services provided in Zimbabwe for the well-being, welfare, care and protection of older persons;
 - (l) to monitor and supervise institutions, associations and organisations, including those controlled and managed by the State and local authorities, that provide services for the care of older persons, and other places at which services for care and protection of older persons are provided;
 - (m) to provide, as far as possible, all institutions, associations, and organisations concerned with the well-being, welfare, care and protection of older persons with access to available information and technical assistance relevant to their functions;
 - (n) generally, improve the social and economic status and condition of older persons and to advance their interests.
 - (o) to keep measures for the well-being, welfare, care and protection of older persons under constant review and to reassess and evaluate those measures in the light of experience;
 - (p) to perform such other functions in relation to the welfare, care and protection of older persons as may be prescribed.
- (2) 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, may—
 - (a) conduct inquiries, including public inquiries, into any matter relating to the welfare, care and protection of older persons;
 - (b) 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 with the concurrence of the Minister;

- (c) 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) 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 well-being, welfare, care and protection of older 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.

8 Reports of Board

(1) The Board—

- (a) shall submit annual reports to the Minister; and
- (b) may submit to the Minister such other reports as the Board considers advisable;

in regard to any matter relating to the well-being, welfare, care and protection of older persons.

(2) The Minister may lay before Parliament a report submitted to him or her by the Board.

PART 111

PUBLIC ASSISTANCE TO OLDER PERSONS

9 Eligibility for social welfare assistance

(1) The Director, or any person acting on his or her behalf, may, on application made by or behalf of a destitute or indigent older person, grant social welfare assistance to such person where he or she is satisfied that such person—

- (a) is handicapped physically or mentally; or
- (b) suffers continuous ill-health; or
- (c) is a dependant of a person who is destitute or indigent or incapable of looking after himself or herself; or
- (d) otherwise has need of social welfare assistance.

(2) In determining whether an older person qualifies to receive or to continue receiving social welfare assistance, the Director or any person acting on his or her behalf shall assess—

- (a) the availability to the applicant and his or her dependants of any assistance, financial or otherwise, from any source; and
- (b) the suitability of the applicant and his or her dependants for resettlement or rehabilitation; and
- (c) the state of health, educational level and the level of skills of the applicant for purposes of the employment; and
- (d) any other prospects of the applicant.

(3) For the purpose of making his or her decision the Director, or any other person acting on his or behalf, may require the applicant—

- (a) to furnish such information as is necessary to verify the facts of the application;
- (b) to appear personally before the Director or any other person acting on his or her behalf.

10 Older Persons Fund

(1) There is hereby established a fund, to be known as the Older Persons Fund.

(2) The Fund shall consist of—

- (a) such monies as are payable to the Fund from monies appropriated by Parliament for the purpose of the Fund; and
- (b) any other monies to which the Fund may be lawfully entitled, including gifts from any source:

Provided that such gifts shall be subject to approval by the Minister.

(3) The Fund shall be vested in the Minister as trustee and, subject to this Act, shall be administered by the Director in accordance with the Board's instructions.

(4) The purpose of the Fund shall be —

- (a) the provision of social welfare assistance to destitute or indigent older persons; and
- (b) the promotion of programmes for any one or more of the following objects—
 - (i) promoting health and education among destitute or indigent older persons; and
 - (ii) providing facilities for developing skills in older persons who are in homes;
 - (iii) any other activities or projects aimed at promoting the well-being, welfare, care and protection of older persons.

PART V

OTHER MEASURES TO BENEFIT OLDER PERSONS

11 Adjustment orders by the Board

(1) This section shall apply to any—

- (a) homes or premises in which older persons reside or members of the public generally are admitted, whether on payment of a fee or otherwise; and
- (b) services or amenities ordinarily provided to members of the public;

including homes or premises owned or services or amenities provided by any statutory corporation or local authority.

(2) Where the Board considers that any homes, premises, services or amenities are inaccessible to older 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 home or premises or the provider of the service or amenity an adjustment order—

- (a) setting out—
 - (i) the full description of the home, premises, service or amenity concerned; and
 - (ii) the grounds upon which the Board considers that the home, premises, service or amenity is inaccessible to older persons

and

- (b) requiring the owner or provider concerned to undertake at his or her own expense such action as may be specified in order to secure reasonable access by older persons to the home, premises, service or amenity, and
- (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.

(3) Before serving an adjustment order, 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 or she 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 representation made, the Board may issue or refrain from or defer issuing, an adjustment order.

(5) A person against whom an adjustment order is served 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 expenses 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 home, 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, 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 upon any home, hospital, accommodation, nursing home or clinic controlled or managed by the State or registered in terms of the Medical Services Act [*Chapter 15:13*], the Private Voluntary Organisations Act [*Chapter 17:05*], the Health Professions Act [*Chapter 27:19*] or any other law, except with the consent of the Minister responsible for health.

(8) An obligation to comply with an adjustment order is a duty owed to every interested person, that is, every person who may suffer loss or damage by a contravention of it, and accordingly civil proceedings for specific performance, an interdict, damages or other appropriate relief in respect of any contravention or threatened contravention of an adjustment order may be brought by the interested person against any owner or provider of the home, premises, services or amenities who is subjected to the adjustment order.

12 Prohibition of denial to older persons of access to public premises services and amenities

(1) No older person shall, on the ground of his or her age alone be denied—

- (a) admission into any premises to which members of the public are ordinarily admitted, unless such denial is motivated by a genuine concern for the safety of the older person concerned;
- (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 older person concerned; or
- (c) access to social and legal services to enhance his or her autonomy, protection and care to which members of the public are ordinarily granted access; or
- (d) access to schemes, projects or income-generating opportunities to which members of the public are generally granted access.

(2) No older person residing in any home, hospital, accommodation, nursing home or clinic controlled or managed by the State or registered in terms of the Medical Services Act [*Chapter 15:13*], the Private Voluntary Organisations Act [*Chapter 17:05*], the Health

Professions Act [*Chapter 27:19*] or any other law, shall be denied his or her fundamental rights and freedoms under the Constitution or the enjoyment or exercise thereof to the extent that he or she is able to enjoy or exercise them, and every such older person shall be accorded full respect for his or her dignity, beliefs, needs and privacy, and for his or her right (subject to such reasonable restrictions as are made by the responsible authority of the home, hospital, accommodation, nursing home or clinic concerned in the interests of the health, welfare or safety of older persons as a whole) to make decisions about his or her care and the quality of his or her life.

(3) The proprietor of a premises referred to in subsection (1)(a) shall not have the right on the ground of an adult person's age alone to reserve right of admission to his or her premises against such a person.

(3) An older person—

- (a) who is denied admission into or access to any premises or service, amenity, scheme or project referred to in subsection (1); or
- (b) whose rights, freedoms, dignity, privacy or autonomy are violated or denied in contravention of subsection (2);

shall be deemed to have suffered an *injuria* and shall, in addition to any other legal remedy that may be available to him or her, have the right to recover damages in any court of competent jurisdiction.

PART VI

GENERAL

13 Offences and penalties

(1) Any person who—

- (a) fails to comply with an adjustment order, or
- (b) wilfully denies to an older person, on the ground of his or her age 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 older person concerned;

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

14 Regulations

Subject to this Act and any other enactment, the Minister, after consultation with the Board and affected local authorities, may make regulations providing for—

- (a) the co-ordination of services provided in Zimbabwe for the well-being, welfare, care and protection of older persons;
- (b) the registration of—
 - (i) older persons for the purpose of any assistance, scheme or project referred to in section 10(4); or
 - (ii) and supervision of homes, institutions, associations and organisations, including those controlled and managed by the State and local authorities, that provide services for the well-being, welfare, care or protection of older

persons; or

- (iii) and supervision of places at which services for the well-being, welfare, care and protection of older persons are provided;
- (c) effect to be given to Zimbabwe's obligations under any international convention, treaty or agreement concerning older persons;
- (d) any other matter which in terms of this Act is required, permitted or convenient to be prescribed; or
- (e) penalties for non-compliance with regulations made under this section, not exceeding a fine of level eight or imprisonment for a period of one year or both such fine and imprisonment. .