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SCHEDULE Provisions as to the Conduct of Business and Affairs of the Council

An Act of Parliament to provide for the rights and rehabilitation of persons with disabilities; to achieve equalisation of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities; and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Persons with Disabilities Act, 2003 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and different dates may be appointed for different provisions.

Interpretation.

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

“adjustment order” means an order made by the Council under section 24;

“aged person” includes a person with a disability who has been forced into retirement from employment due to his disability;

“assistive devices and services” means implements, tools and specialised services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities;

“Council” means the National Council for Persons with Disabilities established under section 3;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning

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or physical incapability, which impacts adversely on social, economic or environmental participation;

“discriminate” means to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalise or embarrass a person with a disability;

“doctor” means a person registered or licensed as a medical practitioner under the Medical Practitioners and Dentists Act;

Cap. 253.

“Fund” means the National Development Fund for persons with Disabilities established under section 32;

“organizations for persons with disabilities” means associations or societies formed for the purposes of rendering services to persons with disabilities;

“organizations of persons with disabilities” means associations or societies formed by persons with disabilities for their welfare and protection;

“usual day-to-day activities” means the activities of daily living which an ordinary person would reasonably be expected to carry out.

PART II—NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

3. (1) There is hereby established a council to be known as the National Council for Persons with Disabilities.

Establishment.

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of suing and being sued, and acquiring, holding and disposing of movable and immovable property.

Membership.

4. (1) The Council shall consist of the following members appointed by the Minister—

- (a) not more than eight persons nominated, in a manner approved by the Minister, by organisations representing persons with various categories of disabilities;
- (b) three members appointed from a panel of names submitted to the Minister by organizations for persons with disabilities;
- (c) eight members representing the Ministries responsible for the following—
 - (i) culture and social services;
 - (ii) local government;
 - (iii) health;
 - (iv) education;
 - (v) economic planning;
 - (vi) housing;
 - (vii) transport; and
 - (viii) labour;
- (d) one member representing the Attorney General;
- (e) one member appointed from a list of not less than three persons submitted by an organization which the Minister responsible for labour deems to be representative of employers in Kenya;
- (f) one member appointed in consultation with the organization for the time being recognized by the Government as the umbrella organization representing the interests of workers in the country; and
- (g) such other members as may be co-opted by the Council with the approval of the Minister:

Provided that—

- (i) the membership of the Council shall not exceed twenty-seven persons, out of whom at least twenty members shall be persons with disabilities;
- (ii) the members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
- (iii) one of the members of the Council shall be from a rural-based organization.

(2) The Minister shall appoint one of the members appointed under subsection (1) (a) as the chairman.

(3) The Minister shall appoint one of the members, other than a member appointed under subsection (1) (c) or (d), as the vice-chairman.

(4) The member appointed under subsection (1) (c) to represent the Ministry of Education shall be a child psychologist.

5. (1) The chairman, vice-chairman and members appointed under paragraphs (a), (b), (e), (f) and (g) of section 4 (1) shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

Tenure of
office.

(2) The provisions of the Schedule shall have effect with respect to the membership and procedures of the Council.

6. (1) There shall be a Director of the Council who shall be employed by the Council on such terms as the Council may determine.

Director.

(2) The functions of the Director shall be—

- (a) to consult with Ministries and local authorities to secure the implementation of measures recommended under this Act by the Council for the benefit of persons with disabilities;
- (b) to work together with institutions, associations and organizations concerned with the educational, social and cultural circumstances of persons with disabilities; and
- (c) to do such other things as he may be directed by the Council under this Act.

(3) The Council shall employ such other staff in its secretariat as may be necessary for the discharge of its functions under this Act, on such terms and conditions as the Council may determine.

Functions of the Council.

7. (1) The functions of the Council shall be—

- (a) to issue adjustment orders under section 24 of this Act;
- (b) to formulate and develop measures and policies designed to—
 - (i) achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment, and participate fully in sporting, recreational and cultural activities and are afforded full access to community and social services;
 - (ii) co-operate with the Government during the national census to ensure that accurate figures of persons with disabilities are obtained in the country, for purposes of planning;
 - (iii) advise the Minister on the provisions of any international treaty or agreement relating to

the welfare or rehabilitation of persons with disabilities and its benefits to the country;

- (iv) recommend measures to prevent discrimination against persons with disabilities;
 - (v) put into operation schemes and projects for self-employment or regular or sheltered employment for the generation of income by persons with disabilities;
 - (vi) encourage and secure the rehabilitation of persons with disabilities within their own communities and social environment;
 - (vii) encourage and secure the establishment of vocational rehabilitation centres and other institutions and other services for the welfare, rehabilitation and employment of persons with disabilities; and
 - (viii) co-ordinate services provided in Kenya for the welfare and rehabilitation of persons with disabilities and to implement programmes for vocational guidance and counselling;
- (c) to register—
- (i) persons with disabilities;
 - (ii) institutions, associations and organizations, including those controlled and managed by the Government and local authorities, that provide services for the rehabilitation and welfare of persons with disabilities;
 - (iii) places at which services for the rehabilitation of persons with disabilities are provided; and
 - (iv) persons with disabilities whose condition requires constant medical attention for the purposes of availing subsidized medical services;

- (d) to provide, to the maximum extent possible—
 - (i) assistive devices, appliances and other equipment to persons with disabilities; and
 - (ii) access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities, including those controlled and managed by the Government;
- (e) to consult with the Government in the formulation of suitable curricula for vocational rehabilitation centres and other training facilities for persons with disabilities;
- (f) to make provision for assistance to students with disabilities in the form of scholarships, loan programmes, fee subsidies and other similar forms of assistance in both public and private institutions;
- (g) to assess and report to the Minister on the welfare and rehabilitation of persons with disabilities and to advise on the relative priorities to be given to the implementation of those measures;
- (h) to consult with the Government in the provision of suitable and affordable housing for persons with disabilities;
- (i) generally to carry out measures for public information on the rights of persons with disabilities and the provisions of this Act;
- (j) to perform such other functions in relation to the welfare and rehabilitation of persons with disabilities as the Council may deem necessary; and
- (k) to perform such other functions as may be assigned to the Council under this or any other Act.

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(2) Without prejudice to the provisions of subsection (1), the Council 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) to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities;
- (b) to constitute committees consisting of its members, and where necessary to co-opt experts to serve on such committees with the approval of the Minister;
- (c) to vest in or delegate to any committee constituted under paragraph (b) such of the functions of the Council as the Council may with the approval of the Minister determine; and
- (d) with the approval of the Minister, to engage or make other arrangements with any other person to carry out research on, or supply information on, any matter relating to the welfare and rehabilitation of persons with disabilities.

8. The funds of the Council shall consist of the following—

Funds of the
Council.

- (a) funds voted by Parliament; and
- (b) funds the Council may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions.

9. (1) The financial year of the Council shall be from the 1st July of one year to the 30th June of the following year.

Annual
accounts.

(2) The Council shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Council and ensure that, within three months of the end of each financial year of the Council, a statement of accounts of the Council is prepared and audited by an external auditor appointed by the Council and approved by the Minister.

Annual report.

10. The Council shall prepare an annual report of its activities which shall be presented to the Minister and all other Government agencies involved in the work of the Council.

PART III—RIGHTS AND THE PRIVILEGES OF PERSONS WITH DISABILITIES

Realisation of rights of persons with disabilities.

11. The Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities set out in this Part.

Employment.

12. (1) No person shall deny a person with a disability access to opportunities for suitable employment.

(2) A qualified employee with a disability shall be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees.

(3) An employee with a disability shall be entitled to exemption from tax on all income accruing from his employment.

13. The Council shall endeavour to secure the reservation of five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities.

Reservation of
employment.

14. Subject to the provisions of the Employment Act, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are hired.

Apprenticeship.

15. (1) Subject to subsection (2), no employer shall discriminate against a person with a disability in relation to—

Discrimination
by employers
prohibited.

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

(2) Notwithstanding subsection (1), an employer shall be deemed not to have discriminated against a person with a disability if—

- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;