

SPECIAL ISSUE

Kenya Gazette Supplement No. 5 (Senate Bills No. 1)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2019

NAIROBI, 6th February, 2019

CONTENT

Bill for Introduction into the Senate—

PAGE

The Persons with Disabilities (Amendment) Bill, 2019 1

**THE PERSONS WITH DISABILITIES
(AMENDMENT) BILL, 2019**

A Bill for

AN ACT of Parliament to amend the Persons with Disabilities Act to provide for the functions of the National government and the county governments; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Persons with Disabilities (Amendment) Act, 2019.

Short title.

2. The Persons with Disabilities Act, hereinafter referred to as the “principal Act”, is amended in section 2 by—

Amendment of section 2 of No.14 of 2003.

(a) deleting the definition of the word “disability” and substituting therefor the following new definition—

“disability” means a physical, sensory, developmental or other impairment, including any visual, hearing, learning or physical incapability which impacts adversely on social, economic or environmental participation;

(b) inserting the following new definitions in their proper alphabetical sequence—

No. 24 of 2013

“Authority” means the Social Assistance Authority established under section 3 of the Social Assistance Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to persons with disabilities;

“county executive committee member” means the county executive committee member responsible for matters relating to persons with disabilities in the respective county;

“harmful practices” include behaviour, attitudes and practices based on tradition, culture, religion, superstition or other reasons, which negatively affect the human rights and fundamental freedoms of persons with disabilities or perpetuate discrimination against such persons;

“reasonable accommodation” means necessary and appropriate modification and adjustments needed to ensure

persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms and may include a change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to—

- (a) participate in the job application process;
- (b) perform the essential functions of a job; or
- (c) enjoy benefits and privileges of employment equal to those enjoyed by an employee without a disability;

3. The principal Act is amended by inserting the following new Part immediately after Part I-

Insertion of new part IA.

PART IA – OBLIGATIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

Obligations of national government.

- 2A. The national government shall—
- (a) develop policies on the protection and promotion of the welfare of persons with disabilities;
 - (b) undertake investigations, surveys and research into the causes and nature of disabilities and development of new assistive devices;
 - (c) put in place measures for the prevention of disabilities and rehabilitation of persons with disabilities;
 - (d) provide facilities and infrastructure for the training of professionals in the rehabilitation and habilitation of persons with disabilities;
 - (e) promote the integration of persons with disabilities in schools;
 - (f) promote the inclusion of persons with disabilities in the public service and put in place measures to ensure that at least five per centum of the employment positions are filled by persons with disabilities;

- (g) prescribe minimum standards and guidelines to be adhered to by public transport vehicles, communication service companies and infrastructure developers to facilitate reasonable access by persons with disabilities;
- (h) adopt affirmative action in procurement of national government goods and services by implementing preferential procurement for individuals or entities managed by persons with disabilities; and
- (i) ensure access to free basic education and other social amenities to every child with a disability.

Obligations of county governments.

2B. (1) Each county government shall—

- (a) implement national policies for the protection and promotion of the welfare of persons with disabilities;
- (b) budget for adequate resources to be allocated to programmes specifically targeting persons with disabilities;
- (c) ensure access to free pre-primary education and other social amenities to every child with disability;
- (d) coordinate and disseminate information on government sponsored and non-government sponsored programmes targeting persons with disabilities within their respective counties;
- (e) align county legislation and regulations with national policy relating to persons with disabilities;

(f) promote the inclusion of persons with disabilities in the county public service by putting in place measures to ensure that at least five per centum of the employment positions are filled by persons with disabilities; and

(g) adopt affirmative action in procurement of county government goods and services by implementing preferential procurement for individuals or entities established or managed by persons with disabilities.

(2) In ensuring that the county governments meet their obligations under subsection (1), the county executive committee member in each county shall—

(a) advise the respective county governor on the appropriate measures and interventions to be put in place for the protection of persons with disabilities in the county;

(b) develop mechanisms for the identification of persons with disabilities residing in the county;

(c) establish a database of persons with disabilities residing within the respective county containing the following information regarding the persons with disability—

(i) the name, age and place of residence of the person;

(ii) the type of disability of the person;

(iii) the education level of the person;

(iv) the health needs of the person;

-
- (v) the employment status of the person;
 - (vi) any interventions made in relation to the person; and
 - (vii) any other information that the county executive committee member may consider necessary;
- (d) monitor and evaluate the progress by the county in ensuring that the provisions of Article 54 (1) of the Constitution are realised;
- (e) implement programmes to promote the socio-economic development, including participation in cultural life, recreation and sports, by persons with disability in the county;
- (f) coordinate the implementation of programmes developed by the Council and the Authority relating to persons with disabilities in the county, in particular coordinate programmes on—
- (i) awareness creation;
 - (ii) provision of assistive devices and services;
 - (iii) accessibility and reasonable accommodation;
 - (iv) employment;
 - (v) preferential procurement;
 - (vi) health and education; and
- (g) prepare and publish reports containing statistical or other information relating to programmes and effect of the programmes carried out by the county in relation to persons with disabilities.

(3) The county executive committee member may, for the effective performance of the functions under subsection (2), designate a public officer within the county public service or constitute a committee to perform such functions as the county executive member may determine.

(4) Where the county executive member constitutes a committee under subsection (3), the committee shall consist of not more than five persons out of whom at least two shall be public officers serving in the respective county public service.

(5) In constituting a committee under subsection (3), the county executive member shall ensure that membership consists of—

- (a) a person who represents persons with disabilities in the county;
- (b) not more than two thirds of its members shall be of the same gender; and
- (c) persons who hold a minimum qualification of a degree from a university recognised in Kenya.

(6) The respective county government shall enact county specific legislation to provide for—

- (a) procedure for nomination and appointment of the members of the committee;
- (b) such further qualifications for appointment to the committee as may be considered appropriate;
- (c) the term of appointment;
- (d) the criteria and procedure for removal of a member from the committee; and
- (e) such other matters as the county government shall consider necessary.

4. Section 4 of the principal Act be amended—

Amendment of section 4 of No.14 of 2003.

- (a) in subsection (1)—
- (i) by inserting the following new paragraphs immediately after paragraph (c)—
 - (ca) the Principal Secretary in the Ministry responsible for matters relating to education or an alternate designated in writing;
 - (cb) the Principal Secretary in the Ministry responsible for matters relating to health or an alternate designated in writing;
 - (cc) two persons nominated by the Council of County Governors who have knowledge and at least three years' experience on matters relating to disabilities;
 - (ii) by deleting paragraph (d) and substituting therefor the following new paragraphs—
- (d) four persons nominated by organisations representing various types and categories of persons with disabilities, at least one of whom shall be –
- (i) from a county-based organisation; and
 - (ii) a person nominated by organisations of persons with developmental disability.
 - (iii) by inserting the words “an ex officio member and” appearing immediately after the words “who shall be” in paragraph (e);
- (b) by inserting the following new subsections immediately after subsection (1)—
- (1A) The Council may co-opt not more than two persons, whose knowledge and skills are found necessary for the performance of the functions of the Council.
 - (1B) A member co-opted under subsection (1A) shall—

- (a) have no right to vote at a meeting of the Council; and
- (b) serve for a specified period as may be determined by the Council.

5. The principal Act is amended by inserting the following new sections immediately after section 4—

Insertion of new sections in No. 14 of 2003.

Qualifications of chairperson.

4A. A person is qualified to be appointed as chairperson of the Council if that person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a university recognized in Kenya;
- (c) has knowledge and at least six years' working experience, three of which shall be on matters relating to disability, human rights or social development; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

Vacancy

4B. (1) A member of the Council, other than an ex-officio member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

- (iii) is convicted of an offence involving dishonesty or fraud;
- (iv) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors; or
- (v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Board.

(2) Where the office of a member becomes vacant the vacancy may with the approval of the Cabinet Secretary be filled through the majority vote of the members for the remainder of the term.

Remuneration of the Council

4C. The Council shall pay to its members such remuneration as the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission, may approve.

6. Section 6 of the principal Act is amended—

Amendment of section 6 of No 14 of 2003.

- (a) in subsection 2 (a) by deleting the words “local authorities” appearing immediately after the words “Ministries and” and substituting therefor the words “county governments”;
- (b) in subsection 3 by inserting the words “in consultation with the Salaries and Remuneration Commission,” immediately after the words “as the Council”.

7. Section 7 of the principal Act is amended—

Amendment of section 7 of No 14 of 2003.

- (a) in subsection 1(b) by—
 - (i) inserting the word “National” immediately after the words “cooperate with the” in subparagraph (ii);
 - (ii) inserting the following new subparagraph after subparagraph (ii)-

- (iia) advise the Cabinet Secretary for the time being responsible for matters relating to statistics management and county executive committee members in each county on the collection, collation, management and dissemination of data relating to persons with disabilities;
- (iii) deleting the word “Minister” appearing immediately after the words “advise the” in subparagraph (iii) and substituting therefor the words “Cabinet Secretary and county executive committee members in each county”;
- (iv) inserting the following new subparagraphs immediately after subparagraph (iii)—
 - (iiia) advise the Cabinet Secretary on matters relating to development of national policy and legislation for the promotion and protection of the rights of persons with disabilities;
 - (iiib) monitor, evaluate, report on and advise the Cabinet Secretary and the county executive committee members in each county on the progress made in the realisation of the rights of persons with disabilities and recommend appropriate action to facilitate full enforcement;
- (v) inserting the following new subparagraph immediately after subparagraph (iv)—
 - (iva) monitor and facilitate the promotion and protection of the rights of persons with disabilities;
 - (vi) inserting the words “in collaboration with the relevant county government,” at the beginning of subparagraph (vii);
- (b) in subsection (1) (c) by—
 - (i) deleting the words “Government and local authorities” appearing immediately after the words “managed by the” in subparagraph (ii) and substituting therefor the words “National and county governments”;

-
- (ii) by inserting the following new paragraph immediately after paragraph (c)—
 - (ca) maintain a database and facilitate access to information on persons with disabilities including institutions and organizations offering services to the persons with disabilities;
 - (c) in subsection (1) (d) by—
 - (i) deleting the word “Government” appearing immediately after the words “managed by the” in subparagraph (ii) and substituting therefor the words “National and county governments”;
 - (ii) inserting the following new paragraphs immediately after paragraph (d)—
 - (da) facilitate access to information on, and the, acquisition of mobility aids, devices and assistive technologies required by persons with disabilities;
 - (db) advise the county government on matters relating to the enactment and formulation of county legislation and policy respectively in as far as they relate to the promotion and protection of basic rights and freedoms of persons with disabilities, including—
 - (i) the right of children with disabilities to access early childhood development programmes, child care facilities and respite care services; and
 - (ii) the right of learners with disabilities to access village polytechnics, homecraft and vocational training centres on;
 - (d) in subsection (1) (e) by inserting the word “National” immediately after the words “to consult with the”;
 - (e) in subsection (1) (g) by deleting the word “Minister” appearing immediately after the words

“report to the” and substituting therefor the words
“Cabinet Secretary and Parliament;

- (f) by inserting the following new paragraph immediately after paragraph (1) (g)—
 - (ga) to prepare and submit a report annually to the Cabinet Secretary and Parliament on—
 - (i) the progress made in the realization of the rights of persons with disabilities;
 - (ii) the challenges faced by persons with disabilities in the realisation of their rights; and
 - (iii) measures that may be put in place to address the challenges;
- (g) in subsection (1) (h) by inserting the words “National and County” immediately after the words “consult with the”;
- (h) by inserting the following new paragraphs after subsection (1) (h)—
 - (ha) advise the Cabinet Secretary and county governments on appropriate programmes, plans and other administrative measures required for the realisation of the rights of persons with disabilities;
 - (hb) advise the Cabinet Secretary and county governments on appropriate measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by persons with disabilities because of past discrimination;
 - (hc) advise and facilitate state and non-state agencies in the training of relevant professionals and staff in matters relating to the rights of persons with disabilities;
 - (hd) provide information and technical advice to individual care givers, institutions, associations and organizations concerned with the welfare and rehabilitation of persons with disabilities;

- (he) undertake research, advise and recommend the development of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for use by persons with disabilities;
- (hf) collaborate with the Media Council of Kenya and media houses in Kenya to—
 - (i) create awareness through programmes on matters relating to the rights of persons with disabilities; and
 - (ii) ensure that information communicated by the media houses is accessible to persons with disabilities;
- (i) in subsection (2) by—
 - (i) deleting the word “Minister” appearing at the end of paragraph (b) and substituting therefor the words “Cabinet Secretary”;
 - (ii) deleting the word “Minister” appearing immediately after the words “approval of the” in paragraph (c) and substituting therefor the words “Cabinet Secretary” and
 - (iii) deleting the word “Minister” appearing immediately after the words “approval of the” in paragraph (d) and substituting therefor the words “Cabinet Secretary”.

8. Section 8 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 8 of No. 14 of 2003

- (c) any grants, gifts, donations or other endowments given to the Council.

9. Section 9 of the principal Act is amended by deleting the word “Minister” appearing at the end of subsection (2) and substituting therefor the words “Cabinet Secretary”.

Amendment of section 9 of No. 14 of 2003

10. Section 10 of the principal Act is amended by deleting the words “Minister and all other Government agencies involved in the work of the Council” appearing immediately after the words “presented to the” and

Amendment of section 10 of No. 14 of 2003.

substituting therefor the words “Cabinet Secretary and Parliament.”

11. The principal Act is amended by deleting section 11 and substituting therefor the following new section—

Amendment of
section 11 of No
14 of 2003.

Realisation of rights
of persons with
disabilities

11. The National government and county governments shall take steps to achieve the full realisation of the rights of persons with disabilities and shall, for this purpose—

- (a) take all necessary measures to ensure the effective enjoyment of the inherent right to life by persons with disabilities;
- (b) take appropriate measures to prevent the discrimination of women and girls with disabilities;
- (c) take all feasible measures to specifically protect persons with disabilities in situations of risk;
- (d) ensure that persons with disabilities enjoy equal protection before the law;
- (e) take all the necessary measures to prevent persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (f) take all the necessary measures to prevent persons with disabilities from being subjected to medical or scientific experimentation without their consent;
- (g) take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation, habilitation and social reintegration of persons with disabilities;
- (h) protect the privacy and information relating to the health, rehabilitation

and habilitation of a person with disabilities;

- (i) establish appropriate habilitation and rehabilitation programmes for persons with disabilities; and
- (j) facilitate the full participation of persons with disabilities in political activities including voting and seeking public positions whether elective or appointive.

12. Section 12 of the principal Act is amended in—

Amendment of section 12 of No. 14 of 2003

- (a) subsection (1) by deleting the word “suitable” appearing immediately after the words “to opportunities for”; and
- (b) subsection (2) by deleting the words “A qualified employee” and substituting therefor the words “An employee” appearing at the beginning of the subsection.

13. The principal Act is amended by deleting section 13 and substituting therefor the following new section—

Amendment of section 13 of No. 14 of 2003.

Reservation in employment

13. The National government and county governments shall ensure that at least five percent of state and public service positions, all casual, emergency and contractual positions in employment in the public and private sectors are reserved for persons with disabilities.

14. Section 16 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 16 of No. 14 of 2003

(2) A private employer shall be entitled to apply for additional deductions from his net taxable income equivalent to fifty per cent of the direct costs of—

- (a) improvements or modifications of the employer’s physical facilities or special services to provide reasonable accommodation for employees with disabilities; or
- (b) provision of mobility aids, assistive devices, adaptive technology or other devices or

equipment, designed to meet the special needs of the employees with disabilities.

15. Section 18 of the principal Act is amended by-

Amendment of section 18 of No 14 of 2003.

(a) inserting the following new subsection immediately after subsection (2)—

(2A) The National government and county governments shall provide adequate financing to learning institutions for the provision of appropriate equipment, assistive devices, support services and other auxiliary services to accommodate the special needs of learners with disabilities.

(b) inserting the following new subsection immediately after subsection (3)—

(3A) The National and county governments shall promote inclusive education in all schools and institutions for all learners with disabilities.”

16. Section 19 of the principal Act is amended by deleting the words “relevant agencies of Government to make provisions in all districts” appearing immediately after the words “consultation with the” and substituting therefor the words “relevant National government agencies and all county governments to make provisions in all sub-counties.”

Amendment of section 19 of No 14 of 2003.

17. The principal Act is amended by deleting section 20 and substituting therefor the following new section—

Amendment of section 20 of No. 14 of 2003

Integration of health needs in programmes

20. The Ministry responsible for health, departments and agencies at the national and county governments shall, in consultation with the Council ensure that their policies and programmes are inclusive of the health needs of persons with disabilities and in particular –

- (a) prevention of disability;
- (b) early detection of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and

- medical services in public health institutions;
- (e) availing essential health services to persons with disabilities at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities;
- (g) prompt attendance by medical personnel to persons with disabilities; and
- (h) raising awareness on the social factors that affect the health of persons with disabilities.

18. The principal Act is amended by deleting section 21 and substituting therefor the following new section—

Amendment of section 21 of No.14 of 2003.

Accessibility and mobility

21. (1) A person with disability is entitled to—

- (a) a barrier-free and disability-friendly environment to enable them have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility; and
- (b) live independently and participate fully in all aspects of life, facilitated by equal access to new information and communication technologies.

(2) The relevant state agency or county government shall not approve the construction of a road, building or any other premises if the plans for the construction do not include an access way for persons with disabilities.

19. Section 22 of the principal Act is amended—

Amendment of section 22 of No 14 of 2003.

- (a) by inserting the following new subsections immediately after subsection (1)—

(1A) Where modification to a public building is not possible, assistive services shall be made available to persons with disabilities or reservation of goods and services for use by persons with disabilities.

(1B) A proprietor of a public building shall ensure that persons with disabilities have access to the building through provision of—

- (a) accessible entrances, pathways, indoor or outdoor parking areas, local public transit stops and accessible elevators;
- (b) safe and accessible urinals and bathrooms for the diverse disabilities;
- (c) safe and well-dimensioned staircases for persons with mobility problems;
- (d) ramps for wheel chair users and persons with mobility problems; and
- (e) well-dimensioned elevators in the case of a multi-storied building which a person with disabilities can use conveniently including—
 - (i) embossed numerals and tactile markings on the floor selector buttons to be easily identifiable by touch; and
 - (ii) signal arrival to each floor to alert the visually impaired and the deaf passengers.

(1C) Where, owing to the existing structure of a building, it is not feasible to install a ramp or an elevator to an existing building, the owner of the building shall provide platform lifts to provide access to persons with disabilities.

20. Section 23 of the principal Act is amended—

- (a) by inserting the following new subsection immediately after subsection (1)—

(1A) The National government and county shall ensure that bus parks, railway stations, air and sea ports are accessible to persons with disabilities and conform to universal design

Amendment of
section 23 of No
14 of 2003.

standards for parking spaces, toilets, ticketing counters, ticketing machines and cruise facilities.

21. Section 25 of the principal Act is amended in subsection (1) by deleting the words “unless such denial is motivated by a genuine concern for the safety of such person” appearing at the end of the subsection.

Amendment of section 25 of No 14 of 2003.

22. Section 26 of the principal Act is amended is amended by deleting subsection (3) and substituting therefor the following new subsection-

Amendment of section 26 of No 14 of 2003.

(3) The Court may, in addition to the penalty imposed under subsection (2), make an order—

- (a) for the payment, by person found guilty, to the person injured by the offence such sums of money in compensation as the Court may consider appropriate;
- (b) for the closure of the premises in question until the adjustment orders issued have been fully complied with; or
- (c) that the person bears the costs of the relevant department of the National or county government or that any other person undertakes any required works on the premises.

23. Section 27 of the principal Act is amended—

Amendment of section 27 of No 14 of 2003.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Council shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the national or county government or registered under the Public Health Act except with the consent of the Cabinet Secretary or county executive committee member responsible for health; or

Cap. 242

- (b) any school or educational or training institution controlled or managed by the national or county government or registered under the Basic Education Act except with the consent of the Cabinet

No. 14 of 2013

Secretary or county executive committee member responsible for the administration of the institution or Act concerned.

- (b) in subsection (2) by deleting the word “Minister” appearing immediately after the words “subsection (1) the” and substituting therefor the words “Cabinet Secretary”.

24. Section 28 of the principal Act is amended—

Amendment of
section 28 of No
14 of 2003.

- (a) in subsection (1) by inserting the words “National government or county government” immediately after the words “operated by the”;
- (b) by inserting the following new subsections immediately after subsection (2)-

(2A) Persons with disabilities are entitled to the development and utilization of their creative, artistic and intellectual potential for their own benefit and that of society.

(2B) For the purposes of subsection (2) the national government shall, in consultation with the Council, provide –

- (a) adequate financial resources to facilitate recognition and development of talent;
- (b) subsidized apparatus and equipment needed by the persons with disabilities to participate fully in sports and other creative and artistic activities;
- (c) recognition mechanisms, including appropriate awards; and
- (d) a framework for early talent identification and development support.
- (c) in subsection (3) by inserting the words “and county governments” appearing immediately after the words “with the Council”.

25. Section 29 of the principal Act is amended-

Amendment of
section 29 of
No.14 of 2003.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

[Participation in political and public life];

(b) by deleting subsection (1) and substituting therefor the following new subsections-

(1) Persons with disabilities have the right to full and effective participation in political and public life on an equal basis with others, including—

- (a) being registered as voters;
- (b) voting;
- (c) vying and being elected to office; or
- (d) being appointment to a public office;

(1A) The Independent Electoral and Boundaries Commission shall in consultation with the Council ensure that—

- (a) voter registration, voting procedures, facilities and materials are appropriate, accessible, easy to understand and user friendly to persons with disabilities;
- (b) the rights of persons with disabilities to vote by secret ballot in elections and public referenda are protected;
- (c) persons nominated to special affirmative action seats for persons with disabilities by political parties are bona fide persons with disabilities; and
- (d) appropriate assistance measures are put into place during the voting considering the statistics on persons with disabilities.

(1B) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting during presidential, parliamentary and civic elections.

26. Section 33 of the principal Act is amended-

(a) in subsection (1) by—

(i) deleting paragraph (c) and substituting therefor the following new paragraph-

Amendment of
section 33 of No
14 of 2003.

- (c) any grants, donations, bequests or other contributions made to the Fund;
- (ii) inserting the following new paragraphs immediately after the new paragraph (c)—
 - (d) fees and levies collected by the Fund;
 - (e) monies that may be borrowed by the Council for the discharge of the functions of the Fund; and
 - (f) all other payments due to the Fund in respect of any matter incidental to its functions;
- (b) by inserting the following new subsection immediately after subsection (1)-
 - (1A) In making investments under subsection (1) (b) the Board shall, with the approval of the Council, ensure that the funds are invested in a lawfully constituted investment scheme in accordance with the law relating to the administration of public funds.
- (c) in subsection (2) –
 - (i) by inserting the words “national and county “immediately after the words “undertaken by the” appearing in paragraph (c);
 - (ii) by inserting the following new paragraphs immediately after paragraph (c)-
 - (ca) make contributions to support capacity building and empowerment programmes undertaken by organisations of and for persons with disabilities for the general benefit and development of persons with disabilities;
 - (cb) pay such sums of money required to defray the expenses incurred in the administration of the Fund, provided that such payments shall not be made in excess of fifteen per cent of the money appropriated by Parliament in to the Fund in any particular year;

27. Section 34 of the principal Act is amended—

Amendment of
section 34 of No

- (a) in subsection (1) by-
- (i) deleting the words “The Chairman” appearing at the beginning of paragraph (a) and substituting therefor the words “The Chairperson”;
 - (ii) deleting paragraph (c) and substituting therefor the following new paragraph-
 - (c) a representative of the Cabinet Secretary appointed by the Cabinet Secretary;
 - (iii) deleting the word “Minister” appearing immediately after the words “appointed by the” and substituting therefor the words “Cabinet Secretary” in paragraph (d)
 - (iv) deleting the word “mental” appearing immediately after the words “for persons with” and substituting therefor the word “developmental” in paragraph (e);
- (i) inserting the following new paragraph immediately after paragraph (e)-
- (ea) a person appointed by the Council of County Governors who has knowledge and experience in matters relating to finance;
 - (ii) deleting the word “three” appearing immediately after the words “not more than” in paragraph (f) and substituting therefor the word “two”;
- (b) in subsection (2) by deleting the words “the Minister” appearing at the beginning of the subsection and substituting therefor the words “Cabinet Secretary”;
- (c) by inserting the following new subsection immediately after subsection (2)—
- (2A) The Board of Trustees shall prepare and submit to the Council quarterly and annual reports on the discharge of its functions every year.

14 of 2003.

28. Section 35 of the principal Act is amended—

- (a) in subsection (1) by deleting the word “Minister” appearing immediately after the words “may apply

Amendment of
section 35 of No
14 of 2003.

to the” and substituting therefor the words “Cabinet Secretary”

- (b) by inserting the following new subsection immediately after subsection (1)—

(1A) The Cabinet Secretary responsible for finance may, on recommendation by the Council exempt an applicant from income tax or other levies specified under this Act.

- (c) in subsection (2) deleting the words “The Minister” appearing at the beginning of the subsection and substituting therefor the words “The Cabinet Secretary”.

29. Section 36 (2) of the principal Act is amended by deleting the word “Minister” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “Cabinet Secretary”.

Amendment of section 36 of No.14 of 2003.

30. The principal Act is amended by deleting section 37 and substituting therefor the following new subsection—

Amendment of section 37 of No.14 of 2003.

Credit

37. The Cabinet Secretary responsible for matters relating to credit unions, co-operatives and other lending institutions shall, by regulation, prescribe the manner in which such institutions may extend credit facilities to persons with disabilities.

31. Section 38 (2) of the principal Act is amended-

Amendment of section 38 of No 14 of 2003.

- (a) in subsection (2) by inserting the following new paragraph immediately after paragraph (a)-

(aa) legal aid and assistance in the enforcement of the rights of persons with disabilities;

- (b) in subsection (3) by deleting the word “Minister” appearing immediately after the words “regulations made by the” and substituting therefor the words “Cabinet Secretary”.

32. Section 42 of the principal Act is amended in subsection (1) by-

Amendment of section 42 of No 14 of 2003.

- (i) deleting the word “Minister” appearing immediately after the words “prescribed in the regulations made by the” in paragraph (b) and substituting therefor the words “Cabinet

Secretary”; and

(ii) deleting paragraph (c).

33. Section 44 of the principal Act is amended by deleting the words “Minister” appearing immediately after the word “The” in the introductory clause and substituting therefor the words “Cabinet Secretary in consultation with the council of County Governors”.

Amendment of section 44 of No 14 of 2003.

34. The principal Act is amended by inserting the following new section immediately after sections 45—

Insertion of new sections in No. 14 of 2003

Harmful practices.

45A. (1) The government shall take appropriate measures, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices committed against a person with disability, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.

(2) A person who perpetrates a harmful practice against a person with disability is guilty of an offence and shall be liable upon conviction to life imprisonment.

(3) A person who wilfully aids, abets or is an accessory to an offence in subsection (2), is guilty of an offence and shall upon conviction be liable to life imprisonment

35. Section 46 of the principal Act is amended in subsection (1) by deleting the words “one hundred thousand shillings or to imprisonment for a term not exceeding one year” appearing immediately after the words “fine not exceeding” and substituting therefor the words “one million shillings or to imprisonment for a term not less than three years”.

Amendment of section 46 of No. 14 of 2003.

36. The principal Act is amended by inserting the following new section immediately after section 46-

Insertion of section 46A in No. 14 of 2003

Torture and cruel treatment.

46A. A person who causes or intends to cause harm or death of a person with disability through torture, cruel treatment, ritual killings or other practices commits an

offence and shall on conviction be liable to life imprisonment.

37. The Schedule of the principal Act is amended-

Amendment of the
Schedule of No 14
of 2003.

- (a) by deleting paragraph 1;
- (b) by deleting paragraph 2;
- (c) by deleting paragraph 3;
- (d) by deleting paragraph 5 and substituting therefor the following new paragraphs—

5. A meeting of the Council shall be held on such date and at such time as the Council shall decide, or in the absence of such a decision if the chairperson decides that a meeting is necessary, on a date and at a time determined by the chairperson.

5A. Notwithstanding the provisions of paragraph (5), the Chairperson may, and upon requisition in writing by at least six members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

- (e) in paragraph 7 by deleting the word “fifteen” appearing immediately after the words “Council shall be” and substituting therefor the word “six”;
- (f) by deleting paragraph 8 and substituting therefor the following new paragraph-

8. (1) The chairperson, or in the absence of the chairperson, the vice-chairperson, shall preside at the meeting of the Council.

(2) In the absence of both the chairperson and vice-chairperson, the members present shall elect one of their number to preside at the meeting.

- (g) in paragraph 9 by deleting the words “chairman, vice-chairman” appearing immediately after the words “voting shall be equal, the” and substituting therefor the words “chairperson, vice chairperson”;
- (h) by inserting the following new paragraphs immediately after paragraph 10—

11. If a member is directly or indirectly interested in any contract, proposed contract or other matter before the

Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

12. The Council shall cause minutes of all resolutions and proceedings of meetings of the Council to be entered in books kept for that purpose.

38. The Films and Stage Plays Act is amended in section 35 (2) by inserting the following new paragraph immediately after paragraph (f)-

Amendment of
section 35 of Cap
222

(fa) prescribing the requirements to be met by makers or exhibitors of films in order to make such films accessible to persons with disabilities.

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

Article 54(1) of the Constitution provides for various rights in relation to persons with disabilities. These include the right to access various social amenities and the right to be treated with dignity and respect.

The Constitution further establishes two levels of government, the national government and the county governments. These two levels of government have an obligation to ensure that persons with disabilities within their jurisdiction are protected and that the requirements of Article 54(1) of the Constitution are met.

It is in this context that this Bill proposes to impose obligations on each level of government to address the socioeconomic needs of persons with disabilities.

The Bill proposes to bestow upon the county executive committee member for the time being in charge of matters relating to persons with disabilities the responsibility to advise on and put in place measures to ensure the socio-economic development of persons with disabilities in the county.

The Bill further proposes to review the membership of the National Council for Persons with Disabilities in order to make the workings of the Council more efficient and representative.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit any fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill outlines the obligations of the county government in regard to securing the rights of persons with disabilities in the county.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 27th November, 2018.

AARON CHERUIYOT,
Senator.
ISAAC MWAURA,
Senator.

Section 2 of Act No.14 of 2003 of which it is proposed to amend

2. Interpretation

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 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.

Section 4 of Act No.14 of 2003 of which it is proposed to amend

4. Membership

(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.

Section 6 of Act No.14 of 2003 of which it is proposed to amend

6. Director

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

(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.

Section 7 of Act No.14 of 2003 of which it is proposed to amend

7. Functions of the Council

(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.

(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.

Section 8 of Act No.14 of 2003 of which it is proposed to amend

8. Funds of the Council

The funds of the Council shall consist of the following—

- (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.

Section 9 of Act No.14 of 2003 of which it is proposed to amend

9. Annual accounts

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

(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.

Section 10 of Act No.14 of 2003 of which it is proposed to amend

10. Annual report

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.

Section 11 of Act No.14 of 2003 of which it is proposed to amend

11. Realisation of rights of persons with disabilities

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.

Section 12 of Act No.14 of 2003 of which it is proposed to amend

12. Employment

(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.

Section 13 of Act No.14 of 2003 of which it is proposed to amend

13. Reservation of employment

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

Section 16 of Act No.14 of 2003 of which it is proposed to amend

16. Incentives to employers

(1) A private employer who engages a person with a disability with the required skills or qualifications either as a regular employee, apprentice or learner shall be entitled to apply for a deduction from his taxable income equivalent to twenty five per cent of the total amount paid as salary and wages to such employee:

Provided that—

- (i) such an employer shall present proof certified by the Ministry responsible for labour that the persons with disabilities in respect of whom he claims the deduction are under his employ; and
- (ii) the persons with disabilities so employed are accredited with the Council as to their disabilities, skills and qualifications.

(2) A private employer who improves or modifies his physical facilities or avails special services in order to provide reasonable accommodation for employees with disabilities shall be entitled to apply for additional deductions from his net taxable income equivalent to fifty per cent of the direct costs of the improvements, modifications or special services.

Section 18 of Act No.14 of 2003 of which it is proposed to amend

18. Education

(1) No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.

(2) Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.

(3) Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and self-reliance.

Section 19 of Act No.14 of 2003 of which it is proposed to amend

19. Special and non-formal education

The Council shall work in consultation with the relevant agencies of Government to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities

and the establishment where possible of Braille and recorded libraries for persons with visual disabilities.

Section 20 of Act No.14 of 2003 of which it is proposed to amend

20. Health

The Council shall be represented in the implementation of the national health programme under the Ministry responsible for health for the purpose of—

- (a) prevention of disability;
- (b) early identification of disability;
- (c) early rehabilitation of persons with disabilities;
- (d) enabling persons with disabilities to receive free rehabilitation and medical services in public and privately owned health institutions;
- (e) availing essential health services to persons with disabilities at an affordable cost;
- (f) availing field medical personnel to local health institutions for the benefit of persons with disabilities; and
- (g) prompt attendance by medical personnel to persons with disabilities.

Section 21 of Act No.14 of 2003 of which it is proposed to amend

21. Accessibility and mobility

Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.

Section 22 of Act No.14 of 2003 of which it is proposed to amend

22. Public buildings

(1) A proprietor of a public building shall adapt it to suit persons with disabilities in such manner as may be specified by the Council.

(2) All proprietors of public buildings shall comply with subsection (1) within five years after this section comes into operation.

Section 23 of Act No.14 of 2003 of which it is proposed to amend

23. Public service vehicles

(1) An operator of a public service vehicle shall adapt it to suit persons with disabilities in such manner as may be specified by the Council.

(2) All operators of public service vehicles shall comply with subsection (1) within two years after this section comes into operation.

Section 25 of Act No.14 of 2003 of which it is proposed to amend

25. Denial of admission into premises, etc.

(1) No person shall, on the ground of disability alone, deny a person with a disability—

- (a) admission into any premises to which members of the public are ordinarily admitted; or
- (b) the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.

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

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

(4) Without prejudice to subsection (3), damages awarded under that subsection shall be recoverable summarily as a civil debt.

Section 26 of Act No.14 of 2003 of which it is proposed to amend

26. Offences-Adjustment orders and discrimination

(1) A person is guilty of an offence if he—

- (a) fails to comply with an adjustment order served under section 24;
- (b) contravenes section 12(1) or discriminates against a person contrary to section 12;
- (c) discriminates against a person contrary to section 15(1);
- (d) contravenes section 25(1) or discriminates against a person contrary to section 25; or
- (e) on the ground of any ethnic, communal, cultural or religious custom or practice, discriminates against a person with a disability.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) A person found guilty of an offence under this section may in addition to the penalty imposed by the Court be ordered to pay the person injured by the offence such sums of money in compensation as the Court may deem appropriate.

Section 27 of Act No.14 of 2003 of which it is proposed to amend

27. Adjustment orders against Government institutions

(1) The Council shall not serve an adjustment order upon—

- (a) any hospital, nursing home or clinic controlled or managed by the Government or registered under the Public Health Act (Cap. 242) except with the consent of the Minister responsible for health; or
- (b) any school or educational or training institution controlled or managed by the Government or registered under the Education Act (Cap.211) except with the consent of the Minister responsible for the administration of the institution or Act concerned.

(2) Within sixty days after being requested to consent under subsection (1) the Minister shall either give or refuse his consent and if he fails to do so within that period the Council may proceed to serve the adjustment order as though the Minister had consented.

Section 28 of Act No.14 of 2003 of which it is proposed to amend

28. Sports and recreation

(1) All persons with disabilities shall be entitled, free of charge, to the use of recreational or sports facilities owned or operated by the Government during social, sporting or recreational activities.

(2) Persons with disabilities shall be entitled to participate in all national and international sports events.

(3) For the purpose of subsection (2) the Ministry responsible for sports shall, in consultation with the Council, provide the necessary suitable environment including—

- (a) architectural infrastructure;
- (b) apparatus and equipment;
- (c) training and medical personnel; and
- (d) transportation facilities for the participants.

(4) Section (1) shall not apply in cases where there is exclusive private hire of such facilities.

Section 29 of Act No.14 of 2003 of which it is proposed to amend

29. Voting

(1) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections.

(2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter.

(3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.

(4) A person who contravenes subsection (2) is guilty of an offence.

Section 33 of Act No.14 of 2003 of which it is proposed to amend

33. Sources of and Payments from Fund

(1) The sources of the Fund shall be—

- (a) such moneys as may be appropriated thereto by Parliament;
- (b) income generated by investments made by the trustees; and
- (c) any other donations which the Council may receive for purposes of the Fund.

(2) Without limiting the generality of section 32(2), the Board of Trustees may, out of the Fund—

- (a) contribute to the expenses, including capital expenses, of organizations of or for persons with disabilities;
- (b) contribute to the expenses, including capital expenses, of institutions that train persons in the care of persons with disabilities;
- (c) contribute to the capital expenses of projects undertaken by the Government for the benefit of persons with disabilities;
- (d) provide or contribute to the cost of assistive devices and services;
- (e) pay allowances to persons with disabilities falling in the following categories and who have no other source of income—
 - (i) persons with severe disabilities and who are therefore not trainable in any skills;
 - (ii) aged persons with disabilities; and
 - (iii) single parents with children with disabilities and who cannot therefore seek employment;
- (f) make payments or contributions for such purposes as may be prescribed by the Council.

Section 34 of Act No.14 of 2003 of which it is proposed to amend

34. Trustees to manage Fund

(1) The Fund shall be managed by a Board of Trustees which shall consist of—

- (a) the Chairman of the Council;

- (b) the Director of the Council who shall be the secretary to the Board;
- (c) a representative of the Minister appointed by the Minister;
- (d) a representative of the Ministry responsible for finance appointed by the Minister responsible for finance;
- (e) four representatives appointed by the Council consisting of—
 - (i) one representative nominated by organizations of persons with visual disabilities;
 - (ii) one representative nominated by organizations of persons with hearing disabilities;
 - (iii) one representative nominated by organizations for persons with mental disabilities; and
 - (iv) one representative nominated by organizations for persons with physical disabilities;
- (f) not more than three persons co-opted by the Council to represent the donors that in its opinion have substantially supported the welfare of persons with disabilities.

(2) The Minister shall appoint one of the persons appointed under subsection (1)(e) to be the treasurer to the Fund.

(3) The Board shall conduct its affairs in accordance with regulations prescribed by the Council subject to any law relating to trustees.

Section 35 of Act No.14 of 2003 of which it is proposed to amend

35. Exemptions

(1) All persons with disabilities who are in receipt of an income may apply to the Minister responsible for finance for exemption from income tax and any other levies on such income.

(2) The Minister responsible for finance may, by notice in the *Gazette*, prescribe the procedure for application for and grant of exemption under this section.

(3) Materials, articles and equipment, including motor vehicles, that are modified or designed for the use of persons with disabilities shall be exempt from import duty, value added tax, demurrage charges, port charges and any other government levy which would in any way increase their cost to the disadvantage of persons with disabilities.

(4) All goods, items, implements or equipment donated to institutions and organizations of or for persons with disabilities shall be exempt from import duties, value added tax, demurrage charges, port

charges and any other government levy which would in any way defeat the purposes of or increase the cost of the said donations.

Section 36 of Act No.14 of 2003 of which it is proposed to amend

36. Incentives

(1) Any donations, bequest, subsidy or financial aid which may be made to government agencies involved in the rehabilitation of persons with disabilities or to organisations involved in such rehabilitation and registered with the Council for the purposes of this section shall, subject to the provisions of the Income Tax Act, be allowed as deductions from the donor's gross income for the purpose of computing taxable income.

(2) The Minister responsible for finance or other appropriate authority shall endeavor to provide, subject to the provisions of any other relevant law, incentives to local manufacturers of technical aids and appliances used by persons with disabilities including, but not limited to, the following—

- (a) additional deductions for labour expenses;
- (b) tax and duty exemptions on imported capital equipment;
- (c) tax credits on domestic capital equipment;
- (d) simplified customs procedures;
- (e) unrestricted use of consigned equipment;
- (f) employment of foreign nationals;
- (g) exemptions from taxes and duties on raw materials; and
- (h) access to bonded manufacturing systems.

Section 37 of Act No.14 of 2003 of which it is proposed to amend

37. Credit

It shall be the duty of the Minister responsible for matters relating to credit unions, co-operatives and other lending institutions to encourage the extension by such institutions of credit to persons with disabilities.

Section 38 of Act No.14 of 2003 of which it is proposed to amend

38. Legal system

(1) The Attorney-General, on consultation with the Council and the Law Society of Kenya, shall make regulations providing for free legal services for persons with disabilities with respect to the following—

- (a) matters affecting the violation of the rights of persons with disabilities or the deprivation of their property;

- (b) cases involving capital punishment of persons with disabilities; and
- (c) such matters and cases as maybe prescribed in the regulations made by the Attorney-General.

(2) The Chief Justice shall make rules providing for—

- (a) the exemption, for persons with disabilities, from the payment of fees in relation to matters or cases described in subsection (1); and
- (b) the provision, to persons with disabilities who attend court, of free sign language interpretation, Braille services and physical guide assistance.

(3) Accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with regulations made by the Minister.

(4) The Chief Justice shall endeavour to ensure that all suits involving persons with disabilities are disposed of expeditiously having due regard to the particular disability and suffering of such persons.

Section 42 of Act No.14 of 2003 of which it is proposed to amend

42. Exemptions and deductions-general requirements

(1) The following apply with respect to exemptions and deductions described in subsection (2)—

- (a) no person is eligible for an exemption or deduction unless the exemption or deduction has been recommended by the Council and approved by the appropriate government authority;
- (b) no person is eligible for an exemption or deduction unless any additional requirements or conditions prescribed in the regulations made by the Minister are satisfied;
- (c) an exemption or deduction may be refused on the basis that it has not been provided for in the allocation of public resources.

(2) The exemptions and deductions referred to in subsection (1) are the exemptions and deductions under the following—

- (a) section 12;
- (b) section 16;
- (c) section 35;
- (d) section 36(1); and
- (e) section 40.

Section 44 of Act No.14 of 2003 of which it is proposed to amend

44. Regulations

The Minister may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations—

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) specifying and describing the nature of acts of discrimination against persons with disabilities; and
- (c) prescribing the procedure and forms for persons entitled to subsidized medical care under this Act.

Section 46 of Act No.14 of 2003 of which it is proposed to amend

46. Negligence by doctor

(1) Any person who, being a doctor or other medical practitioner, negligently causes a disability to a patient is guilty of an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) The Court may order a doctor convicted under this section to pay to the patient such sums of money in compensation as it may deem appropriate.

The Schedule of Act No.14 of 2003 of which it is proposed to amend

SCHEDULE

[Section 5 (2)]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS
OF THE COUNCIL

1. A member of the Council may—

- (a) resign his office by notice in writing to the Minister; or
- (b) be removed by the Minister by notice in writing if he—
 - (i) is subject to a vote calling for his removal by a two-thirds majority of all members of the Council;
 - (ii) has been absent from five consecutive meetings of the Council without permission of the chairman;
 - (iii) is so incapacitated by prolonged physical or mental illness as to be unable to attend to and perform his duties;
 - (iv) is an undischarged bankrupt;

(v) is convicted by a Court of an offence punishable by a term of imprisonment; or

(vi) is otherwise unable or unfit to discharge his functions.

2. Where the office of a member becomes vacant the vacancy may with the approval of the Minister be filled through the majority vote of the members for the remainder of the term.

3. The Council shall pay to its members such remuneration as the Minister may approve.

4. The Council shall meet not less than four times in every year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

5. A meeting of the Council shall be held on such date and at such time as the Council shall decide, or in the absence of such a decision if the chairman decides that a meeting is necessary, on a date and at a time determined by the chairman.

6. Unless otherwise decided by a two-thirds majority of the members of the Council, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

7. The quorum of a meeting of the Council shall be fifteen members.

8. (1) The chairman, or in his absence, the vice-chairman, shall preside at every meeting of the Council.

(2) In the absence of both the chairman and vice-chairman, the members present may choose one of their number to preside at the meeting.

9. A decision of the majority of members of the Council present at any meeting of the Council shall be deemed to be the decision of the Council and if upon any question the voting shall be equal, the chairman, vice-chairman or other person presiding shall have a second and casting vote.

10. No act, decision or proceedings of the Council shall be invalid on account of a vacancy in the membership thereof or on account of the appointment of a member of the Council being defective.

Section 35 (2) of Act No. Cap. 222 of which it is proposed to amend

Without prejudice to the generality of subsection (1) of this section, regulations under this section may provide for—

(a) prescribing fees for anything to be done under this Act, generally or in respect of specified areas, and, for the purpose of prescribing

fees, licences may be divided into different classes and a different fee prescribed for each such class;

- (b) prescribing charges for, or for matters incidental to, the attendance of police officers and other persons at the making of films under section 7;
- (c) prescribing the procedure for appeals to the Minister under this Act;
- (d) deleted by Act No. 5 of 2007, s. 14;
- (e) prescribing the conditions to be observed in regard to the erection, alteration and equipment of any theatre or cinema in the Nairobi Area;
- (f) prescribing the conditions to be observed in regard to securing the safety of theatres and cinemas from fire or other danger, or the safety and control of persons attending at theatres and cinemas in the Nairobi Area;