THE PERSONS WITH DISABILITIES (AMENDMENT) BILL, 2007

A Bill for

AN ACT of Parliament to amend various laws relating to persons with disabilities 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, 2007.

2. The Persons with Disabilities Act (in this Act referred to as the “principal Act”) is amended in section 2 by-
   (a) deleting the definition of “aged person”;
   (b) deleting the definition of “disability” and substituting the following –
       “‘disability’ means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, whether arising from natural or artificial causes, which is irreversible and long term and which impacts adversely on a person’s capacity to participate in social, economic, cultural or political activities;”;
   (c) deleting the definition of “assistive devices and services” and substituting therefor the following –
       “assistive devices and services” includes implements, tools and devices (including the services of qualified interpreters for the deaf, qualified teachers for the blind, guides for visually impaired persons and other life assisters and intermediaries) provided to persons with disabilities to assist them in education, employment or other activities;
   (d) deleting the definition of “usual day to-day-activities”;
   (e) inserting the following definition in its proper alphabetical sequence-
       “‘Minister’ means the Minister for the time being responsible for matters relating to persons with disabilities.”

3. Section 4 of the principal Act is repealed and the following replaced –

4. (1) The Council shall consist of the following members appointed by the Minister-
   (a) five persons nominated, in a manner approved by the Minister, by organizations 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) three members representing each of the following-

   i) the Ministry for the time being responsible for matters relating to disability;
   ii) the Ministry for the time being responsible for matters relating to finance;
   iii) the Attorney-General;

Provided that-

   i) at least one third of the members of the Council shall be of either gender;
   ii) members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
   iii) at least one of the members of the council shall be from a rural-based organization.

(2) The members of the Council shall elect –

   (i) one of members appointed under subsection (1) for appointment by the Minister as the chairman of the Council; and

   (ii) one of members appointed other than a member appointed under subsection (1) (c) for appointment by the Minister as the vice-chairman of the Council:

Provided that the chairman and the vice-chairman shall not be persons of the same gender.

(3) The members to be appointed as chairman and vice-chairman under subsections (2) shall be persons with knowledge and experience in matters relating to persons with disabilities.

(4) The Council may, with the approval of the Minister co-opt as members of the Council, such persons as the Council may consider necessary.

4. Section 6 of the principal Act is amended in subsection (1) by inserting the words “who shall be the chief executive officer of the Council and” immediately after the words “Director of the Council”.

Act No.14 Amendment of section 6 of 2003.
5. Section 7 of principal Act is amended –
   (a) in paragraph (c), by inserting the words “at birth or on the onset or discovery of a disability,” at the beginning of subparagraph (i);

   (b) in paragraph (d), by deleting the words “to the maximum extent possible” and substituting the words “or to facilitate the provision of”;

   (c) by repealing paragraph (f), and substituting therefor the following-

   “(f) to facilitate or endeavour to procure assistance to students with disabilities in the form of scholarships, loans, fee subsidies and other similar forms of assistance, in both public and private institutions; and towards this end, the Council may approach or liaise with the Fund, constituency development committees established under the Constituency Development Fund Act or any other fund established by or under any law;”

6. Section 11 of the principal Act is repealed and the following new section replaced –

   “11 (1) Persons with disabilities have a right not to be discriminated against on grounds of disability and are entitled to enjoy all rights and freedoms and to participate fully in society.

   (2) The Government shall take steps with a view to achieving the full realization of the rights of persons with disabilities set out in this Part and in shall in particular –

   (a) take all necessary measures to ensure the effective enjoyment of the inherent right to life by persons with disabilities on an equal basis with others;

   (b) recognize that women and girls with disabilities are subject to multiple discrimination and take appropriate measures to ensure their full development and advancement;

   (c) take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms and equal enjoyment of children with disabilities of all rights and privileges of persons with disabilities.

   (d) take all feasible measures to specially protect persons with disabilities in situations of risk to the general population;

   (e) ensure that persons with disabilities enjoy equal protection before the law;

   (f) ensure that persons with disabilities enjoy the right to liberty and security of the person on an equal basis with others;

   (g) take effective legislative, administrative, judicial or other
measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment;

(h) take appropriate legislative, administrative, social and other measures to protect persons with disabilities, both within and outside the home from all forms of exploitation, violence and abuse;

(i) protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others;

(j) take appropriate measures to eliminate discrimination against persons with disabilities in matters relating to marriage, family and personal relations;

(k) protect the rights of persons with disabilities to liberty of movement, to choose their residence, and to citizenship on an equal basis with others; and

(l) establish appropriate habilitation and rehabilitation programmes for persons with disabilities.

(3) The rights and privileges set out in this Part are not exhaustive and do not exclude other rights and privileges not mentioned which are recognised or conferred by any law.

(4) Subsection (2) does not preclude the Government or any other person from recognizing any other right or privilege or extending any other benefit to persons with disabilities.”

7. Section 12 of the principal Act is amended-
   (a) in subsection (1), by deleting the word “suitable” immediately before the word “employment”;
   (b) in subsection (2), by deleting the words “a qualified employee” and substituting therefor the words “an employee”.

8. Section 13 of the principal Act is amended by inserting deleting the words “in liaison with the appropriate organs of Government and with private sector employers,” immediately after the words “The Council shall”.

9. Section 15 of the principal Act is amended-
   (a) by repealing subsection (3);
   (b) by repealing subsection (6) and substituting therefor the following-

   “(6) The minimum age of mandatory retirement for persons with disabilities shall be sixty years, but a person with disability may at his discretion opt for voluntary early retirement in accordance with any other law.”
10. Section 18 of the principal Act is amended –
   (a) in subsection (2), by deleting the full stop and inserting the words “and shall provide appropriate equipment, assistive devices and other services to accommodate the special needs of students with disabilities.”;
   
   (b) by repealing subsection (3) and substituting therefor the following-
   
   “(3) The Government shall establish inclusive schools and institutions for the deaf, the blind, the mentally retarded and other categories of persons with disabilities to cater for formal education, skills development and self-reliance.

Provided that there shall be established special institutions and schools to provide or cater for the needs of persons with disabilities of such degree as cannot be adequately served in inclusive schools and/or institutions.”

11. The principal Act is amended by in section 20, by deleting the words “be represented in the implementation of the national health programme under the Ministry responsible for the health” immediately after the words “The Council shall” and substituting therefor the words “advise on the design and implementation of all programmes.”.

12. Section 25 of the principal Act is amended in subsection (1), by deleting the full stop at the end thereof and inserting the words “and in any such case, the person has a duty to notify the person with disability the reasons for the denial of admission or service.”

13. Section 26 of the principal Act is amended by inserting the following new subsection (4)-

   “(4) The court before which a person is convicted for an offence under subsection (1) (a) may -
   
   (a) order that the premises in question be closed to use or access by any person until the adjustment orders issued under section 24 have been complied with; or
   
   (b) order a relevant department of Government or any other person to undertake any required works on the premises and the costs of such works be borne by the owner of the premises.

14. Section 27 of the principal Act is repealed.
15. **Section 31 of the principal Act is repealed and the following replaced:**

**Register of organizations**

31. (1) The Council shall maintain a register of all organizations of or for persons with disabilities that it has accredited as being organizations with which the Council collaborates or cooperates in the provision of services to the disabled.

(2) Any organization may apply for accreditation by the Council in terms of subsection (1) in such manner and subject to such conditions as the Council may prescribe.

(3) For the avoidance of doubt, subsections (1) and (2) shall not be construed so as to-
   (a) require any organization that does not seek any of the benefits under this section to register with the Council; or
   (b) prejudice the operation of the Societies Act

16. **Section 32 of the principal Act is amended in subsection (3) by deleting the words “the Council through” immediately after the words “shall be administered by.”**

17. **Section 33 of the principal Act is amended:**

(a) in subsection (1), by inserting the word “annually” immediately after the words “such moneys as may be”;  

(b) in subsection (2)-
   (i) by inserting the following new paragraph immediately after paragraph (d)-
   “(da) establish or contribute to any established scheme of health or social insurance for persons with disabilities;”
   (ii) by repealing paragraph (e) and substituting therefor the following-

   (e) pay allowances to persons with disabilities falling in the following categories and who do no have a sufficient source of income-

   (i) persons with severe disabilities and are therefore not trainable in any skills;
   (ii) aged persons with disabilities; and
(iii) children with disabilities whose parents cannot seek employment on account of having to care for them, or whose care and welfare entails considerable expense; and”

18. Section 34 of the principal Act is repealed and the following replaced—

34 (1) The Fund shall be managed by a Board of Trustees accountable to the Council which shall consist of—

a) a chairman appointed by the Minister on the recommendation of the Council;

b) the secretary to the Board, who shall be appointed by 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 organization of persons with hearing disabilities;

iii) one representative nominated by organizations for persons with mental disabilities; and

f) not more than three persons co-opted by the Board of Trustees to represent the donors that in the opinion of the Board of Trustees have substantially supported the welfare of persons with disabilities.

(2) The Board of Trustees shall elect one of the persons appointed under subsection (1) (e) to be the treasurer to the Fund.
(3) The Board of Trustees shall conduct its affairs in accordance with regulations prescribed by the Council subject to any law relating to trustees.

19. Section 35 of the principal Act is amended -

(a) in subsection (1), by deleting the word “an” immediately after the words “in receipt of” and substituting therefor the word “any”;

(b) repealing subsections (3) and (4) and substituting therefor the following-

(3) Notwithstanding the provisions of any other law, the following shall be exempt from any duty, tax or other government charge or levy associated with their importation into the country –

(a) all materials, articles and equipment, including motor vehicles, purchased before entry into Kenya, that are modified or designed or intended for the use of persons with disabilities;

(b) All goods, items, implements or equipment purchased before entry into Kenya for donation to an institution or organization of or for persons with disabilities.

20. Section 36 of the principal Act is amended by inserting the following new subsection immediately after subsection (1) –

(1A) The Minister responsible for matters relating to finance on the recommendation of the Council, may, if satisfied that the circumstances of any particular case so warrant, allow as deductions from the donor’s gross income for the purpose of computing taxable income under subsection (1), donations, bequests, subsidies or other financial aid to individual persons with disabilities, if made with the approval in writing of the Council.

21. Section 37 of the principal Act is repealed and the following substituted -

Credit 37. The Minister responsible for matters relating to credit unions, co-operatives and other lending institutions, on the advice of the Council shall establish a scheme through which such institutions shall extend credit facilities to persons with disabilities.

22. Section 38 of the principal Act is amended in subsection (2) (b) by deleting the words “Braille services” and substituting therefor the words “Braille materials or other accessible format”.


Repeal and replacement of section 37 of Act No.14 of 2003.

Amendment of section 38 of Act No.14 of 2003.
Amendment of section 42 of Act No.14 of 2003.

23. Section 42 of the principal Act is amended in subsection (1), by
   (a) deleting the semi-colon at the end of paragraph (b) and substituting therefor a full stop;
   (b) repealing paragraph (c).

Amendment of Schedule to Act No.14 of 2003.

24. Paragraph 1 of the Schedule to the Principal Act is amended in subparagraph (b) by inserting the words “on the recommendation of the Council,” immediately after the words “removed by the Minister”.

Amendment of section 35 of Cap 222.

25. The Films and Stage Plays Act is amended in subsection (2) of section 35 by-
   (a) inserting the following new paragraph immediately before paragraph (a)-
      (a) prescribing the requirements to be met by the makers or exhibitors of films in order to make such films accessible to persons with disabilities;
   (b) re-numbering the existing paragraphs (a), (b), (c), (d) (e) (f) and (g) as (b), (c), (d) (e) (f) (g) and (h) respectively.

Amendment of section 96 of Cap 403.

26. Section 96 of the Traffic Act is amended in paragraph (c) of subsection (2) by inserting the words “or any other law,” immediately after the words “the provisions of this Act.”