

Zambia

CHAPTER 551

THE HANDICAPPED PERSONS ACT

An Act to establish a Zambia Council for the Handicapped; to provide for the voluntary registration of handicapped persons; to provide for the registration of associations; and to make provision for matters connected with and Incidental to the foregoing.

[6th December, 1968]

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation
3. Appointment of Commissioner
4. Establishment of Council and appointment of members
5. Chairman of Council
6. Duration of members' appointment
7. Allowances payable to members
8. Proceedings of Council
9. Funds of Council
10. Exemption from taxes
11. Accounts
12. Appointment of auditors and audit of Council's accounts
13. Duties of auditors
14. Annual report

15. Common seal of Council
16. Functions of Council
17. Powers of Council
18. Registration of the handicapped
19. Registration of associations
20. Power to impose conditions
21. Inspection of institutions
22. Penalties for failing to register
23. Restrictions on seeking subscriptions, contributions or collections
24. Regulations for medical criteria
25. Regulations
26. Saving
27. Dissolution of Zambia Council for the Blind
28. Composition of Council pending appointment
29. Commissioner pending appointment
30. Vesting of property in Council
31. Transfer of contractual rights to Council
32. Transfer of contractual and other liabilities to Council
33. Registration upon transfer of registered land or interests
34. Proceedings not to abate
35. Terms of service of employees transferring to Council
1. This Act may be cited as the Handicapped Persons Act.
2. In this Act, unless the context otherwise requires-

"association " has the meaning assigned to it section nineteen;

"authorised officer " means the Commissioner, a juveniles inspector, a medical practitioner, an inspector of schools and any other person authorised by the Minister;

"Board " means a Board established by the Council under the provision, of section seventeen;

"the handicapped " means those persons who by reason of defect of mind, senses or body, congenital or acquired, are unable to take part in normal education, occupation and recreation or require special assistance and training to enable them to take part in normal education, occupation and recreation, and " handicap " shall be construed accordingly;

" Commissioner" means the Commissioner for the Handicapped Persons appointed under the provisions of section three;

"Council" means the Zambia Council for the Handicapped established by section four;

"institution" includes any buildings or other premises in which an association carries on work for the promotion of the welfare of the handicapped; or premises where the handicapped live and are cared for;

" medical practitioner " means a medical practitioner registered under the provisions of the Medical and Allied Professions Act;

" the old Council " means the Zambia Council for the Blind established under the provisions of section three of the Blind Persons Act, Chapter 207 of the 1965 Edition of the Laws.

3. The Minister shall appoint a public officer as the Commissioner for the Handicapped Persons who shall perform such duties as may be necessary for the proper administration of this Act.

4. (1) There is hereby established a Council to be known as Establish the Zambia Council for the Handicapped which shall be a body ment of Council and corporate with perpetual succession and a common seal and appointment shall, in the name of the Zambia Council for the Handicapped, be capable of suing and being sued and, subject to the provisions of this Act, of performing all such acts as a body corporate may by law perform.

(2) Nothing in subsection (1) shall be construed to mean that the chairman or any member of the Council shall be hold personally liable for any defect arising out of the administration of the Council.

(3) Members of the Council shall be appointed by the Minister and the Council shall consist of-

- the chairman of the Council;
- the Commissioner;
- a member representing the Department of Health;
- a member representing the Ministry of Education;
- a member representing the Ministry of Labour and Social Services;
- a member representing the Department of Labour;
- a member representing the Zambia Red Cross Society;
- five members who are handicapped;

and as many other additional handicapped members as there are number of Boards, one member from each Board, established from time to time under the provisions of section seventeen.

5. (1) The Minister shall appoint a suitable person as Chairman of the Council

(2) The Council shall, at the annual general meeting, elect a member to be vice-chairman of the Council.

6. (1) The members of the Council, other than the Commissioner, shall be appointed for such period, not exceeding appointment three years, as the Minister may specify:

Provided that a retiring member shall be eligible for reappointment.

(2) The Minister may at any time require an individual member to resign from the Council and the member shall resign when so required.

(3) The Minister shall appoint a person to be secretary of the Council and such other officers as he may deem necessary.

(4) The Minister shall determine the terms and conditions of appointments of chairman, secretary and other officers mentioned in subsection (3) and their emoluments shall be paid out of the funds of the Council.

7. The members of the Council, other than public officers, shall be paid such subsistence and travelling allowances as the Council may from time to time determine.

8. (1) At any meeting of the Council, more than half the of Council number of members of the Council, of whom one is the member representing the Ministry of Labour and Social Services, shall constitute a quorum, and all acts, matters or things authorised or required to be done by the Council shall be decided by resolution by majority vote of the members present at any meeting at which a quorum is present.

(2) At all meetings of the Council, the chairman or in his absence the vice-chairman or, in the absence of both, such member as the members present shall elect, shall preside.

(3) At all meetings of the Council, the person presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(4) Subject to the provisions of subsection (1), no act, decision or proceedings of the Council shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Council being defective.

(5) The Council may appoint any committee for any purpose that it may deem expedient and may co-opt any person to be a member of any committee so appointed; the chairman of any committee so appointed shall be a member or a co-opted member of the Executive Committee.

(6) The Council may from time to time make rules for the transaction of the business of the Council or of any committee of the Council.

(7) (a) The Council at the annual general meeting shall appoint an Executive Committee consisting of

(i) the chairman of the Council who will be the chairman of the Executive Committee;

(ii) three members who are public officers, one of whom shall be the Commissioner;

(iii) four members who are handicapped; and

(iv) two members who are not public officers and who are not handicapped.

(b) The chairman of the Council may co-opt any person to be a member of the Executive Committee.

(c) The Executive Committee shall meet at least four times in any one year.

(d) At any meeting of the Executive Committee, five or more members, of whom one is the member representing the Ministry of Labour and Social Services, shall constitute a quorum.

(8) Subject to the provisions of this Act, the Council may regulate its own procedure.

(9) The Council shall hold in each year an annual general meeting within three months of the first day of the financial year of the Government, and shall meet more frequently at the discretion of the chairman.

(10) The Council shall cause minutes of every Council meeting to be kept.

9. The funds of the Council shall consist of-

(a) such sums as may be payable to the Council from moneys appropriated by Parliament;

(b) such moneys as may be given to the Council by way of donation, contributions, collections or gifts; and

(c) such other moneys or assets as may vest in or accrue to the Council whether in the course of its operation or otherwise.

10. The Council shall be exempt from any tax on income or profit.

11. The Council shall keep or cause to be kept a full and correct account of all moneys and assets vested, received or otherwise obtained and all moneys and assets sold, expended or otherwise dealt with by the Council.

12. (1) The Council shall, at its annual general meeting appoint one or more persons who publicly carry on the profession of accountants as its auditors to examine and report to the Council and to the Minister on the Council's accounts not less than once in each financial year.

(2) In addition to the report referred to in subsection (1), the Minister may, at any time, require the Council to obtain from its auditors such other reports, statements and explanations in connection with the work and operations of the Council as the Minister may consider expedient.

(3) The Council shall produce and lay before the auditors all of its books and accounts with all vouchers in support thereof and all books, papers and writings in its possession or control relating thereto.

(4) The expenses of and incidental to any audit shall be borne and paid by the Council.

13. It shall be the duty of the auditors of the Council, in addition to the ordinary duties of auditors, to certify not less than once in each financial year whether or not

(a) they have received from the Council all the information and explanations which they considered necessary for the performance of their duties as auditors;

(b) the accounts of the Council have been properly kept; and

(c) the accounts of the Council present a true and fair view of the financial position of the Council according to the information and explanations given and the books and records produced to them.

14. (1) The Council shall, as soon as practicable and in any report not later than three months after the termination of the financial year, submit to the Minister an annual report of its work and operation during the year.

(2) The annual report shall include a balance sheet and a complete statement of income and expenditure duly audited, and the report of the auditors and such other information as the Minister may require.

(3) The Minister shall lay the annual report before the National Assembly.

15. The common seal of the Council shall be authenticated by the signature of the chairman of the Council or of some other member of the Council authorised in that behalf and such seal shall be officially and judicially noticed.

16. The functions of the Council shall be

(a) to advise the Minister in regard to all matters affecting the welfare, education, training, rehabilitation, health and employment of the handicapped and in regard to all matters relating to the prevention of any type of handicap;

(b) to co-ordinate the work of associations In all matters relating to the handicapped;

(c) to promote public interest in the welfare of the handicapped and in all matters relating to the prevention of handicap, and the care of the handicapped;

(d) to do all things necessary or required in any matter in pursuance of the objects of this Act.

17. The Council shall have power

(a) to acquire by purchase, gift or otherwise any property and any rights or interest therein or thereover;

(b) to enter into any contract or agreement;

(c) to employ upon such terms and conditions as may be determined by the Council such managers, agents and servants as the Council may deem necessary, to fix their remuneration, and to arrange for pension schemes, gratuities and retiring allowances and any contributions therefor;

(d) to augment the earnings of persons registered in accordance with section eighteen, or of any person engaged in promoting the welfare, education, training or employment of the handicapped;

(e) to raise and to receive funds and donations to be applied for the welfare of the handicapped; to borrow and raise moneys;

(g) to invest any moneys not immediately required in any investment for the time being authorised by law for the investment of trust moneys, and to vary such investments;

(h) to assist by grants-in-aid or loans in the establishment, maintenance or running of any association or institution which will be of direct benefit to the handicapped;

(i) to establish Boards for the handicapped in any specified area or for any specified undertakings and by rules to make provisions for the constitution, powers and duties of any such Board in promoting the welfare, education, training and employment of the handicapped;

(j) to do all such acts, matters and things as may be necessary for fulfilling the objects of the Council.

18. (1) A register of the handicapped in the form prescribed hereinafter referred to as " the register ", shall be maintained-

(a) in every District within which there is a Board, by the Board; and

(b) in every District within which there is no Board, by 1 the District Secretary.

(2) Any person wishing to be registered as handicapped shall make or cause to be made on his behalf an application in the prescribed form to the Board or the District Secretary, as the case may be, of the District in which he resides.

(3) On receipt of an application under the provisions of subsection (2), a Board or a District Secretary, as the case may be, shall, as soon as may be practicable, cause the person by whom or on whose behalf the application is made to be examined by an authorised officer.

(4) Where an authorised officer has examined any person under the provisions of subsection (3), he shall forward a certificate in the prescribed form to the Board or the District Secretary, as the case may be, stating whether he is satisfied that the person examined by him is a handicapped person.

(5) Where an authorised officer certifies that he is satisfied that a person examined by him under this section is a handicapped person, the Board or the District Secretary, as the case may be, shall, on receipt of such certificate, cause

the name of that person to be entered in the register and shall cause the person so registered to be issued with a certificate in the prescribed form.

(6) Where any person whose name is entered in the register is subsequently examined by a medical practitioner and such medical practitioner certifies in the prescribed form that the said person is not a handicapped person, the Board or the District Secretary, as the case may be, shall, on receipt of such certificate, cause the name of the said person to be removed from the register.

(7) A Board or a District Secretary shall notify the Commissioner in such manner as may be prescribed of all names entered in the register under the provisions of this section.

(8) The Commissioner shall maintain a register in the prescribed form in which shall be entered all names notified to him under subsection (7).

(9) A Board or a District Secretary shall notify the Commissioner of all names removed from the register under subsection (6), and on receipt of such notification the Commissioner shall cause every such name to be removed from the register maintained by him under subsection (8).

19. (1) Every group or body formed or operating within Zambia and having as its object or one of its professed objects the promotion of the welfare of the handicapped (in this Act referred to as an "association") shall apply to the Commissioner, in such manner as may be prescribed, for registration.

(2) Every association applying for registration under subsection (1) shall, in its application-

(a) set forth the name and address of the association and the names, designations and addresses of its officers and the members of the executive committee or other body in control of its affairs; and

(b) submit, together with its application, a copy of the constitution or rules of the association.

(3) Upon due application being made to the Commissioner by an association for registration, and after satisfying himself of the suitability of the constitution or rules of the association, the Commissioner shall cause such association to be registered in a register which shall be in the prescribed form.

(4) Where any amendment to the constitution or rules of an association registered under this section is made, the association shall forthwith give particulars thereof in writing to the Commissioner.

(5) An association registered under this section shall, not later than the last day of February in each year, submit to the Commissioner a report of the operations of

the association together with a balance sheet duly certified by auditors elected at the annual general meeting of the association.

20. (1) The Commissioner may at the time of registering an association or at any time thereafter impose conditions-

(a) limiting the number of the handicapped in any age group who may be admitted to any institution at any one time;

(b) for ensuring that any institution shall be adequately staffed both as regards the qualifications and experience of the persons employed therein or taking part in the conduct thereof;

(c) for ensuring that any institution shall be adequately equipped and maintained;

(d) providing for the keeping by any association of records of the handicapped admitted to any institution;

(e) generally for securing the well-being of the handicapped persons admitted to any institution.

(2) In this section, " institution " means an institution or institutions under the management of an association.

(3) An association shall be notified in writing of the terms of any conditions imposed by the Commissioner under the provisions of this section.

(4) Any conditions imposed by the Commissioner under the provisions of this section may be varied or revoked by the Commissioner, and the Commissioner shall notify the association conobrned in writing of such variation or revocation.

(5) Any association aggrieved by any condition imposed by the Qommissioner under this section, or by any variation by him of such condition, may, within thirty days being notified of the imposition or variation of such condition,, appeal to the Minister, who may dismiss the appeal, revoke any or all of the conditions imposed or varied; and may generally exercise all the powers of the Commissioner under subsection (1).

21. (1) Any public officer authorised by the Commissioner of may, at all reasonable times, enter any institution for the handicapped and may inspect such institution, and the facilities provided for the handicapped therein, the arrangements for their welfare, education, training, rehabilitation, health and employment and any records kept in pursuance of the provisions of this Act.

(2) Any person who hinders or obstructs any other person in the exercise of any of the powers conferred by subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty kwacha.

22. If at any time after the commencement of this Act

(a) any handicapped person is admitted to, or found in any institution operated by an association which is not registered under the provisions of section eleven of the Blind Persons Act, Chapter 207 of the 1965 Edition of the Laws, or section nineteen of this Act; or

(b) any condition lawfully imposed in relation to an association under the provisions of section twenty of this Act is contravened or not complied with;

any person concerned in the management of the association and any person controlling or in charge of the institution shall be guilty of an offence and shall be liable, in the case of a first offence, to a fine not exceeding one hundred kwacha, and in the case of a second or subsequent offence, to a fine not exceeding two hundred kwacha or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

23. (1) Save with the written permission of the Commissioner, but without prejudice to any other written law, no person shall-

(a) publish appeals to the general public for subscriptions, contributions, donations or other forms of gifts for the welfare of the handicapped; or

(b) organise, hold, assist or be concerned in any collection of money, or attempt to collect any money, from house to house or in any street, by sale of goods or otherwise, for the welfare, education, training, rehabilitation or health of the handicapped.

(2) Any person who contravenes the provisions of sub section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty kwacha or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment, and the court before which the person is convicted of an offence under this section may order that the Handicapped Persons money, goods or other things collected or received by him by way of a subscription, donation, contribution or gift, shall be forfeited and paid or given to the Council;

Provided that it shall be a sufficient defence if the person charged with an offence under this section proves that he was acting for and on behalf of an association

(a) registered under the provisions of section nineteen; or

(b) registered under the provisions of section eleven of the Blind Persons Act, Chapter 207 of the 1965 Edition of the Laws.

24. The Minister may, by statutory order, prescribe the medical criteria to be applied when examining any person who for medical has applied to be registered under the provisions of section criteria eighteen.

25. (1) The Minister may, by statutory instrument, make Regulations regulations for the administration and efficient working of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister may make regulations concerning

(a) the form of records to be kept under this Act;

(b) anything to be prescribed under this Act.

26. Any licence, certificate, authority or permit issued or Saving any registration registered or any application for registration made under the provisions of the Blind Persons Act, Chapter 207 of the 1965 Edition of the Laws, which immediately before the commencement of this Act was of, or was capable of acquiring, force or effect, and which is not inconsistent with the provisions of this Act, shall, subject to the provisions of this Act, continue to have force or effect, and shall on and after such commencement be deemed to have been pursued, registered, made or determined under this Act.

27. Upon the commencement of this Act, the old Council shall be dissolved and shall cease to exist for all purposes except for the purposes of performing any act or executing any document necessary to implement any of the provisions of this Act, and for such purposes the Minister may, by statutory order, nominate any person to perform any such act or to executon any such document on behalf of and in the name of the old Council and such act or document so performed or so executed shall be deemed to be the act or document of the old Council.

28. From the commencement of this Act and until such time as the Minister, pursuant to section four, appoints members of the Council established under this Act-

(a) those persons who immediately before the commencement of this Act were members of the old Council shall be deemed to be the members of the Council established under this Act and shall, during the said period, exercise all the powers and functions of such members as if they had been appointed to the Council pursuant to section four; and

(b) the provisions of section eight. shall apply, mutatis a mutandis, to any meeting of the Council.

29. From the commencement of this Act, and until such time as the Minister, pursuant to section three, appoints the Commissioner, the Commissioner for Blind Welfare appointed under the provisions of section four of the Blind Persons

Act, Chapter 207 of the 1965 Edition of the Laws, shall be the Commissioner for the Handicapped Persons and shall, during the said period, exercise all the powers and functions of the Commissioner for the Handicapped Persons as if he had been appointed under the provisions of section three of this Act.

30. Upon the commencement of this Act, all real property, real or personal, and all rights to and over the property and all liabilities arising out of the ownership, possession or occupation of property of any kind and all liabilities in tort and all statutory liabilities which were subsisting immediately prior to such commencement and which were vested in, held, enjoyed, incurred or suffered by the old Council shall, by virtue of this section, be transferred to and vested in the Council in the same tenore as the said property and rights were vested in or incurred to the benefit of, and to the same extent as the said liabilities were incurred by or suffered by, the old Council.

31. Upon the commencement of this Act, the benefits of all needs, contracts, bonds, securities, instruments, working arrangements or things in action which were subsisting immediately prior to such commencement and were vested in the old Council shall, by virtue of this section, be transferred to and vested in and shall inure to the benefit of the Council in the same manner as if the Council had been contracted with instead of the old Council and as if the Council had been party to all such deeds, contracts, bonds, securities, instruments or working arrangements instead of the old Council and in the same manner as if the Council had at all times been entitled to the benefit of all such things in action instead of the old Council.

32. Upon the commencement of this Act, all subsisting and future liabilities or obligations arising out of any deed, contract, bond, security, instrument, working arrangement, tort or thing in action imposed upon, suffered or incurred by the old Council shall, by virtue of this section, be transferred to, imposed upon, suffered or incurred by the Council in the same manner as if the Council had been party to each such deed, contract, bond, security, instrument or working arrangement instead of the old Council and in the same manner as if the Council at all times had been the party bound or obliged by or under each such thing in action instead of the old Council or liable by reason of each such tort instead of the old Council.

33. In the case of property transferred to and vested in the Council under the provisions of this Act, in respect of the transfer of which any written law provides for registration, it shall be the duty of the Council, within one year from the commencement of this Act, to make written application to the proper officer of the appropriate registration authority for the registration of each such transfer and it shall be the duty of that officer to make such entries in the appropriate register which shall give effect to such transfer and, where appropriate, to issue to the Council a Certificate of Title in respect of the said property or to make the necessary amendments to the register, as the case may be, and, if presented therefor, to make entries on the deeds relating to the title, right or

obligation concerned; and no registration or other fees, stamp or other duties shall be payable in respect thereof.

34. Where, upon the commencement, of this Act, any legal proceeding is pending to which the old Council is a party, the Council shall be substituted in such proceeding for the old Council and such proceeding shall not abate by reason of such substitution.

35. Where any person who was, whether on secondment or otherwise, in the service of the old Council immediately before its dissolution transfers from that service to the service of the Council, his terms and conditions of service with the Council shall be no less favourable than those he enjoyed while in the service of the old Council and his service under the old Council shall be treated as service under the Council for the purpose of determining rights to or eligibility for pension, gratuity or leave in respect of his service.