

## **EIGHT THINGS THAT CAN BE IMPROVED ON THE PERSONS WITH DISABILITIES BILL H.B. 2, 2023 May 2024**

### **Introduction**

The Persons with Disabilities Bill (PWD Bill) was published in the Government Gazette on the 9th February 2024. It proposes to replace the existing Disabled Persons Act for Zimbabwe. According to the Zimbabwe 2022 Population and Housing Census Report, 9.5% of the total population are persons with disabilities (PWDs) and must not be excluded from participating fully in society. The PWD Bill aims to align Zimbabwean law with the Constitution and international obligations, recognizing the rights of persons with disabilities. It broadens the definition of disabilities, establishes a Commission, introduces registers, and creates a Disability Fund. The Bill enhances PWDs' rights to education, work, and participation in decision-making bodies. With the help of input from ZimRights' PWD rights champions and the analysis prepared by Veritas, in this resource we summarise the eight areas that can be improved in the PWD Bill.

- 1. No explicit gender balance relating to the Commission.** The Bill establishes the Commission for Persons with Disabilities. However, it does not make reference to the gender composition of the Commission. It is recommended that the bill makes it explicit that there shall be gender balance in the Commission.
- 2. The Fund Must be Managed Independently:** The Bill establishes the Assistance Fund for Persons with Disabilities. The Minister will be the trustee of the Fund and the Commission will administer it subject to directions from the Minister. The roles of the Minister and the Commission in managing the Fund are not separated clearly enough. This creates a danger of the Minister may involve himself/herself in the fund which should be managed by the commission with sufficient autonomy. In the past, the government has been accused of looting fund meant to benefit underprivileged groups. There is need to make the Fund independent of government interference except in administrative matters of accountability and reporting to Parliament.
- 3. The Bill must promote full access to buildings.** The Bill provides that PWDs shall have the right to reasonable access to all indoor and outdoor places, public transport and information. This is subject to restrictive interpretation. Instead of providing for 'reasonable access', the Bill must provide for 'full access.'
- 4. The Bill must prohibit the construction on inaccessible buildings.** While giving the rights of access to PWDs to indoor and outdoor spaces, the Bill makes the realisation of this right difficult because it fails to prohibit the construction of inaccessible spaces.
- 5. The Minister has excessive powers over recruitment:** The Commission is given powers to recruit a Chief Executive Officer. However, the Bill makes several processes subject to the approval of the Minister. This undermines the authority of the Commission and creates unnecessary interference in the work of the Commission. History has shown potential political interference in what are supposed to be professional roles. The Commission must be given full recruitment powers without need to get approval from the Minister.

6. **Cumbersome registration process:** The registration procedures into the Register of Organisations of and for Persons with Disabilities are fairly involved, and informal organisations will be not registrable. In addition, organisations will have to be registered as private voluntary organisations before they or their projects can be registered. This can be a barrier for PWDs to be on the register.
7. **Unclear appeal process:** If the Commission rejects an application for assistance from the Fund, the applicant will be entitled to appeal to the Minister under clause 55 of the Bill. However, the Minister is as trustee of the Fund making him an interested party. This section must be change. An appeal against the decision of the Commission must be made to the Administrative Court in line with the laws of Zimbabwe.
8. **Support for PWDs with mental health challenges:** Our society has over time struggled to take of persons with mental health challenges. The current criminal justice system has failed to provide humane centers for the care of persons with mental health challenges facing criminal charged. The places of care have been time and again been condemned as resembling prison conditions. This is true of many mental health care centres which are usually poor maintained and poorly funded. The Bill is an opportunity to set these standards by giving the Commission power to inspect such centres and make adjustment orders in line with best practices. The current Bill is silent on this matter.

## Conclusion

The Bill's provisions are a noble aspiration but for any law to be fully effective, there is need to plug the glaring loopholes. If fully implemented with adequate resources, the law will have the potential to significantly improve the rights and support for persons with disabilities in Zimbabwe, promoting their inclusion and well-being in society in line with international standards and obligations.

---

*This resource has been compiled by the Zimbabwe Human Rights Association (ZimRights). To receive the full analysis of the PVO Bill prepared by Veritas and the Bill itself, send a Whats App txt with the words 'PWDBill' to Whats App number +263772954075*

# BILL WATCH 15/2024

[8th May 2024]

## Persons with Disabilities Bill

### Introduction

The Persons with Disabilities Bill was published in the *Gazette* on the 9th February but has not yet been presented in Parliament. It proposes to replace the existing Disabled Persons Act to bring our law into line with the Constitution and Zimbabwe's international obligations.

The Bill can be accessed on the Veritas website [\[link\]](#), and so can the existing Act [\[link\]](#).

### Importance of the Bill

The prevalence of disability in Zimbabwe is estimated to be 9.5%, according to the Zimbabwe 2022 Population and Housing Census Report, so persons with disabilities (PWDs) are a significant portion of the total population and they must not be excluded from participating fully in society.

### The Constitution and International Law on Disability

#### **The Constitution**

According to section 22 of the Constitution, the State and all agencies of the government have an obligation to recognise the rights of PWDs, in particular their right to be treated with dignity and respect.

Section 83 of the Constitution goes on to oblige the State to take appropriate measures, within the limits of its resources, to ensure that PWDs realise their full mental and physical potential, including measures:

- enabling them to become self-reliant
- enabling them to live with their families and participate in social, creative or recreational activities
- protecting them from exploitation and abuse
- giving them access to medical, psychological and functional treatment
- providing them with special facilities for their education and, if they need it, with State-funded education and training.

#### **International law**

Zimbabwe is a party to two international instruments dealing specifically with PWDs:

The UN Convention on the Rights of Persons with Disabilities, which obliges State parties to modify and abolish existing laws, regulations, customs and practices that constitute discrimination against PWDs.

The African Charter on the Rights for Persons with Disabilities, which mandates State parties to modify, outlaw, criminalise and campaign against, as appropriate, any harmful practice applied to PWDs.

We now turn to the Bill, to see how far it conforms with the Constitution and meets our international obligations.

### **Scope of the Bill**

The definition of “person with a disabilities” (sic) in clause 2 gives the Bill a wider scope than the existing Act, covering people with long-term physical, mental, intellectual or sensory impairments that hinder them participating fully and effectively in society and exercising their fundamental human rights and freedoms equally with others. The definition is adapted from the Convention on the Rights of Persons with Disabilities, which we mentioned above.

### **Commission for Persons with Disabilities**

The Bill will replace the National Disability Board, established by the existing Act, with a Commission for Persons with Disabilities, most of whose members will be chosen by the Minister from panels of names submitted by organisations registered in the Register of Organisations of and for Persons with Disabilities (a new register that will also be established by the Bill).

The Commission’s functions will be much the same as those of the present Board: the Commission will prepare a national policy for the “mainstreaming” of PWDs throughout society [though how the plan is to be implemented is not spelled out clearly]; it will have power to issue adjustment orders requiring premises to be altered to accommodate PWDs; and it will be responsible generally for promoting the interests of PWDs. In addition, the Commission will maintain registers, which we shall deal with now.

### **Registers**

The Commission will be responsible for keeping two registers:

#### **Register of Organisations of and for Persons with Disabilities**

This register will be maintained by the Commission’s chief executive officer under clause 11 of the Bill. The clause implies that organisations will have to be registered on this register in order to receive funding or benefits from the State.

#### **Register of projects**

The Commission's chief executive officer will maintain this Register under clause 12 for projects qualifying for assistance from the State.

*Comment: If organisations and projects must be registered before they can get State assistance, these registers may be barriers to the realisation by PWDs of their rights. The registration procedures are fairly involved, and informal organisations will be not registrable. In addition, organisations will have to be registered as private voluntary organisations before they or their projects can be registered.*

### **Disability Fund**

The Bill proposes to establish a fund called the Assistance Fund for Persons with Disabilities. The Minister will be the trustee of the Fund and the Commission will administer it subject to directions from the Minister. The Fund will get its resources from parliamentary appropriations as well as gifts and grants from well-wishers. It will be applied to establishing and running vocational training centres, rehabilitating PWDs, providing scholarships, and generally for the welfare of PWDs.

*Comment: The Fund is a worthy initiative, but the roles of the Minister and the Commission in managing the Fund are not demarcated clearly enough and may involve the Minister in what should be the Commission's business. It also raises questions about the appeal process: if the Commission rejects an application for assistance from the Fund the applicant will be entitled to appeal to the Minister under clause 55 of the Bill – yet the Minister as trustee of the Fund will be an interested party.*

### **Rights of PWDs under the Bill**

The Bill will treat PWDs not as objects of charity but rather as people entitled to equitable treatment and the same fundamental rights as everyone else. It will also expand the specific rights of PWDs beyond those accorded to them by the existing Act. In particular:

- The Bill recognises that parents of children with disabilities should receive support, training and capacity-building to ensure the children enjoy their rights.
- Access to justice will be enhanced by giving PWDs a right to free or affordable legal aid.
- PWDs will have a right to education in their preferred language and access to free primary and secondary education. This right will include learning a sign language to promote linguistic identity, and learning other forms of communication such as Braille.
- Their right to work on an equal basis with others, to be employed in the public sector and to exercise their labour rights will be

enhanced. Within two years after the Bill becomes law, at least two per cent of the employees of Government institutions and parastatals employing 50 employees or more will have to be PWDs. Private corporations that employ PWDs will get a tax credit.

- The Minister will have to ensure that State entities whose decision-making bodies have five or more members include at least one PWD among those members.

*Comment: The Bill goes a long way to flesh out the constitutional rights of PWDs. The recognition of parents of PWDs is a progressive provision because children cannot independently enjoy their rights. Bringing PWDs into decision-making bodies is particularly welcome as an important step towards mainstreaming disability.*

*All the measures will require diligence and robust monitoring on the part of the Commission and Minister for them to be effective. Some are legally questionable, however: the requirement that PWDs must be included in all decision-making bodies may be unconstitutional if it is applied to bodies such as the Cabinet. Other measures will need to be refined: for example, tax credits for “private corporations” should extend to non-corporate bodies such as law firms.*

### **Adjustment Orders**

Under the existing Act, the National Disability Board has power to make “adjustment orders” – orders compelling owners of premises and providers of services to alter their premises or services to make them reasonably accessible to PWDs. The Bill will give the same power to the Commission, but will go further and allow interested persons, including the Zimbabwe Human Rights Commission, to approach the High Court for adjustment orders against owners of premises and providers of services. The Bill also omits a provision in the existing Act which prohibits the issue of adjustment orders against medical facilities without the consent of the Minister of Health, and against educational institutions without the consent of the Minister of Education or Higher Education.

*Comment: These measures are welcome and will go a long way to give PWDs access to buildings and services. However, the Bill does not prohibit the construction of inaccessible buildings to which PWDs should properly have access.*

### **Conclusion**

Apart from the issues we have already mentioned, there are some further ones that need to be attended to:

- The Bill will come into force as soon as it is published in the Gazette as an Act. This will cause problems because there will be no Commission

to make the new Act operational. The Bill should have a delayed date of commencement so that the new Commission can be established.

- The Bill will not save in force things done under the existing Act, such as adjustment orders issued by the National Disability Board. These will lapse unless a savings provision is inserted in the Bill.
- The definition of “disability” in clause 2 may be aspirational but it is legally meaningless. It should be deleted.
- There are typographical errors which should be corrected. We have already noted the definition of “person with a disabilities” in clause 2. The reference to “Part VII” in clause 50 is another error. There are many more.
- That said, the Bill is an admirable one which will advance the rights of PWDs and, if fully implemented, will greatly improve their enjoyment of the rights to which they are entitled under the Constitution and international law. We must emphasise the words “if fully implemented”, however, because unless the new Commission and Fund are given all the resources they need, the Bill may become little more than a virtuous aspiration.

Veritas makes every effort to ensure reliable information, but cannot take legal responsibility for information supplied.

If you want to contact Veritas, have any questions or wish to subscribe or unsubscribe please email [veritas@mango.zw](mailto:veritas@mango.zw)

If you are looking for legislation please look for it on [www.veritaszim.net](http://www.veritaszim.net)

Follow us on     (+263 71 893 3633)



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).

PERSONS WITH DISABILITIES

---

H.B. 2, 2023.]

DISTRIBUTED BY VERITAS

e-mail: [veritas@mango.zw](mailto:veritas@mango.zw); website: [www.veritaszim.net](http://www.veritaszim.net)

Veritas makes every effort to ensure the provision of reliable information,  
but cannot take legal responsibility for information supplied.



## PERSONS WITH DISABILITIES BILL, 2023

---

### MEMORANDUM

This Bill seeks to provide for the alignment of the bill to the Constitution. The Bill reflects human rights based approach to disability, fundamental rights and freedoms of persons with disabilities. For this purpose, the Bill establishes a Commission to carry out a number of functions.

In more detail, the Bill provides as follows:

#### PART I

##### PRELIMINARY

This Part provides for preliminary matters: the title of the Bill which is Persons with Disabilities Act [*Chapter...*]. **Clause 1** this Clause sets out the Bill's short title. **Clause 2** sets out the interpretation of terms used in the Bill.

#### PART II

##### ESTABLISHMENT AND FUNCTIONS OF COMMISSION

**Clause 3** provides for the establishment of a Commission to be known as the Persons with Disabilities Commission. **Clause 4** provides for the composition of the Commission which shall consist of seven members appointed by the Minister from a panel of names submitted to him or her by organisations or associations which, in his or her opinion qualify to be registered in the Register of Organisation. The Minister shall endeavour to appoint members who represent a cross section of impairments occurring among persons with disabilities. The term of office of a member of the Commission shall be four (4) years and a member's appointment shall only be renewable once. In appointing the members of the Commission, the Minister shall pay due regard to the provisions of sections 17 and 18 of the Constitution. **Clause 5** this Clause provides for various functions of the Commission such as advising the Minister on all matters relating to persons with disabilities in Zimbabwe. **Clause 6** provides that Commission may invite persons with expertise to participate on a non-voting basis in one or more meetings of the Commission if and when the need arises.

#### PART III

##### ADMINISTRATION

Under this part, **Clause 7** provides for the appointment of the Chief Executive Officer, setting out the prescribed term of office as well as his or her functions. **Clause 8** provides for the formulation of a five year strategic plan which shall be approved by the Minister. **Clause 9** provides for the Reports of the Commission, specifying the required reports and timelines within which they must be provided. **Clause 10** provides for the immunity of the Commission, a committee established by the Commission under the First Schedule, any member of the Commission or a committee, the Chief Executive Officer, a person invited to the Commission under clause 6 for acts or omission done in good faith.

#### PART IV

##### REGISTRATION

**Clause 11** establishes the Register of Organisations of and for Persons with Disabilities which shall be in the custody of the Commission and is administered by the Chief Executive Officer. **Clause 12** provides that the Chief Executive Officer in

consultation with the Commission shall establish a register of projects qualifying for assistance and the register shall be in the custody of the Chief Executive Officer.

## PART V

### ACCOUNTS AND FINANCE

In this Part, **Clauses 13–15** provides for the source of funds of the Commission which is mainly the Fiscus and as such, moneys guaranteed and appropriated by an Act of Parliament and donations, grants, bequests made by any person, organisation or any government of any country to the Commission. It also sets out audit requirements that are to be observed by the Commission.

## PART VI

### RIGHTS OF PERSONS WITH DISABILITIES AND ENFORCEMENT OF SUCH RIGHTS

**Clauses 16–36** provides for the fundamental rights and freedoms as covered in the Constitution. The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure the promotion of these rights of persons with disabilities.

**Clause 37** provides for the promotion of employment of persons with disabilities. Two years after this Act has become law, government institutions and parastatal, with a minimum number of fifty (50) employees, shall ensure that two (2) *per centum* of its total workforce shall be persons with disabilities provided that the Commission shall, before the expiry of two years, require every employer to submit to it a proposed plan of how the employer concerned shall comply. **Clause 38** provides that the Minister shall take the necessary steps to ensure that all persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions. **Clause 39** provides for the participation in political and public life for persons with disabilities. **Clauses 40–41** provides for the participation in cultural life, recreation, leisure and sport for persons with disabilities and promoting awareness of the capabilities of persons with disabilities. **Clauses 42–43** sets out the conditions for adjustments orders by the Commission and adjustment orders by High Court respectively, in cases where premises, services or amenities are inaccessible to persons with disabilities. **Clause 44** provides for the powers of the Inspectors designated by the Minister to be inspectors for purposes of enforcing the provisions of this Act and sets out the circumstances under which such powers may be exercised.

## PART VII

### ASSISTANCE FUND FOR PERSONS WITH DISABILITIES

**Clause 45** provides for the establishment of a fund to be known as the Assistance Fund for Persons with Disabilities. **Clause 46** provides for the income of the fund. **Clause 47** provides for the object of the fund which is to promote the rights of persons with disabilities. **Clause 48** provides for the application of the fund which includes facilitating physical, mental or social rehabilitation of persons with disabilities. **Clause 49** provides for the holding fund of the Commission. **Clause 50** provides that Part VII of the bill shall apply with necessary changes to the Disability Fund in relation to the keeping of accounts and auditing of the Fund.

## PART VIII

### MISCELLANEOUS PROVISIONS

**Clause 51** provides that the Department of Disability Affairs established in terms of the Disabled Persons Act [*Chapter 17:01*] shall continue to be in existence. **Clause**

**52** provides for the powers of the Minister to give policy directions to the Commission. **Clause 53** provides for the seal of the Commission seal whose design as may be prescribed by the Minister and shall be kept in custody of the Chief Executive Officer. **Clause 54** provides for the offices and operations of the Commission. **Clause 55** provides for the appeals procedure. **Clause 56** sets out that the Minister may make regulations in consultation with the Commission providing for matters which in terms of this Act are required or permitted to be prescribed. **Clause 57** provides for the repeal of The Disabled Persons Act [*Chapter 17:01*].

FIRST SCHEDULE: Conditions for Commissioners.

SECOND SCHEDULE: Ancillary powers of Commission.



**PERSONS WITH DISABILITIES BILL, 2023**

---

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

*Section*

1. Short title.
2. Interpretation.

PART II

COMMISSION FOR PERSONS WITH DISABILITIES

3. Establishment of Commission for Persons with Disabilities.
4. Composition of Commission.
5. Functions of Commission.
6. Invited members.

PART III

ADMINISTRATION

7. Chief Executive Officer of Commission.
8. Strategic plans.
9. Reports of Commission.
10. Indemnity.

PART IV

REGISTRATION

11. Register of Organisations.
12. Register of projects.

PART V

ACCOUNTS AND FINANCE

13. Funds of Commission.
14. Accounts of Commission and appointment of Internal Auditor.
15. Audit.

PART VI

RIGHTS OF PERSONS WITH DISABILITIES AND ENFORCEMENT OF SUCH RIGHTS

16. Scope of discrimination on basis of disability.
17. Equality and non-discrimination.
18. Accessibility.
19. Children with disabilities.
20. Women with disabilities.
21. Persons with multiple impairments.
22. Disaster and humanitarian emergencies.
23. Right of autonomy and equal recognition before the law.
24. Access to justice.
25. Liberty and security of person.
26. Freedom from torture or cruel, inhuman or degrading treatment or punishment.

*Section*

27. Freedom from exploitation, violence and abuse.
28. Liberty of movement and nationality.
29. Living independently and being included in community.
30. Personal mobility.
31. Freedom of expression and opinion, and access to information.
32. Respect for privacy.
33. Respect for home and family.
34. Education.
35. Health.
36. Habilitation and rehabilitation.
37. Work and employment.
38. Adequate standard of living and social protection.
39. Participation in political and public life.
40. Participation in cultural life, recreation, leisure and sport.
41. Awareness raising.
42. Adjustment orders by Commission.
43. Adjustment order by High Court.
44. Inspectors.

PART VII

DISABILITY FUND

45. Establishment of Assistance Fund for Persons with Disabilities.
46. Income of Fund.
47. Object of Fund.
48. Application of Fund.
49. Holding of Fund.
50. Part VII to apply to Disability Fund.

PART VIII

MISCELLANEOUS PROVISIONS

51. Department for Disability Affairs and Director thereof.
52. Power of Minister to issue directives.
53. Seal of Commission.
54. Offices and operations of Commission.
55. Appeals.
56. Regulations.
57. Repeal.

FIRST SCHEDULE: Conditions for Commissioners.

SECOND SCHEDULE: Ancillary Powers of Commission.

# BILL

To provide for the establishment of the Commission for Persons with Disabilities; to provide for the protection of the rights of persons with disabilities in accordance with the Constitution of Zimbabwe and the  
5 United Nations Convention on the Rights of Persons with Disabilities; to repeal the Disabled Persons Act [*Chapter 17:01*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

## 1 Short title

10 This Act may be cited as the Persons with Disabilities Act [*Chapter :...*].

## 2 Interpretation

In this Act, unless the context otherwise requires—

“Chief Executive Officer” means the Chief Executive Officer of the Commission established in terms of section 7;

15 “Commission” means the Commission for Persons with Disabilities established under section 3;

20 “communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

H.B. 2, 2023.]

---

*Printed by the Government Printer, Harare*

- “Constitution” means the Constitution of Zimbabwe;
- “Convention” means the United Nations Convention on the Rights of Persons with Disabilities of 2006;
- “disability” means an evolving concept involving the interaction between persons with impairments, on one hand, and attitudinal and environmental barriers, on the other hand, that may have the effect of hindering persons with impairments from fully and effectively participating in society on an equal basis with others; 5
- “Deaf community” means the distinct linguistic and cultural group of people who use Zimbabwean Sign Language as their first or preferred language, who have common values and who also have a common way of interacting with each other and with hearing people; 10
- “Director” means Director of Disability Affairs referred to in section 52;
- “disability mainstreaming” means the inclusion of persons with disabilities in all aspects of development and humanitarian efforts; 15
- “habilitation service” means health care services that help a person with disabilities keep, learn or improve skills and functioning for daily living;
- “language” includes spoken and sign language and other forms of non-spoken languages;
- “Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act; 20
- “organisation for persons with disabilities” means any entity however formed or incorporated whose purpose is to provide any rehabilitation or habilitation services for persons with disabilities or to promote and protect the rights of such persons; 25
- “organisation of persons with disabilities” means any entity however formed or incorporated whose membership is exclusively or predominantly composed of persons with disabilities and whose purpose is the promotion and protection of the rights of its members, or to engage in any gainful pursuit for the benefit of its members or both; 30
- “person with a disabilities” means any individual who has any long-term physical, mental, intellectual or sensory impairment which because of various environmental, attitudinal, social or legal barriers may hinder his or her full and effective participation in society and enjoyment and exercise of all human rights and fundamental freedoms on an equal basis with others; 35
- “reasonable accommodation” in relation to sections 16, 22, 25, 34 and 37 means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that persons with disabilities enjoy or exercise on an equal basis with others all human rights and fundamental freedoms; 40
- “Register of Organisations of and for Persons with Disabilities” means the register established under section 11 in which organisations for persons with disabilities and organisations of persons with disabilities are recorded; 45
- “Register of Projects” means the register established under section 12;
- “rehabilitation service” in relation to persons with disabilities, means any service designed to restore, improve or maximise such person’s optimal level of functioning, self-care, self-independence and quality of life and 50

to minimise impairments, disabilities and dysfunction caused by a serious and persistent physical, mental, intellectual or sensory impairment;

“universal design” means the design of goods, products, environment, equipment, facilities, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design and includes assistive devices for particular groups of persons with disabilities where this is needed, and the term “universally designed” in relation to goods, products, environment, equipment, facilities, programmes and services, shall be construed accordingly.

(2) In interpreting the rights under this Act, due regard shall be paid to the provisions of sections 22 and 83 of the Constitution and Article 4(2) of the Convention.

## PART II

### COMMISSION FOR PERSONS WITH DISABILITIES

#### 3 Establishment of Commission for Persons with Disabilities

(1) It is hereby established a Commission to be known as the Commission for Persons with Disabilities.

(2) The Commission shall operate as a body corporate with perpetual succession and may sue and be sued and do all other acts that may be done in law by a body corporate.

#### 4 Composition of Commission

(1) The Commission shall consist of the following persons—

- (a) seven (7) members appointed by the Minister from a panel of names submitted to him or her by organisations or associations which, in his or her opinion qualify to be registered in the Register of Organisations (and after the Register is established, the Minister shall accept nominations only from organisations or associations that are registered):

Provided that the Minister shall endeavour to appoint members who represent a cross section of impairments occurring among persons with disabilities;

- (b) one member representing the Ministry responsible for Local Government appointed by the Minister in consultation with the Minister responsible for Local Government;
- (c) one member representing the Ministry responsible for Health appointed by the Minister in consultation with the Minister responsible for Health;
- (d) one member representing the Ministry responsible for Education appointed by the Minister in consultation with the Minister responsible for Education;
- (e) one member representing the Ministry responsible for Justice appointed by the Minister in consultation with the Minister responsible for Justice;
- (f) one member representing the Ministry responsible for Finance appointed by the Minister in consultation with the Minister responsible for Finance;
- (g) the Director of Disability Affairs who shall be an *ex-officio* member of the Commission;
- (h) a member or two members co-opted by the Commission after consultation with the Minister.

(2) In appointing the members of the Commission, the Minister shall pay due regard to the provisions of sections 17 and 18 of the Constitution.

(3) The Minister shall designate one member appointed in terms of subsection (1)(a) to be the Chairperson of the Commission and designate another member appointed in terms of the same provision to be the Vice Chairperson and in so doing the Minister shall ensure that such office bearers are of different gender.

(4) The term of office of a member of the Commission shall be four (4) years and a member's appointment shall only be renewable once. 5

(5) The qualifications, terms and condition of service and vacation of office of members of the Commission shall be as specified in the First Schedule.

## 5 Functions of Commission

(1) The functions of the Commission are— 10

- (a) to advise the Minister on all matters relating to persons with disabilities in Zimbabwe;
- (b) to formulate a national policy that facilitates disability mainstreaming in all organs and institutions of the State and all economic, social, cultural and political institutions of a private or non-State character, that is to say, a policy that— 15
  - (i) assesses and addresses the possible impact of any actual or planned programme or other action by any organ or institution of the State on persons with disabilities;
  - (ii) makes provision for the formulation of particular plans and strategies in implementation of the national policy; 20
  - (iii) provides for the recommendations for legal and other remedies for the removal of barriers that exclude persons with disabilities from the equal enjoyment of their human rights and fundamental freedoms;
  - (iv) incorporates a national plan of action in implementation of the elements of the national policy mentioned in subparagraphs (ii) and (iii) as well as actions to be taken to create, improve and support rehabilitation and habilitation services; 25
- for approval and adoption by the Minister;
- (c) in cooperation with the Zimbabwe National Statistics Agency, and in line with international best practices, to collect appropriate information in connection with persons with disabilities including statistical and research data; 30
- (d) to maintain the Register of Organisations, and the Register of projects;
- (e) to promote, protect and respect the rights of persons with disabilities; 35
- (f) to regularly inform the appropriate Ministries of the Government of the problems and needs of persons with disabilities and seek and recommend solutions to such needs;
- (g) to periodically review the national policy and national plan of action for the purpose of determining their continuing relevance to local, regional and international realities; 40
- (h) to encourage all forms of the media to portray persons with disabilities in a manner consistent with the purposes of this Act and the Convention;
- (i) to promote research and development of universally designed goods, products, environment, equipment, facilities, programmes and services, which may require the minimum possible adaptation and the least cost to meet the specific needs of persons with disabilities and to promote their 45

availability and use, and to promote universal design in the development of standards and guidelines;

- 5 (j) to promote research, development of, availability and use of new technologies, including information and communications technologies, mobility aids, devices, assistive technology and languages suitable for persons with disabilities;
- (k) to promote research of all other matters affecting the human rights of persons with disabilities not contemplated in paragraphs (i) and (j);
- 10 (l) to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- 15 (m) to promote the training of professionals and staff working with persons with disabilities in the rights recognised in the Constitution, this Act and the Convention so as to better provide the services guaranteed by the Constitution, this Act and the Convention;
- (n) to act as a co-ordinating body for all organisations dealing with the care and rehabilitation of persons with disabilities;
- 20 (o) to raise awareness throughout society including awareness at the family level, regarding the special needs of persons with disabilities and to foster respect for the rights and dignity of persons with disabilities;
- (p) to promote the recognition of skills, merits and abilities of persons with disabilities, and their contributions to the workplace and labour market;
- 25 (q) to foster at all levels of society and the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
- (r) in co-operation with the Human Rights Commission, to monitor and evaluate the extent to which human rights of persons with disabilities are respected and protected and to propose remedies where they are deficits in that respect.
- 30

(2) For the Commission to better discharge its functions, the Commission shall have the powers specified in the Second Schedule.

## 6 Invited members

35 (1) The Commission may invite persons to participate on a non-voting basis in one or more meetings of the Commission if and when the need arises.

(2) A person invited under subsection (1) must be an expert or have special knowledge or experience to provide informed advice to the Commission on any matter relating to persons with disabilities.

## PART III

### 40 ADMINISTRATION

## 7 Chief Executive Officer of Commission

(1) In this section, “suitably qualified” in relation to a person being considered for appointment as the Chief Executive Officer means having a qualification in one of the social sciences at degree level and having managerial or administrative experience.

45 (2) The Commission shall, with the approval of the Minister (which approval shall be made after consulting the Minister responsible for Finance), appoint a suitably

qualified person as the Chief Executive Officer of the Commission in accordance with any terms and conditions the Commission may fix.

(3) If two or more suitably qualified persons are being considered by the Commission for appointment as the Chief Executive Officer of the Commission, and the Commission finds that they are equally suitably qualified, preference for appointment shall be given to the person (if any) who is a person with disabilities, or a parent of a child with disabilities, or is the son or daughter of a person with disabilities, or is a person who has extensive experience of working with or for persons with disabilities. 5

(4) The Chief Executive Officer may be appointed for a term office (5) years and may be re-appointed once subject to satisfactory performance as appraised by or on behalf of the Commission. 10

(5) The Chief Executive Officer may be remunerated in a manner and at a rate determined by the Commission with the approval of the Minister (which approval shall be made after consulting the Minister responsible for Finance).

(6) The Chief Executive Officer shall— 15

- (a) be responsible to the Commission for its management and the execution of its policies;
- (b) assist the Commission in the implementation of its strategic plans, (mentioned in section 8) and national policies concerning persons with disabilities; and 20
- (c) do all things necessary or convenient to be done in connection with, or incidental to, the performance of his or her duties under this Act or any other written law.

(7) The Chief Executive Officer may, in consultation with the Commission, appoints such officers as he or she considers necessary for the efficient exercise, performance and discharge of the duties of the Commission. 25

(8) Such officers shall be remunerated in a manner and be subject to terms and conditions determined by the Commission with the approval of the Minister (which approval shall be made after consulting the Minister responsible for Finance).

(9) The Chief Executive Officer and other officers shall be holders of public offices but shall not form part of the Public Service. 30

## 8 Strategic plans

(1) The Commission shall—

- (a) formulate a five year strategic plan setting out the manner in which the Commission proposes to perform its functions; and 35
- (b) review and revise the strategic plan on an annual basis.

(2) A strategic plan, or a revision of a strategic plan, shall have no effect until approved by the Minister.

(3) The first strategic plan shall be submitted to the Minister within six (6) months after the setting up of the Commission and subsequent strategic plans must be submitted to the Minister within three (3) months of the preceding strategic plan or such longer or shorter time frame as the Minister may allow. 40

## 9 Reports of Commission

(1) The Commission shall submit an annual report, describing fully its operations and activities, to the Parliament through the Minister which report shall be 45

submitted not later than the end of March in the year following the year to which the report relates.

(2) The report submitted in terms of subsection (1) shall include a copy of the following in relation to the Commission—

- 5 (a) a balance sheet; and
- (b) the income and expenditure account;
- (c) the annual report of the Auditors appointed in terms of section 14; and
- 10 (d) a statement of capital expenditure reported upon by the Auditors showing the general heads of such expenditure as compared with the figures provided for in the capital budget or supplementary capital budget approved for that financial year.

(3) The Minister may in regard to the Commission's operations, undertakings and properties require that the Commission to submit such other reports as the Minister sees fit.

15 (4) The report submitted in terms of subsection (1) and, with the leave of the Minister, any report submitted in terms of subsection (3) shall be laid before Parliament by the Minister within ten (10) days on which Parliament sits next after the Minister has received the reports.

(5) The reports submitted in terms of subsection (4) may provide for—

- 20 (a) the nature and extent of any investigations undertaken by the Commission in compliance with its mandate and a summary of its principal findings arising there from;
- (b) appropriate recommendations for legislative, executive, administrative and practical steps required to be taken to address the violation of rights of persons with disabilities and to promote those rights;
- 25 (c) a comprehensive strategy for incorporating a disability perspective in planning, implementation, monitoring and evaluation of all Government programmes and policies;
- (d) any other work that the Commission has undertaken during the period under review; or
- 30 (e) any other matter or consideration it deems fit to bring to the attention of the Minister and Parliament.

35 (6) The Commission shall publish every report referred to in subsection (1) laid before Parliament thirty days after the Minister is expected to have laid such report in terms of subsection (4).

## 10 Immunity

The Commission, a committee established by the Commission under the First Schedule, any member of the Commission or a committee, the Chief Executive Officer, a person invited to the Commission under section 6 and a member of staff of the Commission, shall not be held liable for any action, suit, proceeding, dispute or challenge in any court, tribunal or any other adjudicating body for or in respect of any act or omission done in good faith and or gross negligence in the exercise of his or her or its functions under this Act.

## PART IV

### REGISTRATION

#### 11 Register of Organisations of and for Persons with Disabilities

(1) There is hereby established the Register of Organisations of and for Persons with Disabilities which shall be in the custody of the Commission and administered by the Chief Executive Officer in accordance with this section. 5

(2) Any organisation for persons with disabilities or organisation of persons with disabilities, wishing to receive any grant or other benefit from the State pursuant to the implementation of the National Plan of Action may on application to the Chief Executive Officer in the prescribed form and manner and for the prescribed fee (if any), be recorded in the Register of Organisations. 10

(3) An organisation referred to in subsection (2) qualifies to be registered if it satisfies the Chief Executive Officer that—

- (a) it is in existence by furnishing proof of its formation or incorporation in the form of its constitution and— 15
  - (i) in the case of a common law association, a clause in its constitution establishing it as a corporate body, or in the case of any other association of a corporate character, a certificate of incorporation or registration or similar document under any law; and
  - (ii) the minutes of the meeting held by the organisation at which it was resolved for it to be registered; and 20
- (b) the organisation is established to provide services to persons with disabilities for the purpose of implementing any projects which contribute to the wellbeing and development of persons with disabilities;
- (c) it has been registered as a Private Voluntary Organisation under the Private Voluntary Organisation Act; and 25
- (d) a list of the office bearers of the organisation, their addresses and occupations and written references in respect of each to show that they are fit and proper persons to be office bearers; and
- (e) it has adequately disclosed the sources of its present or proposed funding; and 30
- (f) it has furnished such additional information as may be prescribed or as the Commission may reasonably require.

(4) The Register must include, in relation to each organisation on the Register—

- (a) the organisation's registered name and registered contact address; and 35
- (b) the manner of its formation or incorporation; and
- (c) in the case of an organisation for persons with disabilities, the qualifications held by members of the organisation established to provide services to persons with disabilities; and
- (d) a list of the members for the organisation; and 40
- (e) any other information as may be prescribed or that the Commission considers appropriate.

#### 12 Register of projects

(1) The Chief Executive Officer in consultation with the Commission shall establish a register of projects qualifying for assistance under this Part implemented by organisations for and of persons with disabilities registered under this Part. 45

- (2) No project shall qualify to be registered unless if the project is designed—
- (a) to assist persons with disabilities in any suitable manner; or
  - (b) to seek and attract national and appropriate international expertise; or
  - (c) to promote the production of material, mobility aids, assistive devices or any other equipment required by persons with disabilities to enhance their independent living; or
  - (d) to promote the enjoyment of human rights by persons with disabilities.
- (3) Any organisation wishing to register its project shall apply to the Chief Executive Officer in the prescribed form and manner and for the prescribed fee.
- (4) The register of projects shall be in the custody of the Chief Executive Officer.

## PART V

### ACCOUNTS AND FINANCE

#### 13 Funds of Commission

- (1) The funds of the Commission shall consist of—
- (a) such moneys guaranteed and appropriated by an Act of Parliament for the—
    - (i) programmes of the Commission;
    - (ii) salaries and allowances payable to and in respect of Members of the Commission and salaries and allowances payable to and in respect of the Commission's staff; and
    - (iii) recurrent administrative expenses of the Commission;
  - (b) any other moneys that may be payable to the Commission from moneys appropriated for the purpose by an Act of Parliament;
  - (c) any donations, grants or bequests made by any person or organisation or any government of any country to the Commission:
 

Provided that the Commission shall accept such donations, grants or bequests in consultation with the Minister;
  - (d) any other moneys that vest in or accrue to the Commission, whether in terms of this Act or otherwise including fines, civil penalties, fees or loans.

#### 14 Accounts of Commission and appointment of Internal Auditor

- (1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as provided for by the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009).
- (2) As soon as possible after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as provided for by the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009).
- (3) Section 80 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009), shall apply, with such changes as may be necessary, to the appointment of an Internal Auditor to the Commission in all respects as if the Commission were a Ministry or a department of a Ministry.

(4) The Commission shall apply its funds to the fulfilment of its functions and shall further observe public finance management principles established in terms of section 298 of the Constitution.

## 15 Audit

(1) The Commission shall cause its books of accounts to be audited once a year. 5

(2) The accounts of the Commission shall be audited by the Auditor-General, who for that purpose shall have the functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*] (No. 12 of 2009).

(3) Any person under the authority or supervision of the Commission who refuses to provide the Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Auditor-General with a false explanation or information, or an explanation or information that the person has no grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment. 10 15

## PART VI

### RIGHTS OF PERSONS WITH DISABILITIES AND ENFORCEMENT OF SUCH RIGHTS

## 16 Scope of discrimination on basis of disability

(1) For the purposes of this Part, “discrimination on the basis of disability” means— 20

- (a) any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field; 25
- (b) any denial of reasonable accommodation.

(2) Affirmative action laws, programmes and policies to promote equality for persons with disabilities shall not constitute discrimination on the basis of disability, as long as such laws, programmes and policies are proportionate to the aim of promoting equality for persons with disabilities. 30

## 17 Equality and non-discrimination

(1) All persons with disabilities are entitled to equality with others and non-discrimination.

(2) All persons with disabilities have a right to respect for their physical and mental integrity on an equal basis with others. 35

(3) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that the rights of all persons with disabilities mentioned in subsections (1) and (2) are realised, in particular the Minister shall—

- (a) endeavour to rectify any action inconsistent with subsection (2) on the part of a State actor by enlisting the assistance of registered organisations for and of persons with disabilities; 40
- (b) take all appropriate steps, such as sensitivity training for all State actors, that will promote and accelerate the equality of persons with disabilities in the society. 45

(5) The Commission shall make appropriate recommendations for amendment of the laws and practices in order—

- (a) to promote equality of persons with disabilities;
- (b) to eliminate discrimination against persons with disabilities;
- 5 (c) to make other people aware of the integrity and dignity of persons with disabilities.

## 18 Accessibility

(1) In expansion of section 22(4) of the Constitution, all persons with disabilities shall have the following rights—

- 10 (a) reasonable access to all indoor and outdoor places, public transport and information;
- (b) access to the use of sign language, Braille or other appropriate means of communication;
- 15 (c) reasonable access to necessary materials, substances and devices relating to the person's impairment;
- (d) entitlement to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights;
- 20 (e) in the case of buildings and other facilities open to the public, access to information, signage and forms in Braille and in easy to read and understand modes;
- (f) access to forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public.

25 (2) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that accessibility for persons with disabilities mentioned in subsection (1) is realised.

30 (3) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices for the purposes of enhancing accessibility for persons with disabilities specified in subsection (1).

## 19 Children with disabilities

(1) In all actions concerning children with disabilities, the best interests of such children shall be of primary consideration.

35 (2) Children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.

(3) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that—

- 40 (a) children with disabilities are able to enjoy their rights on an equal basis with others;
- (b) parents of children with disabilities receive necessary support, capacitating and training for the protection, promotion and respecting of human rights of children with disabilities.

45 (4) The Commission shall make appropriate recommendations of the relevant laws and practices to ensure that—

- (a) children with disabilities enjoy their rights on equal basis with others;
- (b) parents of children with disabilities receive necessary support, capacitation and training for the protection, promotion and respecting of human rights of children with disabilities.

## **20 Women and girls with disabilities**

5

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to eliminate every form of discrimination against women and girls with disabilities.

(2) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that women and girls with disabilities —

10

- (a) enjoy human rights on an equal basis with others;
- (b) are empowered to enable them to enjoy human rights on an equal basis with others.

(3) The Commission shall make recommendations for the amendment of the relevant laws and practices to ensure that —

15

- (a) all forms of discrimination against women and girls with disabilities are eliminated;
- (b) women and girls with disabilities enjoy rights on an equal basis with others.

## **21 Persons with multiple impairments**

20

(1) The Minister, on the advice of the Commission, shall take all necessary steps within the power and competence of his or her Ministry —

- (a) to protect the rights of persons with multiple impairments;
- (b) to minimise disadvantages experienced by persons with multiple impairments;
- (c) to ensure that persons with multiple impairments enjoy human rights on an equal basis with others.

25

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with multiple impairments realise their rights in the manner specified in subsection (1).

30

## **22 Disaster and humanitarian emergencies**

(1) In consultation with other appropriate Ministers, the Minister shall endeavour to ensure that all persons with disabilities, on an equal basis with others, have the right to —

- (a) reasonable accommodation with regard to the protection and safety in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters;
- (b) access to information in their preferred languages or accessible formats.

35

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities realise their rights in the manner specified in subsection (1).

40

## **23 Right of autonomy and equal recognition before the law**

(1) It is hereby affirmed that all persons with disabilities have the right of autonomy to the full extent that they are able to exercise it.

- (2) It is an aspect of the right of autonomy that—
- (a) persons with any severe impairment who are unable themselves to exercise that autonomy personally have the right to exercise it through someone else of their choice and at their direction;
  - 5 (b) persons with disabilities have the right to enjoy legal capacity on an equal basis with others in all aspects of life and special measures to promote such equality and to support access to justice for persons with disabilities shall not constitute discrimination on the basis of disability.
- (3) All persons with disabilities shall be entitled to the support they may require  
10 to exercise their right to full legal capacity.
- (4) Every person providing support referred to in subsection (2)(a) shall—
- (a) respect the will and preferences of the individual benefiting from the support measures;
  - (b) ensure that the support must not constitute any restriction to the  
15 individual's legal capacity.
- (5) All persons with disabilities who are of sound mind are entitled, on an equal basis with others, to—
- (a) own or inherit property;
  - (b) control their own financial affairs;
  - 20 (c) have equal access to bank loans, mortgages and other forms of financial credit.
- (6) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that persons with disabilities enjoy their rights in the manner specified in this section.
- 25 (7) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy their rights in the manner specified in this section.

## 24 Access to justice

- (1) The Minister shall, in consultation with the Minister responsible for Justice,  
30 take all necessary steps within the power and competence of his or her Ministry to ensure that—
- (a) all persons with disabilities have the right to the provision of procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal  
35 proceedings, including at investigative and other preliminary stages;
  - (b) persons with mental or intellectual impairments—
    - (i) are enabled themselves to make their own decisions to the extent they are able to; and
    - (ii) who are not capable of making their own decisions are afforded the  
40 necessary support so that such decisions are made on their behalf as are in their best interest;
  - (c) appropriate measures in court proceedings for witnesses with multiple impairments shall be available for persons with disabilities;
  - 45 (d) all indigent persons with disabilities have access to free or affordable legal assistance in all legal proceedings on an equal basis with other indigent persons;

- (e) judicial officers, prosecutors, police officers, prison officers, lawyers and other actors in the justice delivery sector receive appropriate training of handling cases for persons with disabilities.
- (2) Procedural and age-appropriate accommodations referred to in subsection (1)(a) may include any one or more of the following — 5
- (a) enabling accompaniment during investigation or testimony by a chosen support person;
  - (b) utilisation of alternative and augmentative communication, such as pictures and communication boards, to enable the person to fully communicate;
  - (c) investigations performed by those who have experience and expertise in communicating with persons with disabilities, instead of by a standard police investigator; 10
  - (d) utilisation of experts to remove misinformation regarding the impairment that may hinder courts from accepting the testimony, and assist in understanding the witness' way of communication; 15
  - (e) in the case of a person with hearing or speech impairment, the right to a sign language interpreter from the point of arrest, detention, trial and imprisonment;
  - (f) assistance in court in formulating questions so that they are understood by the witness and children taking into account the children's evolving capacity; 20
  - (g) the possibility of testifying without official attire, or in camera (in private) through video links or in the judge's chambers, without detracting from the weight and validity of the testimony;
  - (h) sufficient time for giving testimony and appropriate breaks during proceedings; 25
  - (i) provision of information about the proceedings in preferred language, form of communication or child-friendly formats;
  - (j) establishing court procedures to enable a process for requesting accommodations; 30
  - (k) any other measure that the Minister, in consultation with the Minister responsible for Justice, considers expedient and convenient to persons with disabilities in their attempt to access justice as witnesses, accused persons, plaintiffs, defendants, applicants, respondents, court officials or any other capacity. 35
- (2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities are entitled to the right of accessing justice.

## 25 Liberty and security of person

- (1) All persons with disabilities have the right — 40
- (a) not to be deprived of their personal liberty on the basis of the existence of an impairment or disability except in cases allowed by law;
  - (b) to reasonable accommodation if kept in custody; and
  - (c) to the protection of any applicable national and international legal measures to ameliorate the conditions of custody for persons with disabilities. 45
- (2) The Minister in consultation with the Minister of Justice and other relevant Ministers shall take all necessary steps within the power and competence of his or

her Ministry to ensure that all persons with disabilities enjoy the rights specified in subsection (1).

- (3) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices in order to enhance the enjoyment of the right to liberty by persons with disabilities in a manner consistent with this section.

## **26 Freedom from torture or cruel, inhuman or degrading treatment or punishment**

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that—

- (a) all persons with disabilities are entitled to freedom from torture or cruel, inhuman or degrading treatment or punishment;
- (b) all persons with disabilities shall not be subjected, without consent of the concerned person, to medical or scientific experimentation;
- (c) measures are put in place to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities are protected from torture or cruel, inhuman or degrading treatment or punishment.

## **27 Freedom from exploitation, violence and abuse**

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities who are—

- (a) within and outside the home, have the right to be protected from all forms of exploitation, violence and abuse, including gender-based violence;
- (b) victims of any form of exploitation, violence or abuse shall have the right to accessible protective services which foster the health, welfare, self-respect, dignity and autonomy of such persons taking into account gender and age specific needs;
- (c) victims of any form of exploitation, violence or abuse shall have the right to have the exploitation, violence or abuse investigated by the appropriate authorities, and where relevant, prosecuted.

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the freedom from exploitation, violence and abuse.

## **28 Liberty of movement and nationality**

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities have the right to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including—

- (a) the right to acquire and change a nationality and the right not to be deprived of their nationality arbitrarily or on the basis of impairment or disability;
- (b) the right not to be deprived, on the basis of impairment or disability, of their ability to obtain, possess and utilise documentation of their nationality or other documentation of identification, or to utilise relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

- (c) the right to leave Zimbabwe unless prevented from doing so by a lawful act or order;
- (d) the right not to be deprived, arbitrarily or on the basis of impairment or disability, of the right to enter Zimbabwe;
- (e) the right of children with disabilities to be registered immediately after birth and to have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents. 5

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy their liberty of movement and nationality. 10

## 29 Living independently and being included in community

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities—

- (a) have the right to live in the community, with choices equal to others, and to full enjoyment of this right and of their full inclusion and participation in the community, including— 15
  - (i) the right to be given the opportunity to choose their place of residence and where and with whom they live on an equal basis with others;
  - (ii) the right not to be obliged to live in a particular living arrangement except in cases equally applicable to enabled persons allowed by the law; 20
- (b) have the right to access a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; 25
- (c) have the right to community services and facilities which are available for the general population on an equal basis and in a way that is responsive to their needs.

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to facilitate the independent living and inclusion of persons with disabilities in the community. 30

## 30 Personal mobility

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities enjoy the right to personal mobility and the greatest possible independence in that regard, including— 35

- (a) implementing any national or local programme to facilitate personal mobility of persons with disabilities in a manner that is cost effective;
- (b) access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost; 40
- (c) the progressive provision of personal assistants to persons with disabilities;
- (d) training in mobility skills to persons with disabilities and specialist staff to work with persons with disabilities.

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to promote personal mobility of persons with disabilities. 45

### 31 Freedom of expression and opinion and access to information

- (1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities have the right to exercise the right to freedom of expression and opinion, including the freedom to seek,  
 5 receive and impart information and ideas on an equal basis with others and through all languages or forms of communication of their choice, including—
- (a) information intended for the general public in accessible formats and technologies appropriate to different kinds of impairments in a timely manner and without additional cost;
  - 10 (b) the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice in official interactions;
  - (c) the right to the use of sign language.
- (2) The Commission shall make appropriate recommendations for the  
 15 amendment of the relevant laws and practices to promote the enjoyment of freedom of expression and access to information by persons with disabilities.

### 32 Respect for privacy

- (1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that—
- 20 (a) no person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation;
  - (b) all persons with disabilities have the right to the protection of the law  
 25 against such interference or attacks;
  - (c) there are adequate protection measures for the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.
- (2) The Commission shall make appropriate recommendations for the  
 30 amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the right to privacy on an equal basis with others.

### 33 Respect for home and family

- (1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities have the right to  
 35 freedom from discrimination in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that—
- (a) the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised;
  - 40 (b) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided;
  - 45 (c) persons with disabilities, including children, retain their fertility on an equal basis with others;

- (d) in cases of the rights and responsibilities of persons with disabilities, with regard to guardianship, custody, maintenance or adoption of children the best interests of the child shall be paramount;
  - (e) no child must be separated from his or her parents or guardians against the child's will, except in accordance with the relevant law in force and only on the ground that such separation is necessary for the best interests of the child; 5
  - (f) no child must be separated from their parents or guardians on the basis of an impairment of either the child or one or both of the parents or guardians.
- (2) Children with disabilities have equal rights with respect to family life and in realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, the Minister shall ensure that there is adequate provision of early and comprehensive information, services and support to children with disabilities and their families. 10
- (3) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the rights specified in subsections (1) and (2). 15

### 34 Education

- (1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities — 20
- (a) have the right to education in their preferred language and communication;
  - (b) have a right to education without discrimination and on the basis of equal opportunity, and such education shall be inclusive and lifelong;
  - (c) are not excluded from the general education system, including tertiary education on the basis of impairment or disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, or from tertiary education on the basis of impairment or disability; 25
  - (d) can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; 30
  - (e) are entitled to reasonable accommodation measures based on individual's requirements;
  - (f) receive the support required, within the general education system, to facilitate their effective education; 35
  - (g) receive effective individualised support measures in the environment that maximises academic and social development, consistent with the goal of full inclusion.
- (2) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that the right to education for persons with disabilities shall promote — 40
- (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
  - (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; 45

- (c) the enabling of persons with disabilities to participate effectively in a free society.

(3) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that persons with disabilities have the right to learn life and social development skills to facilitate their full and equal participation in education and as members of the community including—

- (a) the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (b) the learning of sign language and the promotion of the linguistic identity of the deaf community;
- (c) ensuring that the education of persons, and in particular children, who are blind, deaf or dumb, is delivered in the most appropriate languages and modes and means of communication for the individual, and in the environment which maximises academic and social development;
- (d) the right to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others;
- (e) the right to reasonable accommodation while pursuing education.

(4) The Minister, acting in consultation with the Minister responsible for Primary and Secondary Education and the Minister responsible for Higher and Tertiary Education, shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities enjoy the right to education at all levels as provided for in this section.

(5) The Commission shall make recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the right to education in the manner specified in this section.

### 35 Health

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities—

- (a) have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability;
- (b) have the right to the same range, quality and standard of free or affordable health care and programmes, including in the area of sexual and reproductive health and population-based public health programmes;
- (c) have the right to appropriate health services including early identification and intervention as appropriate, and services designed to minimise and prevent further impairments, including among children and older persons;
- (d) have the right to health services as close as possible to their own communities, including in rural areas;
- (e) have the right to health care of the same quality as is given to others, including on the basis of free and informed consent, patient autonomy and medical and nursing ethics;
- (f) shall enjoy freedom from discrimination in the provision of health insurance which shall be provided in a fair and reasonable manner;
- (g) have the right to freedom from discrimination, denial of health care or health services or of food and fluids on the basis of disability;

- (h) in particular, persons with albinism shall be entitled to the necessary support;
- (i) shall be entitled to health services which shall be provided to persons with disabilities in languages and forms of communication appropriate for persons with disabilities. 5

(2) The Minister, acting in consultation with the Minister responsible for Health, shall take all reasonable steps to ensure that all persons with disabilities enjoy the right to health as provided for in this section.

(3) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the right to health in the manner specified in this section. 10

### 36 Habilitation and rehabilitation

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry—

- (a) to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life; 15
- (b) to organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes— 20
  - (i) begin at the earliest possible stage and are based on the multidisciplinary assessment of individual needs and strengths;
  - (ii) support participation and inclusion in the community and all aspects of society are voluntary and are available to persons with disabilities as close as possible to their own communities including in rural areas; 25
- (c) to promote the development of initial and continuing training for professionals and staff working in the habilitation and rehabilitation services; 30
- (d) to promote the availability, knowledge and use of assistive devices and technologies designed for persons with disabilities as they relate to habilitation and rehabilitation.

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to promote access to habilitation and rehabilitation services and programmes by persons with disabilities. 35

### 37 Work and employment

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities—

- (a) have the right to work, on an equal basis with others and this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to all persons with disabilities; 40
- (b) have the right to be free from discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; 45

- (c) have the right on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe working conditions, including protection from harassment, and the redress of grievances;
- 5 (d) have the right to exercise their labour and trade union rights on an equal basis with others;
- (e) have the right to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- 10 (f) shall be protected from servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

(2) Programmes policies and laws shall not be discriminatory if they are proportionate to the objects and rights set out in this section and if they are intended—

- 15 (a) to promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- (b) to promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- (c) to employ persons with disabilities in the public sector;
- 20 (d) to promote the employment of persons with disabilities in the public, private and other sectors through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- 25 (e) to ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (f) to promote the acquisition by persons with disabilities of work experience in the open labour market;
- (g) to promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

30 (3) Two years after this Act has become law, government institutions and parastatals, with a minimum number of fifty (50) employees, shall ensure that two (2) *per centum* of its total workforce shall be persons with disabilities:

35 Provided that the Commission shall, before the expiry of two years, require government institutions and parastatals to submit to it a proposed plan of how they shall comply with the provisions of this subsection.

(4) For purposes of calculating two (2) *per centum* referred to in subsection (3), number of persons with disabilities that the government institutions and parastatals must have employed shall be rounded upwards to the nearest whole number.

40 (5) Government institutions and parastatals who employ more persons with disabilities that exceeds the quota of two (2) *per centum* referred to in subsection (3) shall be entitled to benefit from any programme of the Commission funded partly or wholly by monies from the Disability Fund to assist them to make the necessary accommodation to employ persons with disabilities.

45 (6) Private corporates shall be awarded with a tax credit of fifty United States dollars (US\$50) equivalent of Zimbabwe local currency per month, per employee with disabilities, up to a maximum of \$US2 500 per year of assessment.

(7) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the right to work and employment.

### 38 Adequate standard of living and social protection

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions and in particular the right to an adequate standard of living and social protection includes—

- (a) access to clean water; 10
- (b) access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- (c) access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care; 15
- (d) access by persons with disabilities to public housing programmes;
- (e) equal access by persons with disabilities to retirement benefits and programmes. 20

(2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to ensure that persons with disabilities enjoy the right to an adequate standard of living and social protection.

### 39 Participation in political and public life

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities have the right to effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected. 25

(2) The Minister shall, in consultation with other appropriate Ministers endeavour to take necessary steps to ensure that at least one (1) member of every decision making body of the State and of every entity controlled by the State having at least five (5) members shall be a person with a disability, to the end that every such body shall be compliant with this subsection no later than five (5) years after commencement of this Act. 30 35

(3) In implementation of subsection (2) the President may—

- (a) in the case of entities that are not independent, issue policy directions to the relevant Ministers responsible for the administration of the public entities referred to in subsection (2) to comply with the requisite percentage specified by the Minister; 40
- (b) in the case of independent entities, issue policy directions to the relevant Board responsible for the administration of the public entities referred to in subsection (2) to comply with the requisite percentage specified by the Minister;
- (c) request for further particulars from the Minister before issuing policy directions; 45
- (d) request for representations from the Minister or Board, as the case may be, responsible for the administration of the public entity concerned.

(5) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to enhance the participation of persons with disabilities in political and public life.

#### 40 Participation in cultural life, recreation, leisure and sport

5 (1) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities have the right to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities—

- (a) enjoy access to cultural materials in accessible formats;
- 10 (b) enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats; and
- (c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.
- 15

(2) The Minister shall take all necessary steps within the power and competence of his or her Ministry to ensure that all persons with disabilities—

- (a) have the right to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society;
- 20 (b) have the right on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages, deaf culture and deaf blind mode of communication;
- (c) shall have the opportunity—
- 25 (i) to participate, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (ii) to have an opportunity to organise, develop and participate in disability specific sporting and recreational activities on an equal basis with others, and to have access to appropriate instruction, training and resources;
- 30 (iii) to ensure access to sporting, recreational and tourism venues;
- (iv) where children have disabilities, to have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;
- 35 (v) to have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

(3) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to enhance the participation of persons with disabilities in cultural life, recreation, leisure and sport.

#### 40 41 Awareness raising

(1) The Minister shall take all necessary steps within the power and competence of his or her Ministry—

- (a) to raise awareness throughout society, including at the family level, regarding persons with disabilities and foster respect for the rights and dignity of persons with disabilities;
- 45 (b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities including those based on sex and age in all areas of life;

- (c) to promote awareness of the capabilities and contributions of persons with disabilities;
  - (d) to foster at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities; 5
  - (e) to encourage the media to portray persons with disabilities in a manner consistent with the Constitution, this Act and the Convention;
  - (f) to promote awareness training programmes regarding persons with disabilities and the rights of persons with disabilities;
  - (g) to disseminate awareness and knowledge of this Act and the Convention throughout society; 10
  - (h) to ensure that persons with disabilities are educated on their rights.
- (2) The Commission shall make appropriate recommendations for the amendment of the relevant laws and practices to enhance awareness raising in a manner consistent with this section. 15

## 42 Adjustment orders by Commission

- (1) This section shall apply to any —
- (a) premises to which members of the public are ordinarily admitted, whether on payment of a fee or otherwise; and
  - (b) services or amenities ordinarily provided to members of the public; and 20
  - (c) including premises owned or services or amenities provided by any statutory corporation or local authority.
- (2) Where the Commission considers that any premises, services or amenities referred to in subsection (1) are inaccessible to persons with disabilities by reason of any structural, physical, administrative or other impediment to such access, the Commission may, subject to this section, serve upon the owner of the premises or the provider of the service or amenity concerned an adjustment order— 25
- (a) setting out—
    - (i) a full description of the premises, service or amenity concerned; and 30
    - (ii) the grounds upon which the Commission considers that the premises, service or amenity is inaccessible to disabled persons;
 and
  - (b) requiring the owner or provider concerned to undertake at his own expense such action as may be specified in order to secure reasonable access by disabled persons to the premises, service or amenity concerned; and 35
  - (c) stipulating the period within which the action referred to in paragraph (b) shall be commenced and completed.
- (3) Before serving an order in terms of subsection (2) the Commission shall serve notice upon the person concerned— 40
- (a) specifying the grounds upon which the adjustment order is to be issued and the nature of the action which the Commission considers necessary to rectify the situation which has given rise to the proposed order; and
  - (b) stipulating the maximum period that the Commission considers reasonable for the implementation of the action it proposes to order; and 45

- (c) calling upon the person concerned, if he wishes to make representations, to make them to the Commission within thirty (30) days from the date of the service of the notice.

(4) After considering any representations made in terms of subsection (3), the Commission may issue, or refrain from or defer issuing, an adjustment order.

(5) A person upon whom an adjustment order is served in terms of subsection (2) may, within thirty (30) days of the service of the adjustment order, appeal to the High Court against such order on the ground that—

- (a) the person concerned cannot reasonably be expected to bear the whole or any part of the expense required in implementing the adjustment order; or
  - (b) the period stipulated for implementing the adjustment order is unreasonable; or
  - (c) the nature of the action required to be taken in terms of the adjustment order is, in the circumstances of the case, unreasonable; or
  - (d) adequate access to the premises, service or amenity concerned may be secured without recourse to the action required by the adjustment order or on any other ground.
- (6) Upon hearing an appeal in terms of subsection (5) the High Court may—
- (a) confirm, vary or set aside the adjustment order appealed against; and
  - (b) make such order as to the costs of the appeal as it thinks fit.

(7) Any person who contravenes an adjustment which has been served on him in terms of this section and with which it is his duty to comply shall be guilty of an offence and liable to a fine not exceeding level 7 or imprisonment for a period not exceeding one (1) year or to both such fine and such imprisonment.

### 43 Adjustment order by High Court

(1) Any person referred to in subsection (2) may by action in the High Court seek an adjustment order against any person responsible for any premises, services or amenities referred to in section 42(1) in the same circumstances and in the same terms as the Commission is empowered to make such an order under section 42.

- (2) An action under subsection 1 may be instituted by—
- (a) any person with disability or any organisation representing persons with disabilities; or
  - (b) subject to sections 23 and 24, any person acting on behalf of another person who cannot act for himself or herself;
  - (c) any member acting as a member, or in the interest, of a group or class of persons;
  - (d) any person acting in the public interest;
  - (e) the Zimbabwe Human Rights Commission.

### 44 Inspectors

(1) The Commission shall designate certain staff members of the Commission to be inspectors for purposes of enforcing the provisions of the Act subject to the approval of the Minister.

(2) In designating staff members of the Commission as Inspectors, the Minister shall issue to each Inspector a certificate signed by the Minister.

- (3) In order to monitor and enforce compliance with this Act and, subject to the conditions of his or her appointment, an inspector may —
- (a) enter any premises; and
  - (b) question any persons employed on the premises; and
  - (c) inspect, make copies of and take extracts from or remove any books, records or other documents; 5  
connected with or related to the practice of the person investigated and report to the Council:
- Provided that an investigator shall not enter any premises without the consent of the owner or occupier unless there are reasonable grounds for believing that the entry is necessary for the prevention, investigation or detection of an offence. 10
- (4) An inspector must immediately before entering premises or workplace in accordance with this section —
- (a) identify himself or herself and demand admission to the premises or workplace; 15
  - (b) notify the person in control of the premises or workplace of the purpose of the entry, unless there are reasonable grounds to believe that such notification might defeat the purpose of the search; and
  - (c) on request of the person in charge of such premises or workplace, produce the certificate referred to in subsection (2) to that person. 20
- (5) An inspector entering any premises or workplace referred to in subsection (4) may be accompanied by an interpreter, police officer or both.
- (6) An inspector who enters and inspects any premises under this section must conduct the entry and inspection with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy. 25
- (7) An inspector who removes anything from premises or workplace being searched must —
- (a) issue a receipt for it to the owner or person in control of the premises or workplace, as the case may be; and 30
  - (b) return it as soon as practicable after it has served the purpose for which it was removed.
- (8) Any person who fails to co-operate and furnish assistance to an inspector as contemplated in subsection (3) shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one (1) year or to both such fine and such imprisonment. 35

## PART VII

### ASSISTANCE FUND FOR PERSONS WITH DISABILITIES

#### **45 Establishment of Assistance Fund for Persons with Disabilities**

- (1) There is hereby established a Fund to be known as the Assistance Fund for Persons with Disabilities. 40
- (2) The Minister and the Commission shall respectively be the trustee and the administrator of the Fund.
- (3) The Commission shall administer the Fund subject to any directions given to it by the Minister 45

(4) The administration of the Fund shall be conducted on its behalf by the Chief Executive Officer of the Commission subject to any directions given to him or her by the Commission.

#### 46 Income of Fund

5 The Fund shall consist of—

- (a) moneys appropriated for the purpose of the Fund by Parliament; and
- (b) any gifts or grants made to the Fund by any person or authority or by the government of any country; and
- 10 (c) any interest derived from or increase in any assets of the Fund in any form whatsoever; and
- (d) any other moneys to which the Fund may be lawfully entitled.

#### 47 Object of Fund

Subject to this Act, the object to which the Fund is to be applied shall be the promotion of the rights of persons with disabilities.

#### 15 48 Application of Fund

(1) In order to give effect to the object of the Fund, the Fund shall give grants for the purpose of any one or more of the following—

- (a) establishing, running and maintenance of vocational training centres for persons with disabilities;
- 20 (b) facilitating manpower development with a view to providing persons with disabilities with academic, technical, vocational or other skills or any other training necessary to equip them for employment or gainful occupation;
- (c) facilitating physical, mental or social rehabilitation of persons with disabilities;
- 25 (d) assisting persons with disabilities involved in income-generating projects, whether as individuals or as members of groups, associations or co-operative societies;
- (e) subsidising assistive devices and technologies for persons with disabilities;
- 30 (f) for scholarships to persons with disabilities as part of a collective scholarship scheme;
- (g) for schemes for training and certifying personal assistants of persons with disabilities;
- 35 (h) facilitating programmes of persons with disabilities for the registered organisations for persons with disabilities and organisations of persons with disabilities.

(2) A portion of the monies of the Fund may be applied towards the expenses of administering the Fund but such portion shall not exceed two point five (5) *per centum* of the projected revenue of the Fund for the financial year in question.

#### 40 49 Holding of Fund

(1) All moneys received on behalf of the Fund shall be paid into a banking account and no moneys shall be withdrawn there from except by means of cheques or transfer signed by such persons as are authorised in that behalf by the Commission.

45 (2) Moneys of the Fund not immediately required for the purpose of the Fund may be invested in such manner as the Commission, in consultation with the Minister, may determine.

## 50 Part VII to apply to Disability Fund

Part VII shall apply with necessary changes to the Disability Fund in relation to the keeping of accounts and auditing of the Fund.

## PART VIII

### MISCELLANEOUS PROVISIONS

5

## 51 Department for Disability Affairs and Director thereof

(1) The Department of Disability Affairs established in terms of the Disabled Persons Act [*Chapter 17:01*] shall continue to be in existence.

(2) There shall be a Director for Disability Affairs whose office shall be a public office and form part of the Public Service.

10

(3) The functions of the Director shall be—

- (a) to liaise with the Commission in the formulation of proposals for measures referred to in section 5(1)(b) for submission to the Commission;
- (b) through liaison with the Ministries and local and other authorities involved, to secure the implementation of measures which have been recommended by the Commission in terms of section 5(1)(b) and approved by the Minister;
- (c) to liaise with the Commission in the co-ordination of the activities of institutions, associations and organisations concerned with the welfare and rehabilitation of disabled persons;
- (d) to do such other things as may be prescribed by or in terms of this Act.

15

20

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

## 52 Power of Minister to issue directives

25

(1) The Minister may give the Commission such general directions relating to the policy the Commission is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest, which policy directions must—

- (a) not be inconsistent with any provision of this Act; and
- (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; in particular the policy directions—
  - (i) must not be issued in relation to any particular application or appeal pending before the Commission and must not apply so as to influence or direct the Commission on the outcome of any particular application, appeal or other matter that is being considered by the Commission immediately before the directions are issued; or
  - (ii) must not prejudice the application of the rules of natural justice by the Commission in the exercise of its quasi-judicial functions;
- (c) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms;
- (d) clearly express the national interest at stake;
- (e) must be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event.

30

35

40

### 53 Seal of Commission

(1) The Commission shall have for use as occasion may require, a seal of such design as may be prescribed by the Minister.

(2) The seal of the Commission shall be kept in the custody of the Chief Executive Officer.

### 54 Offices and operations of Commission

(1) The head office and any other offices of the Commission shall be situated at places to be determined by the Commission in consultation with the Minister and the Minister responsible for Finance.

(2) All the offices established by the Commission shall be accessible to members of the public including people who use public transport as well as persons with disabilities.

(3) Subject to its mandate and for the purpose of carrying out its functions the Commission shall—

- (a) operate throughout the country; and
- (b) during discharge of its mandate, request support from existing institutions including any Independent Commission, local government, civil society organisations, media, faith-based institutions and other institutions that the Commission may deem necessary for the execution of its mandate, that will not compromise its independence.

(4) Where the Commission requires any act to be carried out and the Commission has not been empowered by law to carry out such act, the Commission shall call upon any institution of Government which is empowered by law to carry out such act and such institution shall be obliged to exercise its power at the request of the Commission.

(5) The Commission may make a report to the Parliament of any Government institution which refuses to co-operate with the Commission and the Parliament may, through the Chairperson of the relevant portfolio committee, order such institution to appear before the Parliament and explain why such institution has refused to co-operate with the Commission.

### 55 Reviews or decision

(1) Any person who is dissatisfied by the decision of the Commission or the Director for the Department of Disability Affairs, may, within thirty days, appeal to the Minister in writing.

(2) Upon receiving the appeal in terms of subsection (1), the Minister shall, within ten (10) days after receiving all the information which he or she may request pursuant to the appeal noted, communicate in writing his or her decision to the appellant.

(3) Any person who is dissatisfied by the Minister's decision shall, within thirty days, appeal to the High Court.

(4) A person who is aggrieved by the decision of the Minister under subsection (3), may refer the matter for review by the High Court, whereupon it may—

- (a) uphold the decision of the Minister; or
- (b) overturn the decision of the (with or without directions on how to proceed with the application) on any one or more of the following grounds—
  - (i) allowing extraneous or irrelevant considerations to affect the decision; or

- (ii) failure to take into account relevant considerations in arriving at the decision; or
- (iii) any material mistake of fact or law that tainted the decision; or
- (v) gross but unwilful irregularity in the proceedings or the decision of any person involved in making or contributing to the decision; or 5
- (vi) interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision;
- or
- (c) where there is a substantive factual dispute that cannot be resolved by the High Court on the evidence before it, or where the matter had previously been referred by the High Court to the Minister for investigation and report but the High Court is not satisfied with the report for any reason, refer the matter to the Minister with a direction to investigate the matter further and make a further report and recommendations to the Court (on the basis of which report the Court may then proceed in terms of paragraph (a) or (b). 10 15

## 56 Regulations

- (1) The Minister, after consultation with the Commission, may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act. 20
- (2) Regulations referred to in subsection (1) may provide for—
  - (a) the establishment of inclusive workshops for the training and employment of persons with disabilities;
  - (b) the manner in which registers established in terms of this Act may be kept; 25
  - (c) the manner in which impairment may be assessed to determine level of support needs for persons with disabilities;
- (3) Regulations referred to in subsection (1) may provide for—
  - (a) fines which shall not exceed level six (6) or imprisonment for a period not exceeding one (1) year or both; 30
  - (b) civil penalties which shall not exceed level six, which may accrue on daily basis up to maximum of one hundred and eighty days;

for the contravention of the regulations.

## 57 Repeal

The Disabled Persons Act [*Chapter 17:01*] is hereby repealed. 35

### FIRST SCHEDULE ((Section 4(5))

#### CONDITIONS FOR COMMISSIONERS

##### *Appointment of Members of Commission*

1. In the appointment of members of the Commission in terms of this Act, the Minister shall observe the provisions of sections 17, 18 and 236 of the Constitution. 40

##### *Terms of office and conditions of service of members*

2. (1) Subject to section 320 of the Constitution, a member shall hold office for a term of four years which may be renewable for one additional term only.

(2) Subject to paragraph 9, a Member shall hold office on such terms and conditions as the Minister may fix. 45

(3) A member shall vacate his or her office on expiry of the period for which the Member has been appointed.

(4) The term of office of the Members may be renewable subject to section 340 of the Constitution.

5 *Additional disqualification grounds for appointment as Member*

3. Subject to section 320(3) of the Constitution, no person shall be appointed as a member and no person shall be qualified to hold office as a Member who—

- (a) is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- 10 (b) has financial interest in any business connected with the provision of services to the Commission, or is engaged in any activity connected with any such service, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the Minister is satisfied that the interest or activity will not interfere with the person's impartial discharge of his or her duties as a member; or
- 15 (c) has, in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;
- 20 or
- (d) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
  - (i) in Zimbabwe, of an offence; or
  - 25 (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

*Vacation of office by member*

30 4. A member shall vacate his or her office and his or her office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the Minister of his or her intention to resign, or on the expiry of such other period of notice as he or she and the Minister may agree; or
- 35 (b) if he or she becomes disqualified in terms of paragraph 3 to hold office as a Member.

*Filling of vacancies of Commission*

5. Subject to this Act, on the death of, or vacation of office by a member, the Minister shall appoint a qualified person to fill the vacancy:

40 Provided that if as a result of the vacancy, the number of members falls below the minimum number specified in paragraph 7, the Minister shall fill the vacancy as soon as is practically possible.

*Chairperson and Vice-Chairperson of Commission*

45 6. (1) The Vice-Chairperson of the Commission shall perform the Chairperson's functions whenever the Chairperson is, for any reason, unable to perform them.

(2) The Chairperson or Vice-Chairperson of the Commission may at any time resign his or her office as such by one month's notice in writing to the Minister.

(3) Whenever the office of Chairperson of the Commission falls vacant, the Minister shall fill the vacancy within three months.

(4) Whenever the office of Vice-Chairperson of the Commission falls vacant, the Minister shall fill the vacancy within three weeks. 5

*Meetings and procedure of Commission*

7. (1) The Commission shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit. 10

(2) The Chairperson of the Commission may at any time convene a special meeting of the Commission.

(3) The Chairperson shall send written notice of any special meeting convened in terms of subparagraph (2) to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened: 15

Provided that if, in the opinion of the Chairperson, as the case may be, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given. 20

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the Chairperson of the Commission, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (2); or 25
- (b) the business specified in the request for the meeting, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (3).

(5) The Chairperson or, in his or her absence, the Vice-Chairperson shall preside at all meetings of the Commission:

Provided that, if the Chairperson and the Vice-Chairperson are both absent from a meeting of the Commission, the members present may elect one of their number to preside at that meeting as Chairperson. 30

(6) For any meeting of the Commission, nine members shall form a quorum.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present. 35

(8) Subject to subparagraph (9), at all meetings of the Commission each member present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to a deliberative vote. 40

(9) Any proposal circulated among all Members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed at a duly constituted meeting of the Commission and shall being incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a member requires that such proposal be placed before a meeting of the Commission, this subparagraph shall not apply to such proposal. 45

*Committees of Commission*

8. (1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest any of its functions as it considers appropriate:

5        Provided that the vesting of a function in a committee shall not prevent the Commission from itself exercising that function, and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(2) The Commission may appoint to a committee persons other than members.

(3) The Chairperson of the Commission or of a committee may at any reasonable time and place convene a meeting of that committee.

10        (4) The procedure of each committee shall be as fixed from time to time by the Commission.

(5) Subject to this paragraph, paragraph 7(2), (3), (4), (5), (7), (8) and (9) shall apply, with any necessary changes, to committees and their members as they apply to the Commission and its members.

15        (6) The quorum for any committee of the Commission shall be at least half the members of that committee.

*Remuneration and expenses of Members*

9. (1) Members shall be paid—

- (a) such remuneration, if any, as the Minister, may from time to time fix; and
- 20        (b) such allowances, if any, as the Minister in consultation with the Minister responsible for Finance, may from time to time fix to meet any reasonable expenses incurred by members in connection with the business of the Commission.

25        (2) The salary, allowances and other benefits payable to a member shall not be reduced during his or her tenure of office.

*Members to disclose certain connections and interests*

10. (1) In this paragraph—

“relative”, in relation to a member, means the member’s spouse, child, parent, brother or sister.

30        (2) Subject to subparagraph (3)—

- (a) if a member—
  - (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
  - (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member; or
  - (iii) knows or has reason to believe that a relative of his or hers—
    - 40        A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
    - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member;

or

- (b) if for any reason the private interests of a member come into conflict with his or her functions as a member;

the Member shall forthwith disclose the fact to the Commission.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph. 5

(4) Any member who knowingly and without lawful cause contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. 10

*Validity of decisions and acts of Commission*

11. No decision or act of the Commission or act done under the authority of the Commission shall be invalid on the grounds that— 15

- (a) the Commission consisted of fewer than the minimum number of persons specified in paragraph 7(6);or
- (b) a disqualified person acted as a member at the time the decision was taken or act was done or authorised:

Provided that the Commission shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in subparagraph (a) or (b). 20

*Minutes of proceedings of Commission*

12. (1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission to be entered in books kept for the purpose. 25

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned. 30

*Execution of contracts and instruments by Commission*

13. Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

**SECOND SCHEDULE (Section 5(2))** 35

ANCILLARY POWERS OF COMMISSION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and any interest therein and any rights concessions, grants, powers and privileges in respect thereof. 40
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets, or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose or otherwise deal with any assets or part of any 45

- assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
  6. To insure against losses, damages, risks and liabilities which it may incur.
  7. In consultation with the Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Commission considers appropriate or necessary for the proper exercise of its functions.
  8. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to staff of the Commission as it considers fit.
  9. To provide pecuniary benefits for staff of the Commission on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, provident funds or make such other provision as may be necessary to secure for its staff and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
  10. To purchase, take on lease or in exchange or otherwise acquire land for residential purposes or dwellings-houses for use or occupation by staff of the Commission.
  11. To construct dwellings, outbuildings or improvements for use or occupation by Members of the Commission.
  12. To provide or guarantee loans made to members of the Commission for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling houses or land which are the property of its members, subject to any conditions that may be imposed by the Commission from time to time.
  13. To provide security in respect of loans by the deposit of securities, in which the Commission may invest such money as it may consider necessary for the purpose.
  14. Subject to any conditions that may be imposed by the Commission from time to time, to provide loans to—
    - (a) members of the Commission for the purpose of purchasing vehicles or other equipment to be used by the Members in carrying out their duties; or
    - (b) Members of staff for the procuring of their vehicles which may be resold to such members after five years:

Provided that—

    - (i) the Commission may fix further terms and conditions for this vehicle scheme;
    - (ii) the loan shall not exceed twelve months' salary or wages payable to the members of the Commission and members of staff concerned, for any purpose on such security as the Commission considers appropriate.
  15. To register, in the Commission's name, any property, whether movable or immovable, purchased for any member of the Commission or member of staff through loan or loan guarantee until the loan or loan guarantee has been discharged.
  16. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the Commission, members of staff, and in that connection to provide

or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training:

Provided that the duration of such training shall not exceed two years.

17. To engage in any activity, either alone or in conjunction with civil society organisations and other organisations or international agencies, to promote better understanding of the rights of persons with disabilities. 5
18. To do anything which by this Act or any other enactment is required or permitted to be done by the Commission.
19. Generally, to do all such things that are conducive to the performance of the functions of the Commission in terms of this Act or any other enactment. 10