[Chap3302]CHAPTER 33:02
HANDICAPPED PERSONS
ARRANGEMENT OF SECTIONS

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48 of 1971
9 of 1986

An Act to make provision for the improvement of the care, assistance and education of handicapped persons in Malawi; to establish a Council for the handicapped; to provide for the voluntary registration of handicapped persons; to provide for the registration, direction, control and regulation of associations whose objects include the welfare of the handicapped; and further to provide for matters incidental thereto and connected therewith

[1ST OCTOBER 1972]

PART I
PRELIMINARY

[Ch3302s1]1. Short title

This Act may be cited as the Handicapped Persons Act.

[Ch3302s2]2. Interpretation

In this Act, unless the context otherwise requires—

"association" has the meaning assigned to it by section 20;

"authorized officer" means a medical practitioner and any other person authorized by the Minister for the purposes of this Act;

"Chairman" means the Chairman of the Council appointed and designated pursuant to section 4;

"Council" means the Malawi Council for the Handicapped established by section 3;

"the handicapped" means those persons who, by reason of any defect or impairment of the mind, senses or body, congenital or acquired, are unable to take part in normal education, occupation and recreation, or who, by reason of any such defect or impairment, require special assistance or training to enable them to take part in normal education, occupation or recreation, and

"handicap" shall be construed accordingly;

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

"Minister" means the Minister for the time being responsible for the administration of this Act;

"Vice-Chairman" means the Vice-Chairman of the Council elected pursuant to section 4.

PART II
ADMINISTRATION

[Ch3302s3]3. Establishment of Council

There is hereby established a Council to be known as the Malawi Council for the Handicapped (hereinafter referred to as "the Council") which shall be a body corporate by that

name with perpetual succession and common seal and shall be capable of suing and being sued, of acquiring, holding, letting and otherwise disposing of land and, subject to the provisions of this Act, of performing all such acts and things as a body corporate may by law perform.

[Ch3302s4]4. Composition of the Council

9 of 1986(1) The Minister shall, by notice in the Gazette, appoint the members of the Council.

(2) The Council shall consist of—

(a) one member designated by the Minister as Chairman;

(b) two independent members who shall be persons with wide and specialized knowledge in the field of the handicapped;

(c) five other members.

(3) The Minister may appoint to the Council such additional members, not exceeding two, as he deems essential to the Council in the exercise of its functions and powers.

(4) The Council shall, at its first meeting, elect one of its members to be Vice-Chairman of the Council for the period ensuing from the date of that meeting to the date of its first annual general meeting, and shall, at its first annual general meeting, and at each and every annual general meeting held thereafter, elect one of its members to be Vice-Chairman of the Council for the ensuing year.

[Ch3302s5]5. Secretary/ Registrar and officers

(1) There shall be a Secretary to the Council who shall be appointed by the Minister, and who shall be the Registrar for all of the purposes of this Act.

(2) The Minister may appoint such other officers of the Council as he may deem necessary for the proper administration of the affairs of the Council.

(3) The Minister shall determine the terms and conditions of appointment of the Secretary and other officers appointed pursuant to subsections (1) and (2).

(4) The Secretary shall be the chief executive officer of the Council and shall work under the direction of, and be responsible to, the Council for the performance of any duties assigned to him by this Act or delegated to him by the Council, as the case may be.

(5) The Secretary may delegate or assign any administrative or other duties to any officer appointed pursuant to subsection (2) and each officer so appointed shall be responsible to the Secretary for the performance of any such duties lawfully delegated or assigned to him.

(6) The Secretary and every officer appointed pursuant to this section shall be paid such salaries and emoluments as shall be fixed by the Minister in the terms of their respective appointments, and such salaries and emoluments shall be paid to them out of the funds of the Council.

(7) Notwithstanding the foregoing provisions of this section, the Minister may designate an officer in the public service to be the Secretary to the Council, or may designate officers in the public service to be officers of the Council, and in any such event the provisions of subsection (6) shall not apply in respect of such Secretary or officers so designated by the Minister.

[Ch3302s6]6. Tenure of office of members

(1) Members of the Council shall, subject to the provisions of this section, hold office for such period, being not more than three years, as may be specified in their respective appointments.

(2) A retiring member shall be eligible for re-appointment.

(3) On the expiry of the period for which a member is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) The office of a member shall be vacated—

(a) upon his death;

(b) if he is absent from three consecutive meetings of the Council without the permission of the Council;

(c) upon the expiry of one month's notice in writing of his intention to resign his said office given by him to the Minister;

(d) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;

(e) if he becomes physically or mentally incapable of performing his duties as a member of the Council.

[Ch3302s7]7. Remuneration of members of the Council

Any member of the Council who is not an officer in the public service shall be paid, out of the funds of the Council, such remuneration and allowances, if any, as the Minister may in his case fix.

[Ch3302s8]8. Proceedings of the Council

(1) The Council shall meet at such places and times as the Chairman may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the Chairman.

(2) At any meeting of the Council more than half the number of members of the Council shall constitute a quorum and all acts, matters or things authorized or required to be done by the Council shall be decided by resolution by majority vote of the members present at any such meeting.

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

(4) The person presiding at any meeting of the Council shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(5) Subject to the provisions of subsection (2), no act, decision or proceedings of the Council shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Council being defective.

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

(7) The Council may appoint committees for any purposes that it may deem expedient and may, with the prior consent of the Minister, co-opt any person to be a member of any

committee so appointed. The Chairman of the Council shall, by virtue of his office, be a member of every committee so appointed.

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

(9) The Council shall hold in each year an annual general meeting within three months of the first day of the financial year of the Government .

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

[Ch3302s9]9. Non-liability of members of Council

No member of the Council, or of any committee of the Council, shall be liable for any act or default of his, or of the Council, done in the exercise in good faith of the functions or powers of the Council.

[Ch3302s10]10. Functions of the Council

The Council shall act as an agent of the Government and, in promoting the welfare of the handicapped, its functions shall be—

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

(b) to promote public interest in the welfare and care of the handicapped;

(c) to administer vocational and special training centres for the handicapped;

(d) to administer rehabilitation services for the handicapped and to administer services for the care and welfare of handicapped persons;

(e) to raise and receive funds and donations which it may apply for the welfare of the handicapped.

[Ch3302s11]11. Powers of the Council

The Council shall have power—

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

(b) to enter into any contract or agreement;

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

(d) to augment the earnings of persons registered pursuant to section 19, or of any person engaged in promoting the welfare, education, training or employment of the handicapped;

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

(f) to borrow and raise moneys;

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

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

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

[Ch3302s12]12. Authentication of the Common seal

The common seal of the Council shall be authenticated by the signature of the Chairman or of some other member of the Council authorized by the Chairman, in writing, in that behalf and such seal shall be officially and judicially noticed.

[Ch3302s13]13. Annual report

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

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

[Ch3302s14]14. Exemption from taxes

The Council shall be exempt from any tax on income, profits or capital gains.

[Ch3302s15]15. Funds of the Council

The funds of the Council shall consist of—

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

(b) such moneys as may be given to the Council by way of donation, contribution, collection or gift; and

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

[Ch3302s16]16. Accounts

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

[Ch3302s17]17. Appointment of auditors and audit of Council's accounts

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

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

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

(4) The auditors shall be entitled at all reasonable times to require from all members, the Secretary and officers and all other persons in the employ of the Council such information and explanations as may be necessary for the performance of their duties as auditors.

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

[Ch3302s18]18. Duties of auditors

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

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

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

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

PART III

REGISTRATION

[Ch3302s19]19. Registration of the handicapped

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

(2) Any person wishing to be registered as handicapped shall make or cause to be made on his behalf an application in the prescribed form to the Council.

(3) On receipt of an application under the provisions of subsection (2) the Council shall cause the person by whom or on whose behalf the application is made to be examined by an authorized officer.

(4) Where an authorized officer has examined any person under the provisions of subsection (3), he shall forward a certificate in the prescribed form to the Council stating whether he is satisfied that the person examined by him is a handicapped person.

(5) Where an authorized officer certifies that he is satisfied that a person examined by him under this section is a handicapped person, the Council shall, on receipt of such certificate, direct the Registrar to cause the name of that person to be entered in the register and to issue a certificate of registration, in the prescribed form, to the person so registered.

(6) Where any person, who is registered pursuant to this section, is subsequently examined by a medical practitioner and such medical practitioner certifies in the prescribed form that the said person is no longer a handicapped person, the Council shall, on receipt of such certificate, cause the Registrar to strike the name of the said person off the register.

[Ch3302s20]20. Registration of associations

(1) A Register of Associations in the form prescribed (hereinafter referred to as "the register") shall be kept and maintained by the Council.

(2) Every group or body of persons, corporate of unincorporate, other than any body corporate established by any Act of Parliament expressly enacted for that purpose, formed or operating within Malawi and having as one of its objects the promotion of the welfare of the

handicapped (in this Act referred to as an “association") shall apply to the Council in the manner prescribed, for registration as a registered association under this Act.

(3) Every association applying for registration pursuant to subsection (2) shall, in its application—

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

(b) submit together with its application a copy of the memorandum and articles, constitution or rules, as the case may be, of the association.

(4) As soon as is practicable after receiving an application pursuant to subsection (2), the Council shall consider the same and, having satisfied itself as to the suitability of the memorandum and articles, constitution or rules of the association and the good faith of its officers and members, the Council may direct the Registrar to cause such association to be registered in the register.

(5) Where any amendment is made to the memorandum and articles, constitution or rules of an association registered pursuant to this section, the association shall forthwith give particulars thereof in writing to the Council.

(6) An association registered pursuant to this section shall, not later than the last day of April in each year, submit to the Council a report of the operations of the association together with a balance sheet duly certified by auditors elected at the annual general meeting of the association.

[Ch3302s21]21. Power to impose conditions

(1) The Council may before registration of an association or at any time thereafter impose conditions—

(a) limiting the number of the handicapped in any age group who may be maintained at any one time in any institution operated or managed by the said association;

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

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

(d) providing for the keeping by any association of records of the handicapped admitted into and maintained in any such institution;

(e) generally for securing the wellbeing of the handicapped persons admitted into any such institution.

(2) Any association upon which conditions are imposed by the Council pursuant to subsection (1) shall be notified by the Council in writing of the terms of such conditions.

(3) Any conditions imposed by the Council under the provisions of this section may, at any time, be varied or revoked by the Council and the Council shall, in writing, notify the association concerned of such variation or revocation.

(4) Any association aggrieved by any condition imposed, or by any variation of any such condition made, by the Council under this section may, within thirty days after being notified of such imposition or variation, appeal to the Minister, who may dismiss the appeal, or revoke the condition imposed or variation made, or vary such condition or variation and, in this regard, may exercise generally all or any of the powers of the Council under subsection (1).

(5) The decision of the Minister on any appeal pursuant to subsection (4) shall be final and shall not be subject to appeal to or question in any court of law, and the Minister shall not be required to assign any reason for any such decision.

[Ch3302s22]22. Inspection of institutions

(1) Any public officer authorized by the Minister may, at all reasonable times, enter any institution and may inspect the same, and the facilities provided therein for the handicapped, the arrangements for their welfare, education, training, rehabilitation, health and employment and any records kept pursuant to this Act.

(2) Any person who hinders or obstructs any such authorized public officer in the exercise of any of the powers conferred by subsection (1) shall be guilty of an offence and shall be liable to a fine of one hundred Kwacha.

[Ch3302s23]23. Penalties for failing to register

If at any time after three months after the commencement of this Act—

(a) any handicapped person is admitted to, or found in any institution operated by an association which is not registered under section 20; or

(b) any condition lawfully imposed in relation to an association under section 21 is contravened or not complied with,

every person concerned in the management of the said association and any person in control or in charge of the said institution shall be guilty of an offence, and shall be liable, in the case of a first offence, to a fine of two hundred Kwacha, and in the case of a second or subsequent offence, to a fine of four hundred Kwacha and to imprisonment for six months.

PART IV

MISCELLANEOUS

[Ch3302s24]24. Restrictions on seeking subscriptions, contributions or collections

(1) Save with the written permission of the Council, but without prejudice to any other law, no person shall—

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

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

(2) Any person who contravenes subsection (1) shall be liable to a fine of one hundred Kwacha and to imprisonment for six months and the court before which the person is convicted of an offence under this section may order that the money, goods or other things collected or

received by him by way of a subscription, donation, contribution or gift, shall be forfeited and paid or given to the Council:

Provided that it shall be a sufficient defence if the person charged with an offence under this section proves that he was acting for and on behalf of an association registered under section 20.

[Ch3302s25]25. Minister may make regulations

The Minister may make regulations for the better administration and efficient working of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for—

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

(b) the criteria to be applied when examining any person who has applied to be registered under section 19;

(c) anything to be prescribed under this Act.