

CHAPTER 184

THE DISABLED PERSONS (EMPLOYMENT) ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 184

THE DISABLED PERSONS (EMPLOYMENT) ACT

An Act to make provision for enabling persons handicapped by disablement to secure employment or work on their own account and for purposes connected with those matters.

[1st January, 1984]

[G.N. No. 163 of 1983]

Act No. 2 of 1982

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh184s1]1. Short title and application

(1) This Act may be cited as the Disabled Persons (Employment) Act.

(2) The provisions of this Act, other than the penal provisions, shall apply to and be carried into effect by the departments of Government, local authorities and parastatal organisations as if they were employers within the meaning of this Act.

[PCh184s2]2. Interpretation

In this Act, unless the context otherwise requires—

"Council" means the National Advisory Council established by section 3;

"Commissioner" means the Commissioner of Social Welfare;

"Committee" means a Committee established by section 5;

"disabled person" means a person who, on account of injury, disease or congenital deformity, is substantially handicapped in obtaining employment, or in undertaking work on his own account, of a kind which apart from that injury, disease or deformity would be suited to his age, experience and qualification; and

(a) the expression "disablement" in relation to any person shall be construed accordingly;

(b) for the purpose of the definitions contained in this paragraph, the expression "disease" shall be construed as including a physical or mental condition arising from imperfect development of any organ;

"Minister" means the Minister for the time being responsible for social welfare of the disabled persons.

PART II

ADMINISTRATION (ss 3-6)

[PCh184s3]3. National Advisory Council

(1) The Minister shall establish for the purpose of this Act a National Advisory Council.

(2) The provisions of the First Schedule to this Act shall have effect with respect to the constitution and proceedings of the Council.

[PCh184s4]4. Functions of the Advisory Council

(1) The functions of the Council shall be to advise and assist the Minister in matters relating to the employment, undertaking of work on their own account or training, of disabled persons generally and in particular, the Council may advise the Government on—

(a) the formulation of programmes which may secure the educational, vocational and social integration of handicapped persons;

(b) all matters relating to the promotion of the welfare of the disabled;

(c) the co-ordination of policies and programmes and the provision of grants relating to the disabled persons;

(d) the promotion of the collection and dissemination of information relating to programmes, services, facilities, goods, housing, accommodation and employment for disabled persons and the maintenance of inventories thereof for the information and advice of disabled persons;

(e) the training or facilitation of the training of persons as counsellors or administrators who will carry out programmes for the vocational rehabilitation of disabled persons.

(2) The Council may exercise such other functions as may be assigned to it by the Minister.

[PCh184s5]5. Establishment and constitution of Committees

(1) The Minister shall appoint for every district a District Committee and every region, a Regional Committee.

(2) The provisions of the Second Schedule and the Third Schedule shall apply respectively to the constitution of the District and Regional Committees and the provisions of the First Schedule to this Act shall, with modifications, have effect, with respect to the meetings and proceedings of the committees.

[PCh184s6]6. Functions of Advisory Committees

The functions of a Committee shall be to advise upon and report on any matter submitted to it for that purpose by the Council or by the Minister.

PART III

REGISTRATION OF DISABLED PERSONS (ss 7-10)

[PCh184s7]7. Register of disabled persons

(1) The Commissioner shall establish and maintain a register of disabled persons to be known as the Disabled Persons Register.

(2) The register shall be kept in such form, and entries in it, and alterations and removals of entries in it and from it shall be made in such manner as the Commissioner may determine.

(3) A person whose name is for the time being in the register is in this Act referred to as a "person registered as handicapped by disablement".

(4) The Minister may make regulations prescribing the manner in which the fact that a person's name is for the time being in the register may be proved, including, without prejudice to the generality of this power, regulations as to the issue of certificates for that purpose and as to the custody, use and delivery up of those certificates.

[PCh184s8]8. Disabled person to make application for registration

A person who desires his name to be entered in the register shall make application to the District Committee in that behalf in the prescribed manner, and, on an application in that behalf duly made—

(a) if the District Committee is satisfied that the applicant is a disabled person and that his disablement is likely to continue for twelve months or more from the time of entry of his name in the register, that any prescribed condition as to the entry of names in the register applicable to him is satisfied and that he is not subject to any prescribed disqualification in that behalf, it shall forward his name, through the Regional Committee, to the Commissioner, with a recommendation that his name be entered in the register;

(b) where a recommendation has been made by a District Committee to the Commissioner in respect of a disabled person that his name be entered in the register, the Commissioner shall enter the name of the applicant in the register:

Provided that where he is not satisfied on any matter he may refer the application back to the District Committee for their consideration on any issue as to which he is not so satisfied.

[PCh184s9]9. Entry of names of disabled persons in register

(1) The Minister may make regulations prescribing conditions for registration of a person as disabled person.

(2) The matter which may be prescribed under this section, shall be such as must in the opinion of the Minister be so prescribed in order to secure the fact that a person's name is in the register will afford reasonable assurance of his being a person capable of entering into and keeping in employment, or of undertaking work on his own account, under the conditions under which in accordance with the provisions of this Act employment may be offered to him or such work as may be available for him.

[PCh184s10]10. Duration of registration

(1) Subject to the provisions of the subsections (2) and (3), when the name of a person has been entered in the register it shall be retained for so long as that person continues to be a disabled person and until that person attains the age at which if he were working under normal conditions he would retire voluntarily.

(2) The Minister may make regulations prescribing matters which are to constitute conditions of, or disqualifications from, the retention in the register of the names of any persons either generally or in particular circumstances.

(3) If at any time while the name of any person is retained in the Disabled Persons Register the Minister is satisfied, after referring the matter to a District Committee for

their recommendations, that any prescribed condition as to the retention of names in the register applicable to that disabled person is not satisfied or that he is subject to any prescribed disqualification in that behalf, his name shall be removed from the register.

(4) Notwithstanding anything in this section contained, a person registered as a disabled person shall be entitled to have his name removed from the register on making a written application to the Commissioner for it to be removed.

PART IV

VOCATIONAL TRAINING AND INDUSTRIAL REHABILITATION COURSES FOR THE DISABLED (ss 11-12)

[PCh184s11]11. Vocational training courses

(1) The Minister may provide or make arrangements for the provision by other persons of, facilities, in this Act referred to as "vocational training courses", for the training of disabled persons, not being under the age of fifteen years who are in need of training in order to render the disabled persons competent to undertake employment, or work on their own account, of a kind suited to their age, experience and general qualifications.

(2) The Minister may make arrangement with any other Government department, person or body of persons, for the exercise by that department, person or body of persons, of any of the powers conferred on him by this section.

[PCh184s12]12. Industrial rehabilitation courses

(1) The Minister may provide or make arrangements for the provision by other persons, or body of persons such facilities as are mentioned in this section, in this Act

referred to as "industrial rehabilitation courses", for disabled persons, not being under the age of fifteen years, who, by reason of unfitness arising from their injury, disease or deformity, are in need of such facilities in order to render them fit for undertaking employment, or work on their own account, of a kind in which they were engaged before they became disabled or of some kind suited to their age, experience and qualifications or for making use of a vocational training course.

(2) The facilities which may be provided under this section shall consist of facilities where such persons may, under adequate medical supervision and under circumstance conducive to the restoration of fitness, obtain physical training exercise and occupation conducive to the restoration of that fitness, and such other incidental facilities as may appear to the Minister to be requisite for enabling persons attending an industrial rehabilitation course to obtain the full benefit of such a course.

PART V

PROVISIONS FOR ENABLING REGISTERED DISABLED PERSONS TO OBTAIN EMPLOYMENT OR TO UNDERTAKE WORK ON THEIR OWN ACCOUNT (ss 13-23)

[PCh184s13]13. Definition of "employer"

(1) For the purposes of this Part the expression "employer" means any employer to whom the provisions of this Act apply who for the time being has, or in accordance with normal practice and apart from temporary circumstances would have, in his employment persons to the number of not less than fifty or such lesser number as may be specified from

time to time either generally or in respect of any particular occupation, trade, industry or undertaking, by an order made by the Minister.

(2) In this Act references to "taking into employment" shall be construed as including references to the engagement by an employer of a person previously in his employment, but not if the new period of employment begins immediately on the ending of an earlier period or after an interval attributable to the employed person's illness or being on holiday or to other temporary courses.

[PCh184s14]14. Establishment of Employers' Register

(1) The Minister shall establish and maintain registers of employers to be known as Employers' Registers and for such purposes may by order establish such registration centres in, and for such places or areas as he may deem expedient.

(2) The Minister may make regulations prescribing the form of the registers, the manner in which entries and alterations in those register and removals from those registers shall be made, the particulars in relation to employers in general or in respect of any particular employer or group of employers which shall be provided for such registration, and generally any other particulars which must in the opinion of the Minister, be prescribed in order to show the availability and details of employment capable of being offered by employers.

[PCh184s15]15. Obligation to give employment to disabled

(1) It shall be the duty of every registered employer to give employment to persons who are registered as disabled persons to the number which may, from time to time be

fixed by regulations made in that behalf by the Minister and, where he is not already doing so at times when vacancies occur, to allocate for that purpose:

Provided that this subsection shall not apply where an employer can prove to the satisfaction of the Minister that—

- (a) even after reasonable effort he has failed to get any disabled person;
- (b) taking into consideration the nature of the employment, he cannot get a disabled person with the necessary skill or experience required for the employment; or
- (c) taking into consideration the nature of the work or the circumstance of the place of work it may not be possible to employ a disabled person; or
- (d) taking into consideration the condition of the disabled person he is not or would not be able to perform adequately the work genuinely and reasonably required for the employment.

(2) Subject to the provisions of subsections (3) and (4), a person to whom this section applies shall not at any time take, or offer to take, into his employment any person other than a person registered as a disabled person, if immediately after the taking in of that person the number of persons so registered in the employment of the person to whom this section applies would be less than his quota as fixed by the Minister under regulations made under this section.

(3) Subsection (2) of this section shall not apply to a person's taking, or offering to take, into his employment at any time a person whom apart from that subsection it would have been his duty to take into his employment at that time either—

(a) by virtue of any law whether passed before or after the passing of this Act;
or

(b) by virtue of an agreement to reinstate him in his employment entered into or before the date appointed for the coming into operation of subsection (2) of this section.

(4) Subsection (2) of this section shall not apply to a person's taking, or offering to take into his employment any person in accordance with a permit issued by the Minister under this Act in that behalf.

[PCh184s16]16. Employer not to discontinue employment of a person registered as handicapped

A person to whom this section applies, who for the time being has in his employment a person registered as a disabled person shall not, unless he has reasonable cause for doing so, discontinue the employment of that person, as if immediately after the discontinuance the number of persons so registered in the employment of the person to whom this section applies would be less than his quota as fixed by the Minister under regulations made under section 15:

Provided that this subsection shall not have effect if immediately after the discontinuance the employer would no longer be a person to whom this section applies.

[PCh184s17]17. Offence not to offer employment or to discontinue employment of a person registered as handicapped by disablement

(1) Any person who contravenes subsection (2) of section 15 and subsection (2) of section 16 commits an offence and is liable upon summary conviction to a fine not

exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) A prosecution for contravening of subsections (2) of section 15 and subsection by (2) of section 16 shall not be instituted against any person without the consent of the Director of Public Prosecutions.

[PCh184s18]18. Permits for employment of persons not registered where quota condition not satisfied

(1) On an application in that behalf being made in the prescribed manner by any person to whom section 15 of this Act applies, the Minister may grant a permit for the purposes of subsection (4) of section 15 if it appears to him, to be expedient so to do having regard to the nature of the work for which the applicant desires to take a person or persons into his employment and the qualifications and the suitability for the work of any person or persons registered as disabled persons who may be available thereof, or if he is satisfied that there is no such person or an insufficient number of such persons available thereof.

(2) A permit may be granted either unconditionally or subject to any conditions relating to the employment of the person or persons to whom the permit relates, and may be granted as respects the employment either of one or more persons specified or described therein or of a specified number of persons.

(3) If an application is made and the Minister is not satisfied that the case is one in which any permit or such a permit as is applied for, ought to be granted, or is of the opinion that conditions to which the applicant objects ought to be attached to a grant, then

if the applicant so request, the Minister shall refer the application to a District Committee for their recommendations and shall determine what conditions ought to be granted, only after considering the recommendations of the Committee.

[PCh184s19]19. Appropriation of vacancies in certain employments to registered persons only

(1) The Minister may, after consultations with organisations representing employers and workers respectively or both employer and workers as he thinks fit, by order designate classes of employment as classes to which this section is to apply, being such classes of employment as appear to him to afford specially suitable opportunities for the employment of disabled persons.

(2) Subject to subsection (3) no person shall take, or offer to take, into his employment in an employment of a class to which this section applies any person other than a person registered as handicapped by disablement, or cause or permit a person in his employment other than a person registered as handicapped by disablement to take up with him employment of a class to which this section applies.

(3) The provisions as to taking a person into his employment in pursuance of a statutory or contractual obligation, and as to permits of subsections (3) and (4) of section 15 and section 18 respectively of this Act, shall have effect in relation to subsection (2) of section 16 of this Act.

(4) Any person who contravenes subsection (2) of this section commits an offence and upon conviction is liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and

i m p r i s o n m e n t .

[PCh184s20]20. Power of entry

(1) The Commissioner or any person authorised by him may at all reasonable times enter any premises of an employer for the purpose of inspection and for ensuring compliance with the provisions of this Act.

(2) Any person who obstructs the Commissioner or any person authorised by him in carrying out his duties under this section commits an offence and upon conviction is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

[PCh184s21]21. General penalty

Any person who contravenes any provisions of this Act where no penalty has been provided commits an offence and upon conviction is liable to a fine not exceeding ten thousand shillings or to imprisonment not exceeding twelve months or to both such fine and imprisonment.

[PCh184s22]22. Delegation by the Commissioner

In relation to any particular matters or class of matters or to any particular place, area, district or region the Commissioner may by writing under his hand delegate any of his powers under the provisions of this Act so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified in the place, area, district or region specified in the instrument of delegation.

[PCh184s23]23. Transitional provisions

The Minister may, within six months from the date of commencement of this Act, by order published in the Gazette, make such transitional provisions which he may deem necessary to give effect or to enable effect to be given to the purposes of these provisions.

FIRST SCHEDULE

(Section 4(2))

1. Composition of the Council

The Council shall consist of—

- (a) a Chairman, who shall be appointed by the Minister;
- (b) the Commissioner for Social Welfare, who shall be the Secretary;
- (c) four members appointed by the Minister representing one each of the

following—

- (i) The Ministry responsible for Health;
- (ii) The Ministry responsible for Industries;
- (iii) The Ministry responsible for Education;
- (iv) The Office of the Prime Minister;
- (v) The Ministry responsible for Manpower Development;
- (vi) The Association of Tanzania Employers;
- (vii) The Ministry responsible for Legal Affairs;
- (viii) The Association of the Disabled;
- (ix) The National Council of Social Welfare Services;
- (x) The Trade Unions; and

(d) five other persons appointed by the Minister.

2. Vice-Chairman

The members shall elect one of their number to be the Vice-Chairman of the Council, and any member elected as Vice-Chairman shall, subject to his continuing to be a member, hold office for a term of one year from the date of election, and shall be eligible for re-election.

3. Absent member to be represented at meetings

If a member of the Council who is a member by virtue of his holding some other office is unable for any reason to attend any meeting, he may nominate in writing the person from his organisation to attend that meeting in his place.

4. Casual vacancies

Where any member ceases to be a member for any reason before the expiration of his term of office, the appointing authority may appoint another person in his place and the person so appointed shall hold office for the remainder of the term of office of his predecessor.

5. Power of Chairman and Vice-Chairman

(1) The Chairman shall preside at all meetings of the Council.

(2) Where at any meeting of the Council the Chairman is absent, the Vice-Chairman shall preside.

(3) In the absence of both the Chairman and the Vice-Chairman at any meeting of the Council, the members present may, from amongst their number elect a temporary Chairman who shall preside at the meeting.

(4) The Chairman, Vice-Chairman or a temporary Chairman presiding at the meeting of the Council, shall have a vote and, in the event of an equality of votes, shall have a casting vote in addition to his deliberative vote.

6. Meeting and procedure of the Council

(1) The Council shall ordinarily meet for the transactions of its business not less than twice during every year and at such additional times as may be fixed by the Chairman or, if he is absent from the United Republic or unable for any reason to act, the Vice-Chairman.

(2) The Chairman or, in his absence from the United Republic, the Vice-Chairman may, and upon application in writing by at least five members, shall convene a special meeting of the Council at any time.

(3) The Secretary of the Council shall give to each member adequate notice of the time and place of each meeting.

(4) The Council may invite any person who is not a member to participate in the deliberation at any meeting of the Council, but any person so invited shall not be entitled to vote.

7. Quorum

At any meeting of the Council not less than one half of the members in office for the time being shall constitute a quorum.

8. Decisions of the Council

(1) Subject to the provisions relating to a casting vote, all questions at a meeting of the Council shall be determined by a majority of the votes of the members present.

(2) Notwithstanding subparagraph (1), a decision may be made by the Council without a meeting by circulation of the relevant papers among the members, and the expression in writing of the views of the majority of the members.

9. Minutes of meetings

(1) The Council shall cause to be recorded and kept minutes of all business conducted or transacted at its meeting, and the minutes of each meeting of the Council shall be read and confirmed, or amended and confirmed, at the next meeting of the Council and signed by the person presiding at the meeting.

(2) Any minutes purporting to be signed by the person presiding at a meeting of the Council shall, in the absence of proof of error, be deemed to be a correct record of the meeting whose minutes they purport to be.

10. Vacancies, etc., not to invalidate proceedings

The validity of any act or proceeding of the Council shall not be affected by any vacancy among its members or by defect in the appointment of any of them.

11. Council may regulate its own proceedings

Subject to the provisions of this Schedule, the Council may regulate its own proceedings.

SECOND SCHEDULE

COMPOSITION OF THE DISTRICT COMMITTEE

(Section 6(2))

1. Every District Committee shall consist of—

- (a) a Chairman, who shall be appointed by the Minister;
- (b) the District Social Welfare Officer, or the District Manpower Development Officer;
- (c) the District Medical Officer;
- (d) the District Education Officer;
- (e) the District Labour Officer;
- (f) the District Secretary of the Organisation of Tanzania Trade Unions.
- (g) representative, one each from the recognised associations of disabled persons;
- (h) the Officer in charge of Small Industries Development Organisation;
- (i) the constituency member of Parliament;
- (j) a representative of the voluntary organisations concerned with the care and maintenance of the disabled;
- (k) five other persons appointed by the Minister.

THIRD SCHEDULE

COMPOSITION OF THE REGIONAL COMMITTEE

(Section 6(2))

1. Every Regional Committee shall consist of—

- (a) a Chairman, who shall be appointed by the Minister;
- (b) the Regional Social Welfare Officer, who shall be the Secretary;
- (c) the Regional Medical Officer;

- (d) the Regional Education Officer;
- (e) the Regional labour Officer;
- (f) the Regional Secretary of the Organisation of Tanzania Trade Unions (OTTU);
- (g) the Regional Social Welfare Development Officer;
- (h) representatives, one each from the recognised associations of disabled persons;
- (i) the Officer in-charge of Small Industries Development organisation in the region;
- (j) [Omitted];
- (k) a representative of the voluntary organisations concerned;
- (l) a representative of voluntary organisations concerned with the care and maintenance of the disabled; and
- (m) five other persons appointed by the Minister.