

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,323 of 8th December, 2016

B. 24/16

BILL

FOR

AN ACT to make provision for persons with disabilities modelled on the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities; and for matters connected thereto.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Disability Act 2017.

Commencement.

2. This Act comes into operation on the day appointed by the Government by notice in the Gazette, and different days may be appointed for different purposes.

Primary consideration.

3. In all actions, concerning children with disabilities, the best interests of the child must be a primary consideration.

Interpretation.

4. In this Act, unless the context otherwise requires—

“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;

“Convention” means the United Nations Convention on the Rights of Persons with Disabilities and unless otherwise stated includes the Optional Protocol to the Convention;

“disability” means a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out day-to-day activities, and is further defined in Schedule 3;

“discrimination on the basis of disability” means 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 all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“language” includes spoken and signed languages and other forms of non-spoken languages;

“reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure, as far as reasonably possible, that persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“the Minister” means the Minister with responsibility for equality;

“universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design but must not exclude assistive devices for particular groups of persons with disabilities where this is needed.

General principles & obligations.

5.(1) A person who applies a provision of this Act relating to issues of disability must, as far as reasonably possible in applying that provision, have regard to–

- (a) the general principles of the Convention as provided for in Part 1 of Schedule 1; and
- (b) the general obligations in Article 4 of the Convention, as provided for in Part 2 of Schedule 1.

(2) In the exercise of its functions and duties the Government, and in particular the Minister must, as far as reasonably possible, have regard to the matters set out in subsection (1).

(3) In subsection (1) a reference to “a person” includes a reference to a Court or other body which is empowered to consider any matter arising from this Act.

General obligations: supplementary powers.

6. For the purpose of implementing the general obligations referred to in Article 4 of the Convention, the Government may—

- (a) produce guidance notes relating to the general obligations;
- (b) by Regulations provide for such measures as may be required for the further implementation of the rights recognised in the Convention; and
- (c) Regulations made under paragraph (b) may amend this Act or any other enactment which contains any provisions that constitute discrimination against persons with disabilities.

Positive action.

7. Nothing in this Act must in any way limit any other enactment or rule of law which treats a person with a disability in a more favourable manner than is otherwise provided for under this Act.

Duty to have regard: policy development etc.

8. A person which under any enactment is charged with the development of any policy or programme must, in the development of such policy or programme, have regard to the rights of persons with disabilities and, without prejudice to sections 10 and 11, in particular must have regard to children with disabilities and to women with disabilities.

Power to issue Directions.

9.(1) Where a person engages in an act or practice that is inconsistent with this Act the Minister, or any person that the Minister has appointed under subsection (6), must inform that person of the contravention.

(2) If, after the person has been notified under subsection (1), the contravention persists the Minister may issue a Direction requiring the person to comply with its terms within the period set out therein.

(3) A Direction under subsection (2) must-

- (a) be in writing;
- (b) if sent to an institution or company be directed to the senior official in that institution or company; and
- (c) include that it is an offence to fail to comply with the Direction.

(4) A Direction once issued may be amended or rescinded and where amended must have effect as amended.

(5) A person who is named in the Direction and who, without reasonable excuse, fails to comply with that Direction is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and the Court may make any order it deems fit.

(6) The Minister may appoint a person to issue Directions under this Act.

(7) The Minister may revoke or vary any appointment made under subsection (6).

Women with disabilities: powers.

10. The Minister may make Regulations, Rules or Orders for the purpose of ensuring the full development, advancement and empowerment of women with disabilities, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention.

Children: equality and consultation.

11.(1) Where a person seeks to develop a policy that relates to children, before adopting that policy the person must ensure that such policy has regard to the need to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

(2) In any instance where the views of children are sought, the person must, as far as reasonably possible, ensure that 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.

Awareness-raising.

12.(1) The Minister must consider, as far as reasonably possible, the need for and where appropriate introduce such policies, strategies and initiatives as the Minister deems fit to give effect to the provisions of Article 8 of the Convention, which are provided for in Part 3 of Schedule 1.

(2) The Minister must, as far as reasonably possible, keep matters considered under subsection (1) under review to the extent required to fulfil the obligations under Article 8 of the Convention.

(3) The Minister may delegate the matters referred to in subsection (1) to the person referred to in section 9(6) or to any other person as the Minister deems fit.

Accessibility: general provisions.

13. A person exercising a statutory duty relating to accessibility must, in discharging that duty, ensure, as far as reasonably possible, the full inclusion and participation in community life of persons with disabilities.

Access to facilities and premises open to the public.

14.(1) Any person undertaking the provision of any building or premises to which the public are to be admitted whether on payment or otherwise, must, in the means of access both to and within the building or premises and in the parking facilities and sanitary conveniences to be available, if any, make

provision, in so far as it is in the circumstances both practicable and reasonable, for the needs of persons with disabilities visiting the building or premises.

(2) Where any provision required by subsection (1) is made at a building or premises—

- (a) a notice or sign indicating that provision is made for persons with disabilities, must be displayed outside the building or premises or so as to be visible from outside the building or premises; and
- (b) notices or signs must be displayed in the building or on the premises indicating the places where such provision is made and appropriate routes for persons with disabilities to get to those places.

(3) Where parking facilities for persons with disabilities are provided under subsection (1), notices or signs must be displayed indicating an appropriate route for such persons to get from the place where the parking facilities are provided, to the building or premises in connection with which they are provided.

(4) The Minister may by Regulations provide for the implementation of this section, including providing for the penalties for breach of this section or Regulations made under it.

Living independently and being included in the community.

15.(1) With a view to implementing the equal right of all persons with disabilities to live in the community, with choices equal to others, the Minister must undertake a review every 5 years, and after such a review must, as far as reasonably possible, take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

(2) For the purposes of subsection (1) the Minister may make such provision by Regulations or, where appropriate, by implementing plans, programmes or policies.

(3) For the purposes of subsection (1) consideration should be given, as far as reasonably possible, to the following matters—

- (a) that persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- (b) that persons with disabilities have access to 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;
- (c) that community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Personal mobility.

16.(1) A person who exercises a statutory duty relating to issues of personal mobility must, in discharging that duty, promote, as far as reasonably possible, personal mobility with the greatest possible independence for persons with disabilities, including by-

- (a) facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) facilitating 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;
- (c) providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

(2) For the purposes of subsection (1) the Minister may make such provision by Regulations or, where appropriate, by implementing plans, programmes or policies.

Freedom of expression and opinion, and access to information.

17.(1) A person who exercises a statutory duty relating to issues regarding freedom of expression and opinion, and access to information must, in discharging that duty, promote, as far as reasonably possible, the right of persons with disabilities to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, including by-

- (a) providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) urging private entities that provide services to the general public, including through the internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) encouraging the mass media, including providers of information through the internet, to make their services accessible to persons with disabilities;
- (e) recognising and promoting the use of sign languages.

(2) For the purposes of subsection (1) a Minister may make such provision by Regulations or, where appropriate, by implementing plans, programmes or policies.

Education.

18. Subject to the provisions of the Education and Training Act, in particular Part VIII thereof, a person who exercises a statutory duty relating to issues regarding education must, in discharging that duty, promote, as far as reasonably possible, an inclusive education system at all levels and lifelong learning for persons with disabilities directed to-

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

Health.

19. Subject to the provisions of any enactment relating to the provision of health services, a person who exercises a statutory duty relating to issues of health must, in discharging that duty, promote, as far as reasonably possible, the right to health without discrimination on the basis of disability.

Habilitation and rehabilitation.

20.(1) A person who exercises a statutory duty relating to issues regarding the habilitation and rehabilitation of persons with disabilities must, in discharging that duty, promote, as far as reasonably possible, the rights of 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.

(2) For the purposes of subsection (1) the Minister may make such provision by Regulations or, where appropriate, by implementing plans, programmes or policies.

Participation in political and public life.

21.(1) The Minister with responsibility for elections must promote, as far as reasonably possible, the participation in political and public life by persons with disabilities and, with a view to guaranteeing them with an opportunity to enjoy such participation on an equal basis with others.

(2) In realising the aims of subsection (1) consideration should be given, as far as reasonably possible, to providing appropriate measures to-

- (a) ensure that persons with disabilities can 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, inter alia, by-
 - (i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - (iii) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (b) promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including participation in non-governmental organisations and associations concerned with the public and political life.

(3) For the purposes of subsection (1), the Minister with responsibility for elections may make such provision by Regulations or, where appropriate, by implementing plans, programmes or policies.

Participation in cultural life, recreation, leisure and sport.

22. A person who exercises a statutory duty relating to culture, recreation, or leisure and sport must, in discharging that duty, promote, as far as reasonably possible, participation of persons with disabilities in the areas of culture, recreation, leisure and sport, with a view to providing them with an opportunity to enjoy such participation on an equal basis with others, including that they-

- (a) enjoy access to cultural materials in accessible formats;
- (b) enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
- (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.

Statistics and data collection.

23.(1) The Minister may request the collection of appropriate information, including statistical and research data, to enable the formulation and implementation of plans, programmes or policies to make provisions for persons with disabilities.

(2) The information collected in accordance with this section may be used to help assess the implementation of this Act and to identify and address the barriers faced by persons with disabilities in exercising their rights.

Consequential amendments

Civil Contingencies Act.

24. The Civil Contingencies Act 2007 is amended as follows—

- (a) section 18 is renumbered section 18(1);
- (b) after renumbered section 18(1) insert the following—

“(2) In discharging its duties under subsection (1) the Civil Contingencies Committee must take into consideration all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk.”.

Copyright Act.

25. The Intellectual Property (Copyright and Related Rights) Act 2005 is amended by inserting the following subpart after section 39—

“Visual impairment

39A Making a single accessible copy for personal use.

39A.(1) If a visually impaired person has lawful possession or lawful use of a copy (“the master copy”) of the whole or part of—

- (a) a literary, dramatic, musical or artistic work; or
- (b) a published edition,

which is not accessible to him because of the impairment, it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for an accessible copy of the master copy to be made for his personal use.

(2) Subsection (1) does not apply—

- (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
- (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.

(3) Subsection (1) does not apply in relation to the making of an accessible copy for a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.

(4) An accessible copy made under this section must be accompanied by—

- (a) a statement that it is made under this section; and
- (b) a sufficient acknowledgement.

(5) If a person makes an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum

charged must not exceed the cost of making and supplying the copy.

- (6) If a person holds an accessible copy made under subsection (1) when he is not entitled to have it made under that subsection, the copy is to be treated as an infringing copy, unless he is a person falling within subsection (7)(b).
- (7) A person who holds an accessible copy made under subsection (1) may transfer it to—
 - (a) a visually impaired person entitled to have the accessible copy made under subsection (1); or
 - (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a).
- (8) The transfer by a person (“V”) of an accessible copy made under subsection (1) to another person (“T”) is an infringement of copyright by V unless V has reasonable grounds for believing that T is a person falling within subsection (7)(a) or (b).
- (9) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with—
 - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
 - (b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.
- (10) In subsection (9), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.

39B Multiple copies for visually impaired persons.

- 39B. (1) If an approved body has lawful possession of a copy (“the master copy”) of the whole or part of—

- (a) a commercially published literary, dramatic, musical or artistic work; or
- (b) a commercially published edition,

it is not an infringement of copyright in the work, or in the typographical arrangement of the published edition, for the body to make, or supply, accessible copies for the personal use of visually impaired persons to whom the master copy is not accessible because of their impairment.

- (2) Subsection (1) does not apply–
 - (a) if the master copy is of a musical work, or part of a musical work, and the making of an accessible copy would involve recording a performance of the work or part of it; or
 - (b) if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.
- (3) Subsection (1) does not apply in relation to the making of an accessible copy if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree.
- (4) Subsection (1) does not apply in relation to the supply of an accessible copy to a particular visually impaired person if, or to the extent that, copies of the copyright work are commercially available, by or with the authority of the copyright owner, in a form that is accessible to that person.
- (5) An accessible copy made under this section must be accompanied by–
 - (a) a statement that it is made under this section; and
 - (b) a sufficient acknowledgement.

- (6) If an approved body charges for supplying a copy made under this section, the sum charged must not exceed the cost of making and supplying the copy.
- (7) An approved body making copies under this section must, if it is an educational establishment, ensure that the copies will be used only for its educational purposes.
- (8) If the master copy is in copy-protected electronic form, any accessible copy made of it under this section must, so far as it is reasonably practicable to do so, incorporate the same, or equally effective, copy protection (unless the copyright owner agrees otherwise).
- (9) If an approved body continues to hold an accessible copy made under subsection (1) when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.
- (10) If an accessible copy which would be an infringing copy but for this section is subsequently dealt with—
 - (a) it is to be treated as an infringing copy for the purposes of that dealing; and
 - (b) if that dealing infringes copyright, is to be treated as an infringing copy for all subsequent purposes.
- (11) In subsection (10), “dealt with” means sold or let for hire or offered or exposed for sale or hire or communicated to the public.
- (12) “Approved body” means an educational establishment or a body that is not conducted for profit.
- (13) “Supplying” includes lending.

39C Intermediate copies and records.

- 39C.(1) An approved body entitled to make accessible copies under section 39B may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only—

- (a) if and so long as the approved body continues to be entitled to make accessible copies of that master copy; and
 - (b) for the purposes of the production of further accessible copies.
- (2) An intermediate copy which is held in breach of subsection (1) is to be treated as an infringing copy.
- (3) An approved body may lend or transfer the intermediate copy to another approved body which is entitled to make accessible copies of the work or published edition under section 39B.
- (4) The loan or transfer by an approved body (“A”) of an intermediate copy to another person (“B”) is an infringement of copyright by A unless A has reasonable grounds for believing that B–
 - (a) is another approved body which is entitled to make accessible copies of the work or published edition under section 39B; and
 - (b) will use the intermediate copy only for the purposes of the production of further accessible copies.
- (5) If an approved body charges for lending or transferring the intermediate copy, the sum charged must not exceed the cost of the loan or transfer.
- (6) An approved body must–
 - (a) keep records of accessible copies made under section 39B and of the persons to whom they are supplied;
 - (b) keep records of any intermediate copy lent or transferred under this section and of the persons to whom it is lent or transferred; and
 - (c) allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect the records at any reasonable time.

- (7) Within a reasonable time of making an accessible copy under section 39B, or lending or transferring an intermediate copy under this section, the approved body must—
 - (a) notify each relevant representative body; or
 - (b) if there is no such body, notify the copyright owner.
- (8) A relevant representative body is a body which—
 - (a) represents particular copyright owners, or owners of copyright in the type of copyright work concerned; and
 - (b) has given notice to the Minister of the copyright owners, or the classes of copyright owner, represented by it.
- (9) The requirement to notify the copyright owner under subsection (7)(b) does not apply if it is not reasonably possible for the approved body to ascertain the name and address of the copyright owner.

39D Licensing schemes.

- 39D.(1) Section 39B does not apply to the making of an accessible copy in a particular form if—
- (a) a licensing scheme operated by a licensing body is in force under which licences may be granted by the licensing body permitting the making and supply of copies of the copyright work in that form;
 - (b) the scheme is not unreasonably restrictive; and
 - (c) the scheme and any modification made to it have been notified to the Minister by the licensing body.
- (2) A scheme is unreasonably restrictive if it includes a term or condition which—

- (a) purports to prevent or limit the steps that may be taken under section 39B or 39C; or
 - (b) has that effect.
- (3) Subsection (2) does not apply if–
- (a) the copyright work is no longer published by or with the authority of the copyright owner; and
 - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work.
- (4) If section 39B or 39C is displaced by a licensing scheme, sections 140 to 143 apply in relation to the scheme as if it were one to which those sections applied as a result of section 138.

39E Limitations, etc. following infringement of copyright.

39E.(1) The Minister may make an order under this section if it appears to him that the making of copies–

- (a) under section 39B; or
- (b) under a licence granted under a licensing scheme that has been notified under section 39D,

has led to infringement of copyright on a scale which, in the Minister’s opinion, would not have occurred if section 39B had not been in force, or the licence had not been granted.

- (2) The order may prohibit one or more named approved bodies, or one or more specified categories of approved body, from–
- (a) acting under section 39B; or
 - (b) acting under a licence of a description specified in the order.
- (3) The order may disapply–
- (a) the provisions of section 39B; or

- (b) the provisions of a licence, or a licensing scheme, of a description specified in the order,

in respect of the making of copies of a description so specified.

- (4) If the Minister proposes to make an order he must, before making it, consult—
 - (a) such bodies representing copyright owners as he thinks fit; and
 - (b) such bodies representing visually impaired persons as he thinks fit.
- (5) If the Minister proposes to make an order which includes a prohibition he must, before making it, consult—
 - (a) if the proposed order is to apply to one or more named approved bodies, that body or those bodies;
 - (b) if it is to apply to one or more specified categories of approved body, to such bodies representing approved bodies of that category or those categories as he thinks fit.
- (6) An approved body which is prohibited by an order from acting under a licence may not apply to the court under section 142(1) in respect of a refusal or failure by a licensing body to grant such a licence.

39F Definitions and other supplementary provision for sections 39A to 39E.

39F.(1) This section supplements sections 39A to 39E and includes definitions.

- (2) A copy of a copyright work (other than an accessible copy made under section 39A or 39B) is to be taken to be accessible to a visually impaired person only if it is as accessible to him as it would be if he were not visually impaired.

- (3) “Accessible copy”, in relation to a copyright work, means a version which provides for a visually impaired person improved access to the work.
- (4) An accessible copy may include facilities for navigating around the version of the copyright work but may not include—
 - (a) changes that are not necessary to overcome problems caused by visual impairment; or
 - (b) changes which infringe the right (provided by section 97) not to have the work subjected to derogatory treatment.
- (5) “Approved body” has the meaning given in section 39B(12).
- (6) “Lending”, in relation to a copy, means making it available for use, otherwise than for direct or indirect economic or commercial advantage, on terms that it will or may be returned.
- (7) For the purposes of subsection (6), a loan is not to be treated as being for direct or indirect economic or commercial advantage if a charge is made for the loan which does not exceed the cost of making and supplying the copy.
- (8) The definition of “lending” in section 24 does not apply for the purposes of sections 39B and 39C.
- (9) “Visually impaired person” means a person—
 - (a) who is blind;
 - (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light;
 - (c) who is unable, through physical disability, to hold or manipulate a book; or

- (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading.
- (10) The Minister may by Regulations prescribe–
 - (a) the form in which; or
 - (b) the procedure in accordance with which,any notice required under section 39C(7) or (8), or 39D(1), must be given.
- (11) Any power to make Regulations or orders is exercisable by statutory instrument subject to annulment in pursuance of a resolution by Parliament.”.

Equal Opportunities Act 2006.

26. The Equal Opportunities Act 2006 is amended as follows–

- (a) in the long title after “EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION” insert “; AND TO MAKE CERTAIN PROVISIONS FOR THE RIGHTS OF PERSONS WITH DISABILITIES AS MODELLED ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND THE OPTIONAL PROTOCOL TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES,”;
- (b) after subsection 12(6) insert–
 - “ (7) For the purpose of establishing whether a person (“A”) has been discriminated against it does not matter whether A has a disability.

Combined discrimination: women with disabilities.

- 12A.(1) A person (“A”) discriminates against another (“B”) if, because of a combination of B’s disability and sex, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.

- (2) For the purposes of establishing a contravention of this Act by virtue of subsection (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics taken separately.
- (3) But B cannot establish a contravention of this Act by virtue of subsection (1) if, in reliance on another provision of this Act or any other enactment, A shows that A's treatment of B is not direct discrimination because of either or both of the characteristics.”;

(c) after section 50 insert–

“Exceptions for disability: positive action.

50A.(1) This section applies if a person (P) reasonably thinks that–

- (a) persons who have a disability suffer a disadvantage connected to that disability;
 - (b) persons who share a disability have needs that are different from the needs of persons who do not share it; or
 - (c) participation in an activity by persons who share a disability is disproportionately low.
- (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of–
- (a) enabling or encouraging persons who have a disability to overcome or minimise that disadvantage;
 - (b) meeting those needs; or
 - (c) enabling or encouraging persons who share the disability to participate in that activity.

- (3) The Minister may by regulations specify action, or descriptions of action, to which subsection (2) does not apply.
- (4) This section is without prejudice to anything done under section 50.”.

Amendments to listed enactments.

27.(1) The enactments together with the relevant provisions listed in column 1 of the table in Schedule 2 are amended to the extent set out in column 2.

- (2) The Minister may by Order amend Schedule 2.

Repeal of the Disabled Persons Act, 1992.

28. The Disabled Persons Act, 1992 is repealed.

SCHEDULE 1

**GENERAL PRINCIPLES, GENERAL OBLIGATIONS AND
AWARENESS-RAISING**

PART 1

GENERAL PRINCIPLES

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

PART 2

GENERAL OBLIGATIONS

(This Part is equivalent to Article 4 of the Convention)

1. Undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability, and to this end undertake to-

- (a) adopt all appropriate legislative administrative and other measures for the implementation of the rights recognised in the present Convention;
- (b) take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) take all appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise;
- (f) undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in Article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies,

mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

- (h) 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;
- (i) promote the training of professionals and staff working with persons with disabilities in the rights recognised in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realisation of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, to closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.

4. Nothing in the present Convention must affect any provisions which are more conducive to the realisation of the rights of persons with disabilities and which may be contained in the law.

PART 3

AWARENESS-RAISING

(This Part is equivalent to Article 8 of the Convention)

1. Undertake to adopt immediate, effective and appropriate measures to—
 - (a) raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
 - (b) combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
 - (c) promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include—
 - (a) initiating and maintaining effective public awareness campaigns designed to—
 - (i) nurture receptiveness to the rights of persons with disabilities;
 - (ii) promote positive perceptions and greater social awareness towards persons with disabilities;
 - (iii) promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
 - (b) fostering 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;
 - (c) encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

- (d) promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

SCHEDULE 2

Section 27

ENACTMENT (Provisions referred to)	AMENDMENT
Administration of Estates Act Section 61	1. For “of unsound mind” substitute “with a mental disability”. 2. For “or is of unsound mind” substitute “or is mentally disabled”. 3. For “or person of unsound mind” substitute “or mentally disabled person”.
Construction (Design, Management, Health, Safety and Welfare) Regulations, 1998 Schedule 2, Paragraph 19 of Part A-General minimum requirement for on-site workstations	1. For both occasions where “Handicapped workers” appears, substitute “Disabled workers”. 2. For “handicapped persons” substitute “disabled persons”.
Crimes Act 2011 Section 19(5)(c)(i)	For “mentally handicapped persons” substitute “mentally disabled persons”.
Criminal Procedure and Evidence Act 2011 Section 358	In subsections (1) and (3) for “mentally handicapped” substitute “mentally disabled”.
Import Duty (Franchise) Regulations 1993 Schedule 2, paragraph 8	For “handicapped person” substitute “disabled person”.
Import Duty (Integrated Tariff) Regulations 2003 Schedule 1, Part 5 paragraph 5.11, Part 6 paragraph C4 14 Appendix X, Customs Procedure Codes, Home Use	For the four occasions where “handicapped person” appears substitute “disabled person”.
Intellectual Property (Copyright and Related Rights) Act 2005 Section 91(1)	For “mentally handicapped” substitute “mentally disabled”.
Recreation Grounds Rules Rule 6(1)	For “invalid” substitute “disabled person”.
Register of Nurses, Midwives and Health	For each occasion where “handicap” appears substitute “disability”.

Disability Act 2017 [B. 24/16]

Visitors Regulations 1997 Regulations 3, 4(5) and (6), the Schedule	
Social Security (Employment Injuries Insurance) Act Section 15(2)(a)	For “compared with a person of the same age and sex whose physical and mental condition is normal” substitute “compared with a similar person who has not suffered such a loss of ability”
Supreme Court Act Schedule 2 Part I, Paragraphs 1 and 4	For each occasion where “handicap” appears substitute “disability”.
Traffic (Licensing And Registration) Regulations Schedule 1 Forms 18, 20,	1. In Form 18, for “handicap” substitute “disability”. 2. In Form 20, for “or sudden attacks of giddiness or” substitute “, seizures,”.
Traffic (Wearing of Safety Belts) Regulations 2008 Regulation 2	In the definition of “disabled person’s belt” delete “handicap or”.
Transport Act 1998 Schedule 3, Paragraph 2(2.1)(2)(c)(ii)	For “handicapped” substitute “disabled”.
Vehicles (Construction, Equipment And Maintenance) Regulations Regulation 17(3)(d)	For “handicapped” substitute “disabled”.

SCHEDULE 3

Definition of Disability

Impairment.

- 1.(1) Regulations may make provision, for the purposes of this Act—
- (a) for conditions of a prescribed description to be treated as amounting to impairments;
 - (b) for conditions of a prescribed description to be treated as not amounting to impairments.
- (2) Regulations made under subparagraph (1) may make provision as to the meaning of “condition” for the purposes of those regulations.

Long-term effects.

- 2.(1) The effect of an impairment is a long-term effect if—
- (a) it has lasted at least 12 months;
 - (b) the period for which it lasts is likely to be at least 12 months;
or
 - (c) it is likely to last for the rest of the life of the person affected.
- (2) Where an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of subparagraph (2), the likelihood of an effect recurring must be disregarded in prescribed circumstances.
- (4) Regulations may prescribe circumstances in which, for the purposes of this Act—
- (a) an effect which would not otherwise be a long-term effect is to be treated as such an effect; or
 - (b) an effect which would otherwise be a long-term effect is to be treated as not being such an effect.

Severe disfigurement.

3.(1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

(2) Regulations may provide that in prescribed circumstances a severe disfigurement is not to be treated as having that effect.

(3) Regulations under subparagraph (2) may, in particular, make provision with respect to deliberately acquired disfigurements.

Normal day-to-day activities.

4.(1) An impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following—

- (a) mobility;
- (b) manual dexterity;
- (c) physical co-ordination;
- (d) continence;
- (e) ability to lift, carry or otherwise move everyday objects;
- (f) speech, hearing or eyesight;
- (g) memory or ability to concentrate, learn or understand; or
- (h) perception of the risk of physical danger.

(2) Regulations may prescribe—

- (a) circumstances in which an impairment that does not have an effect falling within subparagraph (1) is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities;

- (b) circumstances in which an impairment which has an effect falling within subparagraph (1) is to be taken not to affect the ability of the person concerned to carry out normal day-to-day activities.

Substantial adverse effects.

5. Regulations may make provision for the purposes of this Act—

- (a) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as a substantial adverse effect;
- (b) for an effect of a prescribed kind on the ability of a person to carry out normal day-to-day activities to be treated as not being a substantial adverse effect.

Effect of medical treatment.

6.(1) An impairment which would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, is to be treated as having that effect.

(2) In subparagraph (1) “measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Subparagraph (1) does not apply—

- (a) in relation to the impairment of a person’s sight, to the extent that the impairment is, in his case, correctable by spectacles or contact lenses or in such other ways as may be prescribed; or
- (b) in relation to such other impairments as may be prescribed, in such circumstances as may be prescribed.

EXPLANATORY MEMORANDUM

This Bill uses the UN Convention on the Rights of Persons with Disabilities as a model to introduce legislation for the betterment of persons with disabilities within society.

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