

PERSONS WITH DISABILITY ACT, 2024

No. 6



of 2024

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An Act to provide for the establishment of the Disability Coordination Office and the National Disability Council; to prohibit discrimination against persons on the grounds of disability; to promote equal opportunity for persons with disabilities in work, accommodation and education; to promote equal access to goods, services, facilities and land; and for matters incidental thereto.

Date of Assent: 30.01.2024

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary Provisions*

1. This Act may be cited as the Persons with Disability Act, 2024, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and
commencement

2. In this Act, unless the context otherwise requires —
“abuse” includes —

Interpretation

- (a) physical abuse, harassment or intimidation;
 - (b) emotional, verbal or psychological abuse; or
 - (c) economic abuse,
- of a person with a disability;

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- “action plan” means an action plan prepared and implemented in terms of section 62;
- “adjustment order” means an adjustment order in terms of section 52 (3);
- “assistance animal” has the meaning assigned to it under section 24;
- “carer” has the meaning assigned to it under section 23 (2);
- Cap. 60:01 “club or association” has the meaning assigned to it under the Botswana National Sports Council Act, and includes a society as defined under the Societies Act;
- Cap. 18:01 “commission agent” means a person who does work for another person as an agent and is remunerated, whether in whole or part, by commission;
- “committee” means a committee established under section 16;
- Cap. 47:01 “contract of employment” has the meaning assigned to it under the Employment Act, and “contract worker” shall have a corresponding meaning;
- “Convention” means the Convention on the Rights of Persons with Disabilities adopted on 13 December, 2006;
- “Council” means the National Disability Council established under section 7 (1);
- “Council member” means a member in terms of section 7 (2);
- “disability” means —
- (a) the total or partial loss of a person’s bodily or mental function;
 - (b) the total or partial loss of a part of a person’s body;
 - (c) a malfunction, malformation or disfigurement of a part of a person’s body; or
 - (d) a disorder, illness or disease that —
 - (i) affects a person’s thought process, perception of reality, emotions or judgment, or
 - (ii) causes total or partial loss of a person’s bodily or mental function, andincludes behaviour that is a symptom or manifestation of a disability;
- “disability aid”, in relation to a person with a disability, means an equipment, including a palliative or therapeutic device, that is used by the person and provides assistance to alleviate the effect of the disability;
- “disability standard” means a standard prescribed under section 52;
- “discriminate” means direct or indirect discrimination in terms of section 20 or 21, and “discrimination” shall have a corresponding meaning;
- Cap. 28:05 “economic abuse” has the meaning assigned to it under the Domestic Violence Act;
- “emotional, verbal or psychological abuse” has the meaning assigned to it under the Domestic Violence Act;

“employment” has the meaning assigned to it under the Employment Act;

“exploit” means illegally using a person with a disability’s money or assets, and includes mishandling the person’s money, property through fraud, deception or other improper ways;

“intimidation” has the meaning assigned to it under the Domestic Violence Act;

“neglect” means —

(a) failing to provide reasonable care to a person with a disability;

(b) repeatedly and carelessly confining a person with a disability;

(c) failing to provide food, shelter, clothes, personal hygiene, medical care or rehabilitation of a person with a disability;

or

(d) failing to protect a person with a disability from danger or exposing such person to danger;

“Office” means the Disability Coordination Office established under section 5;

“Permanent Secretary” has the meaning assigned to it under the Public Service Act;

Cap. 26:01

“person with a disability” means a person who has a disability which has substantial and long-term adverse effects prescribed under section 72 (2) (a);

“reasonable adjustment” means an adjustment made in —

(a) terms of section 26; and

(b) compliance with disability standards;

“organisation” means an organisation that is established in accordance with, or otherwise recognised under, the laws of Botswana; and

“service” means any service that is offered to members of the public.

3. The objects of this Act are to —

Objects of the Act

(a) prohibit discrimination against a person on the ground of the person’s disability —

(i) in the areas of work, accommodation and education,

(ii) in relation to access to premises, clubs, associations and sport,

(iii) in the provision of goods, facilities, services and land, and

(iv) in the administration of law and government programs;

(b) promote recognition and acceptance of the principle that a person with a disability has the same fundamental rights as any other person; and

(c) promote recognition and acceptance, within the community, of the equality of persons with disabilities.

4. This Act binds the State.

Application of the Act

*PART II — Establishment of Disability Coordination Office and the
National Disability Council*

Establishment
of Disability
Coordination
Office
Cap. 26:01

5. (1) The Disability Coordination Office is hereby established.

(2) The Office shall be a public office and accordingly, the provisions of the Public Service Act shall apply with the necessary modifications to the office and the officers thereof.

(3) The Office shall consist of a Director, Deputy Director and such other staff as may be appointed.

(4) The Director shall be the administrative head of the Office, and shall, subject to the control and directions of the Council, be responsible for the administration of this Act.

Functions of
the Office

6. Subject to decisions of the Council, the Office shall, as far as is practicable and within the framework established by this Act —

- (a) implement policies, programmes and strategies, including —
 - (i) a national disability policy, and
 - (ii) any other policy for improving the quality of persons with disabilities and resource mobilisation,
- (b) prepare and publish appropriate guidelines for —
 - (i) the avoidance of discrimination on the ground of disability, and
 - (ii) promoting recognition and implementation of legislation on the rights of persons with disabilities;
- (c) guide and support the Government and sectorial Ministries' interventions as they relate to, or impact on, persons with disabilities;
- (d) undertake research, educational programs and other programs to promote the objects of this Act;
- (e) conduct awareness programmes for the recognition and acceptance, within the community, of the equality of persons with disabilities; and
- (f) carry out such functions and do all such things as may appear necessary for purposes of this Act.

Establishment
of the
National
Disability
Council

7. (1) The National Disability Council is hereby established.

(2) The Council shall consist of the —

- (a) Permanent Secretary to the Vice President, who shall be the Chairperson;
- (b) Permanent Secretary to the Ministry responsible for —
 - (i) the national disability policy, or on whose portfolio persons with disabilities fall,
 - (ii) human rights,
 - (iii) social protection,
 - (iv) health,
 - (v) law enforcement,
 - (vi) local government,

- (vii) education and skills development; and
- (viii) labour; and
- (c) six other members appointed by the Minister, who shall be —
 - (i) a representative from persons with disabilities' organisation:
Provided that the representative is a person with a disability,
 - (ii) a representative from a non-governmental body which represents the interests of women and children,
 - (iii) a representative from a non-governmental body for human rights,
 - (iv) a person with a disability, and
 - (v) one other person who represents persons with disabilities' interests, as the Minister may determine.
- (3) The Minister shall appoint a Deputy Chairperson of the Council from among members appointed under subsection (c).
- (4) A member appointed in terms of subsection (2) (c), shall hold office for a period of three years and be eligible for re-appointment for one further term.

8. The Council shall —

- (a) receive and approve action plans under section 62;
- (b) monitor the development and operation of disability standards;
- (c) grant exemptions in terms of section 71;
- (d) oversee the development and implementation of policies, programmes, strategies and legislation, including —
 - (i) a national disability policy, and
 - (ii) any other policy for improving the quality of persons with disabilities and resource mobilisation;
- (e) oversee implementation of Government and sectorial Ministries' interventions as they relate to, or impact on, persons with disabilities; and
- (f) perform any other function as may be necessary for purposes of this Act.

Functions of
the Council

9. A person shall not be appointed as a member of the Council under section 7 (2) (c) or be qualified to continue to hold office as a member appointed in terms of section 7 (2) (c), if the person has —

- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside; or
- (b) within a period of 10 years immediately preceding the date of his or her proposed appointment, has been convicted of a criminal offence and sentenced by a court of competent jurisdiction to imprisonment for a period of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

Disqualification
for appointment
as Council
member

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Vacation of
office

10. A Council member appointed in terms of section 7 (2) (c) shall vacate his or her office —

- (a) if he or she becomes disqualified in terms of section 9 to hold office as a Council member;
- (b) if he or she is absent from three consecutive meetings of the Council without reasonable excuse;
- (c) upon his or her death;
- (d) upon the expiry of one month's notice, given in writing to the Minister, of his or her intention to resign from his or her office;
- (e) upon the expiry of such time as the Minister may specify in writing under section 11, notifying him or her of his or her removal from office by the Minister;
- (f) if he or she becomes mentally or physically incapable of performing his or her duties as a member of the Council; or
- (g) if he or she is convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

Suspension
and removal
by Minister

11. (1) The Minister shall, in writing, suspend from office a Council member appointed in terms of section 7 (2) (c) against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Council.

(2) The Minister may, when satisfied that a Council member has acted improperly as such member, or is mentally or physically incapable of performing his or her duties efficiently, require that member, in writing, to vacate his or her office within such time as the Minister may specify.

Filling of
vacancies

12. On the vacation of office by a Council member under section 10, the Minister shall appoint a person to take the place of the member who vacated the office until the expiry of the period during which such member would have otherwise continued in office.

Payment of
Council
members

13. A Council member shall be paid such allowance and such travelling expenses, incurred in connection with his or her service on the Council, as the Minister may determine.

Secretariat of
the Council

14. (1) The Office shall be the Secretariat of the Council.

(2) The Secretariat shall be —

- (a) responsible for the accurate and complete recording of the proceedings of the Council and the keeping of such records;
- (b) responsible for arranging the business of the Council and shall carry out such other functions as the Council may direct; and
- (c) the liaison office between the Council and any other entity.

(3) Officers of the Secretariat shall have no right to vote in any decision of the Council.

Meetings of
the Council

15. (1) Subject to the provisions of this section, the Council shall regulate its own procedure.

(2) The Council shall hold its first meeting not later than three months immediately after the date of commencement of this Act, and thereafter the Council shall meet at least once in every three months.

(3) The Chairperson, or in his or her absence the Deputy Chairperson, shall, upon giving notice in writing, convene a meeting of the Council and such meeting shall be held not later than 14 days after receipt of such notice.

(4) Where the urgency of any particular matter does not permit the giving of notice in accordance with subsection (3), a special meeting may be called by giving a shorter notice.

(5) At any meeting of the Council —

- (a) the Chairperson, or in his or her absence the Deputy Chairperson, shall preside;
- (b) one half of the members, excluding the person presiding, shall constitute a quorum; and
- (c) a decision of the Council on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

(6) The Council may invite any person whose presence it considers necessary to attend and participate in the deliberations of a meeting of the Council, but such person shall have no right to vote.

(7) The Chairperson, or in his or her absence the Deputy Chairperson, shall —

- (a) countersign all necessary documents on behalf of the Council; and
- (b) perform such functions as may be necessary for purposes of the Council.

16. (1) The Council —

Committees

- (a) shall establish an Independent Disability Monitoring Committee; and
 - (b) may from time to time establish other committees, either of a general or specific nature.
- (2) The Council may delegate to any committee under subsection (1), such powers as it may consider necessary.
- (3) A committee under subsection (1) —
- (a) may consist of such number of members as the Council may, subject to subsection (4), determine; and
 - (b) shall perform any function of the Council which, in the judgment of the Council, could be performed by means of a committee.
- (4) In appointing members to a committee under subsection (1), the Council shall make appointments based on a cross sectional representation of all parties represented in the Council, with each member of the Council being appointed to at least one Committee.

	(5) The Council may revoke or amend any delegation made under subsection (2) and may attach conditions to such delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised. (6) A committee may co-opt persons other than members of the committee, and such co-opted persons may take part in the proceedings of the committee but shall not have the right to vote.
Council's funds	17. The Minister responsible for finance may, by order published in the <i>Gazette</i>, establish a disability Fund for — (a) fees levied by the Council, as may be necessary in order to recover costs; and (b) such administrative penalties and fines as may be imposed by the Council under section 64.
Annual report	18. (1) The Office shall, within a period of six months of the end of the financial year or such longer period as the Minister may approve, submit to the Minister a comprehensive report on its operations during such year. (2) The Minister shall, within 30 days of receiving the report pursuant to subsection (1), lay such report before the National Assembly.
Village Disability Coordinating Committees	19. (1) There is hereby established, for every community, a committee to be known as a Village Disability Coordinating Committee. (2) For purposes of this Act — (a) Village Child Protection Committees established under the Children's Act shall be deemed to be Village Disability Coordinating Committees; and (b) the composition, functions and powers of the Village Child Committees as set out in the First Schedule to the Children's Act shall, with the necessary modifications apply to Village Disability Coordinating Committees.

PART III — *Prohibition of Discrimination*

Prohibition of direct discrimination	20. (1) A person with a disability shall not be treated in a discriminatory manner by any person, public office or public authority on the ground of that person's disability. (2) For purposes of this Act, a person discriminates against another person if — (a) the person affords different treatment to a person with a disability, attributable wholly or mainly to the person's disability whereby the person with a disability is subjected to restrictions to which persons without the disability in circumstances that are not materially different are — (i) not made subject, or (ii) accorded privileges or advantages which are not accorded to the person with a disability; or
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- (b) on the grounds of the person's disability, the person treats the person with a disability less favourably than the person would treat a person without the disability in circumstances that are not materially different.

(3) Without prejudice to the generality of subsection (2), a person discriminates against another if the person fails to make reasonable adjustments for the person with a disability as may be prescribed under section 52 (2), and failure to make such reasonable adjustments has the effect that, because of the disability, the person with a disability is treated less favourably than a person without the disability would be treated in circumstances that are not materially different.

(4) For purposes of this section, circumstances are not materially different merely on the ground that, because of a disability, the person with the disability requires any adjustments.

21. (1) A person with a disability shall not be treated, indirectly, in a discriminatory manner by any person, public office or public authority on the ground of that person's disability.

Prohibition of
indirect
discrimination

(2) For the purposes of this Act, a person indirectly discriminates against another person if, on the ground of the person's disability, the person requires, or proposes to require, the person with a disability to comply with a requirement or condition, and the —

- (a) requirement or condition disadvantages, or is likely to disadvantage the person with a disability; or
- (b) person does not, or proposes not to, make reasonable adjustments, and the effect of not making such reasonable adjustments —
 - (i) is that the person with a disability fails, or is likely to fail, to comply with the requirement or condition, or
 - (ii) disadvantages, or is likely to disadvantage the person with a disability.

(3) Subsection (2) does not apply if the —

- (a) requirement or condition is reasonable or justified, having regard to the circumstances of the case; or
- (b) person shows that he or she did not know, and could not reasonably have been expected to know, that the person has a disability.

(4) For purposes of subsection (3), the burden of proving that a requirement or condition is reasonable or justified shall lie on the person who requires, or proposes to require, a person with a disability to comply with the requirement or condition.

(5) Notwithstanding subsection (4), the Minister may, for purposes of this section, prescribe circumstances in which a requirement or condition may be considered to be reasonable or justified.

22. (1) A carer shall not be treated in a discriminatory manner by any person, public office or public authority in relation to a person with a disability.

Prohibition of
discrimination
in relation to
carer

(2) For purposes of subsection (1), this Act shall apply to a carer in the same way it applies to a person with a disability.

Having a carer,
assistance
animal or
disability aid

23. (1) For purposes of section 22, a person with a disability shall be deemed to have —

- (a) a carer, if the person —
 - (i) is accompanied by the carer or assistant,
 - (ii) was accompanied by the carer or assistant, or
 - (iii) is imputed to be accompanied by the carer or assistant; or
- (b) an assistance animal or disability aid, if the person —
 - (i) is accompanied by the animal or possesses the aid,
 - (ii) was accompanied by the animal, or possessed the aid, or
 - (iii) is imputed to be accompanied by the animal or to possess the aid.

(2) For purposes of this Act, a carer means a person who, at the time, assists or provides care to a person with a disability, and where applicable includes —

- (a) an assistant;
- (b) an interpreter or reader;
- (c) a spouse or former spouse of the person with a disability;
- (d) a person who is engaged or dating, or who is otherwise in a relationship with the person with a disability;
- (e) a sibling or parent of the person with a disability;
- (f) a family or household member of the person with a disability; or
- (g) a person who, in any other manner, otherwise assists or provides care to a person with a disability.

Assistance
animal and
accreditation
of animal
training
organisation

24. (1) For purposes of this Act, an assistance animal means a dog or other animal —

- (a) trained to assist a person with a disability to alleviate the effect of the disability;
- (b) trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place; and
- (c) certified as an assistance animal for the respective disability by an animal training organisation:

Provided that the animal training organisation shall be accredited, as may be prescribed.

(2) Section 22 shall, with the necessary modifications, apply to an assistance animal.

(3) Notwithstanding the provisions of subsections (1) and (2), a person shall not be deemed to discriminate against another person on the ground of the person's disability, if the person with a disability has an assistance animal, and the person requires the —

- (a) assistance animal to remain under the control of —
 - (i) the person with a disability, or
 - (ii) another person on behalf of the person with a disability; and
- (b) person with a disability to produce evidence that the assistance animal is, in accordance with subsection (1), trained and certified to meet standards of hygiene and behaviour that is appropriate for an animal in a public place.

(4) Where a person with a disability fails to produce evidence required under subsection (3) that the assistance animal trained and certified, the person shall treat the person with a disability in the manner he or she would treat any other person in circumstances that are not materially different.

25. For purposes of this Act, if a person discriminates against another for two or more reasons, and one of the reasons is the person's disability, whether or not the disability is the dominant or substantial reason for discriminating against such person, the person shall be deemed to have discriminated against such person on the grounds of disability.

Act deemed
to be carried
out because
of disability

26. In determining whether it is reasonable for a person to make adjustments for a person with a disability, consideration shall be made to the —

Reasonable
adjustments

- (a) effect of the disability on the person with a disability;
- (b) extent to which making reasonable adjustments would prevent discrimination against the person with a disability;
- (c) extent to which it is practicable for the person to make such adjustments;
- (d) financial and other costs which may be incurred by the person in making such adjustments;
- (e) person's financial circumstances and other resources;
- (f) financial or other assistance available with respect to making adjustments for persons with disabilities;
- (g) extent to which making such adjustments would disrupt any of the person's activities; and
- (h) relevant action plans approved by the Council under section 62.

27 (1) A carer or any other person shall not exploit, abuse or neglect a person with a disability on the ground of the person's disability.

Protection from
exploitation,
abuse or
neglect

(2) Any person who contravenes the provisions subsection (1), commits an offence and is liable to imprisonment, without the option of a fine and without the suspension of any part thereof, for not less than 10 years or not more than 30 years.

(3) For purposes of subsection (2) —

- (a) evidence that an offence under subsection (1) has been committed shall be sufficient proof that such an offence was committed with the knowledge of the person charged; and
- (b) the burden of proving any fact which would be a defence to a charge for contravening this section shall lie upon the person charged or accused person.

PART IV — *Prohibition of Discrimination in Work*

28. An employer or a person acting or purporting to act on behalf of an employer shall not discriminate against —

Protection from
discrimination
in employment

- (a) a person with a disability —

Duty of
employer to
make
adjustments

- (i) in the arrangements the employer makes for the purpose of determining to whom the employer should offer employment, or
- (ii) in the terms or conditions on which the employer offers, on the ground of the disability, employment to the person with the disability; or
- (b) an employee, on the ground of the employee's disability —
 - (i) in the terms or conditions of employment that the employer affords the employee,
 - (ii) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment,
 - (iii) by suspending or dismissing the employee, or
 - (iv) by subjecting the employee to any other less favourable treatment than that afforded to other employees.

29. (1) Where any arrangement made by an employer, or any physical feature of the premises occupied by the employer, places an employee with a disability at a disadvantage in comparison with other employees without the disability, it shall be the duty of the employer to make reasonable adjustments, or take such steps as is reasonable in the circumstances, to prevent the arrangement or physical feature having such effect.

- (2) The arrangement in subsection (1) shall apply to —
 - (a) any arrangement for determining to whom employment should be offered; and
 - (b) any term or condition on which employment, promotion, a transfer, training or any other benefit is offered or afforded.
- (3) Subject to the disability standards in section 52, the steps taken by an employer in order to comply with subsection (1) may include —
 - (a) making adjustments to the premises;
 - (b) allocating some of the duties of the employee with the disability to another employee;
 - (c) altering the hours of work of the employee with the disability;
 - (d) assigning the employee with the disability a different place to work for the employee's convenience;
 - (e) modifying instructions or work manuals; and
 - (f) providing training, translation, disability aid or any assistance, as may be necessary, to the employee with the disability.

Protection
from
discrimination
in contract work

- 30.** A principal shall not discriminate against a contract worker on the ground of the contract worker's disability —
- (a) in the terms and conditions on which the principal allows the contract worker to work;
 - (b) by not allowing the contract worker to work or continue to work;
 - (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the principal is made; or

- (d) by subjecting the contract worker to any other less favourable treatment than that afforded to other contract workers.

31. A person who is a partner, or proposes to form a partnership, shall not discriminate against a person with a disability on the ground of the person's disability in —

Protection from
discrimination
in partnerships

- (a) determining who should become a partner in the partnership; or
- (b) the terms or conditions on which the person offers partnership to the person with a disability.

32. (1) An authority or body shall not discriminate against a person with a disability on the ground of the person's disability —

Protection from
discrimination
in professional
bodies

- (a) by refusing to issue, renew or extend a licence, permit, authorisation or qualification;
- (b) by varying the terms or conditions on which the authority or body issues a licence, permit, authorisation or qualification to the person with a disability; or
- (c) by revoking or withdrawing a licence, permit, authorisation or qualification or varying the terms or the conditions upon which such licence, permit, authorisation or qualification is held by the person with a disability.

(2) For the purposes of subsection (1), an “authority or body” means any organisation or body that is empowered to issue, renew, extend, revoke or withdraw a licence, permit, authorisation or qualification that is needed for, or facilitates -

- (a) the practice of a profession;
- (b) the carrying on of a trade or business;
- (c) engaging in an occupation;
- (d) engaging in a sporting activity; or
- (e) engaging in any other activity licensed, authorised or facilitated by that authority or body.

33. (1) An organisation, its committee of management or member of the committee of management shall not discriminate against a person on the ground of the person's disability —

Protection from
discrimination
in organisations

- (a) by refusing or failing to accept a person with a disability's application for membership to the organisation; or
- (b) in the terms or conditions on which the organisation is prepared to admit the person with a disability to its membership.

(2) A committee of management of an organisation, or a member of a committee of management of an organisation, shall not discriminate against a member of the organisation on the ground of the member's disability by —

- (a) denying the member access, or limiting the member's access, to any benefit provided by the organisation;
- (b) depriving the member of membership or varying the terms of membership; or
- (c) subjecting the member to any other less favourable treatment than that afforded to other members of the organisation.

Protection
from
discrimination
in employment
agencies

34. An employment agency shall not discriminate against a person on the ground of the person's disability —

- (a) by refusing to provide any of its services to a person with a disability;
- (b) in the terms and conditions on which the agency offers to provide any of its services to a person with a disability; or
- (c) in the manner in which the agency provides any of its services to a person with a disability:

Provided that, the agency shall not be required under this Part to ensure that an employer complies with this Act.

Enforcement,
remedies and
procedure in
work
Cap. 48:02

35. (1) A complaint or grievance that an employer, principal or any person has, in contravention of this Part, discriminated against a person with a disability shall be made in accordance with the Trade Disputes Act.

(2) Where the Industrial Court determines that a complaint or grievance under subsection (1) is well founded, the Court may order, as it considers just and equitable, the respondent to —

- (a) pay compensation to a person with a disability or complainant; or
- (b) take, within a specified period, action appearing to be reasonable for the purpose obviating or reducing the adverse effect on the complainant of any matter to which the complaint or grievance relates.

(3) Compensation under subsection (2) may, if the Court considers it just and equitable, include compensation for injury to feelings.

Validity of
work
agreements

36. (1) A term or condition in a contract of employment or agreement shall be void if it purports to —

- (a) require a person to do anything which contravenes a provision under this Part;
- (b) limit or exclude the operation on any provision under this Part; or
- (c) prevent any person lodging a complaint or grievance in terms of this Part.

(2) Subsection (1) (b) and (c) shall not apply where the agreement is in execution of a settlement reached through a mediation process under the Trade Disputes Act.

PART V — *Exceptions to Discrimination in Work*

Inherent
requirements
of particular
work

37. (1) Notwithstanding the provisions of Part IV, a person shall not be deemed to discriminate against another person on the ground of a disability, if —

- (a) the discrimination relates to a particular work, including promotion or transfer to a particular work; and
- (b) because of the disability, the person with a disability is, or would be, unable to carry out the inherent requirements of the particular work, even where the employer, principal or partner makes reasonable adjustments for the person with a disability.

(2) For purposes of subsection (1) (b), the following shall be taken into account in determining whether a person with a disability is able to carry out the inherent requirements of a particular work —

- (a) the person with a disability's training, qualifications and experience relevant to the particular work;
- (b) the person with a disability's performance in —
 - (i) working for the employer or principal, if the person with a disability is an employee or contract worker, or
 - (ii) the partnership, if the person with a disability is a partner; or
- (c) any other factor that is material and substantial to carrying out the particular work.

(3) For purposes of this section, a person with a disability works for another person if —

- (a) the other person employs the person with a disability;
- (b) the person with a disability works for the other person as a contract worker;
- (c) the other person engages the person with a disability as a commission agent;
- (d) the other person and the person with a disability are partners; or
- (e) both of the following apply —
 - (i) the other person is an authority or body; and
 - (ii) the person with a disability is a member of that profession, carries on that trade or business, or is engaged in that occupation.

38. Notwithstanding the provisions of Part IV, an employer, principal or partner shall not be deemed to discriminate against another person on the ground of a disability, if subject to the disability standards in section 52, making any adjustments would impose an unreasonable and undue burden on the employer, principal or partner.

Undue burden
on employer,
principal or
partner

PART VI — Equal Opportunity, Access and Participation in Other Areas

39. (1) An educational institution or education provider shall not discriminate against —

Education

- (a) another person on the ground of the person's disability —
 - (i) by refusing or failing to accept the person with a disability's application for admission as a student, or
 - (ii) in the terms or conditions on which the institution or provider is prepared to admit the person with a disability as a student;
- (b) a student on the ground of the student's disability by —
 - (i) denying the student access, or limiting the student's access, to any benefit provided by the educational institution,
 - (ii) suspending or expelling the student, or
 - (iii) subjecting the student to any other less favourable treatment than that afforded to other students; or

A.60

- (c) another person on the ground of the person's disability by —
 - (i) developing a curriculum or training course having content that will either exclude the person with a disability from participation or subject the person with a disability to any other detriment, or
 - (ii) accrediting any curriculum or training course under paragraph (i) with such content.

(2) For purposes of this section, an "educational institution or education provider" shall not be deemed to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person with a disability does not have that particular disability.

Access to
premises

40. A person shall not discriminate against another person on the ground of the person's disability —

- (a) by refusing to allow the person with a disability access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use;
- (b) in the terms or conditions on which such person is prepared to allow the person with a disability access to, or the use of, any such premises;
- (c) in relation to the provision of means of access to such premises;
- (d) by refusing to allow the person with a disability the use of any facility in such premises that the public or a section of the public is entitled or allowed to use;
- (e) in the terms or conditions on which such person is prepared to allow the person with a disability the use of such facility; or
- (f) by requiring the person with a disability to leave such premises or cease to use such facility.

Access to
public
transport

41. A person shall not discriminate against another person on the ground of the person's disability by —

- (a) refusing to allow the person with a disability access to, or the use of, any public transport;
- (b) in the terms or conditions on which such person is prepared to allow the person with a disability access to, or the use of, any such public transport;
- (c) in relation to the provision of means of access to public transport;
or
- (d) in the terms or conditions on which such person is prepared to allow the person with a disability the use of public transport.

Access to
goods,
services and
facilities

42. A person who, whether for payment or not, provides goods or services, shall not discriminate against another person on the ground of the person's disability —

- (a) by refusing to provide the person with a disability such goods or services or to make facilities available to the person with a disability;

- (b) in the terms or conditions on which the person provides the person with a disability such goods or services or makes facilities available to the person with a disability; or
 - (c) in the manner in which the person provides the person with a disability such goods or services or makes such facilities available to the person with a disability.
- 43.** A person, whether a principal or agent, shall not discriminate against another person on the ground of the person's disability —
- (a) by refusing the application of a person with a disability for accommodation;
 - (b) by deferring the person with a disability's application for accommodation or according the person a lower order of preference in any list of applicants for that accommodation; or
 - (c) in the terms or conditions on which the accommodation is offered to the person with a disability.
- 44.** A person, whether a principal or agent, shall not discriminate against another on the ground of the person's disability in relation to the accommodation occupied by a person with a disability by —
- (a) denying the person with a disability access, or limiting the person with a disability's access, to any benefit associated with accommodation;
 - (b) evicting the person with a disability from the accommodation;
 - (c) subjecting the person with a disability to any other less favourable treatment than that afforded to other persons in the same accommodation; or
 - (d) refusing to allow the person with a disability to make reasonable alterations to the accommodation, if —
 - (i) the person with a disability undertakes to restore the accommodation to its condition before alteration on leaving the accommodation,
 - (ii) in all circumstances, it is likely that the person with a disability will perform the undertaking under subparagraph (i),
 - (iii) in all the circumstances, the action required to restore the accommodation to its condition before alteration is reasonably practicable,
 - (iv) the alteration does not involve alteration of the premises of any other occupier, or
 - (v) the alteration is at the expense of the person with the disability.
- 45.** Sections 43 and 44 shall not apply if —
- (a) the person who provides, or proposes to provide, the accommodation —
 - (i) resides, and intends to continue to reside in the premises, or
 - (ii) is a carer and resides, or intends to continue to reside, in the premises;
 - (b) the accommodation is provided by a registered charity, or by a voluntary body that is not a charity; or
 - (c) the accommodation is provided solely for persons who have a particular disability and the person discriminated against does not have that particular disability.

Equal
opportunity in
accommodation
application

Accommodation
occupied by
person with
disability

Accommodation
exception

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Land

46. (1) A person shall not discriminate against another person on the ground of the person's disability —

- (a) by refusing or failing to dispose of an estate or interest in land to the person with a disability; or
- (b) in the terms or conditions on which an estate or interest in land is offered to the person with a disability.

(2) This section shall not apply to a disposal of an estate or interest in land by will or by way of a gift.

Clubs and associations

47. (1) A club or an association, its committee of management or member of its management shall not discriminate against a person on the ground of the person's disability —

- (a) by refusing to accept the person with a disability's application for membership; or
- (b) in the terms or conditions on which the club or association is prepared to admit the person with a disability to membership of that club or association.

(2) A club or an association, its committee of management or member of its management shall not discriminate against a member on the ground of the member's disability —

- (a) in the terms or conditions of membership that are offered to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership, where different classes or types of membership are offered to members of that club or association;
- (c) by denying the member access, or limiting the member's access to any benefit provided by the club or association;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other less favourable treatment than that afforded to other members of the club or association.

(3) Notwithstanding subsections (1) and (2), it shall not be considered discrimination if a club or association is restricted to persons who have a particular disability and the person discriminated against does not have that disability.

Sport

48. (1) A person shall not discriminate against a person on the ground of the person's disability by excluding the person with a disability from a sporting activity.

(2) A sporting activity in subsection (1) includes an administrative or coaching activity in relation to any sport.

(3) Notwithstanding subsection (2), a person shall not be deemed to discriminate against a person with a disability if —

- (a) the person with a disability is not reasonably capable of performing the actions reasonably required in relation to the sporting activity;
- (b) persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of the skills and abilities relevant to the sporting activity; or

- (c) a sporting activity is conducted for persons who have a particular disability and the person discriminated against does not have that disability.

49. (1) A person who —

- (a) performs any function or exercises any power under an Act of Parliament;
- (b) has any other responsibility for the administration of an Act of Parliament; or
- (c) administers or has responsibility for the conduct of a Government program,

Exercise of
powers and
special
measures

shall not, in the performance of the function or exercise of the power or fulfilment of that responsibility, discriminate against another person on the ground of the other person's disability.

(2) Notwithstanding the provisions of subsection (1), a person shall not be deemed to discriminate against another person on the ground of the other person's disability if the person does an act that is reasonably intended to —

- (a) ensure that a person with a disability has equal opportunity with other persons in circumstances in relation to which a provision is made by this Act;
- (b) afford a person with a disability or a particular disability, goods or access to facilities, services or opportunities to meet the person's special needs in relation to —
 - (i) employment, education, accommodation, club or sport,
 - (ii) the provision of goods, services, facilities or land or making facilities available,
 - (iii) the administration of an Act of Parliament or Government program, or
 - (iv) the person's capacity to live independently; or
- (c) afford a person with a disability a grant, benefit or program, whether direct or indirect, to meet the person's special needs in relation to —
 - (i) employment, education, accommodation, clubs or sport,
 - (ii) the provision of goods, services, facilities or land, or making facilities available,
 - (iii) the administration of an Act of Parliament or Government program, or
 - (iv) the person's capacity to live independently.
- (3) Subsection (2) shall not apply to —
 - (a) discrimination in implementing a measure referred to in the subsection, if such discrimination is not necessary for implementing the measure; or
 - (b) the rates of salary or wages paid to a person with a disability.

50. Notwithstanding the provisions of this Part, a person, other than a person under section 49, shall not be deemed to discriminate against another person on the ground of the other person's disability if, subject to a disability standard under section 52 (2) (c), making any adjustments would impose an unreasonable and undue burden on the person.

Undue burden
in other areas

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Request for
information

51. (1) Where it is unlawful under Parts IV, V and VI for a person, in doing a particular act, to discriminate against another person on the ground of a disability of the other person, a person shall not require the other person to provide, whether by completing a form or otherwise, information in connection with, or for the purposes of, doing that particular act, if —

(a) a person who does not have the disability would not be required to provide the information in circumstances that are not materially different; and

(b) the information relates to the disability.

(2) Subsection (1) shall not apply if —

(a) evidence is produced to the effect that the purpose for which the person requires the information is —

(i) not to use the information to unlawfully discriminate against the other person on the ground of the disability, and

(ii) to determine whether the person with the disability is able to carry out the inherent requirements of employment or what reasonable adjustments to make for the person with the disability; and

(b) the evidence under paragraph (a) is not rebutted.

PART VII — *Disability Standards*

Disability
standards

52. (1) The Minister may prescribe disability standards in relation to any area in which it is unlawful under this Act for a person to discriminate against another person on the ground of a disability of the other person.

(2) Without limiting the generality of subsection (1), a disability standard may provide the following —

(a) reasonable adjustments;

(b) strategies and programs to prevent harassment or victimisation of persons with disabilities;

(c) adjustments deemed to impose an unreasonable and undue burden; and

(d) exemptions from the disability standard, including the power, if considered necessary, of the Council to grant such exemptions.

(3) The Minister may, by Order published in the *Gazette*, issue a reasonable adjustment order as may be required under subsection (2) (a).

Contravention
of disability
standard

53. (1) A person who fails to comply with, or contravenes, a disability standard, commits an offence and is liable, upon conviction, to imprisonment for a period of six months without the option of a fine and without the suspension of any part thereof.

(2) Any person who, being a director, promoter, an agent or officer of a company or society, contravenes the provisions of this Part commits an offence and is liable, upon conviction, to the same penalty as provided for in subsection (1):

Provided that where the offence is committed by a body corporate —

- (i) the body corporate shall be liable to such administrative fine as may be imposed by the Council under section 64,
 - (ii) with the consent or connivance of, or is proved to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who purported to act in such capacity, such director, manager, secretary, officer or person shall be liable to the same penalty under subsection (1), and
 - (iii) the director, promoter, agent or officer of such company, society or body corporate may be liable thereon jointly, or jointly and severally.
- (3) For the avoidance of doubt, reference in subsection (2) to a —
- (a) company, society or body corporate shall include a —
 - (i) corporation or any other body corporate, or
 - (ii) an association, club or body of persons; and
 - (b) director, manager, secretary or similar officer shall include every person charged with, or concerned or acting in the control or management of the affairs or activities of such company, body corporate, society, association, club or body of persons.

PART VIII — *Protection Against Harassment*

- 54.** (1) For purposes of this Part, “harassment” in work, employment or education, or in the provision of goods and services, means —
- (a) conduct which relates to a person’s disability; and
 - (b) the conduct has the effect of —
 - (i) violating the dignity of a person with the disability, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for a person with the disability.
- (2) “Harass” shall have a corresponding meaning in subsection (1).
- 55.** A person shall not harass, in relation to a disability, another person who has the disability who is —
- (a) an employee of that person;
 - (b) seeking employment by that person;
 - (c) a contract worker; or
 - (d) seeking to become a contract worker of that person.
- 56.** A person who is a member of staff of an educational institution shall not harass, in relation to a disability, another person who has the disability who is —
- (a) a student at an educational institution; or
 - (b) seeking admission to that educational institution as a student.
- 57.** A person who, whether for payment or not, provides goods or services or makes facilities available shall not harass, in relation to a disability, another person who has the disability who wants to —
- (a) acquire the goods or services;

Harassment in
work, education,
provision of
goods and
services

Harassment in
employment

Harassment in
education

Harassment in
provision of
goods and
services

Harassment
offence

- (b) make use of the facilities;
- (c) be a member of a club or association; or
- (d) participate in a sporting or any other activity.

58. (1) A person who harasses a person with a disability commits an offence and is liable, upon conviction, to imprisonment for a period of six months without the option of a fine and without the suspension of any part thereof.

(2) Any person who, being a director, promoter, an agent or officer of a company or society, contravenes the provisions of this Part commits an offence and is liable, upon conviction, to the same penalty as provided for in subsection (1):

Provided that where the offence is committed by a body corporate —

- (i) the body corporate shall be liable to such administrative fine as may be imposed by the Council under section 64,
 - (ii) with the consent or connivance of, or is proved to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who purported to act in such capacity, such director, manager, secretary, officer or person shall be liable to the same penalty under subsection (1), and
 - (iii) the director, promoter, agent or officer of such company, society or body corporate may be liable thereon jointly, or jointly and severally.
- (3) For the avoidance of doubt, reference in subsection (2) to a —
- (a) company, society or body corporate shall include a —
 - (i) corporation or any other body corporate, or
 - (ii) an association, club or body of persons; and
 - (b) director, manager, secretary or similar officer shall include every person charged with, or concerned or acting in the control or management of the affairs or activities of such company, body corporate, society, association, club or body of persons.

PART IX — *Protection Against Victimisation or Mistreatment*

Victimisation

59. (1) A person who commits an act of victimisation against a person with a disability commits an offence and is liable, upon conviction, to imprisonment for a period of six months without the option of a fine.

(2) For purposes of subsection (1), a person commits an act of victimisation against another person if he or she subjects, or threatens to subject, the other person to any detriment on the ground that the other person —

- (a) made, or proposes to make, a complaint under this Act;
- (b) brought, or proposes to bring, proceedings under this Act;
- (c) gave, or proposes to give, any information or documents to a person exercising power or performing any function under this Act;

- (d) appeared, or proposes to appear, as a witness in a proceeding under this Act; or
- (e) made an allegation that a person has done an act that is unlawful by reason of a provision of this Act.

60. A person who —

- (a) incites discrimination against a person with a disability in contravention of Part IV or VI of this Act; or
- (b) assists or promotes, whether by financial assistance or otherwise, such discrimination or contravention,

Incitement of
discrimination

commits an offence and is liable, upon conviction, to imprisonment for a period of six months without the option of a fine.

61. (1) A person who publishes or displays, or causes or permits to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention by that person to do an act that is unlawful under Parts IV, VI and VII commits an offence and is liable to imprisonment for a period of six months without the option of a fine.

Advertisement

(2) For purposes of subsection (1), “advertisement” includes every form of advertisement or notice, whether to the public or not, and whether —

- (a) in a newspaper or other publication;
- (b) by television, radio or electronic media;
- (c) by display of notices, signs, labels, show cards or goods;
- (d) by distribution of samples, circulars, catalogues, price lists or other material;
- (e) by exhibition of pictures, models or films; or
- (f) in any other way,

and the reference in that subsection to publish or display, in relation to an advertisement, is to be construed accordingly.

PART X — *Action Plans*

62. (1) A person who, under Parts IV, VI and VII, is prohibited from discriminating against another person on the ground of a disability of the other person shall prepare and implement an action plan.

Action plans

(2) The action plan in subsection (1) shall include provisions relating to —

- (a) devising policies and programs to achieve the objects of this Act;
- (b) the communication of such policies and programs to employees, agents or persons who implement the action plan;
- (c) the review of practices within the employment, body or institution with a view to the identification of any discriminatory practices;
- (d) setting the goals and targets, where these may be reasonably determined, against which the success of the plan in achieving the objects of this Act may be assessed;
- (e) the means, other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph (a);

- (f) the appointment of persons within the body to implement the provisions referred to in paragraphs (a) to (e); and
- (g) any other matter that is consistent with the objects of this Act.

(2) A copy of the action plan prepared in accordance with this section, including any amendment made thereto, shall be submitted to the Council by a person under subsection (1) for approval, supervision and monitoring.

(3) The Council shall, on receipt of the copy of the action plan under subsection (2), make the copy available to the public.

PART XI – *Administrative Penalties and Fines*

No offence
unless expressly
provided

63. Except as expressly provided for in this Act, nothing in this Act makes it an offence to do an act merely because the act is prohibited under this Act.

Administrative
penalties or
fines

64. (1) Notwithstanding any other action which may be taken for contravention of this Act, the Council may, in addition to such action, impose an administrative penalty or fine, as may be prescribed, where a person —

- (a) contravenes any disability standard or regulations under this Act;
or
- (b) fails to comply with —
 - (i) an action plan,
 - (ii) a decision of the Council, or
 - (iii) any requirement under this Act.

(2) The administrative penalties or fines under subsection (1) shall be in addition to any other penalty under this Act and shall be without prejudice to any other provision in this Act or the regulations

PART XII — *Exemptions*

Superannuation
and insurance

65. A person may, on the ground of the other person's disability, vary the terms or conditions on which an annuity, life insurance policy, a policy of insurance against accident or any other policy of insurance, membership of a superannuation or provident fund or scheme is offered or may be obtained by the other person, where it is reasonable —

- (a) based upon actuarial or statistical data and having regard to that data and other relevant factors; or
- (b) having regard to any other relevant factors, in a case where no actuarial or statistical data is available and cannot reasonably be obtained.

Acts done
under statutory
authority

66. A person shall not be deemed to discriminate against a person with a disability if, in direct compliance with an order of the court or statutory instrument which has specific provisions relating to payment of salary or wages in which such salary or wages are determined by reference to capacity of a person, a —

- (a) person with a disability is not in receipt of a salary or wages they would be eligible for pursuant to this Act; or
 - (b) statutory instrument, an award, order or a determination of the court fixes a minimum wage or salary that is determined by reference to the capacity of the person.
- 67.** A person shall not be deemed to discriminate against another person on the ground of the other person's disability if the —
- (a) disability is an infectious disease; and
 - (b) discrimination is reasonably necessary to protect public health.
- 68.** This Part shall not apply to a registered charity which confers benefits for charitable purposes or enables such benefits to be conferred.
- 69.** Discrimination in Parts IV and VI shall not apply to provisions in the Immigration Act, or render anything unlawful that is permitted or required to be done under that Act.
- 70.** (1) Discrimination in Parts IV and VI shall not apply to employment, engagement or appointment in the defence force in a position involving the performance of any —
- (a) combat or combat related duty or peacekeeping service; and
 - (b) duty as a chaplain or medical support person in support of forces engaged or likely to be engaged in combat or combat related duty or peacekeeping service.
- (2) For purposes of subsection (1), “combat duty”, “combat related duty”, “peacekeeping service” and “medical support” have the meanings assigned to them under the Botswana Defence Force Act.
- 71.** (1) Subject to subsection (2), the Council may, on application made in the prescribed manner, grant an exemption from the operation of a provision in Parts IV and VI subject to disability standards and such terms and conditions as are specified in the instrument granting the exemption.
- (2) The exemption granted in subsection (1) shall be expressed to only apply in such circumstances or in relation to such activities as are expressed in the instrument and for a specified period not exceeding 12 months.
- (3) The Council may, on application made by a person to whom an exemption is granted, a month before expiry of the exemption, grant a further exemption subject to the terms and conditions as specified in the first exemption.
- 72.** (1) The Minister may make regulations for —
- (a) anything that is required to be prescribed under this Act; or
 - (b) the better carrying into effect of the purposes and provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may provide for —
- (a) a description of total or partial loss of bodily or mental functions which have substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities for purposes of the definition of “person with a disability” in section 2;

Infectious diseases

Charities

Immigration
Cap. 25:02Employment
in combat
duties or the
army

Cap. 21:05

Council may
grant
exemptions

Regulations

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- (b) matters to be taken into account when determining —
 - (i) substantial and long-term adverse effects,
 - (ii) circumstances in which a person may be considered to be a person with a disability under this Act,
 - (iii) conditions to be treated as progressive,
 - (iv) past disabilities, or
 - (v) conditions which would not otherwise have long-term effects;
- (c) disability standards;
- (d) the scope or provisions of an action plan, including the form and manner in which the action plan shall be made;
- (e) accessibility requirements for public facilities and public transport;
- (f) accreditation of animal training organisations and animals trained to assist persons with disabilities;
- (g) administrative penalties and fines; and
- (h) such transitional arrangements as may be necessary for purposes of this Act.

PASSED by the National Assembly this 11th day of December, 2023.

BARBARA N. DITHAPO,
Clerk of the National Assembly.