



# LESOTHO Government Gazette

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## ACT NO. 2 OF 2021

**Persons with Disability Equity Act, 2021**

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## ACT NO. 2 OF 2021

**Persons with Disability Equity Act, 2021**

An Act to establish the Persons with Disability Advisory Council, to provide for equal opportunities and recognition of rights of persons with disabilities, and for related matters.

Enacted by the Parliament of Lesotho

**Citation and commencement**

1. This Act shall be cited as the Persons with Disability Equity Act, 2021 and shall come into operation on the date of publication in the Gazette.

**Application**

2. (1) This Act shall apply to all public offices, government ministries, institutions, public buildings and other agencies which provide a service to members of the public.

(2) When fulfilling a duty of providing a service to members of the public, a public office, government ministry, an institution or any other agency, shall take into consideration, any guidance issued by the Minister on the recommendation of the Council in order to accommodate a person with disability.

**Interpretation**

3. In this section, unless the context otherwise requires -

“accessible format methods” means any alternative format that permits a person with disability to have access to the content as feasibly and comfortably as a person without a disability;

“adjustment order” means an order served by the Council under section 42;

“agent person” includes a person with disability who has been forced into retirement from employment due to his disability;

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“assistive device and service” means a tool, implement and service, provided to a person with disability to assist the person in education, employment or other activity;

“authorized person” means a legal guardian of a person with disability;

“communication” include a language, display of text, Braille, sign language, 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;

“Constitution” means the Constitution of Lesotho, 1993;

“Council” means the Persons with Disability Advisory Council established under section 4;

“disability” means the result of an interaction between a person with an impairment and the environment with various barriers which hinder a person with the impairment to participate in societal activities on an equal basis with other persons;

“Director” means the Director of Disability in the Ministry responsible for social development;

“Director-General” means a person appointed as such under section 13;

“discrimination” 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;

“grant-in-aid” means an amount of money given to a person with disability who is unable to take care of himself without full attendance from a caregiver;

“impairment” means the loss or limitation of physical, mental, intellectual and sensory function on a long term or permanent basis;

“inclusive education” means the general education system which provides age appropriate accessible instruction, assessment, intervention, accommodation, modification, support service, adaptation, physical learning environment and any other relevant additional resources to a learner with disability, in order to help them realize their full potential on an equal basis with others;

“member” means a member of the Council;

“mental disability” means mental and intellectual impairment which hinders a person with such disability to interact with the society on an equal basis with others and does not include a person with mental illness who is a person of unsound mind and has mentally incapacity;

“Minister” means the Minister responsible for social development;

“operator” means a person who is registered with the Minister to operate a Residential Care Facility;

“personal assistance services” includes the provision of guides, sign language interpreters and personal assistants required by a person with disability enabling them to perform their functions on an equal basis with others;

“person with disability” includes a person who has a long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

“public building” means any building to which the public has right of access during all reasonable times for which the building is used for its prescribed occupants;

“reasonable accommodation” means necessary and appropriate modification and adjustments to such places which provide a service to the members of the public which do not impose a disproportionate or undue burden when needed in a particular case, to ensure to a person with disability, the enjoyment or exercise of all human rights and fundamental freedoms on an equal basis;

“residential care facility” means a private non-medical facility which provides shelter and personal care to persons with disability and adults registered under section 35;

“school facilities” means accessible and user-friendly classrooms, playgrounds, furniture, sanitary facilities and learning materials; and

“severe disability” means a physical, mental or intellectual impairment which has a substantial and long term effect to a person with disability to carry out normal day to day activities.

### **Establishment of the Persons with Disability Advisory Council**

4. (1) There is established the Persons with Disability Advisory Council, which shall be an advisory body to government on issues of disability.

(2) The Council is an autonomous body.

(3) The Council is a body corporate with perpetual succession and a common seal and may -

- (a) acquire, hold and dispose of real and personal property;
- (b) sue and be sued; and
- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

### **Composition of the Council**

5. (1) The Council consists of the following members who shall, after each organisation has submitted a name of the person nominated to the Minister, be appointed by the Minister by notice published in the Gazette -

- (a) The Director of Disability in the Ministry of Social Development;
- (b) one representative of Special Education Department in the Ministry of Education;

- (c) one representative of each category of the disabled people, who shall be nominated by the Lesotho National Federation Organisations of the Disabled;
- (d) one representative of the civil society, who shall be nominated by Lesotho Council of Non-Governmental Organisations;
- (e) one representative of the private sector, who shall be nominated by the Chamber of Commerce and the Private Sector Foundation;
- (f) one representative of the legal cadre who shall be nominated by the Law Society of Lesotho;
- (g) one representative of nurses, who shall be nominated by the Nurses Association of Lesotho;
- (h) one representative of the medical practitioners who shall be nominated by the Medical, Dental and Pharmacy Council; and
- (i) one representative of the Principal Chiefs, who shall be nominated by the Council of Chiefs.

(2) Members of the Council shall choose from among their members, a Chairperson and a Deputy Chairperson.

(3) Members of the Council shall determine their own procedures.

### **Functions of the Council**

6. The functions of the Council are to -

- (a) monitor and evaluate issues concerning disability in Lesotho;
- (b) advise on and adopt measures and standard concerning disability in Lesotho;



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- (c) monitor the implementation and ensure compliance of this Act;
  - (d) monitor the situation of the rights of persons with disability in Lesotho and provide advice in expertise on disability rights to the to the Human Rights Commission where necessary;
  - (e) investigate and refer violations of human rights of a person with disability to the Human Rights Commission and if necessary, recommend to the Human Rights Commission, to institute proceedings against violation of disability rights in a court of law;
  - (f) to keep and maintain a register of residential care facilities and their conditions;
  - (g) sensitise the public on its work, the nature and meaning of disability rights;
  - (h) disseminate information to the public on disability issues;
  - (i) gather opinions, recommendations, propositions and reports from the public and private institutions on disability rights issues using the media and other means;
  - (j) advice the Minister to ratify and domesticate the international and regional disability rights instruments;
  - (k) develop and maintain relationships with organizations and representatives of a person with disability in Lesotho;
  - (l) issue out adjustment orders for compliance with the Act;
  - (m) undertake any other activity or responsibility that is consistent with the spirit of promotion and protection of the rights of persons with disability;

- (n) keep and maintain a register of persons with disability;
- (o) keep and maintain a register of institutions, organisations and associations which provide rehabilitation services or support for persons with disabilities; and
- (p) promote studies and research on issues of disabilities to inform policies and practices.

### **Qualification for membership of the Council**

7. A person shall not qualify to be appointed as a member of the Council if he -

- (a) is an unrehabilitated insolvent;
- (b) has been convicted of a criminal offence without an option of a fine; and
- (c) is not a citizen of Lesotho.

### **Tenure of office of a member**

8. (1) A member except, an ex-officio member, shall hold office for a period of three years from the date of his appointment.

(2) A member, except an ex-officio member, shall hold office for not more than two consecutive terms.

### **Vacation from office**

9. (1) The office of a member becomes vacant -

- (a) at the expiration of three years from the date of his appointment;
- (b) if he resigns from office by one month's notice in writing addressed to the Minister;
- (c) if he becomes insolvent;

- 
- (d) if he is incapable of performing the duties of a member;
  - (e) has been absent without the knowledge of the Chairperson from three consecutive meetings of the Council; or
  - (f) is convicted of a criminal offence or an offence without an option of a fine under this Act.

(2) Where a member vacates an office, the Minister shall appoint another person in accordance with the provisions of section 5(1), to hold office for the remainder of the terms of office of the vacating member, at the expiration of the period to which a member was appointed.

### **Meetings of the Council**

10. (1) The Council shall meet quarterly in a year and at such places as may be fixed by the Chairperson.

(2) The Chairperson may at any time convene a special meeting of the Council on a written request of not less than four members.

(3) The Chairperson shall preside at all meetings of the Council and in his absence, the Deputy Chairperson shall preside.

(4) In the absence of both the Chairperson and the Deputy Chairperson, the members present shall elect from among themselves one of their number to preside.

(5) A quorum for a meeting of the Council shall be two thirds majority of the members.

(6) A decision of the Council shall be constituted by the majority of members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(7) A decision made, or an act done by the Council shall not be invalid because of a vacancy in the Council or because a person who is not entitled to be a member sat or acted as a member at the time when the decision was made.

**Disclosure of interest**

11. (1) If a member of the Council or a spouse or partner of the member has a direct or indirect interest in any matter discussed by the Council which results in the interest entailing or appearing to be in conflict with his duties as a member, the member shall disclose the interest to the Council.

(2) A member who discloses such interest in terms of subsection (1) shall not take part in the consideration or discussion of or vote on any question before the Council which relates to the interest.

(3) A person who fails to comply with the provisions of subsections (1) and (2) commits an offence and is liable on conviction to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding five years or to both.

**Remuneration of members**

12. A member, except an ex-officio member, shall receive such allowances as the Minister may, in consultation with the Minister responsible for finance, determine.

**Appointment of Director-General**

13. (1) There shall be a Director-General of the Council who shall be appointed by the Minister on such terms and conditions as may be determined by the Minister in consultation with the Council.

(2) The Director-General is responsible to the Council in the performance of his powers and functions under this Act.

(3) The Director-General is the Secretary of the Council.

**Powers and functions of the Director-General**

14. The functions of the Director-General are, subject to the general supervision and control of the Council, to -

(a) manage the day to day affairs and assets of the Council;

- 
- (b) manage, supervise and control the activities of the staff of the Council in the course of their employment;
  - (c) employ the staff of the Council as may be necessary for conducting the affairs of the Council on such terms and conditions as the Council may think fit;
  - (d) implement the decisions of the Council;
  - (e) mobilise funds for the Council from the local and international sources; and
  - (e) carry out any related duties which may be assigned to him by the Council.

### **Qualifications of the Director-General**

15. (1) A person qualifies to be appointed as the Director-General if he -
- (a) is a citizen of Lesotho;
  - (b) has extensive knowledge on matters relating to disability, human rights or social development;
  - (c) is at least a first-degree holder and has at least five years' experience, three years of which shall be experience on matters relating to disability, human-rights or social development; and
  - (d) is proven to be a person of high integrity and good leadership.

(2) The Minister may, on the recommendation of the Council and by notice published in the Gazette determine any other requirements for qualification of a person to be appointed as Director-General.

### **Tenure of office of Director-General**

16. The Director-General shall hold office for a period of five years.

**Removal from office of Director-General**

17. The Director-General may be removed from office by the Minister, on the recommendation of the Council -

- (a) in accordance with the terms and conditions of his employment;
- (b) if he has been given ninety days notice in writing of reasons for his removal; and
- (c) if he has been given an opportunity to present his defense against the reasons for his removal.

**Remuneration of Director-General**

18. The Director-General shall receive such remuneration and allowances as may be approved by the Minister in consultation with the Minister responsible for finance and on the recommendation of the Council.

**Condition of employment and staff of the Council**

19. (1) The Director-General may request, on the approval of the Council, secondment of a public officer to be employed in the Council, as may be necessary for the proper performance of the functions of the Council.

(2) A public officer who is employed to the Council on secondment shall, during the period of the secondment, be considered as an officer of the Council and shall be subject to the direction and control of the Council.

**Rights of people with disabilities**

20. The Minister shall take necessary steps, to achieve the full realization of the rights of persons with disability.

**Entitlement to live independently**

21. (1) A person with disability is entitled to decide his place of residence and with whom he will live with.

(2) Notwithstanding subsection (1), and if it appears to the satisfaction of the Council that it is the will and preferences of a person with disability, the place of residence and the person with whom the person with disability may reside with, may be determined by a personal assistant approved by the Council.

(3) No person shall deny a person with disability the entitlement provided for in subsection (1).

(4) A person who contravenes the provisions of subsection (3), commits an offence and is liable, on conviction, to a fine not exceeding Three Thousand Maloti or to imprisonment for a period not exceeding three years or both.

## **Employment**

22. (1) An employer shall not deny a person with disability access to opportunities for suitable employment on the basis of his disability.

(2) An employee with a disability, who at the work place performs his duties and responsibilities as competently as other employees, shall be subject to the same terms and conditions of employment, privileges, incentives, benefits, opportunities and allowances as other employees.

(3) An employer is, prohibited from discriminating against a person with disability in relation to -

- (a) the advertisement of employment;
- (b) the recruitment policy;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other benefits;
- (e) the provision of facilities related to or connected with employment;
- (f) the choice of persons for posts, training, advancement, apprenticeship, transfer, promotion or retrenchment; or

(g) any other matter related to employment.

(4) Notwithstanding subsection (3), an employer shall not be deemed to have discriminated against a person with disability if -

(a) the act or omission alleged to constitute the discrimination was not wholly attributable to the disability of the person; or

(b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned.

(5) An employer shall provide a person with disability reasonable accommodation in the workplace, whether physical, administrative or otherwise, to ensure the enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms.

(6) A person with disability may present his case to the courts of law where he has a complaint against his employer to the effect that he was discriminated by the employer in a way contrary to this section.

(7) A person who fails to comply with the provisions of subsections (1), (2), (3) and (5), commits an offence and is liable on conviction to a fine not less than Three Thousand Maloti and imprisonment for a period not exceeding five years or both.

## **Education**

23. (1) A principal, director or a head of a learning institute, private or public shall -

(a) not deny admission to any course of study to a person with disability by reason only of the disability, if the person with disability has the ability to acquire substantial learning in the course; and

(b) take all necessary steps to recognize the special needs of a person with disability with respect to -



- 
- (i) the entry requirements;
  - (ii) pass marks;
  - (iii) curriculum;
  - (iv) examinations;
  - (v) auxiliary services;
  - (vi) use of school facilities;
  - (vii) class schedules;
  - (viii) physical education requirements; and
  - (ix) other similar considerations.

(2) A custodian, parent or guardian of a child with disability is prohibited from refusing to have the child enrolled in a school.

(3) The Council shall, in consultation with relevant government departments or agencies, ensure and make provision in all districts, for all learning institutes, private and public to -

- (a) provide an inclusive education for a person with a disability;
- (b) have educational assistive devices; and
- (c) employ a teacher who is qualified in the use of accessible format methods.

(4) A person who fails to comply with the provisions of subsections (1) and (2) commits an offence and is liable on conviction to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding Five years or to both

**Training of educators**

24. (1) The Minister of Education shall, through the Department of Special Education, ensure that training is offered on the use of accessible format methods for a person with disability on an early basis, to the training of educators.

(2) The training to be offered in terms of subsection (1) shall include, at a minimum, methods on how to read, write and teach a person with disability using accessible format methods.

(3) An educator, including one who has previously completed an accredited course, shall be -

- (a) permitted by his learning institute to attend training;
- (b) allocated time by his learning institute for training; and
- (c) accredited for completing the offered training.

(4) An educator who has just joined a learning institute is entitled to receive intensive introductory accessible format methods for a person with disability.

(5) The Department of Special Education in the Ministry responsible for education shall prepare and submit a report plan in relation to training and completed session on braille to the Minister of Education.

(6) The report submitted to the Minister of Education in terms of subsection (5) shall include details of attendance, content of training, the nature of training and qualitative outcomes of the training.

**Health**

25. The Minister of Health shall involve the Council in the implementation of the national health programme under the Ministry of Health, for the purpose of -

- (a) prevention of disability;

- (b) early identification of disability during pregnancy;
- (c) early rehabilitation of disability;
- (d) enabling a person with disability to receive free habilitation, rehabilitation and medical services in public health institutions;
- (e) availing medical personnel and health professional to health institutions for the benefit of a person with disability; and
- (f) non-discriminatory attendance and service provision by medical personnel and health professionals to a person with a disability.

### **Accessibility and mobility**

26. A person with a disability is entitled to a barrier free and disability friendly environment to enable the person to have access to -

- (a) buildings, roads and other social amenities;
- (b) assistive devices and other equipment to promote their mobility;
- (c) public information in an accessible format; and
- (d) any other assisting equipment.

### **Public buildings**

27. (1) An owner of a public building shall, within five years from the coming into operation of this Act, adapt the building to suit a person with a disability in such a manner as many be specified by the Council.

(2) A person who fails to comply with the provisions of sub-section (1), commits an offence and is liable on conviction to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding five years or both.

**Public transport**

28. (1) The Minister responsible for transport shall, within five years of the coming into operation of this Act, ensure that a State owned bus or any State owned vehicle which transports the public, is adapted to suit a person with disability in such a manner as may be specified by the Council.

(2) An owner of a private bus shall, within ten years of coming into operation of this Act, adapt the bus to suit a person with a disability in such a manner as may be specified by the Council.

(3) An owner of other types of public transport may assist a person with disability in every appropriate and possible manner, to have access to public transport.

(4) A person who fails to comply with the provisions of subsections (2) and (3), commits an offence and is liable, on conviction, to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding five years or both.

**Sports and recreation**

29. (1) A person with a disability is entitled to the use of recreational or sports facilities owned or operated by Government or privately-owned facilities.

(2) A person with a disability is entitled to participate in all national and international sports events.

(3) For purposes of subsection (2), the ministry responsible for sports and recreation shall, in consultation with the Council, provide the necessary suitable environment.

(4) A person who prohibits a person with disability the entitlement to use recreational sports facilities provided for in subsection (1) commits an offence and is liable on conviction to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding Five years or both.

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## **Voting**

30. (1) A person with disability shall be entitled to register for voting in national and local government elections and to be voted for.

(2) A person with disability is entitled, at his request, to be assisted by a person of his choice, in voting in national and local government elections.

(3) A person who undertakes to render assistance under subsection (1), shall do so in strict compliance and confidence with the instruction of the voter and shall bind himself, in the prescribed form to comply with this section.

(4) A ballot paper at a polling station, shall be made available in any other accessible format methods.

## **Polling stations**

31. A polling station shall be made accessible to a person with disability during elections and the person with a disability shall be provided with the necessary assistive device and services by an electoral officer, to facilitate the exercise of this right under this section.

## **Access to justice**

32. (1) The Chief Justice shall make rules for the provision of accessible format methods and any other legal services and procedures which take into account the needs of a person with disability who attends court proceedings.

(2) A person with disability, who is denied bail shall be held in custody in a facility which is modified in accordance with the rules made by the Chief Justice or any other relevant law.

(3) A person with disability shall be competent and compellable to give evidence in a criminal and civil case in any court in Lesotho or before a magistrate on a preparatory examination.

(4) A person with disability shall be assisted in every possible manner to effectively, directly and indirectly participate in all legal proceedings and other preliminary stages of administration of the judicial justice process.

**Disaster risk reduction**

33. A person with a disability shall enjoy the right to equitable protection in situations of risk, whether natural, technological or anthropological in nature.

**Communication**

34. (1) A person who is responsible for hosting a public event or gathering news broadcast, educational programme or similar platform which cover public information of national significance, shall ensure that the sign language and other accessible format methods are provided for the public event, gathering, news broadcast, educational programme or similar platform for purposes of public information dissemination to a person with disability.

(2) A person or organisation providing, public telephone services shall provide and ensure that as far as practicable, a telephone device set or unit for a person with a disability is available to enable the person with the disability to communicate through the telephone system.

(3) A person with disability is entitled to have access to public information in an accessible format method.

(4) A person who fails to comply with subsections (1) and (2) commits an offence and is liable on conviction to a fine not exceeding Twenty Thousand Maloti or to imprisonment for a period not exceeding fifteen years or both.

**Registration of a residential care facility**

35. (1) No person shall operate a residential care facility unless the person is registered under this Act.

(2) A person who wishes to operate a residential care facility shall make an application for registration to the Minister in a prescribed manner.

(3) The Minister may, after receiving an application submitted in terms of subsection (1), grant or refuse the application for registration stating conditions for the grant or refusal.

(4) If the Minister grants an application for registration in terms of subsection (2), he shall issue a certificate of registration to the applicant.

(5) The certificate of registration issued in terms of subsection (3) shall be valid for a period of three years and is renewable.

(6) The Minister may by notice amend or revoke the certificate of registration if before expiration of the date of the certificate of registration, the applicant fails to comply with the prescribed conditions of registration.

(7) An applicant who is granted a certificate of registration shall not transfer the certificate to another person.

(8) Where a certificate of registration is revoked, or if the operator of a residential care facility wishes to close down the residential care facility for any reason, the operator shall -

- (a) consult the Minister;
- (b) ensure that a person with disability who resides at the residential care facility is accommodated at another residential care facility;
- (c) give a full written report to the Minister on relation on the accommodation of the person with disability who resides on the residential care facility; and
- (d) hand over all assets that were purchased with Government funds to the Minister.

(9) An operator who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding Three Thousand Maloti or to imprisonment for a period not exceeding three years or both.

### **Right of a person with disability to reside at a residential care facility**

36. (1) A person with disability is entitled to reside at a residential care facility of his preference.

(2) A person with disability who resides at a residential care facility is entitled to -

- (a) appoint a personal assistant to act on his behalf;
- (b) have reasonable access to and visitation rights at the residential care facility;
- (c) keep and use his personal possessions;
- (d) be informed of any changes in the management of the residential care facility;
- (e) participate in social, religious and cultural activities of his own choice;
- (f) his own privacy;
- (g) be given thirty days notice of any proposed transfer, discharge from or closure of the residential care facility except in cases of emergency or serious misconduct, negligence, criminal activity or non-compliance of this provision by an operator.

### **Admission to a residential care facility**

37. (1) A person with disability who wishes to reside at a residential care facility shall be admitted to the residential care facility if he has given his consent unless his medical condition renders him incapable of giving consent and in such a case, a person authorised to give consent on his behalf shall be required to give the consent.

(2) A police officer, Chief, Community Councilor or a member of the community who is satisfied on reasonable grounds that a person with disability is in need of care and protection in a Residential Care Facility, may take the person with disability to a residential care facility and recommend to the Minister to give consent on behalf of the person with disability where there is no authorized person to give the consent.

(3) If there is no person authorised to give consent on behalf of the person with disability in terms of subsection (1), the Minister shall give the consent required.



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(4) An operator of a residential care facility shall take all reasonable steps to obtain the consent required.

(5) Where a person with disability, an authorized person or where applicable, the Minister, makes an application for the person with disability to reside at a residential care facility, an operator shall admit the person with disability without any direct or indirect discrimination on the grounds referred to in section 18 of the Constitution.

(6) An operator of a residential care facility shall, where he refuses to admit a person with disability to reside at a residential care facility, state in writing, to the person who made the application in terms of subsection (5), the reasons for his refusal for admission.

(7) A person whose application is refused may, within thirty days from receiving the notification of the refusal, apply for the review of the refusal to the Council.

(8) If an operator of a residential care facility admits a person with disability, he shall, within thirty days from the admission inform the Director who shall keep a record of the admission of the person with disability.

### **Services at a residential care facility**

38. An operator of a residential care facility shall provide the following services at his residential care facility -

- (a) twenty-four hour care and support services to a person with disability who needs special care;
- (b) rehabilitation services;
- (c) counseling services to a person with disability and his family member who needs the service;
- (d) education on issues of disabilities;
- (e) training of volunteer care givers who assist within the residential care facility with dealing with a person with disability; and

- (f) sports and recreational activities and facilities.

## **Reports**

39. An operator shall submit an annual financial report to the Minister.

## **Inspection and monitoring of a residential care facility**

40. (1) The Director may designate a social worker or any other person who has knowledge and expertise on social work to -

- (a) inspect and monitor a registered residential care facility to ensure that it complies with the provisions of this Act;
- (b) interview a person with disability who resides and is catered for at a registered Residential Care Facility;
- (c) enquire into the well-being of a person with disability who resides at a residential care facility with or without the assistance of a health care provider;
- (d) request an operator of a registered residential care facility to submit books, documents or records in his possession of the residential care facility he is operating; and
- (e) report to the Director, the results of an inspection carried out in accordance with this Act.

(2) A social worker or any other person who is designated by the Director in terms of subsection (1), shall, before exercising the inspection functions provided for under subsection (1) produce a certificate of inspection to an operator or any other person who is in control of a residential care facility.

- (3) A person who -

- (a) obstructs a social worker or any other person assigned to perform the functions of a social worker;
- (b) refuses to allow a social worker or any other person

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assigned to perform the functions of a social worker access to a person with disability in the care of or who resides at a residential care facility; or

- (c) refuses to submit books, documents or records of a residential care facility he operates to a social worker or to a person assigned to perform the functions of a social worker,

commits an offence and is liable on conviction, to a fine not exceeding Three Thousand Maloti or imprisonment for a period not exceeding three months.

### **Compliance order**

41. (1) The Director shall, where an operator of a residential care facility has failed to comply with the provisions of this Act, issue a compliance order to the operator.

(2) A compliance order issued under subsection (1) shall remain valid until the operator has complied and the Director has issued a compliance certificate in respect of the Compliance Order.

commits an offence and is liable on conviction to a fine not exceeding M3000.00 or to imprisonment for a period not exceeding three months.

### **Adjustment order**

42. (1) This section shall apply to any premises to which members of the public are admitted, whether on payment of a fee or otherwise, for services or amenities provided to them.

(2) Without prejudice to the provisions of section 21, if the Council considers that any premises, services or amenities are inaccessible to a person with a disability, by reason of a structural, physical, administrative or other impediment to such access, the Council may, subject to this section, issue and serve the owner of the premises or the provider of the service or amenities concerned with an adjustment order.

- (3) An adjustment order served under subsection (2) shall -

- (a) set out -
  - (i) a full description of the premises concerned and services or amenities provided;
  - (ii) the grounds upon which the Council considers that the premises concerned and the services or amenities provided are inaccessible to a person with disability;
- (b) require the owner of the premises or provider of the services or amenities, to take such action as may be specified in the order and at his own expense, access by a person with disability to the premises, services or amenities; and
- (c) stipulate the period within which the action referred to in paragraph (b) shall be commenced and completed.

(4) The Council shall, before serving an adjustment order under subsection (2), serve notice to the person concerned -

- (a) specifying the ground upon which the adjustment order is to be issued and the nature of action which the Council considers necessary to rectify the situation which has given rise to the proposed order;
- (b) stipulating the maximum period that the Council considers reasonable for the implementation of the action proposed; and
- (c) calling the person concerned, if he wishes to do so, to make representations to the Council within thirty days from the date of the service of the notice.

(5) The Council may, after considering any representations described in subsection (4)(c), issue, refrain from or defer the issuing of the adjustment order.

(6) A person may, within thirty days after an adjustment order is

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issued under subsection (5), apply for the review of the issuance of the order to the High Court.

(7) A person who fails to comply with an adjustment order issued under this section commits an offence and is liable on conviction to a fine not exceeding Ten Thousand Maloti or to imprisonment for a period not exceeding ten years or both.

### **Disability Public Fund**

43. (1) The Minister of Finance shall establish a Disability Public Fund in accordance with the relevant financial law which shall consist of such monies from donations and contributions.

(2) The Disability Public Fund shall be established to support the implementation of disability programmes and services under this Act.

### **Disability grant**

44. (1) A person with a severe disability shall be entitled to a disability grant.

(2) The severity of a disability provided for in subsection (1) shall be determined by a relevant specialist or an expert on the nature of the disability.

(3) A person with severe disability, who benefits from the disability grant shall not be entitled to public assistance in cash.

### **Eligibility for disability grant**

45. (1) A person with severe disability shall be entitled to a disability grant if he -

- (a) is a citizen of Lesotho;
- (b) is resident in Lesotho;
- (c) complies with the disability grant specific requirements;

- (d) is between the age of zero to sixty-nine; and
- (e) is in possession of a medical report which proves that he is severely disabled.

(2) The disability grant shall be determined annually by the Minister, in consultation with the Minister of Finance.

(3) The disability grant shall be a means tested and shall be determined by the Minister annually for its necessity.

(4) The Minister may determine and prescribe additional eligibility criteria for disability based on the following -

- (a) means testing;
- (b) necessity, age limit and disability severity; and
- (c) proof of measures which establish or verify age, gender, citizenship and family relationship;

(5) An adult person with severe disability who is regularly attended to by another person, shall be entitled to a grant-in-aid in addition to the disability grant.

### **Care dependency grant**

46. (1) A child with severe disability is entitled to a care dependency grant as may be determined by the Minister in consultation with the Minister of Finance.

- (2) A care dependency grant shall be received by -
- (a) parent;
  - (b) guardian;
  - (c) primary care giver; or
  - (d) a foster parent,

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of the child with severe disability.

(3) The severity of a disabled child provided for in subsection (1) shall be determined, subject to the nature of the disability, by a specialist or expert in the nature of the disability.

(4) A severe disabled child who receives a care dependency grant is not entitled to receive any other social grant payable to children.

(5) The care dependency grant shall be means tested and annually reviewed by the Minister.

(6) The Minister shall when determining or prescribing eligibility criteria for care dependency grant consider the following -

- (a) means testing of the parent, guardian, primary care-giver or foster parent;
- (b) the severity and nature of the disability; and
- (c) proof of measures which establish or verify the age, gender, citizenship and family relationship of the child.

### **Eligibility for care-dependency grant**

47. A severely disabled child is entitled to a care dependency grant if -

- (a) the child is severely disabled and dependent on a permanent care or support service;
- (b) the parent, guardian, primary care giver or foster parent of the child is a citizen of Lesotho, a permanent resident or a refugee;
- (c) the child is not residing in an institution funded by or receiving a subvention from government;
- (d) the child is under the age of eighteen years;
- (e) there is evidence of a medical report which confirms the

- (f) severe disability of the child; and  
a parent meets a means test requirement.

### **Suspension of care dependency grant**

48. A care dependency grant may be suspended if -

- (a) there is a change in the financial circumstances of the parent, guardian, primary care giver, foster parent or change in the medical circumstances of the child;
- (b) an outcome of a review by the Minister indicates so;
- (c) the parent, guardian, primary care giver or foster parent of the child fails to utilize the grant in a manner which is intended to assist the child after receiving the grant;
- (d) the parent, guardian, primary care giver or foster parent of the child when making an application for the grant furnishes the Minister with false information; or
- (e) the care dependency grant is approved in error.

### **Lapsing of a care dependency grant**

49. A care dependency grant shall lapse on the -

- (a) last day of the month on which the severely disabled child has died in;
- (b) first day of the third month following the date on which the severely disabled child was admitted to an institution or care facility which is funded by or receives a subvention from government; or
- (c) when a severely disabled child attains eighteen years, he shall be entitled to a disability grant in accordance with sections 45 and 46.



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## **Funds of the Council**

50. The funds of the Council shall consists of -
- (a) funds appropriated by Parliament;
  - (b) funds from donors or agencies, for the purpose of carrying out its functions.

## **Annual accounts**

51. (1) The financial year of the Council shall be from the 1st April of one year ending on the 31st March of the following year.
- (2) The Council shall ensure that -
- (a) proper accounts and other records are kept in relation to the revenue and expenditure of the Council;
  - (b) within three months of the end of each financial year of the Council, a statement of accounts of the Council is prepared by an accountant and audited by an external auditor appointed by the Council and approved by the Lesotho Institute of Accountants and submitted to the Minister.

## **Annual and quarterly reports**

52. (1) The Council shall prepare an annual and quarterly report of its activities which shall be submitted to the Minister for presentation to Parliament.
- (2) The Minister shall present to Parliament within six months of the end of the financial year, an annual report which includes audited financial statements prepared by the Council.
- (3) The Council may be dissolved if it is unable to comply with subsection (2) above.
- (4) The Prime Minister shall make a statement to Parliament if the Minister fails to comply with subsection (2) above.

**Regulations**

53. (1) The Minister may make regulations generally for the better carrying out of the provisions of this Act and without limiting the generality of this provisions, may make regulations -

- (a) prescribing the procedures, forms and fees applicable under this Act;
- (b) specifying and describing the nature of discriminatory acts against a person with a disability; and
- (c) the terms and conditions of employment of staff of the Council.

## GOVERNMENT NOTICE NO. 4 OF 2021

**The Parliament of Lesotho****Statement of Objects and Reasons of the  
Persons with Disability Equity Act, 2021**

**(Circulated by the authority of the Honourable Minister  
of Social Development 'Matebatso Doti)**

The purpose of the Bill is to domesticate the United Nations Convention on the Rights of People with Disabilities (UNCRPD) in order to prevent and uphold the fundamental freedoms of the People with Disabilities. The Bill addresses the injustices that the People with Disabilities (PWDs) go through.

The Bill establishes the Council of Disability Rights. It is an independent body that oversees the government in the implementation of the Bill.

It provides for access to education. In terms of the Bill no person shall be denied access to study on the basis of disability. It also requires the training of educators at schools to include the training on how to use Braille on early basis which shall be provided by the Ministry of Education, through its department of Special Education.

The Bill provides that an employer should be prohibited from discriminating against a person with disability in relation to the advertisement of employment, recruitment policy and other related issues.

The Bill provides that People with Disabilities should have access of all public information in the form of Braille and other forms of accessible format. This would include government gazettes and publications.

In accordance to the Bill, the person with disability is entitled to a barrier free and disability friendly environment to enable them to have access to buildings, roads and other social amenities. Furthermore, it also provides for access to assistive devices and other equipment to promote their mobility.

The Bill entitles the people with mental disability to register for voting in national elections. It further provides that a person with mental disability should be assisted at his request by a person of his choice in voting.

According to the Bill a person with disability is entitled to use the recreational of sports facilities owned or operated by Government during social, sporting or recreational activities.

The Bill provides that a person with mental disability shall be assisted in every possible manner to effectively, directly and indirectly participate in all legal proceedings, including giving of evidence in court.

The Bill also addresses the regulation of residential care facilities for compliance with the law and prescribed standard. It provides that the residential care facilities should be registered with the Ministry of Social Development.

It provides for the establishment of the Disability Trust Fund by the Minister of Finance to support the implementation of the disability programmes and services.

The Bill provides for disability grant and a grant-in-aid which shall be granted to people with severe disability and who cannot generate income by any means. The determination for the severity of the disability shall be done by professionals such as Occupational Therapists, Physiotherapists, Medical Practitioners, Audiologists and Speech Therapists. The grant-in-aid shall be given to adults with disability so that they will be able to pay their care-givers.

The Bill also provides for meaningful and full participation by People with Disabilities in the decision making concerning their lives. This includes making informed choices and decisions about where to live and with whom to live.