

CAYMAN ISLANDS



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THE DISABILITIES (SOLOMON WEBSTER) LAW, 2016

(LAW 43 OF 2016)

THE DISABILITIES (SOLOMON WEBSTER) LAW, 2016

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CAYMAN ISLANDS

Law 43 of 2016.

I Assent

Helen Kilpatrick

Governor.

16th November, 2016

A LAW TO PROMOTE, PROTECT AND ENSURE THE FULL ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, BY PERSONS WITH DISABILITIES, ON AN EQUAL BASIS WITH OTHER PERSONS; TO PROMOTE RESPECT FOR THE DIGNITY OF PERSONS WITH DISABILITIES; TO ESTABLISH THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Disabilities (Solomon Webster) Law, 2016. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law - Interpretation

“access” includes -

- (a) in relation to premises, freedom to enter in, approach, communicate with, make use of, or manoeuvre within, any premises;
- (b) in relation to benefits, freedom to make use of any benefits for which a person may qualify; and
- (c) in relation to communication, the capacity to receive and make use of information,

and “accessible” shall be construed accordingly;

“assistive device” means any equipment or device that is designed, made or adapted to alleviate the effects of a disability;

“benefit” includes the provision of goods, services, facilities, opportunities, situations or advantages;

“built environment” includes buildings (interior and exterior), structures, roads, sidewalks, walkways and similar items;

“caregiver” means -

- (a) a parent;
- (b) a legal guardian; or
- (c) any other person,

responsible for caring for the health, financial, physical security or general well-being of a person with a disability;

“Council” means the National Council for Persons with Disabilities established by section 3;

“disability” means any short term or long term physical, mental, intellectual or sensory impairment which significantly hinders a person’s full and effective participation in society, on an equal basis with other persons and shall be construed with reference to the classification or diagnostic system accepted by the Council;

“discrimination” means any distinction, exclusion or restriction, on the basis of disability, which -

- (a) has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with

- others, of all rights and freedoms in the political, economic, social, cultural, civil, or any other field; and
- (b) cannot be shown to be a proportionate means of achieving a legitimate aim;

“impairment” means any loss or abnormality of psychological or anatomical structure or function;

“member” means a member of the Council and includes the Chair and the Deputy Chair of the Council;

“person with a disability” means a person who has a short-term or long-term physical, mental, intellectual or sensory impairment which significantly hinders, or which may hinder, that person’s full and effective participation in society, on an equal basis with other persons;

“public officer” has the meaning assigned to that expression in the Constitution set out in Schedule 2 to the Cayman Islands Constitution Order 2009;

S.I. 2009/1379

“reasonable accommodation” means the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden where needed in a particular case, to ensure to a person with a disability, the enjoyment or exercise, on an equal basis with persons who do not have disabilities, of privileges, interests, benefits and treatment, and the facilitation of such privileges, interests, benefits and treatment, by the provision of auxiliary aids and services, including -

- (a) assistive devices;
- (b) interpreters, technologies and effective methods of making aurally delivered and received materials available to a person with a disability;
- (c) readers, taped audio visually recorded texts or other effective methods of making visually delivered and received materials available to a person with a disability; and
- (d) physical modification to buildings and the built environment; and

“Register” means the register maintained pursuant to section 10.

(2) For the purposes of this Law, “disproportionate or undue burden” includes -

- (a) the nature of the benefit likely to accrue to, or the detriment likely to be suffered by, any person concerned;

- (b) the effect of the relevant disability on a person concerned;
- (c) the financial circumstances of the person concerned who is claiming a disproportionate or undue burden; or
- (d) the estimated amount of expenditure or other allocation of resources required by the person concerned who is claiming a disproportionate or undue burden and whether it is reasonably proportionate to the benefit likely to accrue.

PART 2 - THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

The National Council for
Persons with Disabilities

3. (1) There is established a body to be called the National Council for Persons with Disabilities, having the functions, responsibilities, powers and duties conferred or imposed upon it by this and any other Law.

Schedule

(2) The Schedule has effect with respect to the constitution and procedure of the Council.

Functions of the Council

4. (1) The Council shall perform such functions as may be necessary for the purpose of -

- (a) reinforcing and promoting recognition and acceptance within the Islands of the principle that a person with a disability, has the same fundamental rights as a person who does not have a disability;
- (b) promoting the dignity and autonomy of persons with disabilities, including their freedom of choice and independence;
- (c) ensuring full and effective participation in the Islands for persons with disabilities on an equal basis with persons who do not have disabilities; and
- (d) promoting respect for, and acceptance of, persons with disabilities.

(2) The Council shall in carrying out its functions adopt a consultative approach in relation to the community of persons with disabilities and other critical stakeholders.

Chair and Deputy Chair

5. (1) The Chair of the Council and the Deputy Chair of the Council shall be appointed by the Cabinet, from among the members of the Council who are not public officers.

(2) The duties of the Chair include -

- (a) chairing meetings of the Council;

- (b) instructing the Executive Secretary on behalf of the Council;
- (c) signing Minutes of meetings of the Council;
- (d) apprising the Council of matters raised by stakeholders;
- (e) making best efforts to guide the Council in accordance with relevant legislation and policy; and
- (f) participating in public relations or education campaigns on behalf of the Council.

(3) In the case of the absence or inability of the Chair to act, the Deputy Chair shall perform the duties of the Chair.

6. (1) The Cabinet shall appoint an individual who is a public officer to be the Executive Secretary of the Council but the Executive Secretary shall not be a member of the Council and shall have no right to vote at meetings of the Council. Executive Secretary

(2) The Executive Secretary shall manage the affairs of the Council in accordance with applicable legislation, Council directives and Council policies.

7. Each of the members of the Council (if they are not public officers) may receive such remuneration in respect of each meeting attended, and the Chair and Deputy Chair may receive such additional remuneration, as may be determined by the Cabinet. Remuneration of members

8. Neither the Council, nor any member of the Council, nor the Executive Secretary of the Council, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was negligent or in bad faith. Immunity

9. The Government shall indemnify a member of the Council against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported discharge of that member's functions, responsibilities, powers and duties under this Law, except claims, damages, costs, charges or expenses caused by the negligence or bad faith of that member. Indemnity

PART 3 - THE DISABILITIES REGISTER

10. (1) The Council shall maintain a confidential register (to be known as the Disabilities Register) containing the particulars of any person with a disability who wishes to be registered. Disabilities Register

(2) The Register shall be kept in such form, and all entries, alterations and removals of entries shall be made in such manner, as may be prescribed.

(3) A person whose name is in the Register shall be issued, in the prescribed manner, with a certificate of registration.

Registration or de-registration of a person with a disability

11. Where -

- (a) a person with a disability desires that person's name; or
- (b) a caregiver of a person with a disability desires the name of the person with a disability,

to be entered in the Register or to be removed from the Register, that person or the caregiver shall make an application to the Council in the prescribed manner.

PART 4 - ACCESS TO RIGHTS

Access to privileges, interests, benefits and treatment

12. (1) A person with a disability is entitled to the enjoyment of rights, privileges, interests, benefits and treatment (whether directly, or through contractual, licensing, or other arrangements).

(2) The rights of persons with disabilities shall be protected by the elimination of discrimination and by the progressive realization of their economic, social and cultural rights.

Personal liberty

13. No person shall be deprived of personal liberty or security of the person only on the ground of disability.

Right to privacy

14. (1) A person with a disability has a right to private life and family life on an equal basis with persons who do not have disabilities.

(2) A person with a disability shall not be a subject of any research or medical or scientific experimentation without that person's free and informed consent, obtained through accessible modes, means and formats of communication.

(3) A person with a disability shall not be subject to any medical procedure which leads to or could lead to infertility without that person's free and informed consent, obtained through accessible modes, means and formats of communication.

15. Persons with disabilities shall, in their individual or representative capacity, as the case may be, have the right to - Access to justice

- (a) move or appear before any court, tribunal, authority, commission, or any other body having judicial, quasi-judicial or investigative powers, on an equal basis with persons who do not have disabilities; and
- (b) receive reasonable accommodations and other support in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

16. A person with a disability shall not, by reason of the disability, be denied the opportunity to participate in programmes, work or activities that relate to political office, including - Political office

- (a) the opportunity to vote using procedures, facilities, material and support that are appropriate, accessible and easy to understand and use; and
- (b) the opportunity to be elected to public office and perform public functions at all levels of government.

17. A person with a disability shall not, by reason of the disability, be denied the opportunity to effectively and fully participate in the conduct of public affairs, including forming and joining any organizations at local, regional, and international levels. Public life

PART 5 - MISCELLANEOUS PROVISIONS

18. (1) A person who -

- (a) assaults or obstructs an authorized person acting in the performance of the authorized person's lawful functions under this Law; or
- (b) knowingly gives false or misleading information to the Council or to an authorized person acting in the performance of the authorized person's functions pursuant to this Law,

Obstruction of
authorized persons

commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(2) In this section -

“authorized person”, in relation to any act, means a person duly authorized by the Council to act in that behalf.

Regulations

19. (1) The Cabinet may make regulations for the better carrying out of this Law and for giving effect thereto and in particular -

- (a) for prescribing the form of any document authorized or required by this Law to be served, made, issued or done;
- (b) for any purpose for which regulations are authorised or required to be made under this Law and for prescribing anything that by this Law is required or authorised to be prescribed by regulations;
- (c) for empowering such persons as may be specified in the regulations to administer or execute the regulations and to make orders, impose requirements or give directions for the purposes of the regulations;
- (d) for empowering such persons as may be specified in the regulations to take measures, including the entry and inspection of any land or building, to secure compliance with the regulations or any order, requirement or direction made, imposed or given thereunder; and for enabling such persons to recover expenses incurred by them in the exercise of any such power; and
- (e) for the review of decisions given under the Regulations.

(2) Any regulation made under this Law may provide for the imposition of a fine of five thousand dollars and imprisonment for six months or both, for any contravention of, or failure to comply with, such regulation.

Law binding on Crown

20. This Law binds the Crown.

SCHEDULE

(Section 3)

THE NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

Composition of Council

1. The Council shall consist of the following members, each of whom shall be appointed by the Cabinet -

- (a) not less than three members who are persons with disabilities, whether or not they are affiliated with an advocacy or service organization that works for the rights of persons with disabilities;
- (b) not less than three members who are from the private sector or who are affiliated with a non-Governmental advocacy or service organization that works for the rights of persons with disabilities;

- (c) not less than three members who are public officers having substantial knowledge of, and experience in, one or more of the following areas -
 - (i) health;
 - (ii) education;
 - (iii) lifelong learning;
 - (iv) employment; and
 - (v) research and analysis; and
 - (d) one member who is an attorney-at-law practising in the Islands.
2. (1) The members of the Council shall hold and vacate office in accordance with the provisions of this Schedule and the terms of their appointment. Tenure of office
- (2) Each member of the Council shall be appointed for a term of not less than three years but not more than six years and shall be eligible for re-appointment; and the Cabinet shall cause notice of such appointment or re-appointment to be published in the Gazette.
3. A member of the Council may resign office by instrument in writing addressed to the Premier, and the resignation shall take effect as from the date of the receipt of the instrument by the Cabinet Secretary. Resignation
4. (1) The Cabinet may - Revocation of appointments
- (a) in its discretion, revoke the membership of a member of the Council; or
 - (b) terminate a person's appointment as a member of the Council, if the member -
 - (i) has been adjudged bankrupt;
 - (ii) has been absent from three consecutive meetings of the Council without the consent of the Chair of the Council; or
 - (iii) is otherwise unable or unfit to discharge the functions of a member of the Council.
- (2) Where any member of the Council ceases to be a member before the normal expiration of the member's office, the Cabinet in accordance with this Law, may appoint another person to hold that office until the time that the member's office would have expired.
5. (1) The Council shall meet a minimum of six times per year, but may meet as often as necessary and practical and the Council may decide its own procedures, except so far as its procedures are prescribed by this Law. Procedure and meetings

(2) Members of the Council who are appointed under subparagraph (c) of paragraph 1 shall have no right to vote but members who are appointed under subparagraph (a), (b) or (d) of paragraph 1 shall each have one vote; and decisions of the Council shall be adopted by a simple majority of the votes of the members present and voting except that in the case of an equality of votes the Chair shall in addition have a casting vote.

(3) At every meeting of the Council a quorum shall consist of a simple majority of the members appointed under subparagraphs (a), (b) and (d) of paragraph 1, with at least one person being a member appointed under each of those subparagraphs.

(4) The Council may act notwithstanding that a vacancy exists among the members.

(5) The deliberations of the Council shall be confidential but the Council shall cause any decision which affects the members of the public to be published in the Gazette, on a website or in a newspaper of the Islands.

(6) If a member of the Council has any personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Council, the member shall, if present at the meeting of the Council at which such matter is to be determined, as soon as practicable after the commencement thereof, disclose the fact and leave the meeting, and shall not take part in the consideration or discussion of such matter or vote on any question with respect thereto.

Passed by the Legislative Assembly the 24th day of October, 2016.

Juliana O'Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.