

CHAPTER 210

PERSONS WITH DISABILITY
(EMPLOYMENT) ACT

To provide for the employment of persons with disability and for matters connected therewith or ancillary thereto.

*Amended by:
XXVI.1995.2.*

(7th February, 1969)*

ACT II of 1969, as amended by Acts XIV of 1969, XXII of 1976, XI of 1977, XIII of 1983 and XXVI of 1995; and Legal Notice 411 of 2007.

1. The short title of this Act is the Persons with Disability (Employment) Act.

Short title.
*Amended by:
XXVI.1995.2,3.*

2. In this Act, unless the context otherwise requires -
"association of persons" includes any society of persons, whether corporate or unincorporate and whether vested with legal personality or not;

Interpretation.
*Amended by:
XIV.1969.18;
XXII.1976.4;
XI.1977.2;
XXVI.1995.2,4.*

"the Authority" means the National Employment Authority established by article 3 of the [Employment and Training Services Act](#);

Cap.343.

"blind person" means a person who has no sight or whose sight is, or is likely to become, so defective that he is unable to obtain or keep any employment, or to undertake any work on his own account, for which sight is essential;

"compulsory school age" in relation to any person means the age at which such person ceases to be subject to the provisions of the [Education Act](#);

Cap. 327.

"the Corporation" means the Employment and Training Corporation established by article 5 of the [Employment and Training Services Act](#);

Cap. 343.

"deaf person with speech" means a person who, even with a hearing aid, has little or no useful hearing and whose normal method of communication is by speech and lip reading;

"deaf person without speech" means a person who has no useful hearing and whose normal method of communication is by signs, finger spelling or writing;

"disablement resettlement services" means such facilities as are designed to place in suitable employment registered persons;

"industrial rehabilitation courses" means such facilities of physical training, exercise and occupation conducive to the restoration of fitness, whereby persons with disability may be rendered fit for undertaking employment or work on their own account, of a kind in which they were engaged before they became disabled or of some other kind suited to their age, experience and

*See Government Notice No 138 of 7th February, 1969.

qualifications, or for making use of a vocational training course, and includes such other incidental facilities as may appear to the Minister to be requisite for enabling persons attending such courses to obtain the full benefit thereof;

"Minister" means the Minister responsible for labour;

"person" includes an association of persons;

"person with disability" means a person, being over compulsory school age, who, by reason of injury, disease, congenital deformity or other physical or mental incapacity, is substantially handicapped in obtaining or keeping employment or in undertaking work on his own account, of a kind which apart from that injury, disease, deformity or incapacity would be suited to his age, experience and qualifications; and the word "disability", in relation to any person, shall be construed accordingly;

"placement medical officer" means any suitably qualified medical officer authorized in writing by the Minister;

"prescribed" means prescribed by regulations made by the Minister under this Act;

"public service" has the same meaning as is assigned to it by article 124 of the [Constitution of Malta](#);

"the register" means the register of persons with disability kept under article 5;

"registered person" means a person whose name is for the time being entered in the register;

"suitable employment" means such employment, or such work on one's own account, as a placement medical officer, having regard to the age, experience and qualifications of the person with disability, considers suitable for that person;

"vocational guidance services" means facilities designed to guide persons with disability in their choice of employment or work on their own account, of a kind suited to their age, experience and qualifications;

"vocational training courses" means facilities for the training of persons with disability who are in need of training in order to render them competent to undertake employment or work on their own account, of a kind suited to their age, experience and general qualifications.

3. (1) The Minister may provide, or make arrangements for the provision by any government department or the Corporation or otherwise of -

- (a) vocational guidance services;
- (b) vocational training courses;
- (c) industrial rehabilitation courses; and
- (d) disablement resettlement services.

(2) Where any person with disability is receiving any of the services or is attending any of the courses referred to in subarticle

Provision of services and courses and arrangements by the Minister.
Amended by:
XXVI.1995.2.5.

(1), he shall be under adequate medical supervision.

(3) Any arrangements made by the Minister under subarticle (1) may include the dispensation from or modification of any qualification or condition relating generally to the entry, attendance, or otherwise, in respect of any services for vocational guidance or any courses for vocational or industrial training provided for persons other than persons with disability.

4. (1) The Minister may defray, or contribute towards, expenses incurred -

Defrayment of expenses and grant of assistance.

- (a) in the provision of vocational training courses or industrial rehabilitation courses as are referred to in article 3(1); and
- (b) by persons attending such courses in travelling to and from the place where the course is held,

and may also, to or in respect of such persons, grant further assistance, in cash or in kind, as he may from time to time determine.

(2) Any assistance granted under subarticle (1) shall be subject to such conditions as the Minister may impose either generally or in respect of any particular person.

5. (1) The Corporation shall set up and maintain a Register of Persons with Disability.

Register of persons with disability.
Amended by:
XXVI.1995.6.

(2) The register shall be kept in such form, and may be divided into such parts, and entries and alterations therein and removal of entries therefrom shall be made in such manner, as the Minister may determine.

6. Every person whose name is entered in the register shall be provided with a certificate of registration and such document shall, until the contrary is proved, be sufficient evidence of the facts shown therein.

Certificate of registration.

7. The Minister may make regulations prescribing -

Power to make regulations with respect to certificates of registration.

- (a) the manner of issue of certificates of registration;
- (b) the conditions for the issue of a duplicate certificate of registration on evidence of the loss or accidental destruction of the original certificate;
- (c) the manner in which such loss or accidental destruction is to be proved;
- (d) the conditions under which, subject to the provisions of this Act, any such certificate shall become null and of no validity; and
- (e) the manner of withdrawal of any certificate issued under this Act.

Power to make regulations with respect to entries in register.

Amended by: XXVI.1995.7.

8. (1) The Minister may make regulations prescribing matters which are to constitute conditions of, or disqualifications from, the entry or the retention in the register of the names of any persons, either generally or in particular circumstances, including, without prejudice to the generality of this power, regulations prescribing the manner in which a person may apply to have his name entered or retained in the register.

(2) The matters which may be prescribed under subarticle (1) shall be such as, in the opinion of the Minister, on the advice of the Authority, are to be so prescribed in order to secure that the fact that a person's name is entered in the register will afford reasonable assurance of his being a person capable of entering into and keeping employment, or of undertaking work on his own account, under the conditions under which, in accordance with the provisions of this Act, employment may be offered to him or work may be available for him, and the said matters shall, without prejudice to the generality of this provision, include -

- (a) unreasonable refusal or failure to attend a vocational training course or an industrial rehabilitation course;
- (b) unreasonable refusal to accept, or unreasonable failure to keep, suitable employment;
- (c) the fact that a person is not ordinarily resident in Malta;
- (d) habitual bad character.

Entry and retention of names in the register

Amended by: XXVI.1995.2,8.

9. (1) Upon the receipt of any application made in the prescribed manner the Corporation shall, after ascertaining that any prescribed condition as to the entry or retention of the applicant's name in the register is satisfied and that there is no prescribed disqualification in respect of such entry or retention, refer the application to a placement medical officer who shall decide whether the name of the applicant should be entered or retained in the register.

(2) Where a placement medical officer is satisfied that any person whose application has been referred to him under subarticle (1) is a person with disability, and that his disability is likely to continue for a period of at least twelve months from the time of the entry or retention, as the case may be, of his name in the register, he shall inform the Corporation that the name of the applicant is to be entered or retained, as the case may be, in the register and the Corporation shall cause such name to be immediately so entered or to be retained.

Duration of entry in register.

Amended by: XXVI.1995.9.

10. (1) Subject to the provisions of the next following subarticle, when the name of a person has been entered in the register it shall be retained therein until the expiration of such period as may have been specified by a placement medical officer at the time of the entry as the time for which such name is to be retained therein without further application or until the expiration of such further period as such name shall have been caused to be retained under the last preceding article.

(2) If at any time whilst the name of any person is entered in the register the Corporation is of opinion that any prescribed condition as to the retention of names in the register applicable to that person is not satisfied, or that such person is subject to any prescribed disqualification in that behalf, the Corporation shall remove from the register the name of that person:

Provided that, where the prescribed condition or disqualification, as the case may be, is of a medical nature, the Corporation shall, before removing the name of such person from the register, refer the matter to the placement medical officer for his decision and shall abide thereby.

11. A placement medical officer may, before coming to any decision on any matter referred to him in accordance with the provisions of this Act, seek the advice of any medical officer in the public service who shall give his advice as early as possible.

Placement medical officer may seek other medical advice.

12. When an application for the entry or retention of a person's name in the register has been refused by the Corporation, or where the name of a person is not for the time being in the register by reason of a decision taken under article 10(2) or a determination of the Authority, no further application may be made for the entry or retention of such person's name in the register unless the circumstances relevant to that decision or determination, as the case may be, have since changed.

No application for entry or retention in register may be made after refusal to enter, or removal of, name in register.
Amended by:
XXVI.1995.10.

13. (1) Any decision taken under or in pursuance of the provisions of this Act shall be notified in writing by the Corporation to the person to whom it relates.

Notification of decision by Corporation and appeal therefrom.
Amended by:
XXVI.1995.11.

(2) When any person is dissatisfied with any decision taken as aforesaid (other than a determination of the Authority), he may appeal to the Authority against such decision in such manner and within such time as the Minister may prescribe by regulations made under this article.

(3) Where the Minister is of opinion that any decision taken under or in pursuance of the provisions of this Act (other than a determination of the Authority) should be reviewed by the Authority, he shall notify the Corporation accordingly and the Corporation shall refer the matter to the Authority for its consideration.

(4) The Authority may, in its determination on any appeal entered in accordance with subarticle (2) or on any reference made under subarticle (3), confirm, reverse or vary, in whole or in part, the original decision.

14. Notwithstanding anything contained in this Act, any person whose name is entered in the register shall be entitled to have his name removed from the register on making a written application therefor to the Corporation.

Right to remove one's own name from register.
Amended by:
XXVI.1995.12.

15. (1) Any person to whom this article applies shall give employment to such number of registered persons as is his quota in accordance with the provisions of article 16:

Compulsory employment of registered persons.
Amended by:
XXVI.1995.13.

Provided that any person to whom, on the coming into operation of this Act, this article applies, shall (if needs be) comply with the provisions of this subarticle as and when vacancies occur.

(2) A person to whom this article applies shall not at any time take, or offer to take, into his employment any person other than a registered person, if, immediately after the taking in of that person, the number of registered persons in his employment (excluding persons employed by him in an employment of a class at that time designated under article 19) would be less than his quota.

(3) The provisions of subarticle (2) shall not apply to a person taking into his employment at any time a person whom, apart from that subarticle, it would have been his obligation so to take at that time by virtue of an agreement entered into before the 22nd November, 1968.

(4) The provisions of subarticle (2) shall not apply to a person taking, or offering to take, into his employment any person in accordance with a permit issued in that behalf by the Minister under the provisions of article 18.

(5) A person to whom this article applies who for the time being has in his employment a registered person shall not, unless he has good and sufficient cause, discontinue the employment of that person if, immediately after such discontinuance, the number of registered persons in his employment (excluding persons employed by him in an employment of a class at that time designated under article 19) would be less than his quota:

Provided that this subarticle shall not have effect if, immediately after such discontinuance, the employer would no longer be a person to whom this article applies:

Provided further that an employer may not set up as a good and sufficient cause -

- (a) that such registered person is a member of a trade union; or
- (b) that such registered person no longer enjoys the employer's confidence.

(6) A prosecution for a contravention of subarticle (5) shall not be instituted against any person unless -

- (a) the matter has been referred to the Authority;
- (b) the Authority, before considering the matter, has notified such person so as to give him an opportunity of making, within a period not shorter than seven days from the sending or giving of the notification to him, such oral or written representations to the Authority as he may desire; and
- (c) the Authority has made a report to the Corporation.

(7) Where any proceedings are taken under subarticle (5), it shall not be necessary to prove compliance with the provisions of the last preceding subarticle but, if the defence pleads non-compliance therewith, a certificate signed by the chairman or by

the deputy chairman of the Authority to the effect that those provisions have been complied with shall be sufficient and conclusive evidence thereof.

(8) This article applies to any person who for the time being has, or would in accordance with his normal practice have, in his employment not less than twenty persons:

Provided that, in the computation of the number of persons employed, no account shall be taken of any employees who are related to the employer by consanguinity or affinity up to the third degree.

16. (1) The quota at any time of a person to whom article 15 applies shall be a number ascertained in accordance with the following provisions of this article.

Determination of
employer's quota.
Amended by:
XXVI.1995.2,14.

(2) The Minister, after consultation with the Corporation, shall by order specify a standard percentage and may, in like manner, specify a special percentage, either greater or smaller than the standard percentage.

(3) A special percentage specified by the Minister under subarticle (2) shall be made with respect to employment in any trade or industry, or in any branch or part of any trade or industry, or to employment with any class of employer, being employment to which, in the opinion of the Minister, a percentage, other than the standard percentage, should be assigned owing to its distinctive characteristics as respects its suitability for persons with disability.

(4) An order specifying a special percentage shall contain such provisions as may appear to the Minister to be requisite for more particularly defining for the purposes of this article the trade or industry, branch or part of a trade or industry, or class of employer, to employment in which or with whom such percentage is assigned.

(5) The quota at any time of a person to whom article 15 applies shall be the number ascertained by applying to the number of all the persons at that time in his employment (excluding persons employed by him in an employment of a class at that time designated under article 19 and any employee related to him by consanguinity or affinity up to the third degree) -

- (a) so far as they consist of persons employed by him in an employment other than one to which a special percentage is at that time assigned, the standard percentage; and
- (b) so far as they consist of persons employed by him in an employment to which a special percentage is at that time assigned, that percentage:

Provided that, if the number so ascertained includes or consists of a fraction less than one half, such fraction shall be disregarded, and, if the number so ascertained includes or consists of a fraction being one-half or more, the quota shall be the nearest higher whole number.

(6) The Minister may, in consultation with the Corporation, and

after application is made in that behalf by any person to whom article 15 applies, reduce the standard percentage or special percentage, as the case may be, applicable to him if it is proved that his quota would be too great having regard to the particular circumstances in which all or any of the persons employed by him, are employed, which reduction shall be for a term not greater than twelve months.

Severely disabled persons.
Amended by:
XXVI.1995.15.

17. Where any person to whom article 15 applies has in his employment, or takes into his employment, a registered person being a severely disabled person as certified by a placement medical officer, he shall, for the purposes of complying with the quota applicable to him, consider each such registered person as two units.

Permit to employ persons not registered although quota condition is not satisfied.
Amended by:
XXVI.1995.16.

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

(2) Any such permit may be made subject to such conditions as may be specified therein and may be granted as respects the employment either of one or more persons specified or described therein or of a specified number of persons.

(3) The Minister shall, before granting or refusing any permit under the provisions of subarticle (1), refer the application to the Corporation for their recommendations.

Designation of classes of employment.
Amended by:
XXVI.1995.2,17.

19. (1) The Minister may, in consultation with the Corporation, by order designate classes of employment as classes to which this article is to apply, being classes of employment as appear to afford specially suitable opportunities for the employment of persons with disability.

(2) No person shall take into his employment in an employment of a class designated by an order made under subarticle (1) any person other than a registered person, or cause or permit a person in his employment, other than a registered person, to perform in his service the duties relating to an employment of a class so designated:

Provided that the provisions of this subarticle shall not apply -

- (a) to any person who, under his contractual obligations ensuing from an agreement of employment entered into before the 22nd November, 1968, is precluded from employing therewith;
- (b) to any person in possession of a permit issued by the Minister under the provisions of article 18; or
- (c) in respect of any person related to the employer by consanguinity or affinity up to the third degree.

20. (1) Every person to whom article 15 applies shall keep a register showing -

Register and records to be kept by employers.
Amended by: XXVI.1995.18.

- (a) the number and the names of persons employed by him;
- (b) the number and the names of registered persons employed by him;
- (c) such other matter as shall be necessary to show compliance by the employer with the provisions of this Act.

(2) Every person who employs any person in an employment of a class designated under article 19 shall keep such records, including the name and other particulars relevant to such employee, as shall be necessary to show compliance by the employer with subarticle (2) of the said article.

(3) Any person shall, on being so required, produce to the Corporation any register or records kept in accordance with the provisions of this article.

(4) The Minister may, by regulations, prescribe the manner in which the register and the records are to be kept, the matter to be registered or recorded therein, and the period during which such register and records are to be preserved.

21. (1) The Minister may provide, or make arrangements for the provision by any government department or the Corporation or otherwise of, facilities for enabling registered persons, who by reason of the nature or severity of their disability are unlikely either at any time or for a prolonged period of time to be able otherwise to obtain employment or to undertake work on their own account (because they would be unlikely to be able to compete therein on terms comparable as respects earnings and security with those enjoyed by persons engaged therein who are not subject to disability), to obtain employment or to undertake such work under special conditions, as well as facilities for the training of such persons for the employment or work in question.

Provision of facilities for persons with serious disability.
Amended by: XXVI.1995.2,19

(2) While any person with disability is availing himself of any of the facilities provided under subarticle (1), such person shall be under adequate medical supervision.

(3) The Minister may defray, or contribute towards, expenses incurred -

- (a) in the provision of any facilities as are referred to in subarticle (1); and
- (b) by persons for whom any such facilities are provided in travelling to and from the place where they are employed or work or where training is provided,

and may also to or in respect of such persons, grant such further assistance, in cash or in kind, as he may from time to time determine.

(4) Any assistance granted under subarticle (3) shall be subject to such conditions as the Minister may impose either generally or in

respect of any particular person.

Preference among
registered persons.
Substituted by:
XXVI.1995.20.

22. In submitting to any person to whom article 15 applies the names of registered persons for employment, the Corporation shall give preference to persons with severe disability as certified by a placement medical officer:

Provided that nothing in this article shall be deemed to imply that the employer, in taking into his employment a person with disability for the purpose of complying with the provisions, shall be bound to engage a person submitted to him by the Corporation under this article.

Constitution of the
Disablement
Resettlement
Advisory
Committee.

23. *Repealed by XXVI.1995.21.*

Functions of the
Corporation.
Amended by:
XXVI.1995.2,22.

24. It shall be the function of the Corporation to advise and assist the Minister in matters relating to the employment or training of, or to the undertaking of work on their own account by, persons with disability, and to perform any functions required to be performed by the Corporation under this Act; and in particular, but without prejudice to the generality of the foregoing, to encourage measures designed to -

- (a) afford for persons with disability an equal opportunity with persons not handicapped by disability to obtain and keep employment;
- (b) promote opportunities for persons with disability to obtain and keep employment;
- (c) overcome, in respect of training or employment, discrimination against persons with disability on account of their disability; and
- (d) promote the awareness by employers of the residual abilities and work capacities of persons with disability.

Disablement
Resettlement
Officer.
Substituted by:
XXVI.1995.23.

25. (1) There shall be an official of the Department of Labour to be styled Disablement Resettlement Officer.

(2) It shall be the duty of such officer to monitor generally the conditions of employment and the work environment in which persons with disability are gainfully employed. In carrying out such duties the Disablement Resettlement Officer shall be expected to -

- (a) investigate any complaints he may receive regarding the conditions of employment under which any person with disability is employed, taking into account the physical or mental disability of the person with disability, and
- (b) report to the Director of Labour and the Chief Executive of the Corporation the results of his investigations.

(3) In carrying out his investigations the Disablement Resettlement Officer shall have access to the registration records of

persons with disability and he may seek the advice of placement medical officers or any other medical officer as may be appropriate.

(4) A copy of the report of the Disablement Resettlement Officer shall be sent to the National Employment Authority and to the person who has submitted the complaint.

26. Where any registered person ceases to be so registered while in employment, he shall thereafter, while still in that employment and for the purpose of that employment, be considered as if he had continued to be a registered person.

Continuity of employment on cessation of registration.

27. It shall be an offence against the provisions -

False information.

- (a) for any person to give any false information for the purposes of this Act with a view to having his name entered or retained in the register;
- (b) for any person to include, or to cause or knowingly to allow to be included, in the register or records to be kept in accordance with the provisions of article 20 any particular which he knows to be false in a material respect, or to produce or to furnish, or to cause or knowingly to allow to be produced or furnished, for purposes connected with this Act, any register, record or information which he knows to be false in a material respect.

28. The Minister may make regulations defining the extent to which the provisions of this Act shall apply to part-time employment.

Part-time employment.

29. (1) Where any person commits an offence against any of the provisions of this Act or of any regulations made thereunder he shall, on conviction, be liable to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment not exceeding three months or to both such fine and imprisonment.

Penalties.
Amended by:
XIII. 1983.5;
L.N. 411 of 2007.

(2) Where the offence consists in the failure to produce registers or records as provided under article 20(3), the offender shall, in addition to the punishment prescribed under subarticle (1), be awarded a further penalty of eleven euro and sixty-five cents (11.65) for each day on which such failure continues unless he proves to the satisfaction of the court that the failure is due to his not having kept, or not having preserved, the required registers or records, as the case may be.

30. Where an offence against any of the provisions of this Act or of any regulations made thereunder is committed by an association of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such association or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Offence by association of persons.

Limitation of
action.

31. Notwithstanding any provisions of any other law, proceedings in respect of an offence against any of the provisions of this Act or of any regulations made thereunder may be instituted at any time within the period of five years from the commission of the offence.

Orders to be
published.

32. Any order made by the Minister under this Act shall be published in the Government Gazette.
