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# CHILDREN'S ACT 38 OF 2005

**GENERAL EXPLANATORY NOTE:**

***** Areas marked with five asterisks indicate omitted provisions which will be inserted by way of an Amendment Bill. That Bill will be dealt with in terms of the procedure prescribed by section 76 of the Constitution - as explained in paragraph 1 of the Memorandum on the Objects of the Bill.

(English text signed by the President)

*[Assented to: 8 June 2006]*
*[Commencement date: certain sections with effect from 1 July 2007]*
[Proc. 13 / GG 30030 / 20070629 ]
*[Commencement date: remaining sections with effect from 1 April 2010]*
[Proc. R12 / GG 33076 / 20100401 ]

**as amended by:**

Children's Amendment Act 41 of 2007

[with effect from 1 April 2010]

Child Justice Act 75 of 2008

[with effect from 1 April 2010]

Judicial Matters Amendment Act 42 of 2013

Legal Aid South Africa Act 39 of 2014 - See s. 26 for Transitional arrangements

[with effect from 1 March 2015 - Proc. R7 / GG 38512 / 20150227]

Prevention and Combating of Trafficking in Persons Act 7 of 2013

[with effect from 9 August 2015]

Judicial Matters Amendment Act 8 of 2017

Children's Amendment Act 17 of 2016

[with effect from 26 January 2018]

Children's Second Amendment Act 18 of 2016

[with effect from 26 January 2018]

Children's Amendment Act 17 of 2022

[with effect from 8 November 2023 - Proc. 142 / GG 49615 / 20231108]

Children's Amendment Act 17 of 2022

[with effect from a date to be determined by the President by proclamation in the Gazette]

***Editor's note: On 11 January 2012 the Constitutional Court of the Republic of South Africa gave judgment in a case concerning the confirmation of a declaration of constitutional invalidity of sections 151 and 152 of the Children's Act No. 38 of 2005. The North Gauteng High Court declared these sections unconstitutional to the extent that they provide for a child to be removed from family care by state officials and placed in temporary safe care, but do not provide for the child to be brought before the children's court for automatic review of that removal.***

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## ACT

**To give effect to certain rights of children as contained in the Constitution; to set out principles relating to the care and protection of children; to define parental responsibilities and rights; to make further provision regarding children's courts; to provide for partial care of children; to provide for early childhood development; to provide for the issuing of contribution orders; to provide for prevention and early intervention; to provide for children in alternative care; to provide for foster care; to provide for child and youth care centres and drop-in centres; to make new provision for the adoption of children; to provide for inter-country adoption; to give effect to the Hague Convention on Inter-country Adoption; to prohibit child abduction and to give effect to the Hague Convention on International Child Abduction; to provide for surrogate motherhood; and to create certain new offences relating to children; and to provide for matters connected therewith.**

[Long title substituted by s. 1 of Act 41/2007 ]

## PREAMBLE

**WHEREAS** the Constitution establishes a society based on democratic values, social justice and fundamental human rights and seeks to improve the quality of life of all citizens and to free the potential of each person;

**AND WHEREAS** every child has the rights set out insection 28 of the Constitution;

**AND WHEREAS** the State must respect, protect, promote and fulfill those rights;

**AND WHEREAS** protection of children's rights leads to a corresponding improvementin the lives of other sections of the community because it is neither desirable nor possible to protect children's rights in isolation from their families and communities;

**AND WHEREAS** the United Nations has in the Universal Declaration of HumanRights proclaimed that children are entitled to special care and assistance;

**AND WHEREAS** the need to extend particular care to the child has been stated in theGeneva Declaration on the Rights of the Child, in the United Nations Declaration on the Rights of the Child, in the Convention on the Rights of the Child and in the African Charter on the Rights and Welfare of the Child and recognised in the UniversaDeclaration of Human Rights and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children;

**AND WHEREAS** it is necessary to effect changes to existing laws relating to childrenin order to afford them the necessary protection and assistance so that they can fully assume their responsibilities within the community as well as that the child, for the full and harmonious development of his or her personality, should grow up in a family environment and in an atmosphere of happiness, love and understanding,

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa,as follows:-

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[Table of contents amended by s. 2 of Act 41/2007, s. 31 of Act 42/2013, s. 48 of Act 7/2013 and s. 11 of Act 17/2016 w.e.f. 26 January 2018]

## CHAPTER 1
## INTERPRETATION, OBJECTS, APPLICATION AND IMPLEMENTATION OF ACT

1. Interpretation

(1) In this Act, unless the context indicates otherwise -

**"abandoned child"** means a child who -

(a) has been deserted by a parent, guardian or care-giver;

(b) for no apparent reason, had no contact with the parent, guardian, or care-giver for a period of at least three months; or

(c) has, if applicable, no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities;

[Definition of "abandoned" substituted by the definition of "abandoned child" by s. 1 of Act 17/2022 w.e.f. 8 November]

**"abuse"**, in relation to a child, means any form of harm or ill-treatment deliberately inflicted on a child, and includes -

(a) assaulting a child or inflicting any other form of deliberate injury to a child;

(b) sexually abusing a child or allowing a child to be sexually abused;

(c) bullying by another child;

(d) a labour practice that exploits a child; or

(e) exposing or subjecting a child to behaviour that may harm the child psychologically or emotionally;

**"adopted child"** means a child adopted by a person in terms of any law;

**"adoption compliance certificate"** -

(a) in relation to a convention country, means a certificate issued in terms of Article 23 of the Hague Convention on Inter-country Adoption; or

(b) in relation to a non-convention country, means a similar certificate prescribed in the relevant agreement;

**"adoption registrar"** means the person designated by the Director-General in terms of section 247(1);

**"adoption service"** includes -

(a) counselling of the parent of the child and, where applicable, the child;

(b) an assessment of a child by an adoption social worker in terms of section 230(2);

(c) an assessment of a prospective adoptive parent by an adoption social worker in terms of section 231(2);

(d) the gathering of information for proposed adoptions as contemplated in section 237; and

(e) a report contemplated in section 239(1)(b);

**"adoption social worker"** means –

(a) a social worker in private practice -

(i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978); and

(ii) who is accredited in terms of section 251 to provide adoption services;
[Subpara. (ii) amended by s. 1 of Act 18/2016 w.e.f. 26 January 2018]

(b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services; or
[Para. (b) amended by s. 1 of Act 18/2016 w.e.f. 26 January 2018]

(c) a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act No. 110 of 1978);
[Para. (c) added by s. 1 of Act 18/2016 w.e.f. 26 January 2018]

**"adoption working agreement"**, for the purpose of Chapter 16, means a written agreement entered into by a child protection organisation accredited in terms of section 259 in the Republic with an equivalent organisation in another country to facilitate inter-country adoptions between the Republic and the country concerned;

**"adoptive parent"** means a person who has adopted a child in terms of any law;

**"after-care"** means the supportive service provided by a social worker or a social service professional to monitor progress with regard to the child's developmental adjustment as part of-

(a) family preservation or reunification services;

(b) adoption or placement in alternative care; or

(c) discharge from alternative care;
[Definition of "after-care" inserted by s. 3 of Act 41/2007]

**"alternative care"** means care of a child in accordance with section 167;
[Definition of "alternative care" inserted by s. 3 of Act 41/2007]

**"area"**, in relation to-

(a) a metropolitan or local municipality, means the area for which the municipality has been established; and

(b) a district municipality, means those parts of the area for which the municipality has been established which do not fall within the area of a local municipality;
[Definition of "area" inserted by s. 3 of Act 41/2007]

**"artificial fertilisation"** means the introduction, by means other than natural means, of a male gamete into the internal reproductive organs of a female person for the purpose of human reproduction, including -

(a) the bringing together of a male and female gamete outside the human body with a view to placing the product of a union of such gametes in the womb of a female person; or

(b) the placing of the product of a union of male and female gametes which have been brought together outside the human body, in the womb of a female person;

**"assessment of a child"** means a process of investigating the developmental needs of a child, including his or her family environment or any other circumstances that may have a bearing on the child's need for protection and therapeutic services;
[Definition of "assessment of a child" inserted by s. 3 of Act 41/2007]

**"assessment of a programme"** means a process, conducted by a suitably qualified person, of determining whether the provision and the content of a programme complies with prescribed national norms and standards;
[Definition of "assessment of a programme" inserted by s. 3 of Act 41/2007]

**"authorised officer"**, in relation to any specific act, means a person who is authorised in writing by the presiding

officer of the children's court to perform that act;

**"Bill of Rights"** means the Bill of Rights contained in Chapter 2 of the Constitution;

**"care"**, in relation to a child, includes, where appropriate -

(a) within available means, providing the child with -

(i) a suitable place to live;

(ii) living conditions that are conducive to the child's health, well-being and development; and

(iii) the necessary financial support;

(b) safeguarding and promoting the well-being of the child;

(c) protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards;

(d) respecting, protecting, promoting and securing the fulfilment of, and guarding against any infringement of, the child's rights set out in the Bill of Rights and the principles set out in Chapter 2 of this Act;

(e) guiding, directing and securing the child's education and upbringing, including religious and cultural education and upbringing, in a manner appropriate to the child's age, maturity and stage of development;

(f) guiding, advising and assisting the child in decisions to be taken by the child in a manner appropriate to the child's age, maturity and stage of development;

(g) guiding the behaviour of the child in a humane manner;

(h) maintaining a sound relationship with the child;

(i) accommodating any special needs that the child may have; and

(j) generally, ensuring that the best interests of the child is the paramount concern in all matters affecting the child;

**"care-giver"** means any person other than a parent or guardian, who factually cares for a child and includes -

(a) a foster parent;

(b) a person who cares for a child with the implied or express consent of a parent or guardian of the child;

(c) a person who cares for a child whilst the child is in temporary safe care;

(d) the person at the head of a child and youth care centre where a child has been placed;

(e) the person at the head of a shelter;

(f) a child and youth care worker who cares for a child who is without appropriate family care in the community; and

(g) the child at the head of a child-headed household;

**"child"** means a person under the age of 18 years;

**"children's court"** means a children's court referred to in section 42;

**"child and youth care centre"** means a facility described in section 191(1);
[Definition of "child and youth care centre" inserted by s. 3 of Act 41/2007]

**"Child Care Act"** means the Child Care Act, 1983 (Act No. 74 of 1983);

**"child-headed household"** means a household recognised as such in terms of section 137;
[Definition of "child-headed household" inserted by s. 3 of Act 41/2007]

**"child labour"** means work by a child which -

(a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and

(b) places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development;

**"circumcision"**, in relation to a female child, means the removal of the clitoris by any means;

**"clerk of the court"** means clerk of the court of the relevant magistrate's court;
means the person appointed by the Director-General: Justice and Constitutional Development as the clerk of the children's court of the relevant magistrate's court;

**"cluster foster care"** means the reception of children in foster care in accordance with a cluster foster care scheme registered by the provincial head of social development;

[Definition of "cluster foster care" inserted by s. 3 of Act 41/2007]

**"cluster foster care scheme"** means a scheme providing for the reception of children in foster care, managed and operated by a designated child protection organisation or the provincial department of social development and registered by the provincial head of social development for this purpose;

[Definition of "cluster foster care scheme" inserted by s. 3 of Act 41/2007 and substituted by s. 1 of Act 17/2022 w.e.f. 8 November 2023 ]

**"college"** means college as defined in the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);

[Definition of "college" inserted by s. 1 of Act 18/2016 w.e.f. 26 January 2018]

**"commercial sexual exploitation"**, in relation to a child, means the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person;

[Definition of "commercial sexual exploitation" substituted by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

**"commissioning parent"** means a person who enters into a surrogate motherhood agreement with a surrogate mother;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;

[Definition of "Constitution" inserted by s. 1 of Act 17/2016 w.e.f. 26 January 2018]

**"contact"**, in relation to a child, means -

(a) maintaining a personal relationship with the child; and

(b) if the child lives with someone else -

(i) communication on a regular basis with the child in person, including -

(aa) visiting the child; or

(bb) being visited by the child; or

(ii) communication on a regular basis with the child in any other manner, including -

(aa) through the post; or;

(bb) by telephone or any other form of electronic communication;

**"contribution order"** means an order referred to in section 161, and includes a provisional contribution order referred to in section 162(2);

**"convention country"** means, in accordance with the wording of Article 45 of the Hague Convention on Inter-country Adoption, any country in which the Convention has entered into force, except for a country against whose accession the Republic has raised an objection under Article 44 of the Convention;

**"delegation"**, in relation to a duty, includes an instruction to perform the duty;

**"Department"** means the national department responsible for the provision ofsocial development services;

**"designated child protection organisation"** means an organization designated in terms of section 107 to perform designated child protection services;
[Definition of "designated child protection organisation" inserted by s. 3 of Act 41/2007]

**"designated child protection service"** means a child protection service referred to in section 105;
[Definition of "designated child protection service" inserted by s. 3 of Act 41/2007]

**"designated social worker"** means a social worker in the service of -

(a) the Department or a provincial department of social development;

(b) a designated child protection organisation; or

(b) a municipality;

**"Director-General"** means the Director-General of the Department, or where thecontext indicates the Director-General of another department, that Director-General;

**"Divorce Act"** means the Divorce Act, 1979 (Act No. 70 of 1979);

**"divorce court"** means the divorce court established in terms of section 10 of theAdministration Amendment Act, 1929 (Act No. 9 of 1929);

**"drop-in centre"** means a facility referred to in section 213;
[Definition of "drop-in centre" inserted by s. 3 of Act 41/2007]

**"early childhood development programme"** means a programme referred to in section 91(3);
[Definition of "early childhood development programme" inserted by s. 3 of Act 41/2007]

**"early childhood development services"** means services referred to in section 91(2);
[Definition of "early childhood development services" inserted by s. 3 of Act 41/2007]

**"early intervention programme"** means a programme referred to in section 143(2);
[Definition of "early intervention programme" inserted by s. 3 of Act 41/2007]

**"exploitation"**, in relation to a child, includes -

(a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage;

(b) sexual exploitation;

(c) servitude;

(d) forced labour or services;

(e) child labour prohibited in terms of section 141; and

(f) the removal of body parts;

**"family advocate"** means a family advocate appointed in terms of the Mediation in Certain Divorce Matters Act;

**"family member"**, in relation to a child, means –

(a) a parent of the child;

(b) any other person who has parental responsibilities and rights in respect of thechild;

(c) a grandparent, brother, sister, uncle, aunt or cousin of the child; or

(d) any other person with whom the child has developed a significant relationship, based on psychological or emotional attachment, which resembles a family relationship;

**"foster care"** means care of a child as described in section 180(1) and includes foster care in a registered cluster

foster care scheme;

[Definition of "foster care" inserted by s. 3 of Act 41/2007]

**"foster parent"** means a person who has foster care of a child by order of the children's court, and includes an active member of an organisation operating a cluster foster care scheme and who has been assigned responsibility for the foster care of a child;

[Definition of "foster parent" inserted by s. 3 of Act 41/2007]

**"gamete"** means either of the two generative cells essential for humanreproduction;

**"genital mutilation"**, in relation to a female child, means the partial or completeremoval of any part of the genitals, and includes circumcision of female children;

**"grade 12"** means grade 12 as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);

[Definition of "grade 12" inserted by s. 1 of Act 18/2016 w.e.f. 26 January 2018]

**"guardian"** means a parent or other person who has guardianship of a child;

**"guardianship"**, in relation to a child, means guardianship as contemplated insection 18;

**"Hague Convention on Inter-country Adoption"** means the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption signed at the Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 1 to this Act;

**"Hague Convention on International Child Abduction"** means the Hague Convention on the Civil Aspects of International Child Abduction signed at the Hague on 25 October 1980, a copy of the English text of which is set out in Schedule 2 to this Act;

**"High Court"** means the High Court contemplated in section 166 of the Constitution;

**"higher education"** means higher education as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997)

[Definition of "higher education" inserted by s. 1 of Act 18/2016 w.e.f. 26 January 2018]

**"in need of care and protection"**, in relation to a child, means a child who is in a situation contemplated in section 150(1);

**"labour inspector"** means a labour inspector appointed under section 63 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

**"Maintenance Act"** means the Maintenance Act, 1998 (Act No. 99 of 1998);

**"marriage"** means a marriage -

(a) recognised in terms of South African law or customary law; or

(b) concluded in accordance with a system of religious law subject to specified procedures,

and any reference to a husband, wife, widower, widow, divorced person, married person or spouse must be construed accordingly;

**"MEC for social development"** means the member of the Executive Council of aprovince who is responsible for social development in the province;

**"Mediation in Certain Divorce Matters Act"** means the Mediation in Certain Divorce Matters Act, 1987 (Act No, 24 of 1987);

**"medical practitioner"** means a person registered or deemed to be registered asa medical practitioner under the Health Professions Act, 1974 (Act No. 56 of 1974) and includes a dentist so registered or deemed to be registered;

**"mental illness"** means mental illness as defined in the Mental Health Care Act, 2002 (Act No. 17 of 2002);

**"midwife"** means a person registered as a midwife under the Nursing Act, 1978 (Act No. 50 of 1978);

[Definition of "midwife" inserted by s. 3 of Act 41/2007]

**"Minister"** means the Cabinet member responsible for social development, or where the context indicates another Minister, that Minister;

**"municipality"** means a metropolitan, local or district municipality established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), but to the extent that a municipality may or must implement a provision of this Act in or in relation to an area which falls within the area of both a local municipality and a district municipality, "municipality" in such a provision means the relevant local municipality;
[Definition of "municipality" inserted by s. 3 of Act 41/2007]

**"Municipal Systems Act"** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**"National Child Protection Register"** means the register referred to in section 111;

**"neglect"**, in relation to a child, means a failure in the exercise of parental responsibilities to provide for the child's basic physical, intellectual, emotional or social needs;

**"nurse"** means a person registered as a nurse under the Nursing Act, 1978 (Act No. 50 of 1978);
[Definition of "nurse" inserted by s. 3 of Act 41/2007]

**"organ of state"** means an organ of state as defined in section 239 of the Constitution;

**"orphan"** means a child whose parent or both parents are deceased;

[Definition of "orphan" substituted by s. 1 of Act 17/2022 w.e.f. 8 November 2023]

**"parent"**, in relation to a child, includes the adoptive parent of a child, but excludes -

(a) the biological father of a child conceived through the rape of or incest with the child's mother;

(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation; and

(c) a parent whose parental responsibilities and rights in respect of a child have been terminated;

**"parental responsibilities and rights"**, in relation to a child, means the responsibilities and the rights referred to in section 18;

**"partial care"** means partial care referred to in section 76;
[Definition of "partial care" inserted by s. 3 of Act 41/2007]

**"party"**, in relation to a matter before a children's court, means -

(a) a child involved in the matter;

(b) a parent;

(c) a person who has parental responsibilities and rights in respect of the child;

(d) a prospective adoptive or foster parent of the child;

(e) the department or the designated child protection organisation managing the case of the child; or

(f) any other person admitted or recognised by the court as a party;

**"permanency plan"** means a documented plan referred to in section 157(1);
[Definition of "permanency plan" inserted by s. 3 of Act 41/2007]

**"person unsuitable to work with children"** means a person listed in Part B of the National Child Protection Register;

**"police official"** means any member of the South African Police Service or a municipal police service appointed in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995);

**"prescribed"** means prescribed by regulation;

**"presiding officer"** means a presiding officer of a children's court designated in terms of section 42;

**"prevention programme"** means a programme referred to in section 143(1);
[Definition of "prevention programme" inserted by s. 3 of Act 41/2007]

**"provincial department of social development"** means the department within a provincial administration responsible for social development in the province;

**"provincial head of social development"** means the head of the provincial department of social development;

**"psychologist"** means a psychologist registered or deemed to be registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

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**"Public Service Act"** means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**"quality assurance process"** means the process referred to in section 211;
[Definition of "quality assurance process" inserted by s. 3 of Act 41/2007]

**"RACAP"** means the Register on Adoptable Children and Prospective Adoptive Parents contemplated in section 232;

**"regulation"** means a regulation made in terms of this Act;

**"removal of body parts"** means the removal of any organ or other body part from a living person in contravention of the National Health Act, 2003 (Act No. 61 of 2003);

**"residential care programme"** means a programme described in section 191(2) which is or must be offered at a child and youth care centre;
[Definition of "residential care programme" inserted by s. 3 of Act 41/2007]

**"respondent"** means any person legally liable to maintain or to contribute towards the maintenance of a child for whose maintenance, treatment or special needs a contribution order is sought or has been made in terms of Chapter 10;

**"school"** means -

(a) an independent school registered or deemed to be registered in terms of section 46 of the South African Schools Act, 1996 (Act No. 84 of 1996); or

(b) a public school contemplated in Chapter 3 of the South African Schools Act, 1996 (Act No. 84 of 1996);

**"secure care"** means the physical containment in a safe and healthy environment-

(a) of children with behavioural and emotional difficulties; and

(b) of children in conflict with the law;
[Definition of "secure care" inserted by s. 3 of Act 41/2007]

**"serve"**, in relation to any notice, document or other process in terms of this Act, means to serve such notice, document or other process in accordance with the procedure provided for the serving of process in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the rules applying to the proceedings of magistrates' courts;

**"sexual abuse"**, in relation to a child, means -

(a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;

(b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;

(c) using a child in or deliberately exposing a child to sexual activities or pornography; or

(d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or

assisting in the commercial sexual exploitation of a child;

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**"sexual offence"** means sexual offence as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and any offence of a sexual nature in any other law;

[Definition of "sexual offence" inserted by s. 1 of Act 17/2016 w.e.f. 26 January 2018]

**"social service practitioner"** means any person registered in a social service profession or occupation with the South African Council of Social Service Professions as contemplated in the Social Service Professions Act, 1978 (Act No. 110 of 1978), to practise and render a service within the social service sector;

[Definition of "social service practitioner" inserted by s. 1 of Act 17/2022 w.e.f. 8 November 2023]

**"social service professional" .....**

[Definition of "social service professional" deleted by s. 1 of Act 17/2022 w.e.f. 8 November 2023]

**"social worker"** means a person who is registered or deemed to be registered as a social worker in terms of the Social Service Professions Act, 1978 (Act No, 110 of 1978);

**"street child"** means a child who -

(a) because of abuse, neglect, poverty, community upheaval or any other reason, has left his or her home, family or community and lives, begs or works on the streets; or

(b) because of inadequate care, begs or works on the streets but returns home at night;

**"surrogate mother"** means an adult woman who enters into a surrogate motherhood agreement with the commissioning parent;

**"surrogate motherhood agreement"** means an agreement between a surrogate mother and a commissioning parent in which it is agreed that the surrogate mother will be artificially fertilised for the purpose of bearing a child for the commissioning parent and in which the surrogate mother undertakes to hand over such a child to the commissioning parent upon its birth, or within a reasonable time thereafter, with the intention that the child concerned becomes the legitimate child of the commissioning parent;

**"temporary safe care"**, in relation to a child, means care of a child in an approved child and youth care centre, shelter or private home or any other place, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell;

**"traditional authority"** means any authority which in terms of indigenous law or any other law administers the affairs of any group of indigenous people or any other persons resident within an area under the control of a traditional leader;

**"this Act"** includes -

(a) any regulation made in terms of this Act;

(b) the rules regulating the proceedings of the children's courts in terms of section 52;

**"trafficking"**.....

[Definition of "trafficking" repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

**"UN Protocol to Prevent Trafficking in Persons"**.....

[Definition of "UN Protocol to Prevent Trafficking in Persons" repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

(2) In addition to the meaning assigned to the terms "custody" and "access" in any law, and the common law, the terms "custody" and "access" in any law must be construed to also mean "care" and "contact" as defined in this Act

(3) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended.

(4) Any proceedings arising out of the application of the Administration Amendment Act, 1929 (Act No. 9 of 1929), the Divorce Act, the Maintenance Act, the Domestic Violence Act, 1998 (Act No. 116 of 1998), and the

Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), in so far as these Acts relate to children, may not be dealt with in a children's court.

(Commencement date of s. 1: 1 July 2007)

2. Objects of Act

The objects of this Act are -

(a) to promote the preservation and strengthening of families;

(b) to give effect to the following constitutional rights of children, namely -

(i) family care or parental care or appropriate alternative care whenremoved from the family environment;

(ii) social services;

(iii) protection from maltreatment, neglect, abuse or degradation; and

(iv) that the best interests of a child are of paramount importance in every matter concerning the child;

(c) to give effect to the Republic's obligations concerning the well-being of children in terms of international instruments binding on the Republic;

(d) to make provision for structures, services and means for promoting and monitoring the sound physical, psychological, intellectual, emotional and social development of children;

(e) to strengthen and develop community structures which can assist in providing care and protection for children;

(f) to protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;

(g) to provide care and protection to children who are in need of care and protection;

(h) to recognise the special needs that children with disabilities may have; and

(i) generally, to promote the protection, development and well-being of children.

(Commencement date of s. 2: 1 July 2007)

3. Conflicts with other legislation

(1) In the event of a conflict between a section of this Act and -

(a) provincial legislation relating to the protection and well-being of children, the conflict must be resolved in terms of section 146 of the Constitution; and

(b) a municipal by-law relating to the protection and well-being of children, the conflict must be resolved in terms of section 156 of the Constitution.

(2) In the event of a conflict between a regulation made in terms of this Act and -

(a) an Act of Parliament, the Act of Parliament prevails;

(b) provincial legislation, the conflict must be resolved in terms of section 146 ofthe Constitution; and

(c) a municipal by-law, the conflict must be resolved in terms of section 156 of theConstitution.

(3) For the proper application of subsection (2)(b) the Minister must in terms of section 146(6) of the Constitution submit all regulations made in terms of this Act and which affect a province, to the National Council of Provinces for approval.

(4) In this section "regulation" means –

(a) a regulation made in terms of this Act; and

(b) a rule regulating the proceedings of children's courts in terms of section 52.

(Commencement date of s. 3: 1 July 2007)

4. Implementation of Act

(1) This Act must be implemented by organs of state in the national, provincial and, where applicable, local spheres of government subject to any specific section of this Act and regulations allocating roles and responsibilities, in an integrated, co-ordinated and uniform manner.

(2) Recognising that competing social and economic needs exist, organs of state in the national, provincial and where applicable, local spheres of government must, in the implementation of this Act, take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.

(Commencement date of s. 4: 1 July 2007)

5. Inter-sectoral implementation of Act

To achieve the implementation of this Act in the manner referred to in section 4, all organs of state in the national, provincial and, where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.

(Commencement date of s. 5: 1 July 2007)

## CHAPTER 2
## GENERAL PRINCIPLES

6. General principles

(1) The general principles set out in this section guide -

(a) the implementation of all legislation applicable to children, including this Act; and

(b) all proceedings, actions and decisions by any organ of state in any matter concerning a child or children in general.

(2) All proceedings, actions or decisions in a matter concerning a child must -

(a) respect, protect, promote and fulfil the child's rights set out in the Bill of Rights, the best interests of the child standard set out in section 7 and the rights and principles set out in this Act, subject to any lawful limitation;

(b) respect the child's inherent dignity;

(c) treat the child fairly and equitably;

(d) protect the child from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or a family member of the child;

(e) recognise a child's need for development and to engage in play and other recreational activities appropriate to the child's age; and

(f) recognise a child's disability and create an enabling environment to respond to the special needs that the child has.

(3) If it is in the best interests of the child, the child's family must be given the opportunity to express their views in any matter concerning the child.

(4) In any matter concerning a child –

(a) an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and

(b) a delay in any action or decision to be taken must be avoided as far as possible.

(5) A child, having regard to his or her age, maturity and stage of development, and a person who has parental responsibilities and rights in respect of that child, where appropriate, must be informed of any action or decision

taken in a matter concerning the child which significantly affects the child.
(Commencement date of s. 6: 1 July 2007)

7. Best interests of child standard

(1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely -

(a) the nature of the personal relationship between -

(i) the child and the parents, or any specific parent; and

(ii) the child and any other care-giver or person relevant in those circumstances;

(b) the attitude of the parents, or any specific parent, towards -

(i) the child; and

(ii) the exercise of parental responsibilities and rights in respect of the child;

(c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;

(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from -

(i) both or either of the parents; or

(ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents,or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child -

(i) to remain in the care of his or her parent, family and extended family; and

(ii) to maintain a connection with his or her family, extended family, culture or tradition;

(g) the child's -

(i) age, maturity and stage of development;

(ii) gender;

(iii) background; and

(iv) any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) any disability that a child may have;

(j) any chronic illness from which a child may suffer;

(k) the need for a child to be brought up within a stable family environment and,where this is not possible, in an environment resembling as closely as possible a caring family environment;

(l) the need to protect the child from any physical or psychological harm that may be caused by -

(i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to

violence or exploitation or other harmful behaviour; or

(ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;

(m) any family violence involving the child or a family member of the child; and

(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

(2) In this section "parent" includes any person who has parental responsibilities and rights in respect of a child.

(Commencement date of s. 7: 1 July 2007)

8. Application

(1) The rights which a child has in terms of this Act supplement the rights which a child has in terms of the Bill of Rights.

(2) All organs of state in any sphere of government and all officials, employees and representatives of an organ of state must respect, protect and promote the rights of children contained in this Act.

(3) A provision of this Act binds both natural or juristic persons, to the extent that it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.

(Commencement date of s. 8: 1 July 2007)

9. Best interests of child paramount

In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied.

(Commencement date of s. 9: 1 July 2007)

10. Child participation

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

(Commencement date of s. 10: 1 July 2007)

11. Children with disability or chronic illness

(1) In any matter concerning a child with a disability due consideration must be given to -

(a) providing the child with parental care, family care or special care as and when appropriate;

(b) making it possible for the child to participate in social, cultural, religious and educational activities, recognising the special needs that the child may have;

(c) providing the child with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and

(d) providing the child and the child's care-giver with the necessary support services.

(2) In any matter concerning a child with chronic illness due consideration must be given to -

(a) providing the child with parental care, family care or special care as and when appropriate;

(b) providing the child with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and

(c) providing the child with the necessary support services.

(3) A child with a disability or chronic illness has the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his or her health, well-being or dignity.

(Commencement date of s. 11: 1 July 2007)

12. Social, cultural and religious practices

(1) Every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.

(2) A child -

(a) below the minimum age set by law for a valid marriage may not be given out in marriage or engagement; and

(b) above that minimum age may not be given out in marriage or engagement without his or her consent.

(3) Genital mutilation or the circumcision of female children is prohibited.

(4) Virginity testing of children under the age of 16 is prohibited.

(5) Virginity testing of children older than 16 may only be performed –

(a) if the child has given consent to the testing in the prescribed manner;

(b) after proper counselling of the child; and

(c) in the manner prescribed.

(6) The results of a virginity test may not be disclosed without the consent of the child.

(7) The body of a child who has undergone virginity testing may not be marked.

(8) Circumcision of male children under the age of 16 is prohibited, except when -

(a) circumcision is performed for religious purposes in accordance with the practices of the religion concerned and in the manner prescribed; or

(b) circumcision is performed for medical reasons on the recommendation of a medical practitioner.

(9) Circumcision of male children older than 16 may only be performed -

(a) if the child has given consent to the circumcision in the prescribed manner;

(b) after proper counselling of the child; and

(c) in the manner prescribed.

(10) Taking into consideration the child's age, maturity and stage of development, every male child has the right to refuse circumcision.

13. Information on health care

(1) Every child has the right to -

(a) have access to information on health promotion and the prevention and treatment of ill-health and disease, sexuality and reproduction;

(b) have access to information regarding his or her health status;

(c) have access to information regarding the causes and treatment of his or herhealth status; and

(d) confidentiality regarding his or her health status and the health status of aparent, care-giver or family member, except when maintaining such confidentiality is not in the best interests of the child

(2) Information provided to children in terms of this subsection must be relevant and must be in a format accessible to children, giving due consideration to the needs of disabled children.

(Commencement date of s. 13: 1 July 2007)

14. Access to court

Every child has the right to bring, and to be assisted in bringing, a matter to a court, provided that matter falls within the jurisdiction of that court.

(Commencement date of s. 14: 1 July 2007)

15. Enforcement of rights

(1) Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights or this Act has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

(2) The persons who may approach a court, are:

(a) A child who is affected by or involved in the matter to be adjudicated;

(b) anyone acting in the interest of the child or on behalf of another person who cannot act in their own name;

(c) anyone acting as a member of, or in the interest of, a group or class of persons; and

(d) anyone acting in the public interest.

(Commencement date of s. 15: 1 July 2007)

16. Responsibilities of children

Every child has responsibilities appropriate to the child's age and ability towards his or her family, community and the state.

(Commencement date of s. 16: 1 July 2007)

17. Age of majority

A child, whether male or female, becomes a major upon reaching the age of 18 years.

(Commencement date of s. 17: 1 July 2007)

## CHAPTER 3
## PARENTAL RESPONSIBILITIES AND RIGHTS

### *Part 1*
### *Acquisition and loss of parental responsibilities and rights*

18. Parental responsibilities and rights

(1) A person may have either full or specific parental responsibilities and rights in respect of a child.

(2) The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right -

(a) to care for the child;

(b) to maintain contact with the child;

(c) to act as guardian of the child; and

(d) to contribute to the maintenance of the child.

(3) Subject to subsections (4) and (5), a parent or other person who acts as guardian of a child must -

(a) administer and safeguard the child's property and property interests;

(b) assist or represent the child in administrative, contractual and other legal matters; or

(c) give or refuse any consent required by law in respect of the child, including –

(i) consent to the child's marriage;

(ii) consent to the child's adoption;

(iii) consent to the child's departure or removal from the Republic;

(iv) consent to the child's application for a passport; and

(v) consent to the alienation or encumbrance of any immovable property of the child.

(4) Whenever more than one person has guardianship of a child, each one of them is competent, subject to subsection (5), any other law or any order of a competent court to the contrary, to exercise independently and without the consent of the other any right or responsibility arising from such guardianship.

(5) Unless a competent court orders otherwise, the consent of all the persons that have guardianship of a child is necessary in respect of matters set out in subsection (3)(c).

(Commencement date of s. 18: 1 July 2007)

19. Parental responsibilities and rights of mothers

(1) The biological mother of a child, whether married or unmarried, has full parental responsibilities and rights in respect of the child.

(2) If -

(a) the biological mother of a child is an unmarried child who does not have guardianship in respect of the child; and

(b) the biological father of the child does not have guardianship in respect of the child,

the guardian of the child's biological mother is also the guardian of the child.

(3) This section does not apply in respect of a child who is the subject of a surrogacy agreement.

(Commencement date of s. 19: 1 July 2007)

20. Parental responsibilities and rights of married fathers

The biological father of a child has full parental responsibilities and rights in respect of the child -

(a) if he is married to the child's mother; or

(b) if he was married to the child's mother at -

(i) the time of the child's conception;

(ii) the time of the child's birth; or

(iii) any time between the child's conception and birth.

(Commencement date of s. 20: 1 July 2007)

21. Parental responsibilities and rights of unmarried fathers

(1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section 20, acquires full parental responsibilities and rights in respect of the child -

(a) if at the time of the child's birth he is living with the mother in a permanent life-partnership; or

(b) if he, regardless of whether he has lived or is living with the mother -

(i) consents to be identified or successfully applies in terms of section 26 to be identified as the child's father or pays damages in terms of customary law;

(ii) contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and

(iii) contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

(2) This section does not affect the duty of a father to contribute towards the maintenance of the child.

(3)

(a) If there is a dispute between the biological father referred to in subsection (1) and the biological mother of a child with regard to the fulfilment by that father of the conditions set out in subsection (1)(a) or (b), the matter must be referred for mediation to a family advocate, social worker, social service professional or other suitably qualified person.

(b) Any party to the mediation may have the outcome of the mediation reviewed by a court.

(4) This section applies regardless of whether the child was born before or after the commencement of this Act.
(Commencement date of s. 21: 1 July 2007)

22. Parental responsibilities and rights agreements

(1) Subject to subsection (2), the mother of a child or other person who has parental responsibilities and rights in respect of a child may enter into an agreement providing for the acquisition of such parental responsibilities and rights in respect of the child as are set out in the agreement, with -

(a) the biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of either section 20 or 21 or by court order; or

(b) any other person having an interest in the care, well-being and development of the child.

(2) The mother or other person who has parental responsibilities and rights in respect of a child may only confer by agreement upon a person contemplated in subsection (1) those parental responsibilities and rights which she or that other person has in respect of the child at the time of the conclusion of such an agreement.

(3) A parental responsibilities and rights agreement must be in the prescribed format and contain the prescribed particulars.

(4) Subject to subsection (6), a parental responsibilities and rights agreement takes effect only if -

(a) registered with the family advocate; or

(b) made an order of the High Court, a divorce court in a divorce matter or the children's court on application by the parties to the agreement.

(5) Before registering a parental responsibilities and rights agreement or before making a parental responsibilities and rights agreement an order of court, the family advocate or the court concerned must be satisfied that the parental responsibilities and rights agreement is in the best interests of the child.

(6)

(a) A parental responsibilities and rights agreement registered by the family advocate may be amended or terminated by the family advocate on application -

(i) by a person having parental responsibilities and rights in respect of the child;

(ii) by the child, acting with leave of the court; or

(iii) in the child's interest by any other person, acting with leave of the court.

(b) A parental responsibilities and rights agreement that was made an order of court may only be amended or terminated on application -

(i) by a person having parental responsibilities and rights in respect of the child;

(ii) by the child, acting with leave of the court; or

(iii) in the child's interest by any other person, acting with leave of the court.

(7) Only the High Court may confirm, amend or terminate a parental responsibilities and rights agreement that relates to the guardianship of a child.

23. Assignment of contact and care to interested person by order of court

(1) Any person having an interest in the care, well-being or development of a child may apply to the High Court, a divorce court in divorce matters or the children's court for an order granting to the applicant, on such conditions as the court may deem necessary -

(a) contact with the child; or

(b) care of the child.

(2) take into account -

(a) the best interests of the child;

(b) the relationship between the applicant and the child, and any other relevant person and the child;

(c) the degree of commitment that the applicant has shown towards the child;

(d) the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child; and

(e) any other fact that should, in the opinion of the court, be taken into account.

(3) If in the course of the court proceedings it is brought to the attention of the court that an application for the adoption of the child has been made by another applicant, the court -

(a) must request a family advocate, social worker or psychologist to furnish it with a report and recommendations as to what is in the best interests of the child; and

(b) may suspend the first-mentioned application on any conditions it may determine.

(4) The granting of care or contact to a person in terms of this section does not affect the parental responsibilities and rights that any other person may have in respect of the same child.

24. Assignment of guardianship by order of court

(1) Any person having an interest in the care, well being and development of a child may apply to the High Court or children's court for an order granting guardianship of the child.

[Subs. (1) substituted by s. 2 of Act 17/2022 w.e.f. 8 November 2023]

(2) When considering an application contemplated in subsection (1), the court must take into account -

(a) the best interests of the child;

(b) the relationship between the applicant and the child, and any other relevant person and the child; and

(c) any other fact that should, in the opinion of the court, be taken into account

(3) In the event of a person applying for guardianship of a child that already has a guardian, the applicant must submit reasons as to why the child's existing guardian is not suitable to have guardianship in respect of the child.

25. Certain applications regarded as inter-country adoption

When application is made in terms of section 24 by a non-South African citizen for guardianship of a child, the application must be regarded as an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 16 of this Act.

26. Person claiming paternity

(1) A person who is not married to the mother of a child and who is or claims to be the biological father of the child

may -

(a) apply for an amendment to be effected to the registration of birth of the child in terms of section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), identifying him as the father of the child, if the mother consents to such amendment; or

(b) apply to a court for an order confirming his paternity of the child, if the mother -

(i) refuses to consent to such amendment;

(ii) is incompetent to give consent due to mental illness;

(iii) cannot be located; or

(iv) is deceased.

(2) This section does not apply to -

(a) the biological father of a child conceived through the rape of or incest with the child's mother; or

(b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation.

27. Assignment of guardianship and care

(1)

(a) A parent who is the sole guardian of a child may appoint a fit and proper person as guardian of the child in the event of the death of the parent.

(b) A parent who has the sole care of a child may appoint a fit and proper person to be vested with care of the child in the event of the death of the parent.

(2) An appointment in terms of subsection (1) must be contained in a will made by the parent.

(3) A person appointed in terms of subsection (1) acquires guardianship or care, as the case may be, in respect of a child -

(a) after the death of the parent; and

(b) upon the person's express or implied acceptance of the appointment,

(4) If two or more persons are appointed as guardians or to be vested with the care of the child, any one or more or all of them may accept the appointment except if the appointment provides otherwise.

(Commencement date of s. 27: 1 July 2007)

28. Termination, extension, suspension or restriction of parental responsibilities and rights

(1) A person referred to in subsection (3) may apply to the High Court, a divorce court in a divorce matter or a children's court for an order -

(a) suspending for a period, or terminating, any or all of the parental responsibilities and rights which a specific person has in respect of a child; or

(b) extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.

(2) An application in terms of subsection (1) may be combined with an application in terms of section 23 for the assignment of contact and care in respect of the child to the applicant in terms of that section.

(3) An application for an order referred to in subsection (1) may be brought -

(a) by a co-holder of parental responsibilities and rights in respect of the child;

(b) by any other person having a sufficient interest in the care, protection, well-being or development of the

child;

(c) by the child, acting with leave of the court;

(d) in the child's interest by any other person, acting with leave of the court; or

(e) by a family advocate or the representative of any interested organ of state.

(4) When considering such application the court must take into account -

(a) the best interests of the child;

(b) the relationship between the child and the person whose parental responsibilities and rights are being challenged;

(c) the degree of commitment that the person has shown towards the child; and

(d) any other fact that should, in the opinion of the court, be taken into account

29. Court proceedings

(1) An application in terms of section 22(4)(b), 23, 24, 26(1)(b) or 28 may be brought before the High Court, a divorce court in a divorce matter or a children's court, as the case may be, within whose area of jurisdiction the child concerned is ordinarily resident.

(2) An application in terms of section 24 for guardianship of a child must contain the reasons why the applicant is not applying for the adoption of the child.

(3) The court hearing an application contemplated in subsection (1) may grant the application unconditionally or on such conditions as it may determine, or may refuse the application, but an application may be granted only if it is in the best interests of the child.

(4) When considering an application contemplated in subsection (1) the court must be guided by the principles set out in Chapter 2 to the extent that those principles are applicable to the matter before it.

(5) The court may for the purposes of the hearing order that -

(a) a report and recommendations of a family advocate, a social worker or other suitably qualified person must be submitted to the court;

(b) a matter specified by the court must be investigated by a person designated by the court;

(c) a person specified by the court must appear before it to give or produce evidence; or

(d) the applicant or any party opposing the application must pay the costs of any such investigation or appearance.

(6) The court may, subject to section 55 -

(a) appoint a legal practitioner to represent the child at the court proceedings; and

(b) order the parties to the proceedings, or any one of them, or the state if substantial injustice would otherwise result, to pay the costs of such representation.

(7) If it appears to a court in the course of any proceedings before it that a child involved in or affected by those proceedings is in need of care and protection, the court must order that the question whether the child is in need of care and protection be referred to a designated social worker for investigation in terms of section 155(2).

***Part 2***
***Co-exercise of parental responsibilities and rights***

30. Co-holders of parental responsibilities and rights

(1) More than one person may hold parental responsibilities and rights in respect of the same child.

(2) When more than one person holds the same parental responsibilities and rights in respect of a child, each of the co-holders may act without the consent of the other co-holder or holders when exercising those responsibilities and rights, except where this Act, any other law or an order of court provides otherwise.

(3) A co-holder of parental responsibilities and rights may not surrender or transfer those responsibilities and rights to another co-holder or any other person, but may by agreement with that other co-holder or person allow the other co-holder or person to exercise any or all of those responsibilities and rights on his or her behalf.

(4) An agreement in terms of subsection (3) does not divest a co-holder of his or her parental responsibilities and rights and that co-holder remains competent and liable to exercise those responsibilities and rights.

(Commencement date of s. 30: 1 July 2007)

31. Major decisions involving child

(1)

(a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development,

(b) A decision referred to in paragraph (a) is any decision -

(i) in connection with a matter listed in section 18(3)(c);

(ii) affecting contact between the child and a co-holder of parental responsibilities and rights;

(iii) regarding the assignment of guardianship or care in respect of the child to another person in terms of section 27; or

(iv) which is likely to significantly change, or to have an adverse effect on, the child's living conditions, education, health, personal relations with a parent or family member or, generally, the child's well-being.

(2)

(a) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b), that person must give due consideration to any views and wishes expressed by any co-holder of parental responsibilities and rights in respect of the child.

(b) A decision referred to in paragraph (a) is any decision which is likely to change significantly, or to have a significant adverse effect on, the co-holder's exercise of parental responsibilities and rights in respect of the child.

(Commencement date of s. 31: 1 July 2007)

32. Care of child by person not holding parental responsibilities and rights

(1) A person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, must, whilst the child is in that person's care -

(a) safeguard the child's health, well-being and development; and

(b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional or mental harm or hazards.

(2) Subject to section 129, a person referred to in subsection (1) may exercise any parental responsibilities and rights reasonably necessary to comply with subsection (1), including the right to consent to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or guardian of the child.

(3) A court may limit or restrict the parental responsibilities and rights which a person may exercise in terms of subsection (2).

(4) A person referred to in subsection (1) may not -

(a) hold himself or herself out as the biological or adoptive parent of the child; or

(b) deceive the child or any other person into believing that that person is the biological or adoptive parent of the child.

***Part 3***
***Parenting plans***

33. Contents of parenting plans

(1) The co-holders of parental responsibilities and rights in respect of a child may agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

(2) If the co-holders of parental responsibilities and rights in respect of a child are experiencing difficulties in exercising their responsibilities and rights, those persons, before seeking the intervention of a court, must first seek to agree on a parenting plan determining the exercise of their respective responsibilities and rights in respect of the child.

(3) A parenting plan may determine any matter in connection with parental responsibilities and rights, including -

(a) where and with whom the child is to live;

(b) the maintenance of the child;

(c) contact between the child and -

(i) any of the parties; and

(ii) any other person; and

(d) the schooling and religious upbringing of the child.

(4) A parenting plan must comply with the best interests of the child standard as set out in section 7.

(5) In preparing a parenting plan as contemplated in subsection (2) the parties must seek -

(a) the assistance of a family advocate, social worker or psychologist; or

(b) mediation through a social worker or other suitably qualified person.

34. Formalities

(1) A parenting plan -

(a) must be in writing and signed by the parties to the agreement; and

(b) subject to subsection (2), may be registered with a family advocate or made an order of court.

(2) An application by co-holders contemplated in section 33(1) for the registration of the parenting plan or for it to be made an order of court must -

(a) be in the prescribed format and contain the prescribed particulars; and

(b) be accompanied by a copy of the plan.

(3) An application by co-holders contemplated in section 33(2) for the registration of a parenting plan or for it to be made an order of court must -

(a) be in the prescribed format and contain the prescribed particulars; and

(b) be accompanied by -

(i) a copy of the plan; and

(ii) a statement by -

(aa) a family advocate, social worker or psychologist contemplated in section 33(5)(a) to the effect that the plan was prepared after consultation with such family advocate, social worker or psychologist; or

(bb) a social worker or other appropriate person contemplated in section 33(5)(b) to the effect that the plan was prepared after mediation by such social worker or such person.

(4) A parenting plan registered with a family advocate may be amended or terminated by the family advocate on application by the co-holders of parental responsibilities and rights who are parties to the plan,

(5) A parenting plan that was made an order of court may be amended or terminated only by an order of court on application -

(a) by the co-holders of parental responsibilities and rights who are parties to the plan;

(b) by the child, acting with leave of the court; or

(c) in the child's interest, by any other person acting with leave of the court,

(6) Section 29 applies to an application in terms of subsection (2).

35. Refusal of access or refusal to exercise parental responsibilities and rights

(1) Any person having care or custody of a child who, contrary to an order of any court or to a parental responsibilities and rights agreement that has taken effect as contemplated in section 22(4), refuses another person who has access to that child or who holds parental responsibilities and rights in respect of that child in terms of that order or agreement to exercise such access or such responsibilities and rights or who prevents that person from exercising such access or such responsibilities and rights is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(2)

(a) A person having care or custody of a child whereby another person has access to that child or holds parental responsibilities and rights in respect of that child in terms of an order of any court or a parental responsibilities and rights agreement as contemplated in subsection (1) must upon any change in his or her residential address forthwith in writing notify such other person of such change.

(b) A person who fails to comply with paragraph (a) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(Commencement date of s. 35: 1 July 2007)

***Part 4***
***Miscellaneous***

36. Presumption of paternity in respect of child born out of wedlock

If in any legal proceedings in which it is necessary to prove that any particular person is the father of a child born out of wedlock it is proved that that person had sexual intercourse with the mother of the child at any time when that child could have been conceived, that person is, in the absence of evidence to the contrary which raises a reasonable doubt, presumed to be the biological father of the child.

(Commencement date of s. 36: 1 July 2007)

37. Refusal to submit to taking of blood samples

If a party to any legal proceedings in which the paternity of a child has been placed in issue has refused to submit himself or herself, or the child, to the taking of a blood sample in order to carry out scientific tests relating to the paternity of the child, the court must warn such party of the effect which such refusal might have on the credibility of that party.

(Commencement date of s. 37: 1 July 2007)

38. Effect of subsequent marriage of parents on child

(1) A child born of parents who marry each other at any time after the birth of the child must for all purposes be

regarded as a child born of parents married at the time of his or her birth.

(2) Subsection (1) applies despite the fact that the parents could not have legally married each other at the time of conception or birth of the child.

(Commencement date of s. 38: 1 July 2007)

39. Rights of child born of voidable marriage

(1) The rights of a child conceived or born of a voidable marriage shall not be affected by the annulment of that marriage.

(2) No voidable marriage may be annulled until the relevant court has inquired into and considered the safeguarding of the rights and interests of a child of that marriage.

(3) Section 6 of the Divorce Act and section 4 of the Mediation in Certain Divorce Matters Act apply, with the necessary changes required by the context, in respect of such a child as if the proceedings in question were proceedings in a divorce action and the annulment of the marriage were the granting of a decree of divorce.

(4) Section 8(1) and (2) of the Divorce Act apply, with the necessary changes as the context may require, to the rescission or variation of a maintenance order, or an order relating to the care or guardianship of, or contact with, a child, or the suspension of a maintenance order or an order relating to contact with a child, made by virtue of subsection (3).

(5) A reference in any law -

(a) to a maintenance order or an order relating to the custody or guardianship of, or access to, a child in terms of the Divorce Act must be construed as a reference also to a maintenance order or an order relating to the custody or guardianship of, or access to, a child in terms of that Act as applied by subsection (3);

(b) to the rescission, suspension or variation of such an order in terms of the Divorce Act must be construed as a reference also to the rescission, suspension or variation of such an order in terms of that Act as applied by subsection (4).

(6) For purposes of this Act, the father of a child conceived of a voidable marriage where such marriage has been annulled is regarded to be in the same position as the father of a child who has divorced the mother of that child.

(Commencement date of s. 39: 1 July 2007)

40. Rights of child conceived by artificial fertilisation

(1)

(a) Whenever the gamete or gametes of any person other than a married person or his or her spouse have been used with the consent of both such spouses for the artificial fertilisation of one spouse, any child born of that spouse as a result of such artificial fertilisation must for all purposes be regarded to be the child of those spouses as if the gamete or gametes of those spouses had been used for such artificial fertilisation.

(b) For the purpose of paragraph (a) it must be presumed, until the contrary is proved, that both spouses have granted the relevant consent.

(2) Subject to section 296, whenever the gamete or gametes of any person have been used for the artificial fertilisation of a woman, any child born of that woman as a result of such artificial fertilisation must for all purposes be regarded to be the child of that woman.

(3) Subject to section 296, no right, responsibility, duty or obligation arises between a child born of a woman as a result of artificial fertilisation and any person whose gamete has or gametes have been used for such artificial fertilisation or the blood relations of that person, except when -

(a) that person is the woman who gave birth to that child; or

(b) that person was the husband of such woman at the time of such artificial fertilisation.

(Commencement date of s. 40: 1 July 2007)

41. Access to biographical and medical information concerning genetic parents

(1) A child born as a result of artificial fertilisation or surrogacy or the guardian of such child is entitled to have

access to -

(a) any medical information concerning that child's genetic parents; and

(b) any other information concerning that child's genetic parents but not before the child reaches the age of 18 years.

(2) Information disclosed in terms of subsection (1) may not reveal the identity of the person whose gamete was or gametes were used for such artificial fertilisation or the identity of the surrogate mother.

(3) The Director-General: Health or any other person specified by regulation may require a person to receive counselling before any information is disclosed in terms of subsection (1).

## CHAPTER 4
## CHILDREN'S COURTS

### *Part 1*
### *Establishment, status and jurisdiction*

42. Children's courts and presiding officers

(1) For the purposes of this Act, every magistrate's court, as defined in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall be a children's court and shall have jurisdiction on any matter arising from the application of this Act for the area of its jurisdiction.

(2) Every magistrate shall be a presiding officer of a children's court and every additional magistrate shall be an assistant presiding officer of a children's court for the district of which he is magistrate, additional magistrate or assistant magistrate.

(3) For the purposes of this Act, the Minister for Justice and Constitutional Development may, after consultation with the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), appoint a magistrate or an additional magistrate as a dedicated presiding officer of the children's court, within existing resources.

(4) The presiding officer of the children's court is subject to the administrative control of the head of an administrative region, defined in section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(5) The presiding officer of the children's court must perform such functions as may be assigned to him or her under this Act or any other law.

(6) For purposes of giving full effect to this Act, magistrates or additional magistrates may be designated as presiding officers for one or more children's courts.

(7) The Minister for Justice and Constitutional Development may, after consultation with the head of an administrative region, by notice in the *Gazette* define the area of jurisdiction of each children's court and increase or reduce the area of jurisdiction of each children's court in the relevant administrative region.

(8) The children's court hearings must, as far as is practicable, be held in a room which -

(a) is furnished and designed in a manner aimed at putting children at ease;

(b) is conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings without compromising the prestige of the court;

(c) is not ordinarily used for the adjudication of criminal trials; and

(d) is accessible to disabled persons and persons with special needs.

(9) A children's court sits at a place within the district or province designated by the Minister for Justice and Constitutional Development as a magistrate's court.

(10) The publication of a notice referred to in subsection (7) does not affect proceedings which have been instituted but not yet completed at the time of such publication.

43. Status

A children's court is a court of record and has a similar status to that of a magistrate's court at district level

44. Geographical area of jurisdiction of children's court

(1) The children's court that has jurisdiction in a particular matter is -

(a) the court of the area in which the child involved in the matter is ordinarily resident; or

(b) if more than one child is involved in the matter, the court of the area in which any of those children is ordinarily resident.

(2) Where it is unclear which court has jurisdiction in a particular matter, the children's court before which the child is brought has jurisdiction in that matter.

45. Matters children's court may adjudicate

(1) Subject to section 1(4), a children's court may adjudicate any matter, involving -

(a) the protection and well-being of a child;

(b) the care of, or contact with, a child;

(bA) guardianship of a child as contemplated in section 24;

[Para. (bA) inserted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(c) paternity of a child;

(d) support of a child;

(e) the provision of -

(i) early childhood development services; or

(ii) prevention or early intervention services;

(f) maltreatment, abuse, neglect, degradation or exploitation of a child, except criminal prosecutions in this regard;

(g) the temporary safe care of a child;

(h) alternative care of a child;

(i) the adoption of a child, including an inter-country adoption;

(j) a child and youth care centre, a partial care facility or a drop-in centre, or any other facility purporting to be a care facility for children;

[Para. (j) substituted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(jA) an unaccompanied or separated migrant child or a child who is an asylum seeker or refugee as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998); or

[Para. (jA) inserted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(k) any other matter relating to the care, protection or well-being of a child provided for in this Act.

(2) A children's court must refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction.

[Subs. (2) substituted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(3) Pending the establishment of family courts by an Act of Parliament, the High Courts have exclusive jurisdiction over the following matters contemplated in this Act:

[Words preceding para. (a) substituted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(a) .....

[Para. (a) deleted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(b) .....

[Para. (b) deleted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(c) artificial fertilisation;

(d) the departure, removal or abduction of a child from the Republic;

(e) applications requiring the return of a child to the Republic from abroad;

(f) the age of majority or the contractual or legal capacity of a child;

(g) the safeguarding of a child's interest in property; and

(h) surrogate motherhood agreement.

[Para. (h) substituted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(3A) The High Court and children's court have concurrent jurisdiction over the guardianship of a child as contemplated in section 24 of 45 this Act.

[Subs. (3A) inserted by s. 3 of Act 17/2022 w.e.f. 8 November 2023]

(3B) The High Court, children's court and regional court have concurrent jurisdiction over the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.

[Subs. (3B) inserted by s. 3 of Act 17/2022 w.e.f. w.e.f. 8 November 2023]

(4) Nothing in this Act shall be construed as limiting the inherent jurisdiction of the High Court as upper guardian of all children.

46. Orders children's court may make

(1) A children's court may make the following orders:

(a) An alternative care order, which includes an order placing a child -

(i) in the care of a person designated by the court to be the foster parent of the child;

(ii) in the care of a child and youth care centre; or

(iii) in temporary safe care;

(b) an order placing a child in a child-headed household in the care of the child heading the household under the supervision of an adult person designated by the court;

(c) an adoption order, which includes an inter-country adoption order;

(d) a partial care order instructing the parent or care-giver of the child to make arrangements with a partial care facility to take care of the child during specific hours of the day or night or for a specific period;

(e) a shared care order instructing different care-givers or child and youth care centres to take responsibility for the care of the child at different times or periods;

(f) a supervision order, placing a child, or the parent or care-giver of a child, or both the child and the parent or care-giver, under the supervision of a social worker or other person designated by the court;

(g) an order subjecting a child, a parent or care-giver of a child, or any person holding parental responsibilities and rights in respect of a child, to –

(i) early intervention services;

(ii) a family preservation programme; or

(iii) both early intervention services and a family preservation programme;

(h) a child protection order, which includes an order -

(i) that a child remains in, be released from, or returned to the care of a person, subject to conditions imposed by the court;

(ii) giving consent to medical treatment of, or to an operation to be performed on, a child;

(iii) instructing a parent or care-giver of a child to undergo professional counselling, or to participate in mediation, a family group conference, or other appropriate problem-solving forum;

(iv) instructing a child or other person involved in the matter concerning the child to participate in a professional assessment;

(v) instructing a hospital to retain a child who on reasonable grounds is suspected of having been subjected to abuse or deliberate neglect, pending further inquiry;

(vi) instructing a person to undergo a specified skills development, training, treatment or rehabilitation programme where this is necessary for the protection or well-being of a child;

(vii) instructing a person who has failed to fulfil a statutory duty towards a child to appear before the court and to give reasons for the failure;

(viii) instructing an organ of state to assist a child in obtaining access to a public service to which the child is entitled, failing which, to appear through its representative before the court and to give reasons for the failure;

(ix) instructing that a person be removed from a child's home;

(x) limiting access of a person to a child or prohibiting a person from contacting a child; or

(xi) allowing a person to contact a child on the conditions specified in the court order;

(i) a contribution order in terms of this Act;

(j) an order instructing a person to carry out an investigation in terms of section 50; and

(k) any other order which a children's court may make in terms of any other provision of this Act.

(2) A children's court may withdraw, suspend or amend an order made in terms of subsection (1), or replace such an order with a new order.

47. Referral of children by other court for investigation

(1) If it appears to any court in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection as is contemplated in section 150, the court must order that the question whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2).

(2) If, in the course of any proceedings in terms of the Administration Amendment Act, 1929 (Act No. 9 of 1929), the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), the Divorce Act, the Maintenance Act, the Domestic Violence Act, 1998 (Act No. 116 of 1998) or the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), the court forms the opinion that a child of any of the parties to the proceedings has been abused or neglected, the court -

(a) may suspend the proceedings pending an investigation contemplated in section 155(2) into the question whether the child is in need of care and protection; and

(b) must request the Director for Public Prosecutions to attend to the allegations of abuse or neglect.

(3) A court issuing an order in terms of subsection (1) or (2) may also order that the child be placed in temporary safe care if it appears to the court that this is necessary for the safety and well-being of the child.

48. Additional powers

(1) A children's court may, in addition to the orders it is empowered to make in terms of this Act -

(a) grant interdicts and auxiliary relief in respect of any matter contemplated in section 45(1);

(b) extend, withdraw, suspend, vary or monitor any of its orders;

(c) impose or vary time deadlines with respect to any of its orders;

(d) make appropriate orders as to costs in matters before the court; and

(e) order the removal of a person from the court after noting the reason for the removal on the court record.

(2) A children's court may for the purposes of this Act estimate the age of a person who appears to be a child in the prescribed manner.

49. Lay-forum hearings

(1) A children's court may, before it decides a matter or an issue in a matter, order a lay forum hearing in an attempt to settle the matter or issue out of court, which may include -

(a) mediation by a family advocate, social worker, social service professional or other suitably qualified person;

(b) a family group conference contemplated in section 70; or

(c) mediation contemplated in section 71.

(2) Before ordering a lay forum hearing, the court must take into account all relevant factors, including -

(a) the vulnerability of the child;

(b) the ability of the child to participate in the proceedings;

(c) the power relationships within the family; and

(d) the nature of any allegations made by parties in the matter.

50. Investigations

(1) A children's court may, subject to section 155(9), before it decides a matter, order any person -

(a) to carry out an investigation or further investigation that may assist the court in deciding the matter; and

(b) to furnish the court with a report and recommendation thereon.

(2) An investigation or further investigation must be carried out -

(a) in accordance with any prescribed procedures; and

(b) subject to any directions and conditions determined in the court order.

(3) The court order may authorise a designated social worker or any other person authorised by the court to conduct the investigation or further investigation to enter any premises mentioned in the court order, either alone or in the presence of a police official, and on those premises -

(a) remove a child in terms of sections 47 and 151;

(b) investigate the circumstances of the child;

(c) record any information; and

(d) carry out any specific instruction of the court.

(4) In addition to the powers a police official has in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995), the police official accompanying the designated social worker or other person authorised to conduct the investigation or further investigation may -

(a) enter the premises mentioned in the court order and conduct any search;

(b) question any person;

(c) request the name, address and identification details of any person on or residing or suspected to be residing on those premises;

(d) remove any person, from the child's home or place of normal residence in the manner contemplated in section 153 if the police official has a reasonable suspicion that the person -

(i) has caused the child harm; or

(ii) is likely to cause the child harm if the person is not so removed.

(e) record any information; and

(f) carry out any specific instruction of the court.

(5) A police official referred to in subsection (4) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises contemplated in subsection (4)(a), including the breaking of any door or window of such premises: Provided that such police official must first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

51. Appeals

(1) Any party involved in a matter before a children's court may appeal against any order made or any refusal to make an order, or against the variation, suspension or rescission of such order of the court to the High Court having jurisdiction.

(2) An appeal in terms of subsection (1) must be noted and prosecuted as if it were an appeal against a civil judgment of a magistrate's court, subject to section 45(2)(c).

***Part 2***
***Court proceedings***

52. Rules and court proceedings

(1) Except as is otherwise provided in this Act, the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and of the rules made in terms thereof as well as the rules made under the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), apply, with the necessary changes required by the context, to the children's court in so far as these provisions relate to -

(a) the issue and service of process;

(b) the appearance in court of advocates and attorneys;

(c) the execution of court orders;

(d) contempt of court; and

(e) penalties for -

(i) non-compliance with court orders;

(ii) obstruction of the execution of judgements; and

(iii) contempt of court.

(2) Rules made in terms of subsection (1) must be designed to avoid adversarial procedures and include rules

concerning -

(a) appropriate questioning techniques for -

(i) children in general;

(ii) children with intellectual or psychiatric difficulties or with hearing or other physical disabilities which complicate communication;

(iii) traumatised children; and

(iv) very young children; and

(b) the use of suitably qualified or trained interpreters.

53. Who may approach court

(1) Except where otherwise provided in this Act, any person listed in this section may bring a matter which falls within the jurisdiction of a children's court, to a clerk of the children's court for referral to a children's court.

(2) The persons who may approach a court, are:

(a) A child who is affected by or involved in the matter to be adjudicated;

(b) anyone acting in the interest of the child;

(c) anyone acting on behalf of a child who cannot act in his or her own name;

(d) anyone acting as a member of, or in the interest of, a group or class of children; and

(e) anyone acting in the public interest.

54. Legal representation

A person who is a party in a matter before a children's court is entitled to appoint a legal practitioner of his or her own choice and at his or her own expense.

55. Legal representation of children

(1) Where a child involved in a matter before the children's court is not represented by a legal representative, and the court is of the opinion that it would be in the best interests of the child to have legal representation, the court must refer the matter to Legal Aid South Africa referred to in section 2 of the Legal Aid South Africa Act, 2014

[Subs. (1) amended by s. 25 of Act 39/2014 w.e.f. 1 March 2015]

(2) The Board must deal with a matter referred to in subsection (1) in accordance with section 3B of that Act, read with the changes required by the context.

56. Attendance at proceedings

Proceedings of a children's court are closed and may be attended only by -

(a) a person performing official duties in connection with the work of the court or whose presence is otherwise necessary for the purpose of the proceedings;

(b) the child involved in the matter before the court and any other party in the matter;

(c) a person who has been instructed in terms of section 57 by the clerk of the children's court to attend those proceedings;

(d) the legal representative of a person who is entitled to legal representation;

(e) a person who obtained permission to be present from the presiding officer of the children's court; and

(f) the designated social worker managing the case.

57. Compulsory attendance of persons involved in proceedings

(1) The clerk of the children's court may, by written notice in the prescribed manner, request a party in a matter before a children's court, a family member of a child involved in the matter or a person who has another interest in the matter, to attend the proceedings of the children's court.

(2) The person in whose physical control the child is must ensure that the child attends those proceedings except if the clerk of the children's court or the court directs otherwise.

58. Rights of persons to adduce evidence, question witnesses and produce argument

The following persons have the right to adduce evidence in a matter before a children's court and, with the permission of the presiding officer of the children's court, to question or cross-examine a witness or to address the court in argument:

(a) A child involved in the matter;

(b) a parent of the child;

(c) a person who has parental responsibilities and rights in respect of the child;

(d) a care-giver of the child;

(e) a person whose rights may be affected by an order that may be made by the court in those proceedings; and

(f) a person who the court decides has a sufficient interest in the matter.

59. Witnesses

(1) The clerk of the children's court must, in the prescribed manner, summons a person to appear as a witness in a matter before the court to give evidence or to produce a book, document or other written instrument on request by -

(a) the presiding officer in the matter;

(b) the child or a person whose rights may be affected by an order that may be made by the court in those proceedings; or

(c) the legal representative of a person referred to in paragraph (b).

(2) A summons referred to in subsection (1) must be served on the witness as if it were a summons to give evidence or to produce a book, document or other written instrument at a criminal trial in a magistrate's court.

(3) Sections 188 and 189 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), read with such changes as the context may require, apply to a person who has been summonsed in terms of subsection (1) or required by the presiding officer to give evidence.

(4) A person summonsed in terms of subsection (1)(a) and who complied with the summons, is entitled to an allowance from state funds equal to that determined for witnesses summonsed to appear in criminal trials in a magistrate's court.

(5) A person summonsed in terms of subsection (1)(b) or (c) is not entitled to an allowance from state funds except if the presiding officer so orders.

60. Conduct of proceedings

(1) The presiding officer in a matter before a children's court controls the conduct of the proceedings, and may -

(a) call any person to give evidence or to produce a book, document or other written instrument;

(b) question or cross-examine that person; or

(c) to the extent necessary to resolve any factual dispute which is directly relevant in the matter, allow that person to be questioned or cross-examined by -

(i) the child involved in the matter;

(ii) the parent of the child;

(iii) a person who has parental responsibilities and rights in respect of the child;

(iv) a care-giver of the child;

(v) a person whose rights may be affected by an order that may be made by the court in those proceedings; or

(vi) the legal representative of a person who is entitled to a legal representative in those proceedings.

(2) If a child is present at the proceedings, the court may order any person present in the room where the proceedings take place to leave the room if such order would be in the best interests of that child.

(3) Children's court proceedings must be conducted in an informal manner and, as far as possible, in a relaxed and non-adversarial atmosphere which is conducive to attaining the co-operation of everyone involved in the proceedings.

61. Participation of children

(1) The presiding officer in a matter before a children's court must -

(a) allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development and any special needs that the child may have, is able to participate in the proceedings and the child chooses to do so;

(b) record the reasons if the court finds that the child is unable to participate in the proceedings or is unwilling to express a view or preference in the matter; and

(c) intervene in the questioning or cross-examination of a child if the court finds that this would be in the best interests of the child.

(2) A child who is a party or a witness in a matter before a children's court must be questioned through an intermediary as provided for in section 170A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) if the court finds that this would be in the best interests of that child,

(3) The court -

(a) may, at the outset or at any time during the proceedings, order that the matter, or any issue in the matter, be disposed of separately and in the absence of the child, if it is in the best interests of the child; and

(b) must record the reasons for any order in terms of paragraph (a).

62. Professional reports ordered by court

(1) A children's court, for the purposes of deciding a matter before it or any issue in the matter, may order, if necessary, that a designated social worker, family advocate, psychologist, medical practitioner or other suitably qualified person carry out an investigation to establish the circumstances of -

(a) the child;

(b) the parents or a parent of the child;

(c) a person who has parental responsibilities and rights in respect of the child;

(d) a care-giver of the child;

(e) the person under whose control the child is; or

(f) any other relevant person.

(2) A person referred to in subsection (1) may, subject to section 63(1) and (2) -

(a) obtain supplementary evidence or reports from other suitably qualified persons;

(b) be required by the court to present the findings of the investigation to the court by -

(i) testifying before the court; or

(ii) submitting a written report to the court.

63. Evidence

(1) A written report, purported to be compiled and signed by a medical practitioner, psychologist, family advocate, designated social worker or other suitably qualified person who on the face of the report formed an authoritative opinion in respect of a child or the circumstances of a child involved in a matter before a children's court, or in respect of another person involved in the matter or the circumstances of such other person, is, subject to the decision of the presiding officer, on its mere production to the children's court hearing the matter admissible as evidence of the facts stated in the report.

(2) The written report contemplated in subsection (1) must be submitted to the children's court within the prescribed period prior to the date of the hearing of the matter.

(3) If a person's rights are prejudiced by a report referred to in subsection (1) the court must -

(a) disclose the relevant parts of the report to that person within the prescribed period prior to the date of the hearing of the matter if that person is a party to the proceedings; and

(b) give that person the opportunity -

(i) to question or cross-examine the author of the report in regard to a matter arising from the report; or

(ii) to refute any statement contained in the report.

64. Adjournments

(1) The proceedings of a children's court may be adjourned only -

(a) on good cause shown, taking into account the best interests of the child;

(b) for a period of not more than 30 days at a time.

(2) A presiding officer of a children's court may excuse any person from appearing at adjournment proceedings.

65. Monitoring of court orders

(1) A children's court may monitor -

(a) compliance with an order made by it in a matter; or

(b) the circumstances of a child following an order made by it

(2) For purposes of monitoring compliance with an order made by a children's court or the circumstances of a child following an order, the court -

(a) when making that order, may order -

(i) any person involved in the matter to appear before it at any future date; or

(ii) that reports by a designated social worker be submitted to the court within a specified period or from time to time as specified in the order;

(b) at any time after making an order or when a report of non-compliance mentioned in subsection (4) is referred to it, may call or recall any person involved in the matter to appear before it.

(3) When a person appears before the court in terms of subsection (2) the court may -

(a) inquire whether the order has been or is being complied with, and if not, why the order has not been complied with or is not being complied with;

(b) confirm, vary or withdraw the order; or

(c) enforce compliance with the order, if necessary through a criminal prosecution in a magistrate's court or in terms of section 45(2).

(4) Any person may report any alleged non-compliance with an order of a children's court, or any alleged worsening of the circumstances of a child following a court order, to the clerk of the children's court, who must refer the matter to a presiding officer for a decision on possible further action.

66. Protection of court case records

Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person has access to children's court case records, except -

(a) for the purpose of performing official duties in terms of this Act;

(b) in terms of an order of court if the court finds that such access would not compromise the best interests of the child;

(c) for the purpose of a review or appeal; or

(d) for the purpose of bona fide research or the reporting of cases in law reports, provided the provisions of section 74 are complied with.

67. Appointment or designation of clerks of children's courts

(1) Subject to the laws governing the public service, the Director-General: Justice and Constitutional Development may, for every children's court, appoint or designate one or more officials in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the children's court, who must generally assist the court to which they are attached in performing its functions and who must perform the functions as may be prescribed in this Act or by way of regulation or in any other law.

(2) If a clerk of the children's court is for any reason unable to act as such or if no clerk of the children's court has been appointed or designated for any children's court under subsection (1), the presiding officer of the children's court may designate any competent official in the Department to act as a clerk of the children's court for as long as the said clerk of the children's court is unable to act or until a clerk of the children's court is appointed or designated under subsection (1), as the case may be.

(3) For purposes of giving full effect to this Act persons may be appointed or designated as clerk of the children's court for one or more children's courts.

68. Referral of matters by clerk of children's court

If it comes to the attention of the clerk of the children's court that a child may be in need of care and protection, the clerk must refer the matter to a designated social worker for investigation in terms of section 155(2).

***Part 3***
***Pre-hearing conferences, family group conferences, other lay-forums and settlingmatters out of court***

69. Pre-hearing conferences

(1) If a matter brought to or referred to a children's court is contested, the court may order that a pre-hearing conference be held with the parties involved in the matter in order to -

(a) mediate between the parties;

(b) settle disputes between the parties to the extent possible; and

(c) define the issues to be heard by the court.

(2) Pre-hearing conferences may not be held in the event of a matter involving the alleged abuse or sexual abuse of a child.

(3) The child involved in the matter may attend and may participate in the conference unless the children's court decides otherwise.

(4) The court may -

(a) prescribe how and by whom the conference should be set up, conducted and by whom it should be attended;

(b) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(c) consider the report on the conference when the matter is heard,

70. Family group conferences

(1) The children's court may cause a family group conference to be set up with the parties involved in a matter brought to or referred to a children's court, including any other family members of the child, in order to find solutions for any problem involving the child.

(2) The children's court must -

(a) appoint a suitably qualified person or organisation to facilitate at the family group conference;

(b) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(c) consider the report on the conference when the matter is heard.

71. Other lay-forums

(1) The children's court may, where circumstances permit, refer a matter brought or referred to a children's court to any appropriate lay-forum, including a traditional authority, in an attempt to settle the matter by way of mediation out of court.

(2) Lay-forums may not be held in the event of a matter involving the alleged abuse or sexual abuse of a child.

(3) The children's court may -

(a) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and

(b) consider a report on the proceedings before the lay-forum to the court when the matter is heard.

72. Settling of matters out of court

(1) If a matter is settled out of court and the settlement is accepted by all parties involved in the matter, the clerk of the children's court must submit the settlement to the children's court for confirmation or rejection.

(2) The court must consider the settlement and, if it is in the best interests of the child, may -

(a) confirm the settlement and make it an order of court;

(b) before deciding the matter, refer the settlement back to the parties for reconsideration of any specific issues; or

(c) reject the settlement.

73. Other functions

The clerk of the children's court may attend every children's court hearing.

***Part 4***
***Miscellaneous matters***

74. Publication of information relating to proceedings

No person may, without the permission of a court, in any manner publish any information relating to the proceedings of a children's court which reveals or may reveal the name or identity of a child who is a party or a witness in the proceedings.

75. Regulations

(1) The Minister for Justice and Constitutional Development, after consultation with the Minister, may make regulations concerning -

(a) the procedures to be followed at or in connection with the proceedings of children's courts and the powers, duties and functions of clerks of the children's court in as far as they relate to the proceedings of children's courts;

(b) the form of any application, authority, certificate, consent, notice, order,process, register or subpoena to be made, given, issued or kept;

(c) the carrying out and monitoring of investigations in terms of section 50(2), procedures regulating such investigations and the gathering of evidence;

(d) the holding of pre-hearing conferences in terms of section 69, procedures regulating such conferences and information that must be submitted to a children's court;

(e) the holding and monitoring of family group conferences or other lay-forums in terms of sections 70 and 71, procedures regulating such conferences and other lay-forums and information that must be submitted to a children's court;

(f) the qualifications and experience of persons facilitating family groupconferences, including special requirements that apply to persons facilitating in matters involving the alleged abuse of children;

(g) documents in connection with matters brought to a children's court and records of the proceedings of children's courts, including regulations determining -

(i) the person by whom, the period for which and the manner in which those documents and records must be kept; and

(ii) access to those documents and records;

(h) the keeping of records with regard to matters brought to and dealt with by the children's court;

(i) the submission of court statistics and progress reports on those matters to the Magistrates' Commission established by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993);

(j) the payment of remuneration to persons who are not in the employ of the state as contemplated in sections 49, 50, 62, 69, 70 and 71; and

(k) any other matter required or permitted to be prescribed under this Act.

(2) Section 306(2) and (3), read with such changes as the context may require, applies to the making of regulations in terms of subsection (1).

**CHAPTER 5**
**PARTIAL CARE**

**76. Partial care**

Partial care is provided when a person, whether for or without reward, takes care of more than six children on behalf of their parents or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents or care-givers and the provider of the service, but excludes the care of a child-

(a) by a school as part of tuition, training and other activities provided by the school;

(b) as a boarder in a school hostel or other residential facility managed as part of a school; or

(c) by a hospital or other medical facility as part of medical treatment provided to the child.

**77. Strategy concerning partial care**

(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses.

(2) The MEC for social development must-

(a) maintain a record of all the registered partial care facilities in the province; and

(b) within the national strategy contemplated in subsection (1), provide for a provincial strategy to ensure an appropriate spread of partial care facilities in the province.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies contemplated in subsections (1) and (2).

**78. Provision of partial care**

(1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund partial care facilities and services for the province, taking into consideration the national and provincial strategies contemplated in section 77.

(2) A partial care facility referred to in subsection (1)-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with-

(i) the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed; and

(ii) the structural safety, health and other requirements of the municipality of the area where the partial care facility is situated.

(3) The owner or manager of a partial care facility or provider of a partial care service only qualifies for funding contemplated in subsection (1) if such owner, manager or provider complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

(4) The funding of partial care facilities must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make facilities accessible to children with disabilities.

**79. National norms and standards for partial care**

(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must determine national norms and standards for partial care by regulation.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A safe environment for children;

(b) proper care for sick children or children that become ill;

(c) adequate space and ventilation;

(d) safe drinking water;

(e) hygienic and adequate toilet facilities;

(f) safe storage of anything that may be harmful to children;

(g) access to refuse disposal services or other adequate means of disposal of refuse generated at the facility;

(h) a hygienic area for the preparation of food for children;

(i) measures for the separation of children of different age groups;

(j) the drawing up of action plans for emergencies; and

(k) the drawing up of policies and procedures regarding health care at the facility.

(3) A partial care facility for children with disabilities or chronic illnesses must, in addition to the national norms and standards contemplated in subsection (1)-

(a) be accessible to such children;

(b) provide facilities that meet the needs of such children; and

(c) employ persons that are trained in and provide training to persons employed at the facility on-

(i) the needs, health and safely of such children;

(ii) appropriate learning activities and communication strategies for such children; and

(iii) basic therapeutic interventions.

(4) A partial care facility may offer programmes appropriate to the developmental needs of the children in that facility as may be prescribed.

**80. Partial care facility to be registered**

(1) Any person or organisation may establish or operate a partial care facility provided that the facility-

(a) is registered with the provincial government of the province where that facility is situated;

(b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and

(c) complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

(2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

(3) Partial care facilities operated or managed by a national or provincial state department or by a municipality must comply with subsection (1).

(4) As from the date on which this section takes effect an existing place of care registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of this section as a partial care facility.

(5) A facility referred to in subsection (4) is regarded as a registered partial care facility for a period of five years from the dale on which that subsection takes effect, unless its registration is cancelled in terms of section 84 before the expiry of that period.

**81. Application for registration and renewal of registration**

(1) An application for registration or conditional registration of a partial care facility or for the reinstatement or renewal of registration must-

(a) be lodged with the provincial head of social development of the province where the facility is situated in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by-

(i) a report by a social service professional on the viability of the application; and

(ii) any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

**82. Consideration of application**

(1) The provincial head of social development must-

(a) within six months of receiving the application consider an application for registration or conditional registration or for the renewal of registration and either reject the application on having regard to subsection (2), grant the registration or renewal with or without conditions;

(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

(2) When considering an application the provincial head of social development must take into account all relevant factors, including whether-

(a) the facility complies with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed;

(b) the applicant is a fit and proper person to operate a partial care facility;

(c) the applicant has the necessary funds and resources available to provide the partial care services of the type applied for;

(d) each person employed at or engaged in the partial care facility is a fit and proper person to assist in operating a partial care facility; and

(e) each person employed at or engaged in the partial care facility has the prescribed skills and training to assist in operating that partial care facility.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a partial care facility.

(4) The provincial head of social development must consider the report contemplated in section 81(l)(c)(i) of a social service professional before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding section 78(3) a provincial head of social development may assist the owner or manager of a

partial care facility to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.

**83. Conditional registration**

The registration or renewal of registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of partial care that may or must be provided in terms of the registration;

(b) stating the period for which the conditional registration will remain valid; and

(c) providing for any other matters that may be prescribed.

**84. Cancellation of registration**

(1) The provincial head of social development may cancel the registration or conditional registration of a partial care facility by written notice to the registration holder if-

(a) the facility is not maintained in accordance with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed;

(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;

(c) the registration holder or the management of the facility contravenes or fails to comply with a provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to operate a partial care facility; or

(e) a person who is not a fit and proper person to assist in operating a partial care facility is employed at or engaged in operating the facility.

(2) The provincial head of social development may in the case of (he cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(3) The provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 79, any requirements as may be prescribed or any provision of this Act where the cancellation was due to non-compliance with those national norms and standards, conditions, requirements or provision.

**85. Notice of enforcement**

(1) A provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person or organisation operating an unregistered partial care facility-

(i) to stop operating that facility; or

(ii) to apply for registration in terms of section 81 within a period specified in the notice; or

(b) a person or organisation operating a registered partial care facility otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered partial care facility and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period, may, despite the provisions of section 80, continue operating the facility during that period and, if that person or organisation applies for registration, until

that application has been processed.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a partial care facility, whether registered or not, to stop operating that facility.

(4) The High Court may grant an order for costs against the owner or manager of the partial care facility referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

**86. Appeal against and review of certain decisions**

(1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal referred to in subsection (1) may apply to the competent division of the High Court to review that decision.

**87. Record and inspection of and provision for partial care facility**

(1) A provincial head of social development must-

(a) maintain a record of all partial care facilities in the province, the types of partial care facility and the number of each type of facility;

(b) compile a profile of the children in that province in the prescribed manner; and

(c) conduct inspections at the prescribed intervals of partial care facilities in the province to enforce the provisions of this Act.

(2) A provincial strategy contemplated in section 77(2) must include a strategy for the provision of partial care facilities in the province, which must include measures-

(a) facilitating the establishment and operation of sufficient partial care facilities in that province;

(b) prioritising those types of partial care facilities most urgently required; and

(c) liaising with municipalities on facilitating the identification and provision of suitable premises.

**88. Assignment of functions to municipality**

(1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 80, 81, 82, 83, 84, 85 and 87 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service professional in the employ of the municipality.

(4) A delegation in terms of subsection (3)-

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8)

(a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may-

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

**89. Serious injury, abuse or death of child in partial care facility**

(1) If a child is seriously injured or abused while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation to be conducted into the circumstances of the serious injury or abuse.

(2) If a child dies while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately after the child's death report such death to-

(a) the parent, guardian or care-giver of the child;

(b) a police official; and

(c) the provincial head of social development.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

**90. Regulations**

The Minister may make regulations in terms of section 306 concerning-

(a) the national norms and standards that partial care facilities must comply with;

(b) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter, for the renewal of such registration and for the suspension or cancellation of registration;

(c) the different types of partial care that may he provided in terms of such registration;

(d) the period for which registration is valid;

(e) the requirements that the different types of partial care facilities have to comply with;

(f) the management of partial care facilities;

(g) the procedure to be followed with regard to the children in a partial care facility if the partial care facility is closed down;

(h) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; and

(i) any other matter that may be necessary to facilitate the implementation of this Chapter.

[Chapter 5 inserted by s. 4 of Act 41/2007]
(Commencement date of Chapter 5 : 1 April 2010)

## CHAPTER 6
## EARLY CHILDHOOD DEVELOPMENT

### 91. Early childhood development

(1) Early childhood development, for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual, moral, physical, social and communication development of children from birth to school-going age.

(2) Early childhood development services means services-

(a) intended to promote early childhood development; and

(b) provided by a person, other than a child's parent or caregiver, on a regular basis to children up to school-going age.

(3) An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child's developmental age and stage.

### 92. Strategy concerning early childhood development

(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses.

(2) The MEC for social development must-

(a) maintain a record of all the early childhood development programmes registered in the province; and

(b) within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed early childhood development system.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

### 93. Provision of early childhood development programmes

(1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development programmes for that province.

(2) An early childhood development programme must-

(a) be provided in accordance with this Act; and

(b) comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(3) The provider of an early childhood development programme only qualifies for funding contemplated in subsection (1) if such provider complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(4) The funding of early childhood development programmes must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make early childhood development programmes available to children with disabilities.

(5) An early childhood development programme must be provided by-

(a) a partial care facility providing partial care services for any children up to school-going age; and

(b) a child and youth care centre which has in its care any children up to school-going age.

(6) Any other person or organisation not disqualified in terms of section 97(3) may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

**94. National norms and standards for early childhood development programmes**

(1) The Minister must determine national norms and standards for early childhood development programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.

(2) The prescribed national norms and standards contemplated in subsection (1) must relate to the following:

(a) The provision of appropriate developmental opportunities;

(b) programmes aimed at helping children to realise their full potential;

(c) caring for children in a constructive manner and providing support and security;

(d) ensuring development of positive social behaviour;

(e) respect for and nurturing of the culture, spirit, dignity, individuality, language and development of each child; and

(f) meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children.

(3) An early childhood development programme provided in terms of this section must be appropriate to the needs of the children to whom the programme is provided, including children with a disability, chronic illness and other special needs.

**95. Early childhood development programme to be registered**

(1) A person or organisation providing an early childhood development programme must-

(a) register the programme with the provincial head of social development of the province where that programme is provided;

(b) provide the programme in accordance with any conditions subject to which the programme is registered; and

(c) comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(2) The Minister may by regulation exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

(3) An early childhood development programme provided by a national or provincial state department or a municipality must comply with subsection (1).

**96. Application for registration and renewal of registration**

(1) An application for registration or conditional registration of an early childhood development programme or for the renewal of registration must-

(a) be lodged with the provincial head of social development of the province where the early childhood development programme is provided in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of an early childhood development programme before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

**97. Consideration of application**

(1) The provincial head of social development must-

(a) within six months of receiving the application consider an application for registration or conditional registration or for the renewal of registration, and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions;

(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

(2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether-

(a) the early childhood development programme complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed;

(b) the applicant is a fit and proper person to provide an early childhood development programme;

(c) the applicant has the prescribed skills, training, funds and resources available to provide the early childhood development programme as applied for; and

(d) the early childhood development programme meets the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of the children to whom the programme will be presented.

(3) A person unsuitable to work with children is not a fit and proper person to provide or assist in the provision of early childhood development programmes.

(4) The provincial head of social development must consider the assessment referred to in subsection (6) of a suitably qualified person before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding the provisions of section 93(3), a provincial head of social development may assist a person providing an early childhood development programme to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(6) A provincial head of social development must authorise a suitably qualified person to assess the provision and content of an early childhood development programme in order to determine whether the programme complies with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.

(7) Section 304(2) and (3), read with such changes as the context may require, applies to any assessment in terms

of subsection (6).

**98. Conditional registration**

The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of early childhood development programme that may or must be provided in terms of the registration;

(b) stating the period for which the conditional registration will remain valid; and

(c) providing for any other matters that may be prescribed.

**99. Cancellation of registration**

(1) A provincial head of social development may cancel the registration or conditional registration of an early childhood development programme by written notice to the registration holder if-

(a) the programme is not run in accordance with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed;

(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;

(c) the registration holder contravenes or fails to comply with a provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to provide an early childhood development programme; or

(e) a person who is not a fit and proper person to provide or assist in the provision of an early childhood development programme provides or assists in the provision of such a programme.

(2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a),(b), (c) or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(3) A provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed or any provisions of this Act where the cancellation was due to non-compliance with those national norms and standards, requirements, conditions or provisions.

(4) The cancellation of the registration or conditional registration of an early childhood development programme in terms of subsection (1) does not affect the registration or conditional registration of a partial care facility or a child and youth care centre.

**100. Notice of enforcement**

A provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person operating or managing a partial care facility or a child and youth care centre which does not provide an early childhood development programme, to comply with section 93(5) within a period specified in the notice;

(b) a person operating or managing a partial care facility or a child and youth care centre which does provide an early childhood development programme but of a standard that does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed, to comply with those national norms and standards and other requirements within a period specified in the notice; or

(c) a person who provides an early childhood development programme which does not comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed-

(i) to stop the provision of that programme; or

(ii) to comply with those national norms and standards and other requirements within a period specified in the notice.

**101. Appeal against and review of certain decisions**

(1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal referred to in subsection (1) may apply to the competent division of the High Court to review that decision.

**102. Assignment of functions to municipality**

(1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service professional in the employ of the municipality.

(4) A delegation in terms of subsection (3)-

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide on the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8)

(a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may-

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

**103. Regulations**

The Minister may make regulations in terms of section 306 concerning-

(a) the national norms and standards that early childhood development programmes must comply with;

(b) any other requirements with which early childhood development programmes must comply;

(c) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;

(d) the assessment and compulsory monitoring of early childhood development programmes; and

(e) any other matter necessary to facilitate the implementation of this Chapter.

[Chapter 6 inserted by s. 4 of Act 41/2007]
(Commencement date of Chapter 6 : 1 April 2010)

## CHAPTER 7
## PROTECTION OF CHILDREN

### *Part 1*
### *Child protection system*

**104. Strategy concerning child protection**

(1) The Minister, after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development and the South African Police Service, must develop a comprehensive inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system.

(2) The MEC for social development must, within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated and managed child protection system.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

**105. Provision of designated child protection services**

(1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund designated child protection services for that province.

(2) Designated child protection services-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with the prescribed national norms and standards contemplated in section 106 and such other requirements as may be prescribed.

(3) Designated child protection services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 106 and such other requirements as may be prescribed.

(4) Designated child protection services may be provided by-

(a) the Department;

(b) a provincial department of social development; and

(c) a designated child protection organisation.

(5) Designated child protection services include-

(a) services aimed at supporting-

(i) the proceedings of children's courts; and

(ii) the implementation of court orders;

(b) services relating to-

(i) prevention services;

(ii) early intervention services;

(iii) the reunification of children in alternative care with their families;

(iv) the integration of children into alternative care arrangements;

(v) the placement of children in alternative care; and

(vi) the adoption of children, including inter-country adoptions;

(c) the carrying out of investigations and the making of assessments, in cases of suspected abuse, neglect or abandonment of children;

(d) intervention and removal of children in appropriate cases;

(e) the drawing up of individual development plans and permanency plans for children removed, or at risk of being removed, from their family; and

(f) any other social work service as may be prescribed.

(6) The Department must, as prescribed, develop and conduct a quality assurance process for the evaluation of-

(a) child protection services; and

(b) child protection organisations as contemplated in section 107.

[**Proposed amendmen**t: Subs. (6) to be inserted by s. 4 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

**106. National norms and standards for child protection**

(1) The Minister must determine national norms and standards for child protection by regulation after consultation with interested persons and the Ministers of Education, Finance, Health and Justice and Constitutional Development and the South African Police Service.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) Prevention and early intervention programmes;

(b) assessment of a child;

(c) therapeutic programmes;

(d) after-care;

(e) family reunification and reintegration;

(f) foster care services;

(g) integration into alternative care;

(h) adoption services;

(i) permanency plans;

(j) education and information; and

(k) child-headed households.

**107. Designation of child protection organisation**

(1) The Director-General or provincial head of social development, on written application, may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services in the relevant province.

(2) A designation in terms of subsection (1)-

(a) must be in writing;

(b) may be made on such conditions as the Director-General or provincial head of social development may determine; and

(c) must be made for such period as may be prescribed.

(3) The Director-General or provincial head of social development may assign to a designated child protection organisation such powers and duties in terms of this Act necessary for the proper provision of designated child protection services by the organisation.

(4) Sections 310 and 311 read with such changes as the context may require, apply to any assignment in terms of subsection (1).

**108. Existing child welfare organisation**

(1) Any organisation which, when section 107 takes effect, is a designated welfare organisation within the meaning of the Child Care Act must be regarded as having been designated in terms of section 107 as a child protection organisation to perform the designated child protection services which it performed immediately before that section took effect.

(2) An organisation referred to in subsection (1) is regarded as a designated child protection organisation for a period of five years from the date on which section 107 takes effect, unless its designation is withdrawn in terms of section 109 before the expiry of that period.

**109. Withdrawal of designation**

(l) The Director-General or provincial head of social development may withdraw the designation of a child protection organisation to perform any, or any specific, designated child protection service-

(a) if the organisation-

(i) breaches or fails to comply with any conditions subject to which the designation was made; or

(ii) contravenes or fails to comply with a provision of this Act; or

(b) if it is in the best interest of the protection of children.

(2) Before the designation of a child protection organisation is withdrawn as contemplated in subsection (1), the Director-General or provincial head of social development, as the case may be, must conduct quality assurance in the prescribed manner of the child protection organisation concerned.

**110. Reporting of abused or neglected child and child in need of care and protection**

(1) Any correctional official, dentist, homeopath, immigration, official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.

(2) Any person who on reasonable grounds believes that a child is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.

(3) A person referred to in subsection (1) or (2)-

(a) must substantiate that conclusion or belief to the provincial department of social development, a designated child protection organisation or police official; and

(b) who makes a report in good faith is not liable to civil action on the basis of the report.

(4) A police official to whom a report has been made in terms of subsection (1) or (2) or who becomes aware of a child in need of care and protection must-

(a) ensure the safety and well-being of the child concerned if the child's safety or well-being is at risk; and

(b) within 24 hours notify the provincial department of social development or a designated child protection organisation of the report and any steps that have been taken with regard to the child.

(5) The provincial department of social development or designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4), must-

(a) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;

(b) make an initial assessment of the report;

(c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated;

(d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child; and

(e) submit such particulars as may be prescribed to the Director-General for inclusion in Part A of the National Child Protection Register.

(6)

(a) A designated child protection organisation to whom a report has been made in terms of subsection (1), (2) or (4) must report the matter to the relevant provincial department of social development.

(b) The provincial head of social development must monitor the progress of all matters reported to it in terms of paragraph (a).

(7) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) may-

(a) take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation;

(b) if he or she is satisfied that it is in the best interest of the child not to be removed from his or her home or place where he or she resides, but that the removal of the alleged offender from such home or place would secure the safety and well-being of the child, request a police official in the prescribed manner to take the steps referred to in section 153; or

(c) deal with the child in the manner contemplated in sections 151,152 or 155.

(8) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) must report the possible commission of an offence to a police official.

[Part 1 inserted by s. 5 of Act 41/2007]
(Commencement date of Part 1 :1 April 2010)

***Part 2***
***National Child Protection Register***

111. Keeping of National Child Protection Register

(1) The Director-General must keep and maintain a register to be called the National Child Protection Register.

(2) The National Child Protection Register consists of a Part A and a Part B.

112. Confidentiality of National Child Protection Register

(1) All Parts of the Register must be kept confidential and information in the Register may be accessed and disclosed only as provided for in this Act.

(2) The Director-General must take adequate steps -

(a) to protect the information in the Register; and

(b) if the Register is kept in electronic format, to secure the Register from unauthorised intrusion.

***Part A of Register***

113. Purpose of Part A of Register

The purpose of Part A of the Register is -

(a) to have a record of abuse or deliberate neglect inflicted on specific children;

(b) to have a record of the circumstances surrounding the abuse or deliberate neglect inflicted on the children referred to in paragraph (a);

(c) to use the information in the Register in order to protect these children from further abuse or neglect;

(d) to monitor cases and services to such children;

(e) to share information between professionals that are part of the child protection team;

(f) to determine patterns and trends of abuse or deliberate neglect of children; and

(g) to use the information in the Register for planning and budgetary purposes to prevent the abuse and deliberate neglect of children and protect children on a national, provincial and municipal level.

114. Contents of Part A of Register

(1) Part A of the Register must be a record of -

(a) all reports of abuse or deliberate neglect of a child made to the Director-General in terms of this Act;

(b) all convictions of all persons on charges involving the abuse or deliberate neglect of a child; and

(c) all findings by a children's court that a child is in need of care and protection because of abuse or deliberate neglect of the child.

(2) Part A of the Register must reflect -

(a) in the case of reported incidents referred to in subsection (1)(a) -

(i) the full names, surname, physical address and identification number of the child;

(ii) the age and gender of the child;

(iii) whether the child has a disability and if so, the nature of the disability;

(iv) whether the child has a chronic illness and if so, the nature of the chronic illness;

(v) the nature and a brief account of the incident, including the place and date of the incident;

(vi) the full names, surname, physical address and identification number of the parents or care-giver of the child; and

(vii) the name and physical address of the institution, child and youth care centre, partial care facility or shelter or drop-in centre, if the incident occurred at such a place;

(b) in the case of a conviction referred to in subsection (1)(b) -

(i) the full names, surname, physical address and identification number of the child;

(ii) the age and gender of the child;

(iii) whether the child has a disability and if so, the nature of the disability;

(iv) whether the child has a chronic illness and if so, the nature of the chronic illness;

(v) the full names, surname, physical address, identification number and occupation of the convicted person;

(vi) the nature and a brief account of the charge and conviction, including the place and date of the incident of which the person was charged; and

(vii) details of the relationship between the convicted person and the child;

(c) in the case of a finding by a children's court referred to in subsection (1)(c) -

(i) the full names, surname, physical address and identification number of the child;

(ii) the age and gender of the child;

(iii) whether the child has a disability and if so, the nature of the disability;

(iv) whether the child has a chronic illness and if so, the nature of the chronic illness;

(v) a brief summary of the court's reasons for finding the child to be in need of care and protection;

(vi) information on the outcome of the court's finding on the child;

(vii) the full names, surname, physical address and identification number of the parents or care-giver of the child; and

(viii) a brief summary of the services rendered to the child found to be in need of care; and

(d) any other prescribed information.

115. Access to Part A of Register

Only the Director-General and officials of the Department designated by the Director-General have access to Part A of the Register, but the Director-General may, on such conditions as the Director-General may determine, allow access to -

(a) a provincial head of social development, or an official of a provincial department of social development designated by the head of that department, for the purpose of performing his or her functions in terms of this Act;

(b) designated child protection organisations;

(c) a member of the unit of the South African Police Service tasked with child protection; or

(d) any other person for the purpose of conducting research on child abuse or deliberate neglect or related issues on condition that the full names, surname, physical address and identification number of the child must be excluded.

116. Disclosure of information in Part A of Register

(1) No person may disclose any information in Part A of the Register except -

(a) for the purpose of protecting the interests, safety or well-being of a specific child;

(b) within the scope of that person's powers and duties in terms of this Act or any other legislation;

(c) for the purpose of facilitating an investigation by the South African Police Service following a criminal charge involving abuse or deliberate neglect of a specific child;

(d) to a person referred to in section 117 on written request by such person; or

(e) when ordered by a court to do so,

(2) The general rule with regard to the disclosure of information in Part A of the Register is that it must be in the best interests of the child, unless the information is disclosed following an inquiry in terms of section 117.

117. Inquiries on information in Part A of Register

(1) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part A of Register, and if so, the reasons why his or her name was entered in the Register.

(2) Inquiries in terms of subsection (1) must be directed in the prescribed format to the Director-General on a confidential basis.

(3) The Director-General must respond to such inquiries in writing within 21 working days and indicate whether the relevant person's name is in Part A of the Register.

***Part B of Register***

118. Purpose of Part B of Register

The purpose of Part B of the Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register in order to protect children in general against abuse from these persons.

119. Contents of Part B of Register

Part B of the Register must be a record of persons found in terms of section 120 to be unsuitable to work with children, and must reflect -

(a) the full names, surname, last known physical address and identification number of the person;

(b) the fingerprints of the person, if available;

(c) a photograph of the person, if available;

(d) a brief summary of the reasons why the person was found to be unsuitable to work with children;

(e) in the case of a person convicted of an offence against a child, particulars of the offence of which he or she has been convicted, the sentence imposed, the date of conviction and the case number; and

(f) such other prescribed information.

120. Finding persons unsuitable to work with children

(1) A finding that a person is unsuitable to work with children may be made by -

(a) a children's court;

(b) any other court in any criminal or civil proceedings in which that person is involved; or

(c) any forum established or recognised by law in any disciplinary proceedings concerning the conduct of that person relating to a child.

(1A) The provisions of subsection (1)(c) are not applicable to a person who was a child at the time of the commission

of the alleged offence.

[Subs. (1A) inserted by s. 2 of Act 17/2016 w.e.f. 26 January 2018]

(2) A finding in terms of subsection (1) may be made by a court or a forum contemplated in subsection (1) of its own volition or on application by -

(a) an organ of state involved in the implementation of this Act;

(b) a prosecutor, if the finding is sought in criminal proceedings; or

(c) a person having a sufficient interest in the protection of children.

(3) Evidence as to whether a person is unsuitable to work with children may be heard by the court or forum either in the course of or at the end of its proceedings.

(4) In criminal proceedings, subject to the provisions of subsection (4A), a person must be deemed unsuitable to work with children-

(a) on conviction of murder, rape, indecent assault or any sexual offence contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), assault with the intent to do grievous bodily harm [with regard to a child], where a child is the victim of any such offence, or any attempt to commit any such offence, or possession of child pornography as contemplated in section 24B of the Films and Publications Act, 1996 (Act No. 65 of 1996), or offences in terms of section 8, 9, 10 or 24A(5) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013); or

(b) if a court makes a finding and gives a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was by reason of mental illness or mental defect not criminally responsible for the act which constituted an offence contemplated in paragraph (a).

[Subs. (4) substituted by s. 2 of Act 17/2016 w.e.f. 26 January 2018]

(4A) If a court has, in terms of this Act or any other law, convicted a person of an offence referred to in subsection (4)(a) and such a person was a child at the time of the commission of such offence, or if a court has made a finding and given a direction referred to in subsection (4)(b) in respect of such person who was a child at the time of the alleged commission of the offence, the court may not make an order as contemplated in subsection (4)(a) unless-

(a) the prosecutor has made an application to the court for such an order;

(b) the court has considered a report by the probation officer referred to in section 71 of the Child Justice Act, 2008, which deals with the probability of committing an offence contemplated in subsection (4), against a child;

(c) the person concerned has been given the opportunity to address the court as to why his or her particulars should not be included in the Register; and

(d) the court is satisfied that substantial and compelling circumstances exist based upon such report and any other evidence, which justify the making of such an order.

[Subs. (4A) inserted by s. 2 of Act 17/2016 w.e.f. 26 January 2018]

(4B) In the event that a court finds that substantial and compelling circumstances exist which justify the making of an order as contemplated in subsection (4), the court must enter such circumstances on the record of the proceedings.

[Subs. (4B) inserted by s. 2 of Act 17/2016 w.e.f. 26 January 2018]

(5) Any person who has been convicted of an offence contemplated in subsection (4)(a), whether committed in or outside the Republic during the five years preceding the commencement of this Chapter, is deemed to be unsuitable to work with children unless such person was a child at the time of the commission of the offence.

[Subs. (5) substituted by s. 2 of Act 17/2016 w.e.f. 26 January 2018]

(6) A finding in terms of subsection (1)(b) that a person is unsuitable to work with children is not dependent upon a finding of guilty or innocent in the criminal trial of that person.

121. Disputes concerning findings

The person in respect of whom a finding in terms of section 120 has been made may -

(a) appeal against the finding to a higher court, if the finding was made by a court; or

(b) have the finding reviewed by a court, if the finding was made by a forum contemplated in section 120(1)(c).

122. Findings to be reported to Director-General

(1) The registrar of the relevant court, or the relevant administrative forum, or, if the finding was made on application in terms of section 120(2), the person who brought the application, must notify the Director-General in writing -

(a) of any finding in terms of section 120 that a person is unsuitable to work with children; and

(b) of any appeal or review lodged by the affected person.

(1A) The National Commissioner of the South African Police Service must, in the prescribed manner, forward to the Director-General all the particulars of persons referred to in section 120(4) and (5) and of any criminal conviction contemplated in section 120(4A).

[Subs. (1A) inserted by s. 3 of Act 17/2016 w.e.f. 26 January 2018]

(2) The Director-General must enter the name of a person found unsuitable to work with children as contemplated in section 120 in Part B of the Register regardless of whether appeal proceedings have been instituted or not.

(3) If, after appeal or review proceedings have been concluded, a finding in terms of section 120 that a person is unsuitable to work with children is reversed, the Director-General must forthwith remove the name of the person from the Register.

123. Consequences of entry of name in Part B of Register

(1) No person whose name appears in Part B of the Register may -

(a) manage or operate, or participate or assist in managing or operating, an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre, a cluster foster care scheme, a school, club or association providing services to children;

(b) work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre, a school, club or association providing services to children, or in implementing a cluster foster care scheme, either as an employee, volunteer or in any other capacity;

(c) be permitted to become the foster parent or adoptive parent of a child;

(d) work in any unit of the South African Police Service tasked with child protection;

(e) be employed in terms of the Public Service Act in a position where that person works with or has access to children;

(f) be employed in terms of the Municipal Systems Act in a position where that person works with or has access to children; or

(g) work in any other form of employment or activity as may be prescribed.

(2) No person managing or operating or who participates or assists in managing or operating an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school may allow a person whose name appears in Part B of the Register to work with or have access to children at the centre, facility, shelter or school, either as an employee, volunteer or in any other capacity.

(3) No designated child protection organisation may allow a person whose name appears in Part B of the Register to work with or have access to children on its behalf, either as an employee, volunteer or in any other capacity.

(4) The South African Police Service may not allow a person whose name appears in Part B of the Register to work in a unit of the Service tasked with child protection.

(5) The head of a state department may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children,

(6) The municipal council of a municipality may not allow a person whose name appears in Part B of the Register to be employed in a position where that person works with or has access to children.

124. Disclosure of entry of name in Part B of Register

(1) If the name of a person is entered in Part B of the Register and that person -

(a) works with or has access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school either as an employee, volunteer or in any other capacity, that person must disclose that fact to the person who manages or operates the institution, centre, facility, shelter or school;

(b) works with or has access to children on behalf of a designated child protection organisation either as an employee, volunteer or in any other capacity, that person must disclose that fact to the organisation;

(c) works in a unit of the South African Police Service tasked with child protection, that person must disclose that fact to the South African Police Service;

(d) is employed in terms of the Public Service Act in a position where he or she works with or has access to children, that person must disclose that fact to the head of the state department in which he or she is employed; or

(e) is employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, that person must disclose that fact to the municipal council of the municipality concerned,

(2) A person contemplated in subsection (1) who fails to disclose the fact that his or her name is entered in Part B of the Register is guilty of misconduct and his or her services may be terminated as a result thereof.

125. Access to Part B of Register

(1) Only the following persons have access to Part B of the Register:

(a) the Director-General;

(b) officials in the Department designated by the Director-General;

(c) a provincial head of social development;

(d) officials in the provincial department of social development designated by the provincial head of social development; and

(e) the manager or person in control of a designated child protection organisation dealing with foster care and adoption.

(2) The Director-General may, on such conditions as the Director-General may determine, allow officials of a provincial education department designated by the head of that department access to Part B of the Register for the purpose of implementing section 123 in relation to schools under the jurisdiction of that department.

126. Establishment of information in Part B of Register

(1) Before a person is allowed -

(a) to work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a shelter or drop-in centre or school, the person managing or operating the institution, centre, facility, shelter or school must establish whether or not that person’s name appears in Part B of the Register;

(b) to work with or have access to children on behalf of a designated child protection organisation, the organisation must establish whether or not that person’s name appears in Part B of the Register;

(c) to work in a unit of the South African Police Service tasked with child protection, the Service must establish whether or not that person’s name appears in Part B of the Register;

(d) to be employed in terms of the Public Service Act in a position where he or she works with or has access to

children, the head of the state department in which he or she is to be employed must establish whether or not that person's name appears in Part B of the Register; or

(e) to be employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children, the municipal council of that municipality must establish whether or not that person's name appears in Part B of the Register.

(2) Within 12 months of the commencement of this chapter -

(a) the person managing or operating an institution, centre, facility, shelter or school contemplated in subsection (1)(a) must establish whether the name of any person who works with or has access to children at the institution, centre, facility, shelter or school appears in Part B of the Register;

(b) a designated child protection organisation contemplated in subsection (1)(b) must establish whether the name of any person who works with or has access to children on behalf of the organisation appears in Part B of the Register;

(c) the South African Police Service must establish whether the name of any person who works in a unit of the South African Police Service tasked with child protection appears in Part B of the Register;

(d) the head of every state department must establish whether the name of any person employed in terms of the Public Service Act in a position where he or she works with or has access to children appears in Part B of the Register; and

(e) the municipal council of every municipality must establish whether the name of any person employed in terms of the Municipal Systems Act in a position where he or she works with or has access to children appears in Part B of the Register.

(3) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.

(4) Inquiries in terms of subsection (1), (2) or (3) must be directed in writing to the Director-General on a confidential basis.

(5) In the event of an inquiry made to the Director-General in terms of -

(a) subsection (1), the Director-General must respond in writing within working days by indicating whether the person's name appears in Part B of the Register or not;

(b) subsection (2), the Director-General must respond in writing within six months by indicating whether the person's name appears in Part B of the Register or not; and

(c) subsection (3), the Director-General must respond in writing within 21 working days by indicating whether the person's name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.

127. Disclosure of names in Part B of Register prohibited

(1) No person may disclose the fact that the name of a particular person appears in Part B of the Register except -

(a) within the scope of that person's powers and duties in terms of this Act or any other law;

(b) to a body referred to in section 126(1) or (2) on written request by such person or institution;

(c) to a person referred to in section 126(3); or

(d) when ordered by a court to do so.

(2) The general rule with regard to the disclosure of information in Part B of the Register is that it must be in the best interests of the child, unless the information is disclosed following an inquiry in terms of section 126.

(3) The Director-General must inform a person found unsuitable to work with children when that person's name and particulars are entered in Part B of the Register.

128. Removal of name from Register

(1) A person whose name appears in Part B of the Register, or a person who was under the age of 18 years when he or she committed the offence in respect of which the finding was made, may in terms of subsection (2) apply for the removal of his or her name and any information relating to that person from the Register.
[Subs. (1) substituted by s. 4 of Act 17/2016 w.e.f. 26 January 2018]

(2) Application for the removal of a name and particulars from the Register may be made -

(a) to any court, including a children's court;

(b) to the Director-General, if the entry was made in error; or

(c) to the High Court if the Director-General refuses an application in terms of paragraph (b).

(3) An application in terms of subsection (1) to remove a person's name and particulars from Part B of the Register on the ground that the affected person has been rehabilitated, may only be made after at least five years have lapsed since the entry was made and after considering the prescribed criteria.

(4) The name and particulars of a person convicted more than once of an offence with regard to a child may not be removed from Part B of the Register.

**128A.Enquiries for purposes of expungement applications in terms of Criminal Procedure Act**

(1) For the purposes of section 271B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the Director-General: Justice and Constitutional Development may enquire from the Director-General whether or not the particulars of a person have been included or recorded in the Register or whether or not that person's particulars and any information relating to that person have been removed from the Register in terms of section 128.

(2) Subject to section 127, the Director-General must respond to the enquiry contemplated in subsection (1) in writing within 21 working days and indicate whether or not the particulars of the person concerned have been included or recorded in the Register or whether or not that person's particulars and any information relating to that person have been removed from the Register in terms of section 128.
[S. 128A inserted by s. 30 of Act 42/2013 w.e.f. 22 January 2014]

## *Part 3*
## *Protective measures relating to health of children*

129. Consent to medical treatment and surgical operation

(1) Subject to section 5(2) of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), a child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either subsection (2), (3), (4), (5), (6) or (7).

(2) A child may consent to his or her own medical treatment or to the medical treatment of his or her child if -

(a) the child is over the age of 12 years; and

(b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment.

(3) A child may consent to the performance of a surgical operation on him or her or his or her child if -

(a) the child is over the age of 12 years; and

(b) the child is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and

(c) the child is duly assisted by his or her parent or guardian.

(4) The parent, guardian or care-giver of a child may, subject to section 31, consent to the medical treatment of the child if the child is -

(a) under the age of 12 years; or

(b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the treatment.

(5) The parent or guardian of a child may, subject to section 31, consent to a surgical operation on the child if the child is -

(a) under the age of 12 years; or

(b) over that age but is of insufficient maturity or is unable to understand the benefits, risks and social implications of the operation.

(6) The superintendent of a hospital or the person in charge of the hospital in the absence of the superintendent may consent to the medical treatment of or a surgical operation on a child if -

(a) the treatment or operation is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and

(b) the need for the treatment or operation is so urgent that it cannot be deferred for the purpose of obtaining consent that would otherwise have been required.

(7) The Minister may consent to the medical treatment of or surgical operation on a child if the parent or guardian of the child -

(a) unreasonably refuses to give consent or to assist the child in giving consent;

(b) is incapable of giving consent or of assisting the child in giving consent;

(c) cannot readily be traced; or

(d) is deceased.

(8) The Minister may consent to the medical treatment of or surgical operation on a child if the child unreasonably refuses to give consent

(9) A High Court or children's court may consent to the medical treatment of or a surgical operation on a child in all instances where another person that may give consent in terms of this section refuses or is unable to give such consent

(10) No parent, guardian or care-giver of a child may refuse to assist a child in terms of subsection (3) or withhold consent in terms of subsections (4) and (5) by reason only of religious or other beliefs, unless that parent or guardian can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

130. HIV-testing

(1) Subject to section 132, no child may be tested for HIV except when -

(a) it is in the best interests of the child and consent has been given in terms of subsection (2); or

(b) the test is necessary in order to establish whether -

(i) a health worker may have contracted HIV due to contact in the course of a medical procedure involving contact with any substance from the child's body that may transmit HIV; or

(ii) any other person may have contracted HIV due to contact with any substance from the child's body that may transmit HIV, provided the test has been authorised by a court.

(2) Consent for a HIV-test on a child may be given by -

(a) the child, if the child is -

(i) 12 years of age or older; or

(ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a test;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(c) the provincial head of social development, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(d) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;

(e) the superintendent or person in charge of a hospital, if -

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and

(ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(f) a children's court, if -

(i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

(Commencement date of s. 130: 1 July 2007)

131. HIV-testing for foster care or adoption purposes

If HIV-testing of a child is done for foster care or adoption purposes, the state must pay the cost of such tests where circumstances permit.

(Commencement date of s. 131: 1 July 2007)

132. Counselling before and after HIV-testing

(1) A child may be tested for HIV only after proper counselling, by an appropriately trained person, of -

(a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; and

(b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

(2) Post-test counselling must be provided by an appropriately trained person to -

(a) the child, if the child is of sufficient maturity to understand the implications of the result; and

(b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

(Commencement date of s. 132: 1 July 2007)

133. **Confidentiality of information on HIV/AIDS status of children**

(1) No person may disclose the fact that a child is HIV-positive without consent given in terms of subsection (2), except -

(a) within the scope of that person's powers and duties in terms of this Act or any other law;

(b) when necessary for the purpose of carrying out the provisions of this Act;

(c) for the purpose of legal proceedings; or

(d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by -

(a) the child, if the child is -

(i) 12 years of age or older; or

(ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(c) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(d) the superintendent or person in charge of a hospital, if -

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and

(ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or

(e) a children's court, if -

(i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interests of the child; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

(Commencement date of s. 133: 1 July 2007)

134. Access to contraceptives

(1) No person may refuse -

(a) to sell condoms to a child over the age of 12 years; or

(b) to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge.

(2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child if -

(a) the child is at least 12 years of age;

(b) proper medical advice is given to the child; and

(c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.

(3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 115.

[Subs. (3) substituted by s. 5 of Act 41/2007]

(Commencement date of s. 134: 1 July 2007)

***Part 4***
***Other protective measures***

**135. Application to terminate or suspend parental responsibilities and rights**

(1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a High Court, a divorce court in divorce matters or a children's court for an order-

(a) suspending for a period, terminating or transferring any or all of the parental responsibilities and rights which a specific person has in respect of a child; or

(b) restricting or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.

(2) An application in terms of subsection (1) may be brought without the consent of a parent or care-giver of (he child if the child, at the time of the application-

(a) is older than seven years, and has been in alternative care for more than two years;

(b) is older than three years but not older than seven years, and has been in alternative care for more than one year; or

(c) is three years or younger, and has been in alternative care for more than six months.

(3) Section 29, read with such changes as the context may require, applies in respect of any proceedings in terms of this section.

**136. Consideration of application to terminate or suspend parental responsibilities and rights**

When considering an application referred to in section 135 the court must-

(a) be guided by the principles set out in Chapters 2 and 3 to the extent that those principles are applicable to the matter before it; and

(b) take into account all relevant factors, including-

(i) the need for the child to be permanently settled, preferably in a family environment, taking into consideration the age and stage of development of the child;

(ii) the success or otherwise of any attempts that have been made to reunite the child with the person whose parental responsibilities and rights are challenged;

(iii) the relationship between the child and that person;

(iv) the degree of commitment that that person has shown towards the child;

(v) whether there had been any contact between the parent and the child over the year preceding the application; and

(vi) the probability of arranging for the child to be adopted or placed in another form of alternative care.

**137. Child-headed household**

(1) A provincial head of social development may recognise a household as a child-headed household if-

(a) the parent, guardian or care-giver of the household is terminally ill, has died or has abandoned the children in the household;

(b) no adult family member is available to provide care for the children in the household;

(c) a child over the age of 16 years has assumed the role of care-giver in respect of the children in the household; and

(d) it is in the best interest of the children in the household.

(2) A child-headed household must function under the general supervision of an adult designated by-

(a) a children's court; or

(b) an organ of state or a non-governmental organisation determined by the provincial head of social development.

(3) The supervising adult must-

(a) perform the duties as prescribed in relation to the household; and

(b) be a fit and proper person to supervise a child-headed household.

(4) A person unsuitable to work with children is not a fit and proper person to supervise a child-headed household.

(5)

(a) The child heading the household or the adult contemplated in subsection (2) may collect and administer for the child-headed household any social security grant or other grant in terms of the Social Assistance Act, 2004 (Act No. 13 of 2004) or other assistance to which the household is entitled.

(b) An adult that collects and administers money for a child-headed household as contemplated in paragraph (a) is accountable in the prescribed manner to the organ of state or the non-governmental organisation that designated him or her to supervise the household.

(6) The adult referred to in subsection (2) may not take any decisions concerning such household and the children in the household without consulting-

(a) the child heading the household; and

(b) given the age, maturity and stage of development of the other children, also those other children.

(7) The child heading the household may take all day-to-day decisions relating to the household and the children in the household.

(8) The child heading the household or, given the age, maturity and stage of development of the other children, such other children, may report the supervising adult to the organ of state or non-governmental organisation referred to in subsection (2)(b) if the child or children are not satisfied with the manner in which the supervising adult is performing his or her duties.

(9) A child-headed household may not be excluded from any grant, subsidy, aid, relief or other assistance or programmes provided by an organ of state in the national, provincial or local sphere of government solely by reason of the fact that the household is headed by a child.

**138. Unlawful removal or detention of child**

(1) No person may without lawful authority or reasonable grounds-

(a) remove a child from the care of a person who lawfully cares for the child; or

(b) detain a child with the result that the child is kept out of the care of a person entitled to lawfully care for the child.

(2) For the purposes of subsection (1) a person must be regarded as detaining a child if that person-

(a) causes the child to be detained; or

(b) induces the child to remain with him or her or any other person.

**139. Unlawful taking or sending of child out of Republic**

(1) No person may take or send a child out of the Republic-

(a) in contravention of an order of a court prohibiting the removal of the child from the Republic; or

(b) without consent-

(i) obtained in terms of section 18(5) from persons holding relevant parental responsibilities and rights in respect of mat child;

(ii) obtained in terms of section 169 with regard to a child in alternative care; or

(iii) of a court.

(2) For the purposes of subsection (1) a person must be regarded as-

(a) taking a child out of the Republic if that person-

(i) causes the child to be taken, or in any way assists in taking the child, out of the Republic; or

(ii) causes or induces the child to accompany or to join him or her or any other person when departing from the Republic; or

(b) sending a child out of the Republic if that person causes the child to be sent, or in any way assists in sending the child, out of the Republic.

**140. Child safety at place of entertainment**

(1) A person providing entertainment to children on any premises or enclosure must comply with subsection (2) if-

(a) access to the premises or enclosure where the entertainment is provided requires the use of doors, stairs, escalators, lifts or other mechanical means;

(b) the majority of the people attending the entertainment are children; and

(c) the number of people, including children, who attend the entertainment exceeds 50.

(2) A person providing entertainment to children in the circumstances specified in subsection (1) must-

(a) determine the number of people, including children, who can safely be accommodated on the premises or enclosure and each part of the premises or enclosure;

(b) station a sufficient number of adult attendants to prevent more people, including children, from being admitted to the premises or enclosure, or any part of the premises or enclosure, than the number of people determined in terms of paragraph (a) for the premises or enclosure or that part of the premises or enclosure;

(c) control the movement of people admitted to the premises or enclosure, or any part of the premises or enclosure, while entering or leaving the premises or enclosure or that part of the premises or enclosure; and

(d) take all reasonable precautions for the safety of the children and other people attending the entertainment.

(3) No alcohol or tobacco products may be sold, served or made available to children at places of entertainment.

(4) If the person providing the entertainment is not the owner of the premises or enclosure where the entertainment is provided, the owner or the owner's agent must take all reasonable steps to ensure that subsections (2) and (3) are complied with.

(5)

(a) A person authorised by a municipality in whose area a premises or enclosure is situated where entertainment described in subsection (1) is or is to be provided, or on reasonable suspicion is or is to be provided, may enter such enclosure in order to inspect whether subsections (2) or (3) are complied with.

(b) Section 304(2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a).

**141. Child labour and exploitation of children**

(1) No person may-

(a) use, procure or offer a child for slavery or practices similar to slavery, including but not limited to debt bondage, servitude and serfdom, or forced or compulsory labour or provision of services;

(b) use, procure, offer or employ a child for purposes of commercial sexual exploitation;

(c) .....

[Para. (c) deleted by s. 34 of Act 8/2017 w.e.f. 2 August 2017]

(d) use, procure or offer a child or attempt to do so for the commission of any offence listed in Schedule 1 or

Schedule 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or

(e) use, procure, offer or employ a child for child labour.

(2) A social worker or social service professional who becomes aware of-

(a) any instance of a contravention of subsection (1)(a), (b), (c) or (d) must report it to a police official; and

(b) any instance of child labour or a contravention of the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) must report it to the Department of Labour.

[Part 4 inserted by s. 5 of Act 41/2007]
(Commencement date of Part 4 : 1 April 2010)

**142. Regulations**

The Minister may make regulations in terms of section 306 –

(a) prescribing criteria for determining organisations which may be designated as child protection organisations;
[Para. (a) inserted by s. 6 of Act 41/2007]

(b) prescribing national norms and standards and codes of good practice to guide designated child protection organisations, organs of state and social workers involved in the provision of designated child protection services;
[Para. (b) inserted by s. 6 of Act 41/2007]

(c) prescribing a broad risk assessment framework to guide decision-making in the provision of designated child protection services;
[Para. (c) inserted by s. 6 of Act 41/2007]

(d) prescribing criteria for determining suitable persons who may conduct investigations into cases of child abuse or neglect;
[Para. (d) inserted by s. 6 of Act 41/2007]

(e) prescribing the powers and responsibilities of persons contemplated in paragraph (d);
[Para. (e) inserted by s. 6 of Act 41/2007]

(f) prescribing the conditions for the examination or assessment of children who have been abused or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child.
[Para. (f) inserted by s. 6 of Act 41/2007]

(f) prescribing the conditions for the examination or assessment of children who have been abused, abandoned or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child.

[**Proposed amendment**: Para. (f) to be substituted by s. 5 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(g) prescribing the manner and format in which the National Child Protection Register must be established and maintained;

(h) prescribing criteria for finding persons unsuitable to work with children;

(i) prescribing the procedure to be followed and the time periods to be adhered to when reporting a finding that a person is unsuitable to work with children to the Director-General;

(j) prescribing criteria for the assessment of applications for the removal of names of persons from Part B of the National Child Protection Register; and

(j) prescribing criteria for the assessment of applications for the removal of names of persons from Part B of the National Child Protection Register;

[**Proposed amendment**: Para. (j) to be amended by s. 5 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(jA) prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register

[**Proposed amendment**: Para. (jA) to be inserted by s. 5 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(jB) prescribing the criteria for the establishment and resourcing of designated child care and protection units; and'

[**Proposed amendmen**t: Para. (jB) to be inserted by s. 5 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(k) prescribing any other matter necessary to facilitate the implementation of this Chapter.

## CHAPTER 8
## PREVENTION AND EARLY INTERVENTION

### 143. Prevention and early intervention programmes

(1) Prevention programmes means programmes-

(a) designed to serve the purposes mentioned in section 144; and

(b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if not attended to, may lead to statutory intervention.

(2) Early intervention programmes means programmes-

(a) designed to serve the purposes mentioned in section 144; and

(b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care.

### 144. Purposes of prevention and early intervention programmes

(1) Prevention and early intervention programmes must focus on-

(a) preserving a child's family structure;

(b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, non-violent forms of discipline;

(c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;

(d) promoting appropriate interpersonal relationships within the family;

(e) providing psychological, rehabilitation and therapeutic programmes for children;

(f) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;

(g) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;

(h) diverting children away from the child and youth care system and the criminal justice system; and

(i) avoiding the removal of a child from the family environment.

(2) Prevention and early intervention programmes may include-

(a) assisting families to obtain the basic necessities of life;

(b) empowering families to obtain such necessities for themselves;

(c) providing families with information to enable them to access services;

(d) supporting and assisting families with a chronically ill or terminally ill family member;

(e) early childhood development; and

(f) promoting the well-being of children and the realisation of their full potential.

(3) Prevention and early intervention programmes must involve and promote the participation of families, parents, care-givers and children in identifying and seeking solutions to their problems.

**145. Strategy for securing prevention and early intervention programmes**

(1) The Minister, after consultation with interested persons, and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport, must include in the departmental strategy a comprehensive national strategy aimed at securing the provision of prevention and early intervention programmes to families, parents, care-givers and children across the Republic.

(2) The MEC for social development must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the provision of properly resourced, co-ordinated and managed prevention and early intervention programmes.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the necessary information available for the development and review of the strategies referred to in subsections (1) and (2).

**146. Provision of prevention and early intervention programmes**

(1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund prevention and early intervention programmes for that province.

(2) Prevention and early intervention programmes must-

(a) be provided in accordance with this Act; and

(b) comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.

(3) The provider of prevention and early intervention programmes only qualifies for funding contemplated in subsection (1) if the programmes comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.

(4) The funding of prevention and early intervention programmes must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make prevention and early intervention programmes available to children with disabilities.

**147. National norms and standards for prevention and early intervention programmes**

(l) The Minister must determine national norms and standards for prevention and early intervention programmes by regulation after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) Outreach services;

(b) education, information and promotion;

(c) therapeutic programmes;

(d) family preservation;

(e) skills development programmes;

(f) diversion programmes;

(g) temporary safe care; and

(h) assessment of programmes.

**148. Court may order early intervention programme**

(1) Before making an order concerning the temporary or permanent removal of a child from that child's family environment, a children's court may order-

(a) the provincial department of social development, a designated child protection organisation, any other relevant organ of state or any other person or organisation to provide early intervention programmes in respect of the child and the family or parent or care-giver of the child if the court considers the provision of such programmes appropriate in the circumstances; or

(b) the child's family and the child to participate in a prescribed family preservation programme.

(2) An order made in terms of subsection (1) must be for a specified period not exceeding six months.

(3) When a case resumes after the expiry of the specified period, a designated social worker's report setting out progress with early intervention programmes provided to the child and the family, parent or care-giver of the child, must be submitted to the court.

(4) After considering the report, the court may-

(a) decide the question whether the child should be removed; or

(b) order the continuation of the early intervention programme for a further specified period not exceeding six months.

(5) Subsection (1) does not apply where the safety or well-being of the child is seriously or imminently at risk.

**149. Report to include summary of prevention and early intervention programmes**

When a report of a designated social worker is produced before a court in order to assist a court in determining a matter concerning a child, the report must contain a summary of any prevention and early intervention programmes provided in respect of that child and the family, parent or care-giver of the child.

[Chapter 8 inserted by s. 7 of Act 41/2007]

(Commencement date of Chapter 8 : 1 April 2010)

## CHAPTER 9
## CHILD IN NEED OF CARE AND PROTECTION

### *Part 1*
### *Identification of child in need of care and protection*

150. Child in need of care and protection

(1) A child is in need of care and protection if such a child-

[Words preceding para. (a) substituted by s. 5 of Act 17/2016 w.e.f. 26 January 2018]

(a) has been abandoned or orphaned and has no family member who is able and suitable to care for that child;

[Para. (a) substituted by s. 5 of Act 17/2016 w.e.f. 26 January 2018 and s. 6 of Act 17/2022 w.e.f. 8 November 2023 ]

(b) displays behaviour which cannot be controlled by the parent or care-giver;

(c) lives or works on the streets or begs for a living;

(d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;

(e) has been exploited or lives in circumstances that expose the child to exploitation;

(f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;

(g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;

(h) is in a state of physical or mental neglect;

[Para. (h) amended by s. 6 of Act 17/2022 w.e.f. 8 November 2023]

(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person in whose care the child is;

[Para. (i) substituted by s. 6 of Act 17/2022 w.e.f. 8 November 2023]

(j) is an unaccompanied migrant child from another country;

[Para. (j) inserted by s. 6 of Act 17/2022 w.e.f. 8 November 2023]

(k) is a victim of trafficking; or

[Para. (k) inserted by s. 6 of Act 17/2022 w.e.f. 8 November 2023]

(l) has been sold by a parent, care-giver or guardian.

[Para. (l) inserted by s. 6 of Act 17/2022 w.e.f. 8 November 2023]

(2) A child found in the following circumstances may be a child in need of care and protection and must be referred for investigation by a designated social worker:

(a) a child who is a victim of child labour; and

(b) a child in a child-headed household.

(3) If after investigation a social worker finds that a child referred to in subsection (2) is not a child in need of care and protection as contemplated in subsection (1), the social worker must where necessary take measures to assist the child, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation.

151. Removal of child to temporary safe care by court order

(1) If, on evidence given by any person on oath or affirmation before a presiding officer it appears that a child who resides in the area of the children's court concerned is in need of care and protection, the presiding officer must order that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2).

(2) A presiding officer issuing an order in terms of subsection (1) may also issue an interim order for the temporary safe care of the child if it appears that it is necessary for the safety and well-being of the child.

[Subs. (2) substituted by s. 2 of Act 18/2016 w.e.f. 26 January 2018]

(2A) The court ordering the removal of the child must simultaneously refer the matter to a designated social worker and direct that social worker to ensure that the-

(a) order in terms of subsection (2) is placed before the children's court, for review before the expiry of the next court day following the removal; and

(b) child concerned, and where reasonably possible the parent, guardian or care-giver, as the case may be, are present in the children's court for the purposes of assisting the court in making a decision which is in the best interest of the child.

[Subs. (2A) inserted by s. 2 of Act 18/2016 w.e.f. 26 January 2018]

(3) When referring the question whether the child is in need of care and protection in terms of subsection (1) or when making an order in terms of subsection (2), the children's court may exercise any of the functions assigned to it in terms of section 50(1) to (3).

(4) An order issued in terms of subsection (2) must identify the child in sufficient detail to execute the order.

(5) A person authorised by a court order may, either alone or accompanied by a police official -

(a) enter any premises mentioned in the order;

(b) remove the child from the premises; and

(c) on those premises exercise any power mentioned in section 50(3)(a) to (d).

(6) A police official referred to in subsection (5) may use such force as may be reasonably necessary to overcome any resistance against the entry of the premises contemplated in subsection (5)(a), including the breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

(7) The person who has removed a child in terms of the court order must -

(a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child, if that person can readily be traced; and

(b) within 24 hours refer the matter to a designated social worker for investigation in terms of section 155(2); and

(c) report the matter to the relevant provincial department of social development

(8) The best interests of the child must be the determining factor in any decision whether a child in need of care and protection should be removed and placed in temporary safe care, and all relevant facts must for this purpose be taken into account, including the safety and well-being of the child as the first priority.

152. Removal of child to temporary safe care without court order

(1) A designated social worker or a police official may remove a child and place the child in temporary safe care without a court order if there are reasonable grounds for believing -

(a) that the child -

(i) is in need of care and protection; and

(ii) needs immediate emergency protection;

(b) that the delay in obtaining a court order for the removal of the child and placing the child in temporary safe care may jeopardise the child's safety and well-being; and

(c) that the removal of the child from his or her home environment is the best way to secure that child's safety and well-being.

(2) If a designated social worker has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the designated social worker must-

(a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child, if that person can readily be traced;

(b) not later than the next court day inform the relevant clerk of the children's court of the removal of the child;

(c) within 24 hours and without delay, report the matter to the relevant provincial department of social development of the removal of the child and of the place where the child has been placed; and

(d) ensure that the-

(i) matter is placed before the children's court for review before the expiry of the next court day after placement of the child in temporary safe care; and

(ii) child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children's court.

[Subs. (2) substituted by s. 3 of Act 18/2016 w.e.f. 26 January 2018]

(3) If a police official has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the police official must -

(a) without delay but within 24 hours inform the parent, guardian or care-giver of the child of the removal of the child, if that person can readily be traced;

[Para. (a) amended by s. 3 of Act 18/2016 w.e.f. 26 January 2018]

(b) refer the matter before the end of the first court day after the day of removal of the child to a designated social worker, who must ensure that-

(i) the matter is placed before the children's court for review before the expiry of the next court day after the removal of the child;

(ii) the child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children's court, unless this is impracticable; and

(iii) the investigation contemplated in section 155(2) is conducted;

[Para. (b) substituted by s. 3 of Act 18/2016 w.e.f. 26 January 2018]

(c) without delay but within 24 hours notify the provincial department of social development of the removal of the child and of the place where the child has been placed; and

(d) not later than the next court day inform the relevant clerk of the children's court of the removal of the child.

(4) The best interests of the child must be the determining factor in any decision whether a child in need of care and protection should be removed and placed in temporary safe care, and all relevant facts must for this purpose be taken into account, including the possible removal of the alleged offender in terms of section 153 from the home or place where the child resides, and the safety and well-being of the child as the first priority.

(5) Misuse of a power referred to in subsection (1) by a designated social worker in the service of a designated child protection organisation -

(a) constitutes unprofessional or improper conduct as contemplated in section 27(1)(b) of the Social Service Professions Act, 1978 (Act No. 110 of 1978) by that social worker; and

(b) is a ground for an investigation into the possible withdrawal of that organisation's designation.

(6) Misuse of a power referred to in subsection (1) by a designated social worker employed in terms of the Public Service Act or the Municipal Systems Act constitutes unprofessional or improper conduct as is contemplated in section 27(1)(b) of the Social Service Professions Act, 1978 (Act No. 110 of 1978) by that social worker.

(7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995).

(8) Any person who removes a child must comply with the prescribed procedure.

**152A.Review of decision to remove child without court order**

(1) When a matter contemplated in section 152(2)(c) is brought before court the presiding officer may-

(a) if he or she is satisfied, after considering all relevant information, that the police official or designated social worker, in removing the child, has satisfied the provisions of section 152(1), issue an order confirming the removal of the child; or

(b) if he or she is not satisfied that the police official or designated social worker, in removing the child, has satisfied the provisions of section 152(1), issue an order setting aside the removal and placement of the child.

(2) Where the court has issued an order contemplated in-

(a) subsection (1)(a) the presiding officer may, in addition, issue an order contemplated in section 151(2); or

(b) subsection (l)(b) the presiding officer may, in addition, order that the child be returned to its parent, guardian or care giver, as the case may be, or order that the question of whether the child is in need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2).

[S. 152A inserted by s. 6 of Act 17/2016 w.e.f. 26 January 2018]

153. Written notice to alleged offender

(1) A police official to whom a report contemplated in section 110(1) or (2) or a request contemplated in section

110(7) has been made, may, if he or she is satisfied that it will be in the best interests of the child if the alleged offender is removed from the home or place where the child resides, issue a written notice which -
[Subs. (1) substituted by s. 8 of Act 41/2007]

(a) specifies the names, surname, residential address, occupation and status of the alleged offender;

(b) calls upon the alleged offender to leave the home or place where the child resides and refrain from entering such home or place or having contact with the child until the court hearing specified in paragraph (c);

(c) calls upon the alleged offender to appear at a children's court at a place and on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the child resides: Provided that the date so specified shall be the first court day after the day upon which the notice is issued; and

(d) contains a certificate under the hand of the police official that he or she has handed the original of such written notice to the alleged offender and that he or she has explained to the alleged offender the importance thereof.

(2) The police official must forthwith forward a duplicate original of the written notice to the clerk of the children's court.

(3) The mere production to the court of the duplicate original referred to in subsection (2) is *prima facie* proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender.

(4) The provisions of section 55 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) apply, with the necessary changes, to a written notice handed to an alleged offender in terms of subsection (1).

(5) A children's court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued, appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice.

(6) The court may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender -

(a) issue an order prohibiting the alleged offender from entering the home or place where the child resides or from having any contact with the child, or both from entering such home or place and having contact with the child, for such period of time as the court deems fit;

(b) order that the alleged offender may enter the home or the place where the child resides or have contact with the child upon such conditions as would ensure that the best interests of the child are served;

(c) order that the alleged offender will be responsible for the maintenance of his or her family during the period contemplated in paragraph (a);

(d) refer the matter to a designated social worker for an investigation contemplated in section 155(2); or

(e) make such other order with regard to the matter as the court deems fit.

(7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995).

154. Other children in need of care and protection

If there are reasonable grounds for believing that a child at the same place or on the same premises as a child placed in temporary safe care in terms of section 47, 151 or 152 is in need of care and protection, the person under whose care the child placed in temporary safe care is or the provincial head of social development may refer that child to a designated social worker for investigation contemplated in section 155(2).

***Part 2***
***Children's court processes***

155. Decision of question whether child is in need of care and protection

(1) A children's court must decide the question of whether a child who was the subject of proceedings in terms of section 47, 151, 152, 152A or 154 is in need of care and protection.

[Subs. (1) substituted by s. 7 of Act 17/2016 w.e.f. 26 January 2018]

(2) A designated social worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection.

[Subs. (2) substituted by s. 7 of Act 17/2022 w.e.f. 8 November 2023]

(3) The designated social worker must report the matter to the relevant provincial department of social development

(4)

(a) If, after an investigation contemplated in subsection (2), the designated social worker finds that the child is not in need of care and protection, he or she must indicate the reasons for the finding in the report, which must be submitted to the children's court for review.

(b) The designated social worker must where necessary indicate in the report the measures recommended to assist the family, including counselling, mediation, prevention and early intervention services, family reconstruction and rehabilitation, behaviour modification, problem solving and referral to another suitably qualified person or organisation.

(5) If, after an investigation contemplated in subsection (2), the designated social worker finds the child to be in need of care and protection, that child must be brought before the children's court for a hearing upon which such court must make a determination.

[Subs. (5) substituted by s. 7 of Act 17/2022 w.e.f. 8 November 2023]

(6) The children's court hearing the matter may -

(a) adjourn the matter for a period not exceeding 30 days at a time; and

(b) order that, pending decision of the matter, the child must -

(i) remain in temporary safe care at the place where the child is kept;

(ii) be transferred to another place in temporary safe care;

(iii) remain with the person in whose care the child is;

(iv) be placed in the care of a family member or other relative of the child; or

(v) be placed in temporary safe care

[Subs. (6) substituted by s. 7 of Act 17/2022 w.e.f. 8 November 2023]

(7) If the court finds that the child is in need of care and protection, the court may make an appropriate order in terms of section 156.

(8) If the court finds that the child is not in need of care and protection, the court -

(a) must make an order that the child, if the child is in temporary safe care, be returned to the person in whose care the child was before the child was placed in temporary safe care;

[Para. (a) substituted by s. 7 of Act 17/2022 w.e.f. 8 November 2023]

(b) may make an order for early intervention services in terms of this Act; or

(c) must decline to make an order, if the child is not in temporary safe care.

(9) When deciding the question of whether a child is a child in need of care and protection in terms of subsection (1) the court must have regard to the report of the designated social worker referred to in subsection (2).

156. Orders when child is **found to be in need of care and protection**

(1) If a children's court finds that a child is in need of care and protection the court may make any order which is in the best interests of the child, which may be or include an order -

(a) referred to in section 46;

(b) confirming that the person in whose care the child is, may retain care of the child, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;

[Para. (b) substituted by s. 8 of Act 17/2022 w.e.f. 8 November 2023]

(c) that the child be returned to the person in whose care the child was before the child was placed in temporary safe care, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;

[Para. (c) substituted by s. 8 of Act 17/2022 w.e.f. 8 November 2023]

(cA) that the child be placed in the care of a parent or family member, if the court finds that such person is a suitable person to provide for the safety and well-being of the child;

[Para. (cA) inserted by s. 8 of Act 17/2022 w.e.f. 8 November 2023]

(d) that the person in whose care the child was must make arrangements for the child to be taken care of in a partial care facility at the expense of such person, if the court finds that the child became in need of care and protection because the person in whose care the child was lacked the time to care for the child;

[Para. (d) substituted by s. 8 of Act 17/2022 w.e.f. 8 November 2023]

(e) if the child has no parent or care-giver or has a parent or care-giver but that person is unable or unsuitable to care for the child, that the child be placed in -

(i) foster care with a suitable foster parent;

(ii) foster care with a group of persons or an organisation operating a cluster foster care scheme;

(ii) foster care with an identified foster parent who is part of a cluster foster care scheme;

[ **Proposed amendmen**t: Subpara. (ii) to be substituted by s. 8 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(iii) temporary safe care, pending an application for, and finalisation of, the adoption of the child;

(iv) shared care where different care-givers or centres alternate in taking responsibility for the care of the child at different times or periods; or

(v) a child and youth care centre designated in terms of section 158 that provides a residential care programme suited to the child's needs;

(f) if the child lives in a child-headed household, that the child must remain in that household subject to section 137;

[Para. (f) inserted by s. 9 of Act 41/2007]

(2) The court that makes an order contemplated in subsection (1) may order that the child concerned be kept in temporary safe care until such time as effect can be given to the court's order.

(3) An order made by the court in terms of subsection (1) -

(a) is subject to such conditions as the court may determine which, in the case of the placement of a child in terms of subsection (1) (e) (i), (ii), (ii), (iv) or (v), may include a condition -

(i) rendering the placement of the child subject to supervision services by a designated social worker or authorised officer;

(ii) rendering the placement of the child subject to reunification services being rendered to the child and the child's parents, care-giver or guardian, as the case may be, by a designated social worker or authorised officer; or

(iii) requiring the person in whose care the child has been placed, to co-operate with the supervising designated social worker or authorised officer or to comply with any requirement laid down by the court, failing which the court may reconsider the placement; and

(b) may be reconsidered by a children's court at any time, and be confirmed, withdrawn or amended as may be appropriate.

(4) If a court finds that a child is not in need of care and protection the court may nevertheless issue an order referred to in subsection (1) in respect of the child, excluding a placement order.

157. Court orders to be aimed at securing stability in child's life

(1) Before a children's court makes an order in terms ofsection 156 for the removal of the child from the care of the child's parent, guardian or care-giver, the court must -

[Words preceding para. (a) substituted by s. 9 of Act 17/2022 w.e.f. 8 November 2023]

(a) obtain and consider a report by a designated social worker on the conditions of the child's life, which must include -

(i) an assessment of the developmental, therapeutic and other needs of the child;

(ii) details of family preservation services that have been considered or attempted; and

(iii) a documented permanency plan taking into account the child's age and developmental needs aimed at achieving stability in the child's life and containing the prescribed particulars; and

(b) consider the best way of securing stability in the child's life, including whether such stability could be secured by -

(i) leaving the child in the care of the parent, guardian or care-giver under the supervision of a designated social worker, provided that the child's safety and well-being must receive first priority;

[Subpara. (i) substituted by s. 9 of Act 17/2022 w.e.f. 8 November 2023]

(ii) placing the child in alternative care for a limited period to allow for the reunification of the child and the parent, guardian or care-giver with the assistance of a designated social worker;

[Subpara. (ii) substituted by s. 9 of Act 17/2022 w.e.f. 8 November 2023]

(iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent, guardian or care-giver;

[Subpara. (iii) substituted by s. 9 of Act 17/2022 w.e.f. 8 November 2023]

(iv) making the child available for adoption; or

(v) issuing instructions as to the evaluation of progress made with the implementation of the permanency plan at specified intervals.

(2) A designated social worker facilitating the reunification of a child with the child's family in terms of subsection (1)(b)(ii) must -

(a) investigate the causes why the child left the family home;

(b) address those causes and take precautionary action to prevent a recurrence; and

(c) provide counselling to both the child and the family before and after reunification.

(3) A child who is three years of age or less who has been orphaned or abandoned must be made available for adoption in the prescribed manner and within the prescribed period except when this is not in the best interests of the child.

[Subs. (3) substituted by s. 9 of Act 17/2022 w.e.f. 8 November 2023]

(4) When issuing an order involving the removal of the child from the care of the child's parent, guardian or care-

giver, the court may include in the court order instructions as to the implementation of the permanency plan for the child.

[Subs. (4) substituted by s. 9 of Act 17/2022 w.e.f. 8 November 2023]

158. Placement of child in child and youth care centre

(1) A children's court may issue an order placing a child in the care of a child and youth care centre only if another option is not appropriate.

(2) If a children's court decides that a child should be placed in the care of a child and youth care centre, the court must -

(a) determine the residential care programme best suited for the child; and

(b) order that the child be placed in a child and youth care centre offering that particular residential care programme.

(3) The provincial head of social development in the relevant province must place the child in a child and youth care centre offering the residential care programme which the court has determined for the child, taking into account -

(a) the developmental, therapeutic, educational and other needs of the child;

(b) the permanency plan for the child which was considered by the court, and any instructions issued by the court with regard to the implementation of the permanency plan;

(c) any other instructions of the court;

(d) the distance of the centre from the child's family or community;

(e) the safety of the community and other children in the centre, in the case of a child in need of secure care; and

(f) any other relevant factors.

(4) The provincial head of social development must, as a general rule, select a centre offering the programme ordered by the court which is located as close as possible to the child's family or community.

159. Duration and extension of orders

(1) An order made by a children's court in terms ofsection 156, except an order contemplated insection 46(1)(c)-

[Words preceding para. (a) substituted by s. 8 of Act 17/2016 w.e.f. 26 January 2018]

(a) lapses on expiry of -

(i) two years from the date the order was made; or

(ii) such shorter period for which the order was made; and

(b) may be extended by a children's court for a period of not more than two years at a time.

(2) When deciding on an extension of the period of a court order in terms of subsection (1), the court must take cognisance of the views of -

(a) the child;

(b) the parent and any other person who has parental responsibilities and rights in respect of the child;

(c) where appropriate, the management of the centre where the child is placed; and

(d) any alternative care-giver of that child.

(2A) A court may extend an alternative care order that has lapsed or make an interim order for a period not exceeding six months on good cause shown.

[Subs. (2A) inserted by s. 10 of Act 17/2022 w.e.f. 8 November 2023]

(2B) Notwithstanding the amendment to section 150(1)(a), an order placing an orphaned or abandoned child in foster care with a family member in terms of section 156 before or on the date of this Amendment Act, may be extended by the court in terms of section 159(2) or section 186(2).

[Subs. (2B) inserted by s. 10 of Act 17/2022 w.e.f. 8 November 2023]

(3) Subject to section 176(2), a court order referred to in subsection (1) may not extend beyond the date on which the child in respect of whom it was made reaches the age of 18 years.

[Subs. (3) substituted by s. 8 of Act 17/2016 w.e.f. 26 January 2018]

**160. Regulations**

The Minister, after consultation with the Minister for Justice and Constitutional Development in respect of court orders, may make regulations prescribing -

(a) the particulars which permanency plans must contain;

(b) the manner in, and intervals at which, permanency plans must be evaluated;

(c) procedures for determining whether a child has been abandoned or orphaned; and

(cA) the procedure, form and manner that a social service practitioner must follow when assessing, screening, investigating, referring to the relevant authority and placing a child who is in need of care and protection,

[**Proposed amendment**: Para. (cA) presumably to be inserted by s. 11 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(d) generally, any other ancillary or incidental administrative or procedural matter that may be necessary to prescribe in order to facilitate the implementation or administration of this Chapter.

## CHAPTER 10
## CONTRIBUTION ORDER

161. Issue of contribution order

(1) A children's court may make an order instructing a respondent to pay a sum of money or a recurrent sum of money -

(a) as a contribution towards the maintenance or treatment of, or the costs resulting from the other special needs of a child -

(i) placed in alternative care; or

(ii) temporarily removed by order of the court from the child's family for treatment, rehabilitation, counselling or another reason; or

(b) as a short-term emergency contribution towards the maintenance or treatment of, or the costs resulting from, the other special needs of a child in urgent need.

(2) A contribution order takes effect from the date on which it is made unless the court orders that it takes effect from an earlier or later date.

(3) A children's court may vary, suspend or rescind a contribution order or revive the order after it has been rescinded.

(4) If a court other than the court which made a contribution order varies, suspends, rescinds or revives the order in terms of subsection (3), the clerk of the first-mentioned court must immediately inform the clerk of the last mentioned court of such variation, suspension, rescission or revival.

162. Jurisdiction

(1) A contribution order may be made, varied, suspended, rescinded or revived by the children's court of the area in which -

(a) the respondent is ordinarily resident, carries on business or is employed; or

(b) the child involved in the matter is ordinarily resident.

(2) A provisional contribution order may be made by a children's court having jurisdiction in terms of subsection (1)(b) against a respondent resident in any country which is a proclaimed country within the meaning of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), or a designated country within the meaning of the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989 (Act No. 6 of 1989).

163. Effect of contribution order

(1) A contribution order and a provisional contribution order have the effect of a maintenance order and a provisional maintenance order in terms of the Maintenance Act and the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), as the case may be.

(2) Sections 31 and 40 of the Maintenance Act, read with such changes as the context may require, apply to a person who refuses or fails to comply with a contribution order.

164. Payments to be made to person determined by court

A contribution order must instruct the respondent to pay the sum stated therein to such person or institution as the court may determine.

165. Attachment of wages of respondent

(1) A children's court which has made a contribution order against a respondent may -

(a) order the employer of the respondent -

(i) to deduct the amount of the contribution which that respondent has been ordered to pay, from the respondent's wages, salary or remuneration; and

(ii) to such person or institution specified in the order; or

(b) vary, suspend or rescind such an order or revive the order after it has been rescinded.

(2) The employer must promptly pay any amount deducted under an order in terms of subsection (1) to such person or institution as may be specified in the order.

166. Change of residence or work by respondent

A respondent against whom a contribution order is in force must -

(a) give notice, in writing, to the clerk of the children's court which made the order of any change in that person's residential address or place of work; and

(b) state in that notice the new residential address or the name and address of the new employer, as the case may be.

## CHAPTER 11
## ALTERNATIVE CARE

**167. Alternative care**

(1) A child is in alternative care if the child has been placed-

(a) in foster care;

(b) in the care of a child and youth care centre following an order of a court in terms of this Act, section 29 or Chapter 10 of the Child Justice Act, 2008;

[Para. (b) substituted by s. 99 of Act 75/2008]

(c) in temporary safe care.

(2) A child may not be in temporary safe care or be kept or retained at any place or facility, including a registered child and youth care centre, for longer than six months without a court order placing the child in alternative care.

(3)

(a) The provincial head of social development must approve a person, facility, place or premises for temporary safe care in the prescribed manner.

(b) A person, facility, place or premises for temporary safe care must comply with the prescribed criteria.

(4) As from the date on which this section takes effect an existing place of safety approved in terms of the Child Care Act must be regarded as having been approved as temporary safe care in terms of this section.

**168. Leave of absence**

(1) Leave of absence may, subject to subsection (2) and such limitations and conditions as may be prescribed, be granted to a child in alternative care-

(a) by the management of a child and youth care centre in whose care the child has been placed;

(b) by the person in whose alternative care the child has been placed; and

(c) by the provincial head of social development in the relevant province, in the case of a child in temporary safe care.

(2) If a child has been placed in alternative care under the supervision of a designated social worker, leave of absence may only be granted with the approval of that social worker.

(3) The management or person referred to in subsection (1), designated social worker or the provincial head of social development in the province may at any time cancel any leave of absence granted in terms of subsection (1).

(4) In the case of foster care, the supervising designated social worker may at any time cancel any leave of absence granted in terms of subsection (1).

(5) When a child's leave of absence has been cancelled, the management or person referred to in subsection (1), designated social worker or the provincial head of social development must request that the child be returned to the child and youth care centre or person, or to the place where the child is in temporary safe care.

**169. Child in alternative care prohibited from leaving Republic**

(1) A child in alternative care may not leave the Republic without the written approval of the provincial head of social development first being obtained.

(2) In granting approval in terms of subsection (1), the provincial head of social development may determine terms and conditions to protect the best interest of the child in alternative care.

**170. Child absconding from alternative care**

(1) Any police official or designated social worker may apprehend a child in alternative care who-

(a) has absconded from the child and youth care centre or person in whose care or temporary safe care that child has been placed; or

(b) has been granted leave of absence by the child and youth care centre or person in whose care or temporary safe care that child has been placed and who on cancellation or expiration of such leave of absence fails to return to that centre or person.

(2) If a police official or designated social worker contemplated in subsection (1) has reasonable grounds to believe that a child is in or on certain premises, the police official or designated social worker may, without a warrant, enter and search the premises for the purpose of apprehending the child.

(3) A police official referred to in subsection (1) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises as contemplated in subsection (1), including the

breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

(4) On apprehending a child in alternative care who has absconded or failed to return in terms of subsection (1), the police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the fact that the child has been apprehended and of any steps that have been taken with regard to the child.

(5) A child so apprehended or a child who returns, of his or her own accord, to the centre or person in whose alternative care he or she was before absconding-

(a) must without delay be brought before a presiding officer of a children's court; and

(b) may, until brought before a presiding officer of a children's court, be kept in temporary safe care in terms of section 152.

(6) When the child is brought before a presiding officer of a children's court, the presiding officer must-

(a) order that the child be put in the temporary safe care of a child and youth care centre or appropriate facility or person determined by the presiding officer and kept there until the proceedings in terms of this section are completed and any order made or action taken in terms of this section is given effect to;

(b) inquire into the reasons why the child absconded from, or failed to return to the relevant child and youth care centre or person, and may for this purpose question the child; and

(c) order that the child-

(i) be returned to that centre or person;

(ii) may not be returned to that centre or person pending any action by the provincial head of social development in the relevant province in terms of subsection (8), if the presiding officer is of the opinion that there are good reasons why the child should not be returned to that centre or person; or

(iii) be placed in another form of alternative care.

(7) The presiding officer of the children's court must order the clerk of the children's court to-

(a) report to the provincial head of social development in the relevant province the result of an inquiry in terms of subsection (6); and

(b) notify the provincial head of social development of any order made in terms of subsection (6) (c).

(8) When an order has been made in terms of subsection (6)(c)(ii) the provincial head of social development may, after consideration of the report of the children's court and such inquiry as the provincial head of social development may consider necessary-

(a) transfer the child in terms of section 171;

(b) remove the child from alternative care in terms of section 173;

(c) discharge the child from alternative care in terms ofsection 175; or

(d) order that the child be returned to the child and youth care centre or person in whose care or temporary safe care that child has been placed.

**171. Transfer of child in alternative care**

(1) The provincial head of social development in the relevant province may, subject to subsection (5), transfer in writing a child in alternative care from one form of alternative care to another.
[Subs. (1) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(1A) The provincial head of social development in the relevant province may, subject to subsection (5), transfer in writing a person referred to in section 176(2) from one form of alternative care to another form of alternative care.
[Subs. (1A) inserted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(2) The provincial head of social development may not transfer a child to a child and youth care centre in another province without the permission of the provincial head of social development in that province and without the prescribed financial arrangements regarding the placement being made.

(3)

(a) If the provincial head of social development transfers a child in terms of subsection (1) under the supervision of a designated social worker, the written notice of transfer must specify the requirements with which the child and that parent, guardian, former care-giver or the current alternative care-giver must comply.

(b) If any requirement referred to in paragraph (a) is breached or not complied with, the designated social worker concerned must bring the child before a children's court, which may, after an inquiry, vary the written notice of transfer issued by the provincial head of social development or make a new order in terms of section 156.

[Subs. (3) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(4) Before the provincial head of social development issues a written notice of transfer in terms of subsection (1), he or she must consider a report by a designated social worker, who must have consulted-

[Words preceding para. (a) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(a) the child, taking into consideration the child's age, maturity and stage of development;

(b) the parent, guardian or care-giver of the child, if available;

(c) the child and youth care centre or person in whose care or temporary safe care or alternative care that child has been placed; and

[Para. (c) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(d) the child and youth care centre, alternative care or person to whom the child is to be transferred.

[Para. (d) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(5) If the provincial head of social development transfers a child or a person referred to in section 176(2) from a more restrictive form of alternative care to a less restrictive form of alternative care, the provincial head of social development must be satisfied that the transfer will not be prejudicial to other children in the less restrictive alternative care.

[Subpara. (5) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(6) A transfer contemplated in subsection (1) may not be given effect to without approval by a children's court if the child is transferred-

[Words preceding para. (a) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(a) from the care of a person, including foster care, to a child and youth care centre; or

[Para. (a) substituted by s. 4 of Act 18/2016 w.e.f. 26 January 2018]

(b) from the care of a child and youth care centre to a secure care or more restrictive child and youth care centre.

**172. Change in residential care programme**

(1) The provincial head of social development in the relevant province may, subject to subsection (3), determine that-

(a) a child in a child and youth care centre be released from a residential care programme;

(b) another residential care programme be applied to such a child; or

(c) an additional residential care programme be applied to such a child.

(2) To give effect to subsection (1), the provincial head of social development may transfer the child to another child and youth care centre or to a person in terms of section 171.

(3) No determination in terms of subsection (1) may be carried out without ratification by a children's court if that determination requires that a residential care programme be applied to the child, which programme-

(a) includes the secure care of a child; or

(b) is more restrictive than the child's current residential care programme.

**173. Removal of child already in alternative care**

(1) The provincial head of social development in the relevant province may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child, pending any action in terms of subsection (2)-

(a) be removed from the child and youth care centre or person in whose care or temporary safe care the child is; and

(b) be put in temporary safe care at a place specified in the notice.

(2) The provincial head of social development must, within six months from the date on which a child has been moved and placed in temporary safe care in terms of subsection (1) and after such inquiry as the provincial head of social development may consider necessary-

(a) transfer the child in terms of section 171;

(b) discharge the child from alternative care in terms of section 175; or

(c) issue a notice directing that the child be returned to the child and youth care centre or person in whose care or temporary safe care the child was immediately before the subsection (1) notice was issued.

**174. Provisional transfer from alternative care**

(1) A provincial head of social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be provisionally transferred from alternative care into another form of care that is not more restrictive, as from a date specified in the notice, for a trial period of not more than six months.

(2) A notice of provisional transfer in terms of subsection (1) may be issued only after-

(a) procedures prescribed by regulation have been followed-

(i) to assess the best interest of the child; and

(ii) to reunite the child with the child's immediate family or other family members, if applicable; and

(b) a report on such assessment and reunification has been submitted to and considered by the provincial head of social development.

(3) Provisional transfer must be managed by a designated social worker to establish the feasibility of-

(a) reunification of the child with the child's immediate family or other family members;

(b) integration into another family; or

(c) a transfer to another child and youth care centre of any other form of placement.

(4) The provincial head of social development-

(a) must revoke the transfer if the child so requests and the social worker so recommends; and

(b) may at the end of or at any time during the trial period confirm the child's placement or discharge the child from alternative care in terms of section 175.

(5) The notice of provisional transfer shall be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

**175. Discharge from alternative care**

(1) The provincial head of social development in the relevant province may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be discharged from alternative care as

from a date specified in the notice.

(2) A notice of discharge in terms of subsection (1) may be issued only after-

(a) procedures prescribed by regulation have been carried out-

(i) to assess the best interest of the child; and

(ii) to reunite the child with the child's immediate family or other family members, if applicable; and

(b) a report on such assessment and reunification by a designated social worker has been submitted to and considered by the provincial head of social development.

(3) A notice of discharge relieves the alternative care-giver from any further responsibilities in relation to the child.

**176. Remaining in alternative care beyond age of 18 years**

(1) A person placed in alternative care as a child is entitled, after having reached the age of 18 years, to remain in that care until the end of the year in which that person reaches the age of 18 years.

(2) A provincial head of social development may on application by a person placed in alternative care as a child, or by a person acting on his or her behalf, allow that person to remain in alternative care until the end of the year in which that person reaches the age of 21 years if-

[Words preceding para. (a) substituted by s. 5 of Act 18/2016 w.e.f. 26 January 2018]

(a) the current alternative care-giver is willing and able to care for that person; and

(b) the continued stay in that care is necessary to enable that person to complete his or her grade 12, higher education, college education, internship or learnership.

[Para. (b) substituted by s. 5 of Act 18/2016 w.e.f. 26 January 2018]

(3) An application contemplated in subsection (2) must be submitted before the end of the year in which the relevant child reaches the age of 18 years, but a late application may be condoned, upon good cause shown, if such application is submitted within three months after such date.

[Subr. (3) added by s. 5 of Act 18/2016 w.e.f. 26 January 2018]

**177. Appeal against and review of certain decisions**

(1) A child or person aggrieved by a decision or action in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide on the appeal within 90 days of receipt thereof.

(2) A child or person who is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1) may apply to the competent division of the High Court to review that decision.

**178. Serious injury, abuse or death of child in alternative care**

(1) If a child in alternative care is seriously injured or abused, the management of the child and youth care centre, person or organisation in whose care or temporary safe care the child has been placed must immediately report the matter to the provincial head of social development, who must cause an investigation to be conducted into the circumstances of the serious injury or abuse.

(2) If a child in alternative care dies, the management of the child and youth care centre or person in whose care or temporary safe care the child has been placed must immediately after the child's death report such death to-

(a) the parent or guardian of the child, if he or she can be traced;

(b) a police official;

(c) the provincial head of social development; and

(d) the social worker dealing with the matter.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural

causes.

**179. Regulations**

The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 306 prescribing-

(a) the manner in which a person, facility, place or premises for temporary safe care must be approved;

(b) the criteria that a person, facility, place or premises for temporary safe care must comply with;

(c) limitations or conditions for leave of absence from alternative care;

(d) the manner in which children in alternative care must be transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care;

(e) fees payable to a child and youth care centre on transfer or provisional transfer of a child in alternative care to that centre;

(f) the manner in which applications for remaining in alternative care beyond 18 years of age are to be made; and

(g) any other matter that may be necessary to facilitate the implementation of this Chapter.

[Chapter 11 inserted by s. 10 of Act 41/2007]
(Commencement of Chapter 11: 1 April 2010)

## CHAPTER 12
## FOSTER CARE

**180. Foster care**

(1) A child is in foster care if the child has been placed in the care of a person who is not the parent or guardian of the child as a result of-

(a) an order of a children's court; or

(b) a transfer in terms of section 171.

(2) Foster care excludes the placement of a child-

(a) in temporary safe care; or

(b) in the care of a child and youth care centre.

(3) A children's court may place a child in foster care-

(a) with a person who is not a family member of the child;

(b) with a family member who is not the parent or guardian of the child; or

(c) in a registered cluster foster care scheme,

**181. Purposes of foster care**

The purposes of foster care are to-

(a) protect and nurture children by providing a safe, healthy environment with positive support;

(b) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and

(c) respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity.

**182. Prospective foster parent**

(1) Before a children's court places a child in foster care, the court must follow the children's court processes

stipulated in Part 2 of Chapter 9 to the extent that the provisions of that Part are applicable to the particular case.

(2) A prospective foster parent must-

(a) be a fit and proper person to be entrusted with the foster care of the child;

(b) be willing and able to undertake, exercise and maintain the responsibilities of such care;

(c) have the capacity to provide an environment that is conducive to the child's growth and development; and

(d) be properly assessed by a designated social worker for compliance with paragraphs (a), (b) and (c).

(3) A person unsuitable to work with children is not a fit and proper person to be entrusted with the foster care of a child.

(4) Subsections (2) and (3), read with such changes as the context may require, apply to any person employed at or involved in a nonprofit organisation managing a cluster foster care scheme.

**183. Cluster foster care**

(1) A cluster foster care scheme must be managed in the following manner:

(a) The organisation operating or managing the cluster foster care scheme must be a nonprofit organisation registered in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997);

(a) The organisation operating or managing the cluster foster care scheme must register as a designated child protection organisation within two years of this provision coming into operation;

[ **Proposed amendmen**t: Para. (a) to be substituted by s. 12 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(aA) the provincial department of social development or a designated child protection organisation must manage and operate a cluster foster care scheme in the prescribed manner;

[ **Proposed amendmen**t: Para. (aA) to be inserted by s. 12 of Act 17/2022 w.e.f. a date to be determined the President by proclamation in the Gazette]

(b) the organisation referred to in paragraph (a) must-

(i) comply with the prescribed requirements; and

(ii) have been approved for providing cluster foster care by the provincial head of social development; and

(c) the scheme in terms of which cluster foster care is provided must-

(i) comply with the prescribed requirements; and

(ii) have been registered with the provincial head of social development in the prescribed manner.

(2) The management of a cluster foster care scheme must be monitored by the provincial head of social development.

**184. Determination of placement of child in foster care**

(1) Before a children's court places a child in foster care by court order in terms of section 156, the court must consider a report by a designated social worker about-

(a) the cultural, religious and linguistic background of the child; and

(b) the availability of a suitable person with a similar background to that of the child who is willing and able to provide foster care to the child.

(2) A child may be placed in the foster care of a person from a different cultural, religious and linguistic background to that of the child, but only if-

(a) there is an existing bond between that person and the child; or

(b) a suitable and willing person with a similar background is not readily available to provide foster care to the child.

**185. Number of children to be placed in foster care per household**

(1) Not more than six children may be placed in foster care with a single person or two persons sharing a common household, except where-

(a) the children arc siblings or blood relations; or

(b) the court considers this for any other reason to be in the best interest of all the children.

(2) Not more than six children may be placed in foster care with a single person or two persons sharing a common household in terms of a registered cluster foster care scheme.

[Subs. (2) substituted by s. 13 of Act 17/2022 w.e.f. 8 November 2023]

**186. Duration of foster care placement**

(1) A children's court may, despite the provisions of section 159(1)(a) regarding the duration of a court order, after a child has been in foster care with a person other than a family member for more than two years and after having considered the need for creating stability in the child's life, order that-

(a) no further social worker supervision is required for that placement;

(b) no further social worker reports are required in respect of that placement; and

(c) the foster care placement subsists until the child turns 18 years, unless otherwise directed.

(1A) Despite the provisions of subsection (1), a children's court may deem it necessary to order further supervision services as contemplated in section 65(2)(a)(ii).

[Subs. (1A) inserted by s. 14 of Act 17/2022 w.e.f. 8 November 2023]

(2) A children's court may, despite the provisions ofsection 159(1)(a) regarding the duration of a court order and after having considered the need for creating stability in the child's life, place a child in foster care with a family member and order that the foster care placement subsists until the child turns 18 years, if-

[Words preceding para. (a) substituted by s. 14 of Act 17/2022 w.e.f. 8 November 2023]

(a) the child has been abandoned by the biological parents; or

(b) the child's biological parents are deceased; or

(c) there is for any other reason no purpose in attempting reunification between the child and the child's biological parents; and

(d) it is in the best interest of the child.

(3) Despite the provisions of subsections (1) and (2), a social service practitioner must visit a child in foster care at least annually to monitor and evaluate the placement.

[Subs. (3) substituted by s. 14 of Act 17/2022 w.e.f. 8 November 2023]

(4) This section does not apply to a cluster foster care scheme contemplated insection 183.

[Subs. (4) inserted by s. 14 of Act 17/2022 w.e.f. 8 November 2023]

**187. Reunification of child with biological parent**

(1) If a children's court placing a child in foster care is of the view that reunification between the child and the child's biological parents is possible and in the best interest of the child, the court must issue the placement order subject to conditions providing for a designated social worker to facilitate such reunification as contemplated in section 156(3)(a).

(2) If the child has not been reunited with the child's biological parents two months before the expiry of the initial court order or any extension of the order, the designated social worker appointed to facilitate the reunification must submit a report to the children's court-

(a) explaining why the child was not reunited with the biological parents; and

(b) recommending any steps that may be taken to stabilise the child's life.

(3) The children's court considering the report may-

(a) order that the designated social worker must continue facilitating the reunification; or

(b) order the termination of the reunification services if there are no prospects of reunification.

**188. Responsibilities and rights of foster parent**

(1) The foster parent of a child has those parental responsibilities and rights in respect of the child as set out in-

(a) the order of the children's court placing the child in the foster care of that foster parent;

(b) the responsibilities and rights of foster parents as may be prescribed;

(c) an order of the children's court amending the initial order;

(d) an order of court assigning parental responsibilities and rights in terms of section 23;

(e) a foster care plan between the parent or guardian of the child and the foster parent; and

(f) any applicable provisions of this Act.

(2) A foster parent may not take any decisions contemplated in section 31(1)(b) involving a child without giving due consideration to-

(a) any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development; and

(b) any views and wishes expressed by the parent or guardian of the child.

(3) Notwithstanding subsection (2), an order of the children's court may give parental rights and responsibilities to a foster parent in addition to those normally necessary for a foster parent if-

(a) the child has been abandoned;

(b) the child is an orphan; or

(c) family reunification is not in the best interest of the child.

(4) A children's court may in terms of section 65 monitor the suitability of the placement of a child in foster care.

**189. Termination of foster care**

(1) Foster care may be terminated by a children's court if it is in the best interest of the child.

(2) Before terminating the foster care of a child, the court must take into account all relevant factors, including-

(a) the bond that exists between the child and the child's biological parent, if the biological parent reclaims care of the child;

(b) the bond that developed between-

(i) the child and the foster parent; and

(ii) the child and the family of the foster parent; and

(c) the prospects of achieving permanency in the child's life by-

(i) returning the child to the biological parent;

(ii) allowing the child to remain permanently in foster care with the foster parent;

(iii) placing the child in any other alternative care; or

(iv) adoption of the child.

**190. Regulations**

The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 306-

(a) prescribing the responsibilities and rights of foster parents;

(b) regulating the establishment, functioning and management of cluster foster care schemes;

(c) prescribing the requirements that a nonprofit organisation must comply with to be approved for the establishment and management of a cluster foster care scheme;

(d) prescribing the requirements with which a cluster foster care scheme must comply; and

(e) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

[Chapter 12 inserted by s. 10 of Act 41/2007]
(Commencement of Chapter 12: 1 April 2010)

## CHAPTER 13
## CHILD AND YOUTH CARE CENTRES

**191. Child and youth care centre**

(1) A child and youth care centre is a facility for the provision of residential care to more than six children outside the child's family environment in accordance with a residential care programme suited for the children in the facility, but excludes-

(a) a partial care facility;

(b) a drop-in centre;

(c) a boarding school;

(d) a school hostel or other residential facility attached to a school;

(e) a prison; or

(f) any other establishment which is maintained mainly for the tuition or training of children other than an establishment which is maintained for children ordered by a court to receive tuition or training.

(2) A child and youth care centre must offer a therapeutic programme designed for the residential care of children outside the family environment, which may include a programme designed for-

(a) the reception, care and development of children other than in their family environment;

(b) the reception, care and development of children on a shared basis with the parent or other person having parental responsibilities;

(c) the reception and temporary safe care of children pending their placement;

(d) early childhood development;

(e) the reception and temporary safe care of children to protect them from abuse or neglect;

(f) the reception and temporary safe care of trafficked or commercially sexually exploited children;

(g) the reception and temporary safe care of children for the purpose of-

(i) observing and assessing those children;

(ii) providing counselling and other treatment to them; or

(iii) assisting them to reintegrate with their families and the community;

(h) the reception, development and secure care of children awaiting trial or sentence;

(i) the reception, development and secure care of children with behavioural, psychological and emotional difficulties;

(j) the reception, development and secure care of children in terms of an order-

(i) under section 29 or Chapter 10 of the Child Justice Act, 2008;

(ii) in terms of section 156(1)(i) placing the child in a child and youth care centre which provides a secure care programme; or

(iii) in terms of section 171 transferring a child in alternative care;

[Para. (j) substituted by s. 99 of Act 75/2008]

(k) the reception and care of street children; or

(l) the reception and care of children for any other purpose that may be prescribed by regulation.

(3) A child and youth care centre may in addition to its residential care programmes, offer-

(a) the provision of appropriate care and development of children with disabilities or chronic illnesses;

(b) therapeutic and developmental programmes;

(c) the treatment of children for addiction to dependence-producing substances;

(d) a programme for the treatment of children with a psychiatric condition;

(e) a programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18; or

(f) any other service that may be prescribed.

(4) The provincial head of social development must-

(a) approve any programme offered in terms of subsections (2) and (3) by a child and youth care centre; and

(b) before approving a programme, authorise a suitably qualified person to assess the content of the programme.

**192. Strategy to ensure sufficient provision of child and youth care centres**

(1) The Minister, after consultation with interested persons and the Ministers of Education, Health, Home Affairs and Justice and Constitutional Development, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions, giving due consideration as provided in section 11, to children with disability or chronic illness.

(2) The MEC for social development must within the national strategy referred to in subsection (1) provide for a provincial strategy aimed at the establishment of an appropriate spread in the province of properly resourced, co-ordinated and managed child and youth care centres providing the required range of residential care programmes.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the information available that is necessary for the development and review of the strategies referred to in subsections

(1) and (2).

(4) The provincial head of social development must maintain a record of all available child and youth care centres in the province concerned and of the programmes contemplated in section 191 offered by each centre.

**193. Provision of child and youth care centres**

(1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund child and youth care centres for that province.

(2) Such child and youth care centres-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with-

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed; and

(ii) the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is situated.

(3) An accredited organisation operating a child and youth care centre only qualifies for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.

**194. National norms and standards for child and youth care centres**

(1) The Minister must determine national norms and standards for child and youth care centres by regulation after consultation with interested persons and the Ministers of Education, Health, Home Affairs and Justice and Constitutional Development.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A residential care programme;

(b) therapeutic programmes;

(c) developmental programmes;

(d) permanency plans for children;

(e) individual development plans;

(f) temporary safe care;

(g) protection from abuse and neglect;

(h) assessment of children;

(i) family reunification and reintegration;

(j) after-care;

(k) access to and provision of adequate health care;

(l) access to schooling, education and early childhood development;

(m) security measures for child and youth care centres; and

(n) measures for the separation of children in secure care programmes from children in other programmes.

***Part 1***
***Establishment and registration of child and youth care centre***

**195. Establishment of child and youth care centre by organ of state**

The MEC for social development must, from money appropriated by the relevant provincial legislature, establish and operate child and youth care centres for that province.

**196. Existing government children's home, place of safety, secure care facility, school of industry and reform school**

(1) As from the date on which section 195 takes effect-

(a) an existing state operated children's home established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(a);

(b) an existing state operated place of safety established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing residential care programmes referred to in section 191(2)(c) and (e);

(c) an existing state operated secure care facility established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(h);

(d) a government industrial school established in terms of section 33 of the Children's Protection Act, 1913 (Act No. 25 of 1913) and maintained as a school of industries in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(i); and

(e) a reformatory established in terms of section 52 of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911) and maintained as a reform school in terms of the Child Care Act must be regarded as having been established in terms of section 195 as a child and youth care centre providing a residential care programme referred to in section 191(2)(j).

(2) The provincial department of education must provide education to the children in the facilities mentioned in paragraphs (d) and (e).

(3) A school of industries referred to in paragraph (d) and a reform school referred to in paragraph (e) which are the responsibility of a provincial department of education on the date when this section comes into operation becomes the responsibility of a provincial department of social development within two years of the commencement of this chapter.

(4) All existing government children's homes, places of safety, secure care facilities, schools of industries and reform schools must be registered as child and youth care centres within two years of the commencement of this chapter.

**197. Establishment of child and youth care centre**

Any national or provincial state department responsible for social development, municipality and accredited organisation may establish and operate a child and youth care centre provided that the centre-

(a) is registered with the relevant provincial department of social development;

(b) is managed and maintained in accordance with this Act and any conditions subject to which the centre is registered;

(c) complies with the prescribed national norms and standards as contemplated in section 194 and such other requirements as may be prescribed; and

(d) complies with the structural, safety, health and other requirements of the municipality of the area in which the child and youth care centre is or is to be situated.

**198. Existing registered children's home and registered shelter**

(1) As from the date on which section 197 takes effect an existing privately operated children's home registered or deemed to be registered in terms of the Child Care Act must be regarded as having been registered in terms of section 197 as a child and youth care centre providing a residential care programme mentioned in section 191(2)(a).

(2) A children's home referred to in subsection (1) is regarded to be a registered child and youth care centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 203 before the expiry of that period.

(3) An existing shelter registered in terms of the Child Care Act must register as a child and youth care centre within a period of five years from the date on which this section takes effect.

**199. Application for registration or renewal of registration**

(1) An application for registration or conditional registration of a child and youth care centre established as referred to in section 197 or for the renewal of such a registration must-

(a) be lodged with the provincial head of social development in the relevant province in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by-

(i) a certified copy of the constitution or founding document of the child and youth care centre;

(ii) a certificate issued by the municipality in which the child and youth care centre is or is to be situated certifying that the premises in which the centre is or is to be accommodated complies with all structural, safety, health and other requirements of the municipality and any applicable legislation; and

(iii) any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of a partial care facility before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

**200. Consideration of application**

(1) The provincial head of social development must-

(a) within six months of receiving the application consider an application for registration or for the renewal of registration and either refuse the application or grant the registration or renewal with or without conditions, having regard to subsection (2);

(b) issue to the applicant a certificate of registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

(2) When deciding an application the provincial head of social development must take into account all relevant factors, including whether-

(a) the child and youth care centre complies with-

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed; and

(ii) the structural, safety, health and other requirements of the municipality in which the child and youth

care centre is or is to be situated;

(b) the applicant is a fit and proper person to operate a child and youth care centre;

(c) the applicant has the necessary skills, funds and resources available to operate the child and youth care centre;

(d) each person employed at or engaged in the child and youth care centre is a fit and proper person to assist in operating a child and youth care centre; and

(e) each person employed at or engaged in the child and youth care centre has the prescribed skills to assist in operating a child and youth care centre.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.

(4) The provincial head of social development must consider a report of a designated social worker before deciding an application for registration or renewal of registration.

(5) Notwithstanding the provisions of section 193(3) a provincial head of social development may assist the person or organisation operating a child and youth care centre to comply with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.

**201. Conditional registration**

The registration or renewal of registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of residential care programme that may or must be provided in terms of the registration;

(b) stating the period for which the conditional registration will remain valid, which may not be longer than one year; and

(c) providing for any other matters that may be prescribed.

**202. Amendment of registration**

The provincial head of social development in the relevant province may on application in the prescribed circumstances by the holder of a registration of a child and youth care centre amend the registration by written notice to that person.

**203. Cancellation of registration**

(1) The provincial head of social development in the relevant province may cancel the registration of a child and youth care centre by written notice to the registration holder if-

(a) the centre is not maintained in accordance with-

(i) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed;

(ii) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated;

(iii) any organisational development plan established for the center as part of the quality assurance process in terms of section 211; or

(iv) any other requirements of this Act;

(b) any condition subject to which the registration or renewal of registration was issued is breached;

(c) the registration holder or the management of the centre contravenes or fails to comply with a provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to operate a child and youth

care centre; or

(e) a person who is not a fit and proper person to assist in operating a child and youth care centre is employed at or involved in activities at the centre.

(2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.

(3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) The Director-General or a provincial head of social development may assist a registration holder to comply with-

(a) the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed;

(b) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated; or

(c) any provisions of the organisational development plan established for the centre in terms of the quality assurance process contemplated in section 211, where the cancellation was due to a failure to comply with those national norms and standards, requirements or process.

(5) The cancellation of a registration which has not been suspended takes effect from a date specified in the notice referred to in subsection (1), which may not be earlier than 90 days from the date on which that notice was given, except if-

(a) the provincial head of social development and the holder of the registration agree on an earlier date; or

(b) the safety or protection of the children in the centre requires an earlier date.

(6) The provincial head of social development, pending an appeal contemplated in section 207, may suspend the operation of a child and youth care centre, whether registered or not.

**204. Notice of enforcement**

(1) A provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person or organisation operating an unregistered child and youth care centre-

(i) to stop operating that centre; or

(ii) to apply for registration in terms of section 199 within a period specified in the notice; or

(b) a person or organisation operating a registered child and youth care centre otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered child and youth care centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 197 regarding the establishment of child and youth care centres, be given permission by the provincial head of social development to continue operating the centre during that period and, if that person or organisation applies for registration, until that application has been finalised.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a person or organisation operating a child and youth care centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the person or organisation referred to in subsection (3) if so

requested by the Director-General or provincial head of social development.

**205. Voluntary closure of child and youth care centre**

The holder of a registration of a child and youth care centre who voluntarily closes a child and youth care centre must-

(a) give written notice to the provincial head of social development in the relevant province; and

(b) surrender the certificate of registration to the provincial head of social development for cancellation.

**206. Child in child and youth care centre to be closed**

If a child and youth care centre is to be closed as a result of the cancellation of its registration in terms of section 203 or voluntary closure of the centre in terms of section 205 every child placed in that centre must be transferred in terms of section 171.

**207. Appeal against and review of certain decisions**

(1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1), may apply to the competent division of the High Court to review that decision.

***Part 2***
***Operation and management of child and youth care centre***

**208. Management board**

(1) Each child and youth care centre must have a management board consisting of no fewer than six and no more than nine members.

(2) The members of a management board are appointed by-

(a) the MEC for social development in the relevant province in accordance with a prescribed procedure, in the case of a child and youth care centre which is operated by the province; and

(b) the registration holder in accordance with a prescribed procedure, in the case of a privately operated child and youth care centre.

(3) In appointing members of the management board, equitable representation by all stakeholders, including the community in which the child and youth care centre is located, must be ensured.

(4) No person unsuitable to work with children may be appointed or continue to serve as a member of a management board.

(5) A management board functions in terms of the regulations, and may exercise the powers and must perform the duties conferred on it in terms of this Act.

(6) The management board must create a children's forum as part of the management board to ensure the participation of resident children in the operation of the centre, taking into consideration the age, maturity and stage of development of the children.

**209. Manager and staff of child and youth care centre**

(1) The person or organisation operating a child and youth care centre must appoint or designate-

(a) a person as the manager of the centre; and

(b) a sufficient number of staff or other appropriate persons to assist in operating the centre.

(2) A person may be appointed or designated in terms of subsection (1) only-

(a) after following an interview process as prescribed;

(b) if that person has the skills and training as prescribed; and

(c) if that person is a fit and proper to assist in operating a child and youth care centre.

(3) A person unsuitable to work with children is not a fit and proper person to assist in operating or serving at a child and youth care centre.

**210. Management system**

A child and youth care centre must be managed-

(a) in accordance with-

(i) a system of management that allows for a division of responsibilities between the management board and the manager of the centre and an appropriate interaction in the exercise of those responsibilities, as may be prescribed;

(ii) the organisational development plan established for the centre in terms of its quality assurance process; and

(iii) any other requirements of this Act; and

(b) in a manner that is conducive to implementing the residential care programme and other programmes offered at the centre.

**211. Quality assurance process**

(1) The provincial head of social development must ensure that a quality assurance process is conducted in respect of each child and youth care centre in the manner and at the intervals as prescribed.

(2) The quality assurance process must be done in the following manner:

(a) A team connected to the child and youth care centre must conduct an internal assessment of the centre;

(b) a team not connected to the centre must conduct an independent assessment of the centre;

(c) an organisational development plan for the centre containing the prescribed particulars must be established between the teams by agreement; and

(d) the team not connected to the centre must appoint a mentor to oversee implementation of the plan by the management of the centre.

(3) The management board of a child and youth care centre must without delay, after completion of the quality assurance process, submit a copy of the organisational development plan established for the centre in terms of the quality assurance process to the MEC for social development in the province.

(4) A provincial head of social development may assist a child and youth care centre in conducting the quality assurance process as contemplated in subsection (1).

***Part 3***
***Miscellaneous***

**212. Regulations**

The Minister may, where appropriate after consultation with the Ministers of Education, Health and Justice and Constitutional Development, in terms of section 306 make regulations prescribing-

(a) the procedure to be followed in connection with the lodging and consideration of-

(i) applications for registration of child and youth care centres;

(ii) applications for renewal or amendment of such registrations; and

(iii) objections to applications made in terms of sub-paragraphs (i) and (ii);

(b) the national norms and standards that child and youth care centres must comply with;

(c) the conditions with which applicants must comply before, during or after the lodging of their applications;

(d) consultation processes that must be followed in connection with such applications;

(e) any additional factors that must be taken into account when deciding such applications;

(f) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;

(g) the format and contents of registration certificates;

(h) methods and procedures to enforce compliance with registration conditions;

(i) matters in connection with the physical attributes, operation and management of child and youth care centres, including the number of staff appointed at or designated to a child and youth care centre;

(j) matters in connection with residential care programmes provided at child and youth care centres, including the setting of criteria for-

(i) the core components of such programmes; and

(ii) the implementation of such programmes;

(k) the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;

(l) an assessment of and the formulation of an individual developmental and permanency plan for each child;

(m) the powers and duties of the management boards of child and youth care centres;

(n) the composition of management boards, which may include representation for staff and residents;

(o) matters relating to members of management boards, including-

(i) appointment procedures;

(ii) qualifications for membership;

(iii) term of office;

(iv) filling of vacancies; and

(v) suspension or termination of membership;

(p) matters relating to the functioning of management boards, including-

(i) designation and functions of presiding members;

(ii) the convening and conduct of meetings;

(iii) quorums; and

(iv) the appointment and functioning of committees of a board;

(q) matters relating to training, qualifications and experience of staff of child and youth care centres;

(r) matters relating to the responsibilities of and interaction between the management board and the staff and residents of a child and youth care centre;

(s) the reporting responsibilities of management boards and staff to the department, person or organisation

operating the child and youth care centre;

(t) the formal of the constitution or founding document of a child and youth care centre and the matters to be regulated in such constitution or founding document;

(u) the rights of children in child and youth care centres;

(v) management, disciplinary and other practices in child and youth care centres;

(w) matters in connection with quality assurance processes and organisational development plans established in terms of such processes for child and youth care centres, including-

(i) the composition of teams to conduct internal and independent assessments;

(ii) the qualifications of team members and the remuneration payable to members of independent teams;

(iii) the manner in which internal and independent assessments must be conducted;

(iv) the core components of organisational development plans;

(v) the implementation, revision and amendment of such plans;

(vi) the monitoring of implementation and reporting of violations of such plans; and

(vii) the qualifications, functions and remuneration of mentors appointed to oversee the implementation of such plans; and

(x) any other matter that may facilitate the implementation of this Chapter.

[Chapter 13 inserted by s. 10 of Act 41/2007]
(Commencement of Chapter 13: 1 April 2010)

## CHAPTER 14
## DROP-IN CENTRES

### 213. Drop-in centres

(1) A drop-in centre is a facility providing basic services aimed at meeting the emotional, physical and social development needs of vulnerable children.

(2) A drop-in centre must offer any of (he following basic services:

(a) Provision of food;

(b) school attendance support;

(c) assistance with personal hygiene; or

(d) laundry services.

(3) A drop-in centre may offer any of the following programmes appropriate to the developmental needs of the children attending that centre:

(a) Guidance, counselling and psychosocial support;

(b) social skills and life skills;

(c) educational programmes;

(d) recreation;

(e) community services;

(f) school holiday programmes;

(g) primary health care in collaboration with the local health clinic;

(h) reporting and referral of children to social workers or social service professionals;

(i) promotion of family preservation and reunification;

(j) computer literacy;

(k) outreach services; and

(l) prevention and early intervention.

**214. Strategy concerning drop-in centres**

(1) The Minister, after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport must include in the departmental strategy a strategy aimed at ensuring an appropriate spread of drop-in centres throughout the Republic, giving due consideration as provided in section 11, to children with disability or chronic illnesses.

(2) The MEC for social development must-

(a) maintain a record of all the registered drop-in centres in the province concerned; and

(b) within the national strategy referred to in subsection (1), provide for a provincial strategy to ensure an appropriate spread of drop-in centres in the province.

(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make the information available that is necessary for the development and review of the strategies referred to in subsections (1) and (2).

**215. Provision of drop-in centres**

(1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund drop-in centres for that province.

(2) Such drop-in centres-

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with-

(i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and

(ii) the structural safety, health and other requirements of the municipality of the area where the drop-in centre is situated.

(3) The owner or manager of a drop-in centre only qualifies for funding appropriated as contemplated in subsection (1) if the centre complies with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

(4) The funding of drop-in centres must be prioritised-

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; and

(b) to make drop-in centres accessible to children with disabilities.

**216. National norms and standards for drop-in centres**

(l) The Minister must determine national norms and standards for drop-in centres by regulation after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A safe environment for the children;

(b) safe drinking water;

(c) hygienic and adequate toilet facilities;

(d) access to refuse disposal services or other adequate means of disposal of refuse; and

(e) a hygienic area for the preparation of food for the children.

**217. Drop-in centres to be registered**

(1) Any person or organisation may establish or operate a drop-in centre provided that the drop-in centre-

(a) is registered with the provincial head of social development of the province where that drop-in centre is situated;

(b) is managed and maintained in accordance with any conditions subject to which the drop-in centre is registered; and

(c) complies with-

(i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and

(ii) the structural, safety, health and other requirements of the municipality.

(2) As from the date on which this section lakes effect an existing drop-in centre registered in terms of the Child Care Act must be regarded as having been registered as a drop-in centre in terms of this section.

(3) A drop-in centre referred to in subsection (2) is regarded to be a registered drop-in centre for a period of five years from the date on which that subsection takes effect, unless its registration is withdrawn in terms of section 221 before the expiry of that period.

**218. Application for registration and renewal of registration**

(1) An application for registration or conditional registration of a drop-in centre or for the renewal of a registration must-

(a) be lodged, in accordance with a prescribed procedure, with the provincial head of social development in which the drop-in centre is or will be situated;

(b) contain the prescribed particulars; and

(c) be accompanied by any documents as may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

(3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

(4) The provincial head of social development must renew the registration of a drop-in centre before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).

**219. Consideration of application**

(l) The provincial head of social development must-

(a) consider an application for registration or conditional registration or for the renewal of registration, and either reject the application or grant the registration or renewal with or without conditions, having regard to subsection (2); and

(b) issue to the applicant a certificate of registration, conditional registration or renewal of registration in the prescribed form if the application is granted.

(2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether-

(a) the drop-in centre complies with-

(i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and

(ii) the structural, safely, health and other requirements of the municipality and any other relevant legislation;

(b) the applicant is a fit and proper person to operate a drop-in centre;

(c) the applicant has the necessary skills, funds and resources available to operate the drop-in centre;

(d) each person employed at or engaged in the drop-in centre is a fit and proper person to assist in operating a drop-in centre; and

(e) each person employed at or engaged in the drop-in centre has the prescribed skills and training to assist in operating a drop-in centre.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a drop-in centre.

(4) The provincial head of social development must consider a report of a social service professional before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding the provisions of section 215(3) a provincial head of social development may assist the person or organisation operating a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

**220. Conditional registration**

(1) The registration or renewal of the registration of drop-in centres may be granted on such conditions as the provincial head of social development may determine, including conditions-

(a) specifying the type of services that may or must be provided in terms of the registration;

(b) stating the period for which the conditional registration will remain valid; and

(c) providing for any other matters that may be prescribed.

(2) A provincial head of social development may assist a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

**221. Cancellation of registration**

(1) A provincial head of social development may cancel the registration of a drop-in centre by written notice to the registration holder if-

(a) the drop-in centre is not maintained in accordance with-

(i) the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed; and

(ii) any other requirements of this Act;

(b) any condition subject to which the registration or renewal of registration was issued is breached or not complied with;

(c) the registration holder or the management of the drop-in centre contravenes or fails to comply with any

provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to operate a drop-in centre; or

(e) a person who is not a fit and proper person to assist in operating a drop-in centre is employed at or engaged in operating the drop-in centre.

(2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a drop-in centre.

(3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)-

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) A provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.

**222. Notice of enforcement**

(1) The provincial head of social development may by way of a written notice of enforcement instruct-

(a) a person or organisation operating an unregistered drop-in centre-

(i) to stop operating that drop-in centre; or

(ii) to apply for registration in terms of section 217 within a period specified in the notice; or

(b) a person or organisation operating a registered drop-in centre otherwise than in accordance with the conditions subject to which the registration was issued, to comply with those conditions.

(2) A person or organisation operating an unregistered drop-in centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 217 regarding the establishment of drop-in centres, be given permission by the provincial head of social development to continue operating the drop-in centre during that period and, if that person or organisation applies for registration, until that application has been finalised.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct a drop-in centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the owner or manager of the drop-in centre referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

**223. Appeal against and review of certain decisions**

(1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (1) may apply to the competent division of the High Court to review that decision.

**224. Record and inspection of and provision for drop-in centres**

(1) A provincial head of social development must-

(a) maintain a record of all available drop-in centres in its area; and

(b) conduct regular inspections of drop-in centres in the province in collaboration with the municipality where the drop-in centres are situated to enforce the provisions of this Act.

(2) The provincial strategy contemplated in section 214(2) must include a strategy for the provision of drop-in centres in the province, which must include measures-

(a) facilitating the establishment of sufficient drop-in centres in the province;

(b) prioritising those types of drop-in centres most urgently required; and

(c) facilitating the identification and provision of suitable premises.

**225. Assignment of functions to municipality**

(1) The provincial head of social development may, by written agreement with a municipality, assign the performance of some or alt of the functions contemplated in sections 217,218,219,220,221,222 and 224 to the municipal manager if the provincial head of social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service professional in the employ of the municipality.

(4) A delegation in terms of subsection (3)-

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may-

(a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal lodged as contemplated in subsection (6) may apply to the competent division of the High Court to review that decision.

(8)

(a) The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) had been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or a!) of the functions assigned to it, the provincial head of social development may-

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

**226. Serious injury, abuse or death of child in drop-in centre**

(1) If a child is seriously injured or abused while in a drop-in centre or following an occurrence at a drop-in centre,

the person operating the drop-in centre or a person employed at the drop-in centre must immediately report such injury or abuse to the provincial head of social development, who must cause an investigation into the circumstances of the serious injury or abuse to be conducted.

(2) If a child dies while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre or a person employed at the drop-in centre must immediately after the child's death report such death to-

(a) the parent, guardian or care-giver of the child, if he or she can be traced;

(b) a police official; and

(c) the provincial head of social development.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

**227. Regulations**

The Minister, after consultation with the Minister of Justice and Constitutional Development where review of decisions by the courts are regulated, may make regulations in terms of section 306 concerning-

(a) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of registration;

(b) the different programmes and services that may be provided in terms of such registration;

(c) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter;

(d) the management of drop-in centres; and

(e) any other matter that may be necessary to facilitate the implementation of this Chapter.

[Chapter 14 inserted by s. 10 of Act 41/2007]
(Commencement of Chapter 14: 1 April 2010)

## CHAPTER 15
## ADOPTION

228. Adoption

A child is adopted if the child has been placed in the permanent care of a person in terms of a court order that has the effects contemplated in section 242.

229. Purposes of adoption

The purposes of adoption are to -

(a) protect and nurture children by providing a safe, healthy environment with positive support; and

(b) promote the goals of permanency planning by connecting children to other safe and nurturing family relationships intended to last a lifetime.

230. Child who may be adopted

(1) Any child may be adopted if -

(a) the adoption is in the best interests of the child;

(b) the child is adoptable; and

(c) the provisions of this Chapter are complied with.

(2) An adoption social worker must make an assessment to determine whether a child is adoptable.

(3) A child is adoptable if -

(a) the child is an orphan and has no guardian or caregiver who is willing to adopt the child;

(b) the whereabouts of the child's parent or guardian cannot be established;

(c) the child has been abandoned;

(d) the child's parent or guardian has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected;
[Para. (d) amended by s. 9 of Act 17/2016 w.e.f. 26 January 2018]

(e) the child is in need of a permanent alternative placement;

(f) the child is the stepchild of the person intending to adopt; or
[Para. (f) added by s. 9 of Act 17/2016 w.e.f. 26 January 2018]

(g) the child's parent or guardian has consented to the adoption unless consent is not required.
[Para. (g) added by s. 9 of Act 17/2016 w.e.f. 26 January 2018]

**231. Persons who may adopt child**

(1) A child may be adopted -

(a) jointly by -

(i) a husband and wife;

(ii) partners in a permanent domestic life-partnership; or

(iii) other persons sharing a common household and forming a permanent family unit;

(b) by a widower, widow, divorced or unmarried person;

(c) by a married person whose spouse is the parent of the child or by a person whose permanent domestic life-partner is the parent of the child;

(d) by the biological father of a child born out of wedlock; or

(e) by the foster parent of the child.

(2) A prospective adoptive parent must be -

(a) fit and proper to be entrusted with full parental responsibilities and rights in respect of the child;

(b) willing and able to undertake, exercise and maintain those responsibilities and rights;

(c) over the age of 18 years; and

(d) properly assessed by an adoption social worker for compliance with paragraphs (a) and (b).

(3) In the assessment of a prospective adoptive parent, an adoption social worker may take the cultural and community diversity of the adoptable child and prospective adoptive parent into consideration.

(4) A person may not be disqualified from adopting a child by virtue of his or her financial status.

(5) Any person who adopts a child may apply for means-tested social assistance where applicable.

(6) A person unsuitable to work with children is not a fit and proper person to adopt a child.

(7)

(a) The biological father of a child who does not have guardianship in respect of the child in terms of Chapter 3 or the foster parent of a child has the right to be considered as a prospective adoptive parent when the child becomes available for adoption.

(b) A person referred to in paragraph (a) must be regarded as having elected not to apply for the adoption of the child if that person fails to apply for the adoption of the child within 30 days after a notice calling on that person to do so has been served on him or her by the sheriff.

(8) A family member of a child who, prior to the adoption, has given notice to the clerk of the children's court that he or she is interested in adopting the child has the right to be considered as a prospective adoptive parent when the child becomes available for adoption.

232. Register on Adoptable Children and Prospective Adoptive Parents

(1) The Director-General must keep and maintain a register to be called the Register on Adoptable Children and Prospective Adoptive Parents for the purpose of -

(a) keeping a record of adoptable children; and

(b) keeping a record of fit and proper adoptive parents.

(2) The name and other identifying information of a child may be entered into RACAP if the child is adoptable as contemplated in section 230(3).

(3) The name and other identifying information of a child must be removed from RACAP if the child has been adopted.

(4) A person may be registered in the prescribed manner as a prospective adoptive parent if-

(a) section 231(2) has been complied with; and

(b) the person is a citizen or permanent resident of the Republic.

(5) Registration of a person as a prospective adoptive parent -

(a) is valid for a period of three years;

(b) may be renewed as prescribed;

(c) ceases -

(i) on written notice of withdrawal being given to the Director-General;

(ii) on the death of the registered person;

(iii) on cancellation by the Director-General if the registered person is no longer -

(aa) a fit and proper person to be entrusted with full parental responsibilities and rights in respect of a child; and

(bb) willing and able to undertake, exercise and maintain those responsibilities and rights,

(iv) if the registered person is no longer a citizen or permanent resident of the Republic;

(v) if a child contemplated in section 150 is removed from the care of that registered person; or

(vi) if the registered person is convicted of an offence involving violence.

(6) Only the Director-General and officials in the Department designated by the Director-General have access to RACAP, but the Director-General may, on such conditions as the Director-General may determine, allow access to -

(a) a provincial head of social development or an official of a provincial department of social development designated by the head of that department;

(b) a child protection organisation accredited in terms of section 251 to provide adoption services; or

(c) a child protection organisation accredited in terms of section 259 to provide inter-country adoption services.

233. Consent to adoption

(1) A child may be adopted only if consent for the adoption has been given by -

(a) each parent of the child, regardless of whether the parents are married or not: Provided that, if the parent is a child, that parent is assisted by his or her guardian;

(b) any other person who holds guardianship in respect of the child; and

(c) the child, if the child is -

(i) 10 years of age or older; or

(ii) under the age of 10 years, but is of an age, maturity and stage of development to understand the implications of such consent.

(2) Subsection (1) excludes a parent or person referred to in section 236 and a child may be adopted without the consent of such parent or person.

(3) If the parent of a child wishes the child to be adopted by a particular person the parent must state the name of that person in the consent.

(4) Before consent for the adoption of the child is granted in terms of subsection (1), the adoption social worker facilitating the adoption of the child must counsel the parents of the child and, where applicable, the child on the decision to make the child available for adoption.

(5) The eligibility of the person contemplated in subsection (3) as an adoptive parent must be determined by a children's court in terms of section 231(2).

(6) Consent referred to in subsection (1) and given -

(a) in the Republic, must be -

(i) signed by the person consenting in the presence of a presiding officer of the children's court;

(ii) signed by the child in the presence of a presiding officer of the children's court if the consent of the child is required in terms of subsection (1)(c);

(iii) verified by the presiding officer of the children's court in the prescribed manner; and

(iv) filed by the clerk of the children's court pending an application for the adoption of the child; or

(b) outside the Republic, must be -

(i) signed by the person consenting in the presence of the prescribed person;

(ii) verified in the prescribed manner and by the prescribed person; and

(iii) submitted to and filed by a clerk of the children's court pending an application for the adoption of the child.

(7) The court may on good cause shown condone any deficiency in the provision of a consent given outside the Republic in that the consent -

(a) was not signed in the presence of the prescribed person; or

(b) was not verified in the prescribed manner or by the prescribed person.

(8) A person referred to in subsection (1) who has consented to the adoption of the child may withdraw the consent within 60 days after having signed the consent, after which the consent is final.

234. Post adoption agreements

(1) The parent or guardian of a child may, before an application for the adoption of a child is made in terms of section 239, enter into a post-adoption agreement with a prospective adoptive parent of that child to provide for -

(a) communication, including visitation between the child and the parent or guardian concerned and such other person as may be stipulated in the agreement; and

(b) the provision of information, including medical information, about the child, after the application for adoption is granted.

(2) An agreement contemplated in subsection (1) may not be entered into without the consent of the child if the child is of an age, maturity and stage of development to understand the implications of such an agreement

(3) The adoption social worker facilitating the adoption of the child must assist the parties in preparing a post-adoption agreement and counsel them on the implications of such an agreement.

(4) A court may, when granting an application in terms of section 239 for the adoption of the child, confirm a post-adoption agreement if it is in the best interests of the child,

(5) A post-adoption agreement must be in the prescribed format

(6) A post-adoption agreement -

(a) takes effect only if made an order of court;

(b) may be amended or terminated only by an order of court on application -

(i) by a party to the agreement; or

(ii) by the adopted child.

235. Freeing orders

(1) The court, on application by the Department, a provincial department of social development, a child protection organisation accredited in terms of section 251 to provide adoption services or an adoption social worker may issue an order freeing a parent or person whose consent to the adoption of the child is required in terms of section 233 from parental responsibilities and rights in respect of the child pending the adoption of the child.

(2) The parent or person whose consent to the adoption of the child is required in terms of section 233 must support an application for a freeing order.

(3) A freeing order must authorise a child protection organisation accredited in terms of section 251 to provide adoption services or a person to exercise parental responsibilities and rights in respect of the child pending the adoption of the child.

(4) A freeing order lapses if -

(a) the child has not been adopted within a period of 12 months and there is no reasonable prospects that the child will be adopted;

(b) the order is terminated by the court on the ground that it is no longer in the best interests of the child; or

(c) the child, parent or person who consented to the adoption withdraws such consent in terms of section 233(8).

(5) A freeing order relieves a parent or person from the duty to contribute to the maintenance of the child pending the adoption, unless the court orders otherwise.

236. When consent not required

(1) The consent of a parent or guardian of the child to the adoption of the child, is not necessary if that parent or guardian -

(a) is incompetent to give consent due to mental illness;

(b) has abandoned the child, or if the whereabouts of that parent or guardian cannot be established, or if the identity of that parent or guardian is unknown;

(c) has abused or deliberately neglected the child, or has allowed the child to be abused or deliberately neglected;

(d) has consistently failed to fulfil his or her parental responsibilities towards the child during the last 12 months;

(e) has been divested by an order of court of the right to consent to the adoption of the child; or

(f) has failed to respond to a notice of the proposed adoption referred to in section 238 within 30 days of service of the notice.

(2) Consent to the adoption of a child is not required if -

(a) the child is an orphan and has no guardian or caregiver who is willing and able to adopt the child; and

(b) the court is provided with certified copies of the child's parent's or guardian's death certificate or such other documentation as may be required by the court.

(3) If the parent referred to in subsection (1) is the biological father of the child, the consent of that parent to the adoption is not necessary if -

(a) that biological father is not married to the child's mother or was not married to her at the time of conception or at any time thereafter, and has not acknowledged in a manner set out in subsection (4) that he is the biological father of the child;

(b) the child was conceived from an incestuous relationship between that biological father and the mother; or

(c) the court, following an allegation by the mother of the child, finds on a balance of probabilities that the child was conceived as a result of the rape of the mother: Provided that such a finding shall not constitute a conviction for the crime of rape.

(4) A person referred to in subsection (3)(a) can for the purposes of that subsection acknowledge that he is the biological father of a child -

(a) by giving a written acknowledgment that he is the biological father of the child either to the mother or the clerk of the children's court before the child reaches the age of six months;

(b) by voluntarily paying maintenance in respect of the child;

(c) by paying damages in terms of customary law; or

(d) by causing particulars of himself to be entered in the registration of birth of the child in terms of section 10(1)(b) or section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).

(5) A children's court may on a balance of probabilities make a finding as to the existence of a ground on which a parent or person is excluded in terms of this section from giving consent to the adoption of a child.

237. Gathering of information for proposed adoption

(1) When a child becomes available for adoption, the clerk of the children's court must take -

(a) the prescribed steps to establish the name and address of each person whose consent for the adoption is required in terms of section 233; and

(b) reasonable steps to establish the name of any person whose consent would have been necessary but for section 236, and the grounds on which such person's consent is not required.

(2) A person who has consented to the adoption of a child in terms of section 233 and who wants the court to dispense with any other person's consent on a ground set out in section 236, must submit a statement to that effect to the clerk of the children's court,

(3) A clerk of the children's court may request the Director-General: Home Affairs to disclose any information contained in fee registration of birth of a child, including the identity and other particulars of a person who has acknowledged being the father or the mother of the child.

(4) If a social worker involved in the proposed adoption of a child obtains information regarding the identity and whereabouts of a person contemplated in subsection (1), the social worker must without delay submit a report containing that information to the clerk of the children's court.

238. Notice to be given of proposed adoption

(1) When a child becomes available for adoption, the presiding officer must without delay cause the sheriff to serve a notice on each person whose consent to the adoption is required in terms of section 233.

(2) The notice must -

(a) inform the person whose consent is sought of the proposed adoption of the child; and

(b) request that person either to consent to or to withhold consent for the adoption, or, if that person is the biological father of the child to whom the mother is not married, request him to consent to or withhold consent for the adoption, or to apply in terms of section 239 for the adoption of the child.

(3) If a person on whom a notice in terms of subsection (1) has been served fails to comply with a request contained in the notice within 30 days, that person must be regarded as having consented to the adoption.

239. Application for adoption order

(1) An application for the adoption of a child must -

(a) be made to a children's court in the prescribed manner;

(b) be accompanied by a report, in the prescribed format, by an adoption social worker containing -

(i) information on whether the child is adoptable as contemplated in section 230(3);

(ii) information on whether the adoption is in the best interests of the child; and

(iii) prescribed medical information in relation to the child.

(c) be accompanied by an assessment referred to in section 231(2)(d);

(d) be accompanied by a letter by the provincial head of social development recommending the adoption of the child; and

(e) contain such prescribed particulars.

(2) When an application for the adoption of a child is brought before a children's court, the clerk of the children's court must submit to the court -

(a) any consent for the adoption of the child filed with a clerk of the children's court in terms of section 233(6);

(b) any information established by a clerk of the children's court in terms of section 237(2);

(c) any written responses to requests in terms of section 237(2);

(d) a report on any failure to respond to those requests; and

(e) any other information that may assist the court or that may be prescribed.

(3) An applicant has no access to any documents lodged with the court by other parties except with the permission of the court.

240. Consideration of adoption application

(1) When considering an application for the adoption of a child, the court must take into account all relevant factors,

including -

(a) the religious and cultural background of -

(i) the child;

(ii) the child's parent; and

(iii) the prospective adoptive parent;

(b) all reasonable preferences expressed by a parent and stated in the consent; and

(c) a report contemplated in section 239(1)(b).

(2) A children's court considering an application may make an order for the adoption of a child only if -

(a) the adoption is in the best interests of the child;

(b) the prospective adoptive parent complies with section 231(2);

(c) subject to section 241, consent for the adoption has been given in terms of section 233;

(d) consent has not been withdrawn in terms of section 233(8); and

(e) section 231(7) has been complied with, in the case of an application for the adoption of a child in foster care by a person other than the child's foster parent.

241. Unreasonable withholding of consent

(1) If a parent or person referred to in section 233(1) withholds consent for the adoption of a child a children's court may, despite the absence of such consent, grant an order for the adoption of the child if the court finds that -

(a) consent has unreasonably been withheld; and

(b) the adoption is in the best interests of the child.

(2) In determining whether consent is being withheld unreasonably, the court must take into account all relevant factors, including -

(a) the nature of the relationship during the last two years between the child and the person withholding consent and any findings by a court in this respect; and

(b) the prospects of a sound relationship developing between the child and the person withholding consent in the immediate future.

242. Effect of adoption order

(1) Except when provided otherwise in the order or in a post-adoption agreement confirmed by the court an adoption order terminates -

(a) all parental responsibilities and rights any person, including a parent, step-parent or partner in a domestic life partnership, had in respect of the child immediately before the adoption;

(b) all claims to contact with the child by any family member of a person referred to in paragraph (a);

(c) all rights and responsibilities the child had in respect of a person referred to in paragraph (a) or (b) immediately before the adoption; and

(d) any previous order made in respect of the placement of the child.

(2) An adoption order -

(a) confers full parental responsibilities and rights in respect of the adopted child upon the adoptive parent;

(b) confers the surname of the adoptive parent on the adopted child, except when otherwise provided in the order;

(c) does not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted;
[Para. (c) amended by s. 10 of Act 17/2016 w.e.f. 26 January 2018]

(d) does not affect any rights to property the child acquired before the adoptiorand
[Para. (d) amended by s. 10 of Act 17/2016 w.e.f. 26 January 2018]

(e) does not automatically terminate all parental responsibilities and rights of the parent of a child, when an adoption order is granted in favour of the spouse or permanent domestic life-partner of that parent.
[Para. (e) added by s. 10 of Act 17/2016 w.e.f. 26 January 2018]

(3) An adopted child must for all purposes be regarded as the child of the adoptive parent and an adoptive parent must for all purposes be regarded as the parent of the adopted child.

243. Rescission of adoption order

(1) A High Court or children's court may rescind an adoption order on application by -

(a) the adopted child;

(b) a parent of the adopted child or other person who had guardianship in respect of the child immediately before the adoption; or

(c) the adoptive parent of the child.

(2) An application in terms of subsection (1) must be lodged within a reasonable time but not exceeding two years from the date of the adoption.

(3) An adoption order may be rescinded only if -

(a) rescission of the order is in the best interests of the child; and

(b) the applicant is a parent of the child whose consent was required for the adoption order to be made, but whose consent was not obtained; or

(c) at the time of making the adoption order the adoptive parent did not qualify as such in terms of section 231.

(4) Notice of an application for rescission of an adoption order must be given to -

(a) the adoptive parent of that child, if any other person brings the application;

(b) all persons who have consented to the adoption in terms of section 233 or who have withheld consent to the adoption in terms of section 241, if the child or the adoptive parent brings the application;

(c) the Central Authority in the case of an inter-country adoption; and

(d) any other person whom the court finds has a sufficient interest in the matter,

244. Effect of rescission

(1) As from the date on which the rescission of an adoption order takes effect -

(a) the effects of the adoption order as set out in section 242(2) and (3) no longer applies in respect of the child concerned; and

(b) all responsibilities, rights and other matters terminated by section 242(1) in respect of the child are restored.

(2) When rescinding an adoption order the court may -

(a) make an appropriate placement order in respect of the child concerned; or

(b) order that the child be kept in temporary safe care until an appropriate placement order can be made.

245. Recording of adoption in births register

(1) After an adoption order has been made by a children's court in respect of a child whose birth has been registered in the Republic, the adoptive parent of the child must apply in terms of the applicable law to the Director-General: Home Affairs to record the adoption and any change of surname of the child in the births register.

(2) An application in terms of subsection (1) must be accompanied by -

(a) the relevant adoption order as registered by the adoption registrar;

(b) the birth certificate of the child;

(c) the prescribed birth registration form; and

(d) a fee prescribed in terms of any applicable law, if any.

246. Registration of birth and recording of adoption of child born outside Republic

(1) After an adoption order has been made by a children's court in respect of a child born outside the Republic, the adoptive parent of the child must apply in terms of any applicable law to the Director-General: Home Affairs to register the birth of the child and to record the adoption of the child in the birth register.

(2) An application in terms of subsection (1) must be accompanied by -

(a) the relevant adoption order as registered by the adoption registrar;

(b) the birth certificate of the adopted child or, if the birth certificate is not available -

(i) other documentary evidence relating to the date of birth of the child; or

(ii) a certificate signed by a presiding officer of a children's court specifying the age or estimated age of the child;

(c) the prescribed birth registration form, completed as far as possible and signed by the adoptive parent; and

(d) a fee prescribed in terms of any applicable law, if any.

247. Adoption register

(1) A person designated by the Director-General as the adoption registrar must, in the prescribed manner, record information pertaining to and keep a register of -

(a) the registration numbers allocated to records of adoption cases;

(b) the personal details of adopted children, of their biological parents and of their adoptive parents;

(c) particulars of successful appeals against and rescissions of adoption orders; and

(d) all other prescribed information in connection with adoptions.

(2) A clerk of the children's court must -

(a) keep a record of all adoption cases by a children's court, including all adoption orders issued by the court, in the prescribed manner;

(b) as soon as is practicable after an adoption order has been issued, forward the adoption order, a copy of the record of the adoption inquiry and other prescribed documents relating to the adoption to the adoption registrar; and

(c) in the case of an inter-country adoption, forward copies of the documents referred to in paragraph (b) to the Central Authority.

248. Access to adoption register

(1) The information contained in the adoption register may not be disclosed to any person, except -

(a) to an adopted child after the child has reached the age of 18 years;

(b) to the adoptive parent of an adopted child after the child has reached the age of 18 years;

(c) to the biological parent or a previous adoptive parent of an adopted child after the child has reached the age of 18 years, but only if the adoptive parent and the adopted child give their consent in writing;

(d) for any official purposes subject to conditions determined by the Director-General;

(e) by an order of court, if the court finds that such disclosure is in the best interests of the adopted child; or

(f) for purposes of research: Provided that no information that would reveal the identity of an adopted child or his or her adoptive or biological parent is revealed.

(2) The Director-General may require a person to receive counselling before disclosing any information contained in the adoption register to that person in terms of subsection (1)(a), (b), (c) or (e).

(3) Notwithstanding subsection (1), an adopted child or an adoptive parent is entitled to have access to any medical information concerning -

(a) the adopted child; or

(b) the biological parents of the adopted child, if such information relates directly to the health of the adopted child.

(4) Notwithstanding subsection (1), parties to a post-adoption agreement as contemplated in section 234 are entitled to have access to such information about the child as has been stipulated in the agreement.

249. No consideration in respect of adoption

(1) No person may -

(a) give or receive, or agree to give or receive, any consideration, in cash or in kind, for the adoption of a child in terms of Chapter 15 or Chapter 16; or

(b) induce a person to give up a child for adoption in terms of Chapter 15 or Chapter 16.

(2) Subsection (1) does not apply to -

(a) the biological mother of a child receiving compensation for -

(i) reasonable medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;

(ii) reasonable expenses incurred for counselling; or

(iii) any other prescribed expenses;

(b) a lawyer, psychologist or other professional person receiving fees and expenses for services provided in connection with an adoption;

(c) the Central Authority of the Republic contemplated in section 257 receiving prescribed fees;

(d) a child protection organisation accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;

(e) a child protection organisation accredited to provide inter-country adoption services receiving the prescribed fees;

(f) an organ of state; or

(g) any other prescribed persons.

250. Only certain persons allowed to provide adoption service

(1) No person may provide adoption services except -

(a) a child protection organisation accredited in terms of section 251 to provide adoption services;

(b) an adoption social worker;

(c) the Central Authority in the case of inter-country adoptions; or

(d) a child protection organisation accredited in terms of section 259 to provide inter-country adoption services.

(2) Subsection (1) does not prohibit the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of any other profession.

(3) A welfare organisation referred to in section 107 which was lawfully engaged in providing adoption services when this section took effect may, despite the provisions of subsection (1), continue with such services for a period of two years without being accredited in terms of section 251 to provide adoption services, but must within that period apply for such accreditation in terms of section 251.

[Subs. (3) inserted by s. 11 of Act 41/2007]

251. Accreditation to provide adoption service

(1) The Director-General may in terms of a prescribed process accredit -

(a) a social worker in private practice as an adoption social worker to provide adoption services; and

(b) a child protection organisation to provide adoption services.

(2) The Director-General must keep a register of all adoption social workers and child protection organisations accredited to perform adoption services.

252. Advertising

(1) No person may publish or cause to be published in any form or by any means an advertisement dealing with the placement or adoption of a specific child.

(2) Subsection (1) does not apply in respect of -

(a) the publication of a notice in terms of this Act or a court order;

(b) an advertisement by a child protection organisation accredited to provide adoption services for purposes of recruitment, according to prescribed guidelines; or

(c) other forms of advertisements specified by regulation.

253. Regulations

The Minister, after consultation with the Minister for Justice and Constitutional Development in respect of regulations dealing with court orders, may make regulations -

(a) prescribing procedures for determining whether a child has been abandoned by a parent or other person who has parental responsibilities and rights in respect of the child;

(b) determining procedures to be followed to locate persons whose whereabouts are unknown for obtaining their consent to adoptions;

(c) prescribing procedures for determining the age of a child;

(d) determining procedures for payment for adoption services undertaken by persons or organisations to prevent conflict of interests from arising;

(e) prescribing the requirements that a child welfare organisation has to comply with for accreditation as

contemplated in section 251 to provide adoption services;

(f) prescribing the requirements that a child welfare organisation has to comply with for accreditation as contemplated in section 259 to provide inter-country adoption services;

(g) prescribing advertising guidelines for recruitment purposes; and

(h) regarding any other ancillary or incidental administrative or procedural matter that it may be necessary to prescribe to facilitate the proper implementation or administration of this Chapter.

## CHAPTER 16
## INTER-COUNTRY ADOPTION

254. Purposes of Chapter

The purposes of this Chapter are -

(a) to give effect to the Hague Convention on Inter-country Adoption;

(b) to provide for the recognition of certain foreign adoptions;

(c) to find fit and proper adoptive parents for an adoptable child; and

(d) generally to regulate inter-country adoptions.

255. International co-operation

(1) The President may on such conditions as he or she deems fit -

(a) enter into an agreement with a foreign State that is not a State Party to the Hague Convention on Inter-country Adoption in respect of any matter pertaining to the inter-country adoption of children; and

(b) enter into an agreement with a foreign State that is a State Party to the Hague Convention on Inter-country Adoption in respect of any matter pertaining to the inter-country adoption of children for the purpose of supplementing the provisions of the Convention or to facilitate the application of the principles contained therein.

(2) An agreement contemplated in subsection (1) may not be in conflict with the provisions of the Hague Convention on Inter-country Adoption.

(3) The President may agree to an amendment to or revocation of an agreement contemplated in subsection (1).

(4) An agreement contemplated in subsection (1) or an amendment to or revocation thereof, shall not be of any force or effect until such agreement, amendment or revocation has been approved by Parliament.

256. Hague Convention on Inter-country Adoption to have force of law

(1) The Hague Convention on Inter-country Adoption is in force in the Republic and its provisions are law in the Republic.

(2) The ordinary law of the Republic applies to an adoption to which the Convention applies but, where there is a conflict between the ordinary law of the Republic and the Convention, the Convention prevails.

257. Central Authority

(1) For the purposes of the Hague Convention on Inter-country Adoption, “Central Authority” -

(a) in relation to the Republic, means the Director-General; or

(b) in relation to a convention country, means a person or office designated by such convention country under Article 6 of the Hague Convention on Inter-country Adoption.

(2) The Director-General, after consultation with the Director-General: Justice and Constitutional Development, must perform the functions assigned by the Convention to Central Authorities.

258. Performance of functions

(1) The Central Authority of the Republic may in terms of section 310 delegate any powers or duties of the Central Authority under the Hague Convention on Inter-country Adoption to an official in the Department.

(2) Any powers or duties of the Central Authority in terms of Articles 15 to 21 of the Convention and sections 261(3) and (4), 262(3) and (4), 264(2) and 265(2) may, to the extent determined by the Central Authority, be performed by -

(a) another organ of state; or

(b) a child protection organisation accredited in terms of section 259 to provide inter-country adoption services.

259. Accreditation to provide inter-country adoption services

(1) The Central Authority may, on application by a child protection organisation -

(a) accredit such organisation to provide inter-country adoption services; and

(b) approve adoption working agreements contemplated in section 260, as long as the prescribed requirements are met.

(2) The Central Authority may accredit a child protection organisation to provide inter-country adoption services for such period and on such conditions as may be prescribed.

(3) A child protection organisation accredited in terms of this section to provide inter-country adoption services -

(a) may receive the prescribed fees and make the necessary payments in respect of inter-country adoptions; and

(b) must annually submit audited financial statements to the Central Authority of fees received and payments made.

(4) Subsection (1) does not prohibit the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of another profession.

260. Entering into adoption working agreement

(1) A child protection organisation accredited in terms of section 259 to provide inter-country adoption services may enter into an adoption working agreement with an accredited adoption agency in another country.

(2) A child protection organisation referred to in subsection (1) -

(a) must provide the Central Authority with certified copies of all adoption working agreements entered into by that child protection organisation for approval thereof; and

(b) may not act in terms of any such adoption working agreements before it has been approved by the Central Authority.

261. Adoption of child from Republic by person in convention country

(1) A person habitually resident in a convention country who wishes to adopt a child habitually resident in the Republic must apply to the central authority of the convention country concerned.

(2) If the central authority of the convention country concerned is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and transmit the report to the Central Authority of the Republic.

(3) If an adoptable child is available for adoption, the Central Authority will prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and forward it to the central authority of the convention country concerned.

(4) If the Central Authority and the central authority of the convention country concerned both agree on the adoption, the Central Authority will refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 240.

(5) The court may make an order for the adoption of the child if the requirements of section 231 regarding persons who may adopt a child are complied with, the application has been considered in terms of section 240 and the court is satisfied that -

(a) the adoption is in the best interests of the child;

(b) the child is in the Republic;

(c) the child is not prevented from leaving the Republic -

(i) under a law of the Republic; or

(ii) because of an order of a court of the Republic;

(d) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements;

(e) the central authority of the convention country has agreed to the adoption of the child;

(f) the Central Authority of the Republic has agreed to the adoption of the child; and

(g) the name of the child has been in the RACAP for at least 60 days and no fit and proper adoptive parent for the child is available in the Republic.

(6)

(a) The Central Authority of the Republic may withdraw its consent to the adoption of the child within a period of 140 days from the date on which it has consented to the adoption, if it is in the best interests of the child to do so.

(b) In the event of the Central Authority of the Republic withdrawing its consent, the child must be returned to the Republic forthwith in the prescribed manner.

(7) An order of court contemplated in subsection (5) takes effect only after the period referred to in subsection (6) has lapsed and the Central Authority has not withdrawn its consent within the stated period.

(8) This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

(9) The provisions of Chapter 15 apply to the adoption of a child referred to in subsection (8).

262. Adoption of child from Republic by person in non-convention country

(1) A person habitually resident in a non-convention country who wishes to adopt a child habitually resident in the Republic must apply to the competent authority of the non-convention country concerned.

(2) If the competent authority of the non-convention country concerned is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the prescribed requirements and transmit the report to the Central Authority in the Republic.

(3) If an adoptable child is available for adoption, the Central Authority will prepare a report on the child in accordance with the prescribed requirements and transmit it to the competent authority in the non-convention country concerned.

(4) If the Central Authority and the competent authority in the non-convention country concerned both agree to the adoption, the Central Authority will refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 240.

(5) The court may make an order for the adoption of the child if the requirements of section 231 regarding persons who may adopt a child are complied with, the application has been considered in terms of section 240 and the

court is satisfied that -

(a) the adoption is in the best interests of the child;

(b) the child is in the Republic;

(c) the child is not prevented from leaving the Republic -

(i) under a law of the Republic; or

(ii) because of an order of a court of the Republic;

(d) the arrangements for the adoption of the child are in accordance with the prescribed requirements;

(e) the competent authority of the non-convention country concerned has agreed to the adoption of the child;

(f) the Central Authority has agreed to the adoption of the child; and

(g) the name of the child has been in the RACAP for at least 60 days and no fit and proper adoptive parent for the child is available in the Republic.

(6)

(a) The Central Authority of the Republic may withdraw its consent to the adoption of the child within a period of 140 days from the date on which it has consented to the adoption, if it is in the best interests of the child to do so.

(b) In the event of the Central Authority of the Republic withdrawing its consent the child must be returned to the Republic forthwith in the prescribed manner.

(7) An order of court contemplated in subsection (5) takes effect only after the period referred to in subsection (6) has lapsed and the Central Authority has not withdrawn its consent within the stated period.

(8) This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

(9) The provisions of Chapter 15 apply to the adoption of a child referred to in subsection (8).

263. Issue of adoption compliance certificate

If the children's court has approved the adoption of a child in terms of section 261 or 262, the Central Authority may issue an adoption compliance certificate.

264. Adoption of child from convention country by person in Republic

(1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a convention country must apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and transmit the report to the central authority of the convention country concerned.

(3) If an adoptable child is available for adoption, the central authority of the convention country concerned shall prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and transmit it to the Central Authority.

(4) If the Central Authority and the central authority of the convention country concerned both agree to the adoption, the central authority in that country will refer the application for adoption for the necessary consent in that country.

265. Adoption of child from non-convention country by person in Republic

(1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a non-convention country must apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is fit and proper to adopt, it shall prepare a report on that person in accordance with the requirements of the non-convention country concerned and transmit the report to the competent authority of that country.

(3) If an adoptable child is available for adoption, the competent authority of the non-convention country concerned shall prepare a report on the child in accordance with the prescribed requirements and transmit it to the Central Authority.

(4) If the Central Authority and the competent authority of the non-convention country concerned both agree to the adoption, the competent authority of that country will refer the application for adoption for the necessary consent in that country.

266. Recognition of inter-country adoption of child from convention country

(1) The adoption in a convention country of a child habitually resident in that convention country by a person habitually resident in the Republic shall be recognised in the Republic if an adoption compliance certificate issued in that country is in force for the adoption.

(2) The adoption in a convention country of a child habitually resident in that convention country by a person habitually resident in another convention country shall be recognised in the Republic if an adoption compliance certificate issued in the convention country where the adoption was granted is in force for the adoption.

(3) If an adoption compliance certificate was not issued in the relevant convention country, the Central Authority may issue a declaration recognising the adoption.

(4) A declaration in terms of subsection (3) is, upon production by any person in a court, admissible as evidence in any proceedings before the court.

(5) The adoption of a child referred to in subsections (1) and (2) shall not be recognised if a declaration is made in terms of section 270 that an adoption or a decision in terms of article 27 of the Hague Convention on Inter-country Adoption has no effect in the Republic.

267. Evidentiary value of adoption compliance certificate of convention country

Subject to section 270, an adoption compliance certificate is evidence, for the purposes of the laws of the Republic, that the adoption to which the certificate relates -

(a) was agreed to by the central authorities of the countries mentioned in the certificate; and

(b) was carried out in accordance with the Hague Convention on Inter-country Adoption and the laws of the countries mentioned in the certificate.

268. Recognition of inter-country adoption of child from non-convention country

The Central Authority may issue a declaration recognising the adoption of a child in a non-convention country if -

(a) the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made; and

(b) the adoption in that country has the same effect it would have had if the order had been made in the Republic.

269. Effect of recognition of inter-country adoption

If the adoption of a child is recognised in terms of section 266 or 268, the adoption has in the Republic the effects set out in section 242.

270. Refusal to recognise inter-country adoption or Article 27 decision

(1) The Central Authority may declare that an adoption to which section 266 or 268 applies or a decision made in terms of article 27 of the Hague Convention on Inter-country Adoption may not be recognised in the Republic if the adoption or decision is manifestly contrary to public policy in the Republic, taking into account the best interests of the relevant child.

(2) If the Central Authority declares that an adoption or decision referred to in subsection (1) may not be recognised,

the adoption or decision has no effect in the Republic.

271. Application to children's court for inter-country adoption of child

(1) In the event of a refusal to recognise an inter-country adoption as contemplated in section 270, an application for the adoption of a child from a convention country or a non-convention country may be made to the children's court.

(2) The provisions of Chapter 15, with the necessary changes which the context may require, apply to the adoption of a child referred to in subsection (1).

272. Access to information

Subject to the provisions of section 248 with regard to access to the adoption register, read with such changes as the context may require, the Central Authority may disclose to a person older than 18 years who, as a child, was adopted in accordance with the Hague Convention on Inter-country Adoption, any information in the records of the Central Authority concerning that person's origin.

273. Processing or facilitating inter-country adoption

No person may process or facilitate an inter-country adoption otherwise than in terms of this Chapter.

## CHAPTER 17
## CHILD ABDUCTION

274. Purposes of Chapter

The purposes of this Chapter are -

(a) to give effect to the Hague Convention on International Child Abduction; and

(b) to combat parental child abduction.

275. Hague Convention on International Child Abduction to have force of law

The Hague Convention on International Child Abduction is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act.

276. Central Authority

(1) For the purposes of the Hague Convention on International Child Abduction, "Central Authority" -

(a) in relation to the Republic, means the Chief Family Advocate appointed by the Minister for Justice and Constitutional Development in terms of the Mediation in Certain Divorce Matters Act; or

(b) in relation to a convention country, means a person or office designated for such convention country under Article 6 of the Hague Convention on International Child Abduction;

(2) The Chief Family Advocate must perform the functions assigned by the Convention to Central Authorities.

277. Delegation of powers and duties

(1) The Central Authority of the Republic may, subject to such conditions as he or she may impose, delegate or assign any powers or duties conferred or imposed upon him or her under the Hague Convention on International Child Abduction to any family advocate appointed in terms of the Mediation in Certain Divorce Matters Act

(2) The delegation, assignment and conditions imposed must be in writing.

278. Powers of court

(1) In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3 of the Hague Convention on International Child Abduction, a High Court may, prior to the making of an order for the return of the child, request the Central Authority to provide a report on the domestic circumstances of the child prior to the alleged abduction.

(2) The court may, prior to the making of an order for the return of the child, order interim protective relief for the child, the applicant or the defendant.

(3) The court must, in considering an application in terms of this Chapter for the return of a child, afford that child the opportunity to raise an objection to being returned and in so doing must give due weight to that objection, taking into account the age and maturity of the child.

279. Legal representation

A legal representative must represent the child, subject to section 55, in all applications in terms of the Hague Convention on International Child Abduction.

280. Regulations

(1) The Minister for Justice and Constitutional Development may make regulations -

(a) to give effect to any provisions of the Hague Convention on International Child Abduction; and

(b) prescribing fees and providing for the recovery of any expenditure incurred in connection with the application of the Convention.

(2) A regulation made under subsection (1) may prescribe a penalty of a fine or of imprisonment for a period not exceeding 12 months for any contravention thereof or failure to comply therewith.

## CHAPTER 18

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[Chapter 18 repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

## CHAPTER 19
## SURROGATE MOTHERHOOD

292. Surrogate motherhood agreement must be in writing and confirmed by High Court

(1) No surrogate motherhood agreement is valid unless -

(a) the agreement is in writing and is signed by all the parties thereto;

(b) the agreement is entered into in the Republic;

(c) at least one of the commissioning parents, or where the commissioning parent is a single person, that person, is at the time of entering into the agreement domiciled in the Republic;

(d) the surrogate mother and her husband or partner, if any, are at the time of entering into the agreement

domiciled in the Republic; and

(e) the agreement is confirmed by the High Court within whose area of jurisdiction the commissioning parent or parents are domiciled or habitually resident.

(2) A court may, on good cause shown, dispose with the requirement set out in subsection (1)(d).

293. Consent of husband, wife or partner

(1) Where a commissioning parent is married or involved in a permanent relationship, the court may not confirm the agreement unless the husband, wife or partner of the commissioning parent has given his or her written consent to the agreement and has become a party to the agreement

(2) Where the surrogate mother is married or involved in a permanent relationship, the court may not confirm the agreement unless her husband or partner has given his or her written consent to the agreement and has become a party to the agreement.

(3) Where a husband or partner of a surrogate mother who is not the genetic parent of the child unreasonably withholds his or her consent, the court may confirm the agreement.

294. Genetic origin of child

No surrogate motherhood agreement is valid unless the conception of the child contemplated in the agreement is to be effected by the use of the gametes of both commissioning parents or, if that is not possible due to biological, medical or other valid reasons, the gamete of at least one of the commissioning parents or, where the commissioning parent is a single person, the gamete of that person.

295. Confirmation by court

A court may not confirm a surrogate motherhood agreement unless -

(a) the commissioning parent or parents are not able to give birth to a child and that the condition is permanent and irreversible;

(b) the commissioning parent or parents -

(i) are in terms of this Act competent to enter into the agreement;

(ii) are in all respects suitable persons to accept the parenthood of the child that is to be conceived; and

(iii) understand and accept the legal consequences of the agreement and this Act and their rights and obligations in terms thereof;

(c) the surrogate mother -

(i) is in terms of this Act competent to enter into the agreement;

(ii) is in all respects a suitable person to act as surrogate mother;

(iii) understands and accepts the legal consequences of the agreement and this Act and her rights and obligations in terms thereof;

(iv) is not using surrogacy as a source of income;

(v) has entered into the agreement for altruistic reasons and not for commercial purposes;

(vi) has a documented history of at least one pregnancy and viable delivery; and

(vii) has a living child of her own;

(d) the agreement includes adequate provisions for the contact, care, upbringing and general welfare of the child that is to be born in a stable home environment, including the child's position in the event of the death of the commissioning parents or one of them, or their divorce or separation before the birth of the child; and

(e) in general, having regard to the personal circumstances and family situations of all the parties concerned, but above all the interests of the child that is to be born, the agreement should be confirmed.

296. Artificial fertilisation of surrogate mother

(1) No artificial fertilisation of the surrogate mother may take place -

(a) before the surrogate motherhood agreement is confirmed by the court;

(b) after the lapse of 18 months from the date of the confirmation of the agreement in question by the court.

(2) Any artificial fertilisation of a surrogate mother in the execution of an agreement contemplated in this Act must be done in accordance with the provisions of the National Health Act, 2003 (Act No. 61 of 2003).

297. Effect of surrogate motherhood agreement on status of child

(1) The effect of a valid surrogate motherhood agreement is that -

(a) any child born of a surrogate mother in accordance with the agreement is for all purposes the child of the commissioning parent or parents from the moment of the birth of the child concerned;

(b) the surrogate mother is obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;

(c) the surrogate mother or her husband, partner or relatives has no rights of parenthood or care of the child;

(d) the surrogate mother or her husband, partner or relatives have no right of contact with the child unless provided for in the agreement between the parties;

(e) subject to sections 292 and 293, the surrogate motherhood agreement may not be terminated after the artificial fertilisation of the surrogate mother has taken place; and

(f) the child will have no claim for maintenance or of succession against the surrogate mother, her husband or partner or any of their relatives.

(2) Any surrogate motherhood agreement that does not comply with the provisions of this Act is invalid and any child born as a result of any action taken in execution of such an arrangement is for all purposes deemed to be the child of the woman that gave birth to that child.

298. Termination of surrogate motherhood agreement

(1) A surrogate mother who is also a genetic parent of the child concerned may, at any time prior to the lapse of a period of sixty days after the birth of the child, terminate the surrogate motherhood agreement by filing written notice with the court.

(2) The court must terminate the confirmation of the agreement in terms of section 295 upon finding, after notice to the parties to the agreement and a hearing, that the surrogate mother has voluntarily terminated the agreement and that she understands the effects of the termination, and the court may issue any other appropriate order if it is in the best interest of the child.

(3) The surrogate mother incurs no liability to the commissioning parents for exercising her rights of termination in terms of this section, except for compensation for any payments made by the commissioning parents in terms of section 301.

299. Effect of termination of surrogate motherhood agreement

The effect of the termination of a surrogate motherhood agreement in terms of section 298 is that -

(a) where the agreement is terminated after the child is born, any parental rights established in terms of section 297 are terminated and vest in the surrogate mother, her husband or partner, if any, or if none, the commissioning father;

(b) where the agreement is terminated before the child is born, the child is the child of the surrogate mother, her husband or partner, if any, or if none, the commissioning father, from the moment of the child's birth;

(c) the surrogate mother and her husband or partner, if any, or if none, the commissioning father, is obliged to accept the obligation of parenthood;

(d) subject to paragraphs (a) and (b), the commissioning parents have no rights of parenthood and can only obtain such rights through adoption; and

(e) subject to paragraphs (a) and (b), the child has no claim for maintenance or of succession against the commissioning parents or any of their relatives.

300. Termination of pregnancy

(1) A surrogate motherhood agreement is terminated by a termination of pregnancy that may be carried out in terms of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996).

(2) For the purposes of the Choice on Termination of Pregnancy Act, 1996, the decision to terminate lies with the surrogate mother, but she must inform the commissioning parents of her decision prior to the termination and consult with the commissioning parents before the termination is carried out,

(3) The surrogate mother incurs no liability to the commissioning parents for exercising her right to terminate a pregnancy pursuant to this section except for compensation for any payments made by the commissioning parents in terms of section 301 where the decision to terminate is taken for any reason other than on medical grounds.

301. Payments in respect of surrogacy prohibited

(1) Subject to subsections (2) and (3), no person may in connection with a surrogate motherhood agreement give or promise to give to any person, or receive from any person, a reward or compensation in cash or in kind.

(2) No promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate motherhood agreement or the execution of such an agreement is enforceable, except a claim for -

(a) compensation for expenses that relate directly to the artificial fertilisation and pregnancy of the surrogate mother, the birth of the child and the confirmation of the surrogate motherhood agreement;

(b) loss of earnings suffered by the surrogate mother as a result of the surrogate motherhood agreement; or

(c) insurance to cover the surrogate mother for anything that may lead to death or disability brought about by the pregnancy.

(3) Any person who renders a bona fide professional legal or medical service with a view to the confirmation of a surrogate motherhood agreement in terms of section 295 or in the execution of such an agreement, is entitled to reasonable compensation therefor.

302. Identity of parties

(1) The identity of the parties to court proceedings with regard to a surrogate motherhood agreement may not be published without the written consent of the parties concerned.

(2) No person may publish any facts that reveal the identity of a person born as a result of a surrogate motherhood agreement.

303. Prohibition of certain acts

(1) No person may artificially fertilise a woman in the execution of a surrogate motherhood agreement or render assistance in such artificial fertilisation, unless that artificial fertilisation is authorised by a court in terms of the provisions of this Act.

(2) No person may in any way for or with a view to compensation make known that any person is or might possibly be willing to enter into a surrogate motherhood agreement.

## CHAPTER 20
## ENFORCEMENT OF ACT

304. Inspection of child and youth care centre, partial care facility, shelter and drop-in centre

(1) A person authorised by the Director-General, a provincial head of social development or a municipality may enter any child and youth care centre, partial care facility, shelter or drop-in centre or any place which on reasonable suspicion is being used as an unregistered child and youth care centre, partial care facility, shelter or drop-in centre, in order -

(a) to inspect that centre, facility, shelter or place and its management; or

(b) to observe or interview any child, or cause a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist.

(2)

(a) An identity card prescribed by regulation must be issued to each person authorised in terms of subsection (1).

(b) When inspecting such a centre, facility, shelter or place, a person authorised in terms of subsection (1) must, on demand, produce such an identity card.

(3) A person authorised in terms of subsection (1) may for the purposes of that subsection -

(a) determine whether the centre, facility, shelter or place complies with -

(i) the prescribed national norms and standards referred to in section 79, 194 or 216 applicable to it;
[Subpara. (i) inserted by s. 12 of Act 41/2007]

(ii) other national norms and standards as may be prescribed by regulation;
[Subpara. (ii) inserted by s. 12 of Act 41/2007]

(iii) any structural, safety, health and other requirements as may be required by any law; and

(iv) the provisions of this Act;

(b) require a person to disclose information, either orally or in writing, and either alone or in the presence of a witness, about any act or omission which, on reasonable suspicion, may constitute an offence in terms of this Act, or a breach of a provision of this Act or of a condition of registration, and require that any disclosure be made under oath or affirmation;

(c) inspect, or question a person about any record or document that may be relevant for the purpose of paragraph (b);

(d) copy any record or document referred to in paragraph (c), or remove such record or document to make copies or extracts;

(e) require a person to produce or deliver to a place specified by the authorised person, any record or document referred to in paragraph (c) for inspection;

(f) inspect, question a person about and if necessary remove, any article or substance which, on reasonable suspicion, may have been used in the commission of an offence in terms of this Act or in breaching a provision of this Act or of a condition of registration;

(g) record information by any method, including by taking photographs or making videos; or

(h) exercise any other power or carry out any other duty that may be prescribed.

(4) A person authorised in terms of subsection (1) must -

(a) provide a receipt for any record, document, article or substance removed in terms of subsection (3)(d) or (f);and

(b) return anything removed within a reasonable period unless seized for the purpose of evidence.

(5) A person authorised in terms of subsection (1) must submit a report to the Director-General, the provincial head of social development or a municipality, as may be appropriate, on any inspection carried out by that person in

terms of this section.

305. Offences

(1) A person is guilty of an offence if that person -

(a) commits an act in contravention of the prohibition set out in section 12(2), (3), (4), (6), (7), or (8);

(b) contravenes a provision of section 32(4), 74, 116(1), 123(1), (2) or (3), 127, 133(1), 249, 250(1), 252, 273, 301, 302 or 303;

(Commencement date of para. (b): 1 July 2007)

(c) fails to comply with section 12(5), 12(9), 57(2), 89(1), 89(2), 110(1), 124, 126(1), 134(1), 138(1), 141(1), 167(2), 178(1), 178(2), 226(1), 226(2) or 232(6);

[Para. (c) substituted by s. 13 of Act 41/2007 ]

(Commencement date of para. (c): 1 July 2007)

(d) fails to comply with a request in terms of section 57(1);

(e) misappropriates money for which that person is accountable in terms of section 137(5)(b);

[Para. (e) inserted by s. 13 of Act 41/2007]

(f) fails to comply with section 80(1), 95(1), 197(1) or 217(1) after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to comply with the relevant section;

[Para. (f) inserted by s. 13 of Act 41/2007]

(g) fails to stop operating an unregistered child and youth care centre, partial care facility or drop-in centre after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to stop operating that child and youth care centre, partial care facility or drop-in centre;

[Para. (g) inserted by s. 13 of Act 41/2007]

(h) fails to slop providing early childhood development programmes after that person has been instructed by way of a notice of enforcement in terms of section 100 to stop providing those programmes;

[Para. (h) inserted by s. 13 of Act 41/2007]

(i) directly or indirectly counsels, induces or aids any child to whom leave of absence has been granted in terms of section 168 not to return to the child and youth care centre or person in whose care or temporary safe care that child has been placed, or prevents the child from returning to that centre or person after the expiration of the period of leave or after the cancellation of such leave;

[Para. (i) inserted by s. 13 of Act 41/2007]

(j) remove a child in alternative care from the Republic without the prior written approval for such removal first being obtained in terms of section 169;

[Para. (j) inserted by s. 13 of Act 41/2007]

(k) knowing that a child in alternative care has absconded from or failed to return to that care, directly or indirectly counsels, induces or aids that child not to return to such care, or harbours or prevents the child from returning to that care;

(l) hinders or obstructs -

(i) a police official or designated social worker in the execution of a warrant issued in terms of section 151(2);

(ii) a police official, social worker or authorised officer when removing a child to temporary safe care in terms of section 152(1);

(m) hinders or interferes with a person in the execution of official duties in terms of section 304;

(n) fails to comply with a request of a person in the execution of his or her official duties in terms of section 50(4) or section 304 or furnishes false or misleading information to such a person when complying with such a request;

(o) falsely professes to be a person authorised in terms of section 50(4) or 304 or an assistant of such a person;

(p) has been issued with a written notice as contemplated in section 153(1) and -

(i) refuses to leave the home or the place where the child resides; or

(ii) has contact with the child in contravention of the written notice;

(q) contravenes or fails to comply with an order of a High Court, Divorce Court in a divorce case and children's court issued in terms of this Act, including section 153(6), or contravenes or fails to comply with any condition contained in such order;

(r) .....

[Para. (r) repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

(s) .....

[Para. (s) repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

(2) A person unfit to work with children is guilty of an offence if that person -

(a) operates or assists in any way in operating a partial care facility, child and youth care centre, shelter or drop-in centre;

(b) assumes the foster care or temporary safe care of a child; or

(c) applies for the foster care, temporary safe care or adoption of a child.

(3) A parent, guardian, other person who has parental responsibilities and rights in respect of a child, care-giver or person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, is guilty of an offence if that parent or care-giver or other person -

(a) abuses or deliberately neglects the child; or

(b) abandons the child.

(Commencement date of subs. (3): 1 July 2007)

(4) A person who is legally liable to maintain a child is guilty of an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance.

(Commencement date of subs. (4): 1 July 2007)

(5) A person who is the owner, lessor, manager, tenant or occupier of any premises on which the commercial sexual exploitation of a child has occurred is guilty of an offence if that person, on gaining information of that occurrence, fails to promptly take reasonable steps to report the occurrence to the South African Police Service.

(Commencement date of subs. (5): 1 July 2007)

(6) A person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) is liable to a fine or to imprisonment for a period not exceeding ten years, or to both a fine and such imprisonment,

(Commencement date of subs. (6): 1 July 2007)

[Subs. (6) substituted by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

(7) A person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) more than once is liable to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

(Commencement date of subs. (7): 1 July 2007)

(8) .....

[Subs. (8) repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

## CHAPTER 21
## ADMINISTRATION OF ACT

306. Regulations

(1) The Minister may make regulations regarding -

(a) any matter referred to in sections 90, 103, 142, 160, 179, 190, 212, 227, 253 and 280;

[Para. (a) substituted by s. 14 of Act 41/2007]

(b) any matter that may be prescribed by the Minister in terms of this Act, after consultation with the Minister for Justice and Constitutional Development where courts, court orders and the review of decisions by the courts are regulated;

(c) codes of ethical practice for persons operating and assisting in the operation of child and youth care centres, partial care facilities, shelters and drop-in centres;

(d) procedures for the interview of persons to be employed or engaged in child and youth care centres, partial care facilities, shelters and drop-in centres;

(e) generally any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Regulations made in terms of subsection (1) may -

(a) apply -

(i) generally throughout the Republic or in a category of areas;

(ii) generally to all persons or to a category of persons; or

(iii) generally to all child and youth care centres, partial care facilities, shelters or drop-in centres or to a category of such centres, facilities, shelters or drop-in centres; or

(b) differentiate between different -

(i) areas or categories of areas;

(ii) persons or categories of persons; or

(iii) child and youth care centres, partial care facilities, shelters or drop-in centres or categories of such centres, facilities, shelters or drop-in centres.

(3) Regulations made in terms of subsection (1) may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable on conviction to -

(a) imprisonment for a period not exceeding two years;

(b) an appropriate fine; or

(c) both a fine and imprisonment.

307. Delegation of powers and duties by Minister

(1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to -

(a) the Director-General or an officer in the employ of the Department;

(b) an MEC responsible for social development, by agreement with the MEC; or

(c) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1) -

(a) is subject to any limitations, conditions and directions which the Minister may impose;

(b) must be in writing;

(c) may include the power to sub-delegate; and

(d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in

terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The Minister may -

(a) not delegate a power or duty -

(i) to make regulations; or

(ii) to publish notices in the *Gazette*;

(b) at any time withdraw a delegation.

(Commencement date of s. 307: 1 July 2007)

308. Assignment of powers and duties by Minister

(1) The Minister may assign any power or duty assigned to the Minister in terms of this Act to an MEC responsible for social development, by agreement with the MEC.

(2) An assignment in terms of subsection (1) -

(a) is subject to any limitations, conditions and directions which the Minister may impose;

(b) must be in writing;

(c) may include the power to delegate; and

(d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister may confirm, vary or revoke any decision taken in consequence of an assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The Minister may -

(a) not assign a power or duty -

(i) to make regulations; or

(ii) to publish notices in the *Gazette*;

(b) at any time withdraw an assignment.

(Commencement date of s. 308: 1 July 2007)

309. Delegation of powers and duties by MECs for social development

(1) An MEC for social development may delegate any power or duty assigned to the MEC in terms of this Act to -

(a) the provincial head of social development or an officer in the employ of the province concerned; or

(b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1) -

(a) is subject to any limitations, conditions and directions which the MEC may impose;

(b) must be in writing;

(c) may include the power to sub-delegate; and

(d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The MEC may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The MEC may -

(a) not delegate a power or duty to publish notices in the *Gazette*; and

(b) at any time withdraw a delegation,

(Commencement date of s. 309: 1 July 2007)

310. Delegation of powers and duties by Director-General

(1) The Director-General may delegate any power or duty assigned to him or her in terms of this Act to -

(a) an official in the employ of the Department;

(b) any organ of state, by agreement with that organ of state,

(2) A delegation in terms of subsection (1) -

(a) is subject to any limitations, conditions and directions which the Director-General may impose;

(b) must be in writing;

(c) may include the power to sub-delegate, in the case of a delegation in terms of subsection (1)(b); and

(d) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty,

(3) The Director-General may - .

(a) confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(Commencement date of s. 310: 1 July 2007)

311. Delegation of powers and duties by provincial heads of social development

(1) The provincial head of social development may delegate any power or duty assigned to him or her in terms of this Act to -

(a) an officer in the employ of the province concerned;

(b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1) -

(a) is subject to any limitations, conditions and directions which the provincial head may impose;

(b) must be in writing;

(c) may include the power to sub-delegate, in the case of a delegation in terms of subsection (1)(b); and

(d) does not divest the provincial head of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The provincial head may -

(a) confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time withdraw a delegation.

(Commencement date of s. 311: 1 July 2007)

312. Agency agreements

(1) The Minister may, subject to the departmental strategic plan, enter into an agreement with a designated child protection organisation or other appropriate person, for the provision of any service that may or must be provided in terms of this Act, by such organisation or person on an agency basis.

(2) The Minister may delegate to such organisation or person such powers and duties in terms of this Act as may be required for the proper performance of the service.

(3) Section 307 read with such changes as the context may require, applies in respect of any delegation in terms of subsection (2).

## CHAPTER 22
## MISCELLANEOUS MATTERS

313. Amendment of laws

The laws referred to in the second column of Schedule 4 are hereby amended to the extent indicated in the third column of the Schedule.

(Commencement date of s. 313: 1 July 2007)

314. Transitional matters

Anything done in terms of a law repealed in terms of section 313 which can be done in terms of a provision of this Act, must be regarded as having been done in terms of that provision of this Act

(Commencement date of s. 314: 1 July 2007)

315. Short title and commencement

This Act is called the Children's Act, 2005, and takes effect on a date fixed by the President by proclamation in the *Gazette.*

(Commencement date of s. 315: 1 July 2007)

## SCHEDULE 1

**HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION** (29 May 93)

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The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that inter-country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that inter-country adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions -

## CHAPTER I

## SCOPE OF THE CONVENTION

### Article 1

The objects of the present Convention are -

(a) to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

(b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

(c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

### Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

### Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

## CHAPTER II

## REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

### Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

(a) have established that the child is adoptable;

(b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests; and

(c) have ensured that -

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing;

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn; and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

(d) have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required;

(2) consideration has been given to the child's wishes and opinions;

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing; and

(4) such consent has not been induced by payment or compensation of any kind.

**Article 5**

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State -

(a) have determined that the prospective adoptive parents are eligible and suited to adopt;

(b) have ensured that the prospective adoptive parents have been counselled as maybe necessary; and

(c) have determined that the child is or will be authorized to enter and reside permanently in that State.

**CHAPTER III**

**CENTRAL AUTHORITIES AND ACCREDITED BODIES**

**Article 6**

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

**Article 7**

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to -

(a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

(b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

**Article 8**

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

**Article 9**

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to -

(a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents,

so far as is necessary to complete the adoption;

(b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(c) promote the development of adoption counselling and post-adoption services in their States;

(d) provide each other with general evaluation reports about experience with inter-country adoption;

(e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

**Article 10**

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

**Article 11**

An accredited body shall -

(a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

(b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of inter-country adoption; and

(c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

**Article 12**

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

**Article 13**

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV

**PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION**

**Article 14**

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

**Article 15**

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment reasons for adoption, ability to undertake an inter-country adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

**Article 16**

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -

(a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the

child;

(b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

(c) ensure that consents have been obtained in accordance with Article 4; and

(d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

**Article 17**

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if -

(a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

(b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

(c) the Central Authorities of both States have agreed that the adoption may proceed; and

(d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

**Article 18**

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

**Article 19**

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

**Article 20**

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

**Article 21**

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular -

(a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

(b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

(c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

**Article 22**

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -

(a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

(b) are qualified by their ethical standards and by training or experience to work in the field of inter-country adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V

**RECOGNITION AND EFFECTS OF THE ADOPTION**

**Article 23**

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

**Article 24**

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

**Article 25**

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

**Article 26**

(1) The recognition of an adoption includes recognition of

(a) the legal parent-child relationship between the child and his or her adoptive parents;

(b) parental responsibility of the adoptive parents for the child;

(c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the

adoption has this effect in the Contracting State where it was made.

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

**Article 27**

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect -

(a) if the law of the receiving State so permits; and

(b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI

**GENERAL PROVISIONS**

**Article 28**

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

**Article 29**

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

**Article 30**

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

**Article 31**

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

**Article 32**

(1) No one shall derive improper financial or other gain from an activity related to an inter-country adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

**Article 33**

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

**Article 34**

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

**Article 35**

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

**Article 36**

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units -

(a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

(c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

(d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

**Article 37**

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

**Article 38**

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

**Article 39**

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**Article 40**

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

**Article 42**

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

## CHAPTER VII

## FINAL CLAUSES

**Article 43**

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

**Article 44**

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

**Article 45**

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

**Article 46**

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force -

(a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

**Article 47**

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

**Article 48**

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following -

(a) the signatures, ratifications, acceptances and approvals referred to in Article 43;

(b) the accessions and objections raised to accessions referred to in Article 44;

(c) the date on which the Convention enters into force in accordance with Article 46;

(d) the declarations and designations referred to in Articles 22, 23, 25 and 45;

(e) the agreements referred to in Article 39;

(f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the____day of 19___, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

## SCHEDULE 2

## HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

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The States signatory to the present Convention, Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -

CHAPTER I

**SCOPE OF THE CONVENTION**

**Article 1**

The objects of the present Convention are -

a. to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b. to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.

**Article 2**

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

**Article 3**

The removal or the retention of a child is to be considered wrongful where -

a. it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b. at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

**Article 4**

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

**Article 5**

For the purposes of this Convention -

a. 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b. 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II

**CENTRAL AUTHORITIES**

**Article 6**

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

**Article 7**

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

a. to discover the whereabouts of a child who has been wrongfully removed or retained;

b. to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c. to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d. to exchange, where desirable, information relating to the social background of the child;

e. to provide information of a general character as to the law of their State in connection with the application of the Convention;

f. to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

g. where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h. to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i. to keep other each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III

**RETURN OF CHILDREN**

**Article 8**

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -

a. information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b. where available, the date of birth of the child;

c. the grounds on which the applicant's claim for return of the child is based;

d. all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

e. an authenticated copy of any relevant decision or agreement;

f. a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g. any other relevant document.

**Article 9**

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

**Article 10**

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

**Article 11**

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

**Article 12**

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child,

**Article 13**

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

a. the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal of retention; or

b. there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

**Article 14**

In ascertaining whether there has been a wrongful removal of retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

**Article 15**

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

**Article 16**

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice.

**Article 17**

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

**Article 18**

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

**Article 19**

A decision under this Convention concerning the return of the child shall not be taken to be determination on the merits of any custody issue.

**Article 20**

The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV

**RIGHTS OF ACCESS**

**Article 21**

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of such rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V

**GENERAL PROVISIONS**

**Article 22**

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

**Article 23**

No legalization or similar formality may be required in the context of this Convention.

**Article 24**

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

**Article 25**

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

**Article 26**

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant

towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

**Article 27**

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

**Article 28**

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

**Article 29**

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

**Article 30**

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

**Article 31**

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

a. any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b. any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

**Article 32**

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

**Article 33**

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

**Article 34**

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

**Article 35**

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

**Article 36**

Nothing in this Convention shall prevent two or more Contracting State, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provision of this Convention which may imply such a restriction.

CHAPTER VI

**FINAL CLAUSES**

**Article 37**

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

**Article 38**

Any other State may accede to the Convention. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

**Article 39**

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

**Article 40**

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

**Article 41**

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

**Article 42**

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservations shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

**Article 43**

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force -

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

**Article 44**

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

**Article 45**

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following -

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;

2. the accession referred to in Article 38;

3. the date on which the Convention enters into force in accordance with Article 43;

4. the extensions referred to in Article 39;

5. the declarations referred to in Articles 38 and 40;

6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article

42;

7. the denunciation referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited 10 in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

## SCHEDULE 3

**.....**

[Schedule 3 repealed by s. 48 of Act 7/2013 w.e.f. 9 August 2015]

SCHEDULE 4

## LEGISLATION REPEALED

| No, and year | Title | Extent of repeal |
|---|---|---|
| 33 of 1960 | Children's Act | The whole |
| 93 of 1962 | General Law Further Amendment Act | Section 1 |
| 57 of 1972 | Age of Majority Act | The whole |
| 74 of 1983 | Child Care Act | The whole |
| 82 of 1987 | Children's Status Act | The whole |
| 133 of 1993 | Prevention of Family Violence Act | Section 4 |
| 192 of 1993 | Guardianship Act | The whole |
| 72 of 1996 | Hague Convention on the Civil Aspects of International Child Abduction Act | The whole |
| 86 of 1997 | Natural Fathers of Children born out of Wedlock Act | The whole |

(Commencement date of the second, third, fifth, seventh, and ninth items of Schedule 4: 1 July 2007)
(Commencement date of the remaining items of Schedule 4: 1 April 2010)