
GOVERNMENT NOTICES

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 250

31 March 2010

CHILDREN'S ACT, 2005 REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION

The Minister of Justice and Constitutional Development has—

- (a) after consultation with the Minister of Social Development, under section 75; and
 - (b) under section 280,
- of the Children's Act, 2005 (Act No. 38 of 2005), made the regulations in the Schedule.

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CHAPTER I DEFINITIONS

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates—

"applicant" includes any person, institution or body vested with parental authority that applies for assistance under the Hague Convention;

"apply" means making a formal written request under the Hague Convention and "application" has a corresponding meaning;

"Chief Family Advocate" means the Chief Family Advocate referred to in section 276(1)(a) of the Act;

"chairperson of the pre-hearing conference" means the person who sets up and conducts a pre-hearing conference as provided for in section 69(4)(a) of the Act;

"clerk" means a clerk of the children's court;

"court" means a children's court;

"day" does not include a Saturday, Sunday or public holiday;

"department" means the Department of Justice and Constitutional Development;

"Director-General" means the Director-General of the department, or a person delegated by him or her;

"facilitator" means a facilitator of a family group conference as provided for in regulation 13(1) of these Regulations;

"family group conference" means a family group conference as provided for in section 70 of the Act and regulation 13 of these Regulations;

"Hague Convention" for purposes of Chapter IV of these Regulations, means the Hague Convention on International Child Abduction;

"lay forum" means a lay forum as provided for in section 71 of the Act and regulation 14 of the Regulations;

"pre-hearing conference" means a pre-hearing conference as provided for in section 69 of the Act and regulation 12 of these Regulations;

"regional head" means the person appointed in the position of manager of each of the nine regional offices of the department;

"respondent", for the purposes of Chapter IV of these Regulations, includes a person who removed or retained a child, or who prevented the exercise of rights of access to a child; and

"the Act" means the Children's Act, 2005 (Act No. 38 of 2005).

CHAPTER II

CLERKS OF CHILDREN'S COURTS

Application for appointment as clerk

2. An application for appointment as a clerk, as provided for in section 67(1) of the Act, must be in writing on Form Z 83(81/971431) as prescribed by the Department of Public Service Administration and must be submitted to the Director-General.

Appointment requirements for clerk

3. A person may be appointed as a clerk by the Director-General if he or she complies with the appointment requirements as stipulated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the appointment policies developed by the department for a post of administrative clerk in the department.

Conditions of appointment of clerk

4. (1) The Director-General may appoint a person as a clerk for the period agreed to between the Director-General and the person, who is entitled to an all inclusive remuneration package equal to that of an administrative clerk in the department.

(2) The conditions of service of a person appointed as a clerk in terms of subregulation (1) are the same as the conditions of service applicable in respect of a person appointed as clerk of a magistrate's court in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Additional functions, powers and duties of clerk

5. In addition to the functions determined by the Act, a clerk must—
- (a) upon receipt of a notification as provided for in regulation 6 open a file and number the matter with a consecutive number for the year;
 - (b) keep and update a register regarding all the matters brought to the court which corresponds substantially with Form 1 of the Annexure;
 - (c) mark every document received afterwards relating to that matter with the number as assigned to the specific matter;
 - (d) file any documentation received on the appropriate file;
 - (e) assist, to the best of his or her ability, any person who requires assistance with the completion of any document relating to the proceedings in the court;
 - (f) perform the duties assigned to him or her in terms of these Regulations;
 - (g) inform a witness who is subpoenaed by the presiding officer of the court in the matter that he or she is entitled to witness fees and ensure that the witness is assisted in this regard, where necessary;
 - (h) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act; and
 - (i) keep a register of investigators appointed by the court in terms of section 75(1)(b) of the Act, in which the following must be entered—
 - (i) the full names of the investigator;
 - (ii) the identity number of the investigator;
 - (iii) the address and contact details of the investigator; and
 - (iv) the matter for which the investigator was appointed.

CHAPTER III
CHILDREN'S COURTS

Part 1: Children's Court Proceedings

Bringing matter to court

6. (1) A person referred to in section 53 of the Act, who intends to bring a matter to court in terms of that section, must notify the clerk of his or her intention to do so on a form which corresponds substantially with Form 2 of the Annexure.

(2) The clerk must, within five days after receipt of the notice referred to in subregulation (1), refer the matter to a presiding officer of the court, who must, within seven days after receiving the documentation relating to the matter, refer—

- (a) the matter for mediation to a—
 - (i) family group conference in terms of section 70 of the Act; or
 - (ii) lay-forum in terms of section 71 of the Act;
- (b) the matter for a pre-hearing conference in terms of section 69(1) of the Act; or
- (c) the matter to court.

Attendance of proceedings

7. (1) If the presiding officer of the court decides under regulation 6(2)(c) that the matter should be referred to court, or if the matter was referred back to the court by a facilitator of a family group conference or by a chairperson of a lay forum, the presiding officer of the court in question must assign a date for the matter to be heard in court, which date must be within 30 days after the presiding officer of the court has decided that the matter must be heard in court or after the matter was referred back to the court by a facilitator of a family group conference or a chairperson of a lay forum.

(2) The clerk must, within five days after the presiding officer of the court has assigned a court date as referred to in subregulation (1), and at least 15 days before the date of the hearing, notify the parties, to attend the proceedings of the court, on a form which corresponds substantially with Form 4 of the Annexure.

- (3) The notice referred to in subregulation (2) must be—
- (a) served personally on a party by a sheriff, a clerk, or a person authorised by the presiding officer of the court;
 - (b) submitted to a party by registered post; or
 - (c) served or submitted in any other manner as directed by the presiding officer of the court.

(4) A written report as provided for in section 63(1) of the Act must be submitted to the presiding officer of the court no later than 10 days prior to the hearing of the matter.

Deviation from time periods

8. (1) A party to the proceedings in a court, or his or her legal representative, may request the court for a deviation from any period of time prescribed in these Regulations, which request must be in writing, stating the reasons for the request and submitting any proof to substantiate his or her reasons.

- (2) A court may—
- (a) grant a deviation from any period of time prescribed in these Regulations, on the conditions that the court deems fit, if any other party—
 - (i) did not raise any objections; or
 - (ii) did not respond but that party's rights will not be affected if a deviation from any period of time prescribed in these Regulations is granted;
 - (b) refuse a deviation from any period of time prescribed in these Regulations, if any other party—
 - (i) raises an objection and that party's rights may be affected if a deviation from any period of time prescribed in these Regulations is granted; or
 - (ii) does not respond but that party's rights may be affected if a deviation from any period of time prescribed in these Regulations is granted.

Witnesses

9. (1) The clerk may subpoena any person to appear as a witness in a matter before the court at least 10 days before the date of the hearing on a form that corresponds substantially with Form 6 of the Annexure.

(2) A person referred to in section 59(1)(b) or (c) of the Act, who intends to have a witness subpoenaed must, within 15 days before the date of the hearing, request the clerk to issue a subpoena to that witness, and the clerk must without delay issue the subpoena.

(3) The subpoena referred to in subregulation (1) must be—

- (a) served personally on a party by a sheriff, a clerk, or a person authorised by the presiding officer of the court;
- (b) submitted to a party by registered post; or
- (c) served or submitted in any other manner as directed by the presiding officer of the court.

Additional powers of court

10. (1) A court may, if there is any uncertainty regarding the age of a person who appears to be a child—

- (a) request any documentation, evidence or statements relevant to the estimation of the age of that person from any person, body or institution; or
- (b) refer that person to a medical practitioner employed by the state of the court's choice for an estimation of that person's age.

(2) The medical practitioner referred to in subregulation (1)(b), must complete a form which corresponds substantially with Form 7 of the Annexure.

(3) In the absence of a valid birth certificate, identity document or passport, the court must, on all the available evidence make an estimation of the age and possible date of birth of the person referred to in subregulation (1) by using, as a guide—

- (a) Form 7 of the Annexure completed by a medical practitioner as provided for in subregulation (1)(b); or

(b) a record of immunisation issued by a clinic.

(4) An estimation of age in terms of subregulation (3), must be entered into the court record as the estimated age and date of birth of the person.

(5) Where a court makes an estimation of age in terms of subregulation (3), a form which corresponds substantially with Form 8 of the Annexure must be completed and handed to the social worker involved with the matter to be handed in at the Department of Home Affairs to be dealt with in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992) and the Identification Act, 1997 (Act No. 68 of 1997).

Part 2: Investigations, Conferences and Forums

Investigations

11. (1) An order of a court in terms of section 50 of the Act to carry out an investigation or further investigation must be on a form which corresponds substantially with Form 9 of the Annexure.

(2) A person who has been ordered by a court in terms of section 50(1) of the Act to carry out an investigation or further investigation may, for the purpose of performing his or her functions—

(a) question any person who is likely to give material or relevant information about any matter that the court ordered him or her to investigate; and

(b) request a person to identify himself or herself to the satisfaction of the investigator.

(3) An investigator may, in investigating a matter so ordered by a court and with due consideration to expediting the investigation of that matter, request any person to—

(a) meet with him or her at a specific time and place on a specific date; and

(b) provide him or her at the meeting, with information relating to the matter and documentary proof of the information, if applicable.

(4) (a) A request referred to in subregulation (2) may be made in the manner the investigator deems fit.

(b) An investigator must keep a written record of—

- (i) the manner in which the request referred to in paragraph (a) was made;
- (ii) any matter he or she investigates;
- (iii) any meetings held with him or her; and
- (iv) the outcome of the investigation.

(5) After the investigator has concluded the investigation ordered by a court he or she must compile a written report which must contain the following information:

- (a) The matter which was investigated;
- (b) the reason for the investigation;
- (c) the manner of the investigation; and
- (d) the outcome of the investigation.

(6) The investigator must submit the report referred to in subregulation (5) to the court within 10 days after the conclusion of the investigation.

Pre-hearing conferences

12. (1) If a court has ordered that a pre-hearing conference as provided for in section 69 of the Act must be held, the court—

- (a) must direct who must attend the pre-hearing conference;
- (b) must direct who will chair the pre-hearing conference; and
- (c) may, if necessary, direct that a court interpreter must attend the pre-hearing conference.

(2) The clerk must, within three days after an order referred to in subregulation (1) is made—

- (a) assign a date for the pre-hearing conference, which must be within 10 days after the order was made; and
- (b) notify the parties involved on a form which corresponds substantially with Form 3 of the Annexure, of the date, place and time of the pre-hearing conference, and keep record of how the parties were notified.

(3) At a pre-hearing conference the chairperson of the pre-hearing conference must—

- (a) give directions in respect of the conduct of the proceedings as he or she deems fit; and
- (b) if a party is unrepresented, inform him or her of his or her right to be represented at his or her own expense by a legal representative of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid, and of the institutions which he or she may approach for legal assistance.

(4) The chairperson of a pre-hearing conference must, within five days after the conclusion of the pre-hearing conference, submit to the court a full written report of the pre-hearing conference, containing—

- (a) any agreement reached between the parties;
- (b) any settlement reached between the parties;
- (c) any matters to be dealt with by the court; and
- (d) any other matter the chairperson deems necessary.

(5) If a party fails to attend a pre-hearing conference without any good cause, after having been notified thereof as provided for in subregulation (2)(b), the chairperson of the pre-hearing conference may—

- (a) proceed with the pre-hearing conference in the absence of that party;
 - (b) postpone the pre-hearing conference if that party is likely to make a valuable contribution regarding the best interests of the child in question;
- or
- (c) refer the matter back to the court for a hearing.

Family group conferences

13. (1) If a court orders that the matter must be referred to a family group conference as provided for in section 70 of the Act for mediation, the presiding officer of the court must appoint a person or organisation as provided for in subregulation (2), as facilitator of the family group conference.

(2) The facilitator of a family group conference may be any suitably qualified person, including, but not limited to—

- (a) a family advocate;
- (b) a social worker;
- (c) a social service professional; or

(d) a traditional leader.

(3) On receipt of an order as provided for in regulation 6(2)(a)(i) the clerk must, within three days, in the manner determined by the court—

- (a) refer the matter to the facilitator by means of a form which corresponds substantially with Part A of Form 5 of the Annexure;
- (b) submit all certified copies of all the relevant documentation relating to the matter, to the facilitator;
- (c) retain original documents relating to the matter;
- (d) forward a copy of the referral to the parties; and
- (e) notify the parties of the documents submitted to the facilitator.

(4) After a facilitator has received the documentation as provided for in subregulation (3), he or she must convene a family group conference within 10 days but not later than 15 days after receipt of the documentation by—

- (a) setting the time, date and place of the conference; and
- (b) taking steps to ensure that all persons entitled to attend the conference are notified within a reasonable time, of the time, date and place of the conference.

(5) No notice referred to in subregulation (4)(b) needs be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subregulation does not affect the validity of the proceedings of a family group conference.

(6) Where a family group conference fails to take place on the time, date and place determined in terms of subregulation (4), the facilitator must arrange for an alternative date and notify the persons entitled to attend the family group conference accordingly.

(7) The facilitator must confer with the parties and endeavour to obtain an agreement or settlement in respect of the matter.

(8) Before entering into discussions at a family group conference, and subject to any directions given by the presiding officer of the court, the parties must decide whether the facilitator is to file—

- (a) a full report on the conference, including anything that the facilitator considers to be relevant to the matter; or

(b) a report that either sets out any agreement reached by the parties or states only that the parties did not reach agreement on the matter.

(9) The report referred to in subregulation (8) and any agreement or settlement reached between the parties must be submitted to the clerk within 15 days after conclusion of the family group conference, who must submit it to the court for the court to make any agreement or settlement reached an order of the court.

(10) If a facilitator refers the matter back to the court for a hearing, that referral must be in writing on a form which corresponds substantially with Part B of Form 5 of the Annexure, stating the reasons why the matter was referred back.

(11) A court must, within five days from the date on which the matter was received back, order that the matter must be heard in court and the clerk must—

- (a) within three days after that order, assign a date for the matter to be heard in court; and
- (b) notify the parties involved in the matter on a form which corresponds substantially with Form 4 of the Annexure of the date, place and time of the hearing.

Lay forums

14. (1) If a court orders that the matter must be referred for mediation to a specified lay forum as provided for in section 71 of the Act, the clerk must, within three days of receipt of the order, in the manner determined by the court—

- (a) refer the matter to a specific lay forum by means of a form which corresponds substantially with Part A of Form 5 of the Annexure;
- (b) submit certified copies of all the relevant documentation relating to the matter, to the lay forum;
- (c) retain original documents relating to the matter;
- (d) forward a copy of the referral to the parties; and
- (e) notify the parties of the documents submitted to the lay forum.

(2) After a lay forum has received the documentation referred to in subregulation (1), that lay forum must within five days, appoint a person to act as chairperson, who must arrange a meeting within 10 days but not later than 15 days after receipt of the documentation by the lay forum by—

- (a) setting the time, date and place of the meeting; and
- (b) taking steps to ensure that all persons entitled to attend the meeting are notified within a reasonable time, of the time, date and place of the meeting.

(3) No notice referred to in subregulation (2)(b) need be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subregulation does not affect the validity of the proceedings of a lay forum meeting.

(4) Where a lay forum meeting fails to take place, the chairperson must arrange for an alternative date and notify the persons entitled to attend the lay forum meeting accordingly.

(5) The chairperson of a lay forum must confer with the parties and endeavour to obtain an agreement or settlement in respect of the matter.

(6) Before entering into discussions at a lay forum, the parties to that lay forum must, subject to any directions given by the presiding officer of the court, decide whether the chairperson is to file—

- (a) a full report of the meeting, including anything that the chairperson considers relevant to the matter; or
- (b) a report that either sets out any agreement or settlement reached by the parties or states only that the parties did not reach agreement on the matter.

(7) The report referred to in subregulation (6), together with any agreement or settlement reached by the lay forum, must be submitted to the clerk within 15 days after conclusion of the proceedings of the lay forum, who must submit it to the court for the court to make any agreement or settlement reached an order of the court.

(8) If a lay forum refers the matter back to the court for a hearing, that referral must be in writing on a form which corresponds substantially with Part B of Form 5 of the Annexure, stating the reasons why the matter was referred back.

(9) The court must, within five days from the date on which the matter was received back, order that the matter must be heard in court and the clerk must—

- (a) within three days after that order, assign a date for the matter to be heard in court; and
- (b) notify the parties involved in the matter on a form which corresponds substantially with Form 4 of the Annexure of the date, place and time of the hearing.

CHAPTER IV INTERNATIONAL CHILD ABDUCTION

Application for return of child to the Republic

15. (1) An application for the return of a child under Article 8 of the Hague Convention from another contracting state to the Republic, must be in writing on a form that corresponds substantially with Form 10 of the Annexure.

(2) An application as provided for in subregulation (1) must be accompanied by—

- (a) recent photographs of the child and of the person alleged to have removed or retained the child;
- (b) a certified copy of the birth certificate of the child;
- (c) proof of parental rights and responsibilities;
- (d) a certified copy of the marriage certificate, where applicable;
- (e) sworn translations of all the relevant documentation in English, if the documentation is in a language other than English; and
- (f) a sworn affidavit setting out the chronological exposition of events and circumstances leading to the abduction of the child.

(3) An application as provided for in subregulation (1) must be submitted to the Central Authority of the Republic, who must, within 48 hours of receipt thereof, forward it to the Central Authority of the country to which the child has been taken.

Access to child wrongfully removed or retained

16. (1) An application for access to a child wrongfully removed to the Republic or retained in the Republic must be—

- (a) in writing on a form which corresponds substantially with Form 11 of the Annexure; and
- (b) submitted to the office of any Family Advocate in the Republic, which must, without delay, submit the application to the office of the Chief Family Advocate.

(2) Upon receipt of the application as provided for in subregulation (1), the Chief Family Advocate must bring an application, within 15 days after the child has been located, to the High Court having jurisdiction.

Application to return child to a contracting state

17. (1) If a child has been wrongfully removed to the Republic or retained in the Republic, the Central Authority of the Republic must—

- (a) upon receipt of the documents from the other country's Central Authority, study the application; and
- (b) within 10 days after the child has been located, bring an application to the High Court on behalf of the parent or person with parental rights and responsibilities from whom the child has been wrongfully removed, to have the child returned to his or her place of habitual residence.

(2) An application for assistance made by an applicant to the Chief Family Advocate must, unless the contrary is proved, be deemed to constitute authorisation by the applicant for the Chief Family Advocate or a Family Advocate to exercise any power and perform any duty conferred or imposed on him or her under the Hague Convention, and to appear on the applicant's behalf in any proceedings that may be necessary under the Hague Convention.

Appointment of persons by Chief Family Advocate

18. (1) Where no Government department is able to grant the assistance sought or where the Chief Family Advocate considers it necessary to give effect to the provisions of the Hague Convention he or she may, subject to any condition he or she may deem appropriate, appoint any person to assist him or her, or a Family Advocate, to exercise any power or perform any duty conferred or imposed upon the Central Authority of the Republic under the Hague Convention.

(2) The appointment referred to in subregulation (1) and any condition thereof must be in writing and a certified copy of the original appointment must be handed to the person concerned: Provided that in urgent cases the appointment may be made orally but must subsequently be confirmed in writing without delay.

Obstruction of Chief Family Advocate, Family Advocate or person appointed

19. Any person who hinders or obstructs the Chief Family Advocate, a Family Advocate or a person appointed by the Chief Family Advocate in terms of regulation 18 in the exercise of his or her powers or the performance of any duty conferred or imposed on him or her under the Hague Convention, the Act or these Regulations is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Court appearances

20. The Chief Family Advocate or a Family Advocate must appear on behalf of an applicant in any court proceedings that may be necessary to give effect to the provisions of the Hague Convention, where the applicant does not—

(a) qualify for legal aid in terms of the Legal Aid Act, 1969 (Act No. 22 of 1969), read with Article 25 of the Hague Convention; or

- (b) wish to appoint a legal representative of his or her choice.

Fees of person appointed by Chief Family Advocate

21. (1) Any person appointed in terms of regulation 18 who is not in the employ of the Public Service is entitled to the following fees for assistance thus rendered by him or her:

- (a) Where he or she is a tracing agent or some other person appointed to locate a child or any other person: an amount of not more than R500 if the child or other person is located; or
- (b) where he or she is a social worker or some other person appointed to investigate and report on the social background, living conditions or other circumstances of a child or to obtain any other information or to harbour, keep safe or escort a child and, for the purposes of rendering such assistance—
- (i) the transport allowance as prescribed from time to time for the Public Service; and
- (ii) if he or she is required to rent overnight accommodation or is absent for a period of 24 hours or longer from the city or town where he or she normally works or resides—
- (aa) the reasonable actual expenses incurred; or
- (bb) the subsistence expenses as prescribed from time to time for the Public Service.

(2) A person referred to in subregulation (1) must, when submitting a claim for actual real expenses incurred by him or her, submit the necessary receipts, vouchers or any other proof in support of his or her expenses to the Central Authority of the Republic, whose decision regarding the amounts payable in terms of this regulation is final.

Recovery of expenditure

22. (1) Where an application for the return of a child has been successful, the state may recover from the applicant the expenses incurred or to be incurred in bringing about the return of the child.

(2) Where an application for the return of a child or for the right of access to a child has been successful and no order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant, the State may recover those expenses or costs from the respondent.

(3) Any expenses or costs recovered by the State in terms of subregulation (1) or (2) shall accrue to the National Revenue Fund.

(4) Where an application for the return of a child or for the right of access to a child has been successful and an order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant, those expenses, costs or fees shall accrue to the National Revenue Fund.

Expeditious handling of proceedings

23. (1) Proceedings for the return of a child under the Hague Convention must be completed within six weeks from the date on which judicial proceedings were instituted in a High Court, except where exceptional circumstances make this impossible.

(2) The following procedural steps are intended to ensure that applications under the Hague Convention are handled expeditiously:

- (a) A High Court file must be clearly marked and must—
 - (i) draw attention to the nature of the application; and
 - (ii) state the date on which the six week period will expire;
- (b) priority must, where necessary, be given to these applications;
- (c) the transcript of the judgment and its approval must be expedited; and
- (d) the transcript of the judgment and its approval must be sent to the Central Authority of the Republic without delay.

Procedure in High Court

24. Where an application has been made to a High Court by the Central Authority of the Republic under the Hague Convention, that Court may, at any time before the application is determined, give any interim direction that it deems fit in order to regulate any aspect of the progress of an application under

the Hague Convention and to ensure the welfare of the child in question and to prevent any changes in the circumstances relevant to the determination of the application.

Declarations by High Court

25.

A High Court may, on an application made for the purposes of Article 15 of the Hague Convention by any person appearing to that Court to have an interest in the matter, make a declaration that the removal of any child from, or his or her retention outside the Republic, was wrongful within the meaning of Article 3 of the Hague Convention.

Proof of documents and evidence

26. (1) For the purposes of Article 14 of the Hague Convention a decision or determination of a judicial or administrative authority of a country outside the Republic may be proved by a duly authenticated copy of the decision or determination and any document purporting to be such a copy is deemed to be a true copy, unless the contrary is shown.

(2) For the purposes of subregulation (1), a copy is duly authenticated if it bears the Seal of that country, or is signed by a judge or an officer of the authority in question.

(3) For the purposes of Articles 14 and 30 of the Hague Convention, any document as is mentioned in Article 8 of the Hague Convention, or a certified copy of any such document, is sufficient evidence of anything stated in it.

Power to order disclosure of child's whereabouts

27. (1) Where in proceedings for the return of a child there is no adequate information available regarding the whereabouts of the child, the High Court may order any person whom it has reason to believe may have relevant information, to disclose it to the Court.

(2) A person may not be excused from complying with an order under subregulation (1) by reason that to do so may incriminate him or her or his or her spouse.

Evidence in support of application

28. If a party making an application in terms of this Chapter, does not produce the relevant documents a High Court may—

- (a) fix a time within which the documents are to be produced;
- (b) accept equivalent documents; or
- (c) dispense with production of the documents.

Response

29. (1) Subject to subregulation (2), a respondent must file and serve on the parties a response to an application within five days, beginning with the date on which the application is served.

(2) A High Court may direct a period longer than that provided for in subregulation (1) for service where the respondent has been made a party if he or she appears to that Court to have sufficient interest in the welfare of the child.

(3) The applicant may, within five days, beginning with the date on which a respondent's response is served on him or her, file and serve a statement in reply.

Adjournment

30. A High Court may not adjourn court proceedings to give effect to the Hague Convention for more than 15 days at any one time.

Assistance to prevent removal from jurisdiction

31. (1) If a parent, guardian or person with parental responsibility of a child suspects that there is an imminent danger or a likelihood that the

child may be wrongfully removed from the Republic, that parent, guardian or person with parental responsibility must immediately inform the Central Authority of the Republic of that danger or likelihood who must—

- (a) in the case of an imminent danger of wrongful removal, request the assistance of the South African Police Service to—
 - (i) inform border posts directly when there is a real and imminent threat that a child is about to be removed unlawfully from the Republic; and
 - (ii) liaise with Immigration Officers at the border posts in an attempt to identify the child at risk of removal; or
- (b) in the case of a likelihood of wrongful removal, request the Department of Home Affairs not to issue a passport in respect of the child without—
 - (i) a High Court's permission; or
 - (ii) the consent of the other parent, guardian or person with parental responsibility.

(2) A request for police assistance as provided for in subregulation (1)(a) must be accompanied by the following information—

- (a) the name, gender, date of birth, physical description, nationality and passport number of the child;
- (b) the name, age, physical description, nationality, passport number and relationship of the person to the child, who is likely to remove the child;
- (c) whether the child is likely to assist the person likely to remove him or her;
- (d) the name and contact details of the person at the Central Authority of the Republic who is requesting the border post alert referred to in subregulation (1)(a);
- (e) the destination to which the child is likely to be removed;
- (f) the likely time of travel and border post embarkation;
- (g) the grounds for the border post alert referred to in subregulation (1)(a); and
- (h) the details of the person to whom the child should be returned if he or she is intercepted.

(3) If a border post is alerted to the danger of a wrongful removal of a child from the Republic, the child's name must be listed and must

remain on that list for four weeks, after which it may be removed, unless a further request of a similar nature is made.

Surrender of passport documents

32. Where a High Court grants an order restraining the removal of a child from the Court's jurisdiction and the child or potential abductor holds a South African passport, the Court may—

- (a) order the surrender of any passport issued to, or which contains particulars of, that child; and
- (b) notify the Department of Home Affairs in every case in which the surrender of a South African passport has been ordered, to prevent the re-issue of such a passport.

CHAPTER V

MISCELLANEOUS

Keeping of records

33. (1) (a) A court is a court or record and proceedings before it in terms of section 57 of the Act must be recorded verbatim, in narrative form or by mechanical means.

(b) Despite paragraph (a), a court must, in respect of each matter before it, record the information indicated in Form 17 of the Annexure in so far as it is applicable.

(2) (a) The record of proceedings includes any judgment handed down or ruling or order made by the court, any viva voce evidence given in court, any exception taken or objection made to any evidence received or tendered and the proceedings of the court generally, including the addresses of any of the parties or the record of any inspection *in loco*.

(b) The court must mark each document submitted as evidence and note that mark on the record.

(3) Rule 30(5) to (12) of the Rules of Court made under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), applies with the changes

required by the context and in so far as it is applicable in respect of the transcription of any court records and copies thereof.

(4) A record of proceedings may only be disposed of after the expiry of—

- (a) a period of 10 years since the date of finalisation of the matter in question; or
- (b) a period of three years after a contribution order was made, in the case of records relating to contribution orders.

(5) Any party to the proceedings may have access to that record of proceedings—

- (a) during office hours at the court where the matter was dealt with; and
- (b) under the supervision of the clerk.

(6) Any person, other than a party to the proceedings, may in writing apply to the presiding officer of the court where the matter was dealt with, to have access to the record of proceedings, stating reasons why access should be granted.

(7) The presiding officer of the court may—

- (a) refuse access to the record of proceedings; or
- (b) grant access to record of proceedings, or any part thereof—
 - (i) during office hours at the court where the matter was dealt with;
 - (ii) under the supervision of the clerk;
 - (iii) against payment of the amount, as amended from time to time, prescribed in terms of section 7 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and
 - (iv) on any other conditions he or she may determine;

(8) Notwithstanding the provisions of subregulation (7), a presiding officer of the court may give approval in a specific case for the record of proceedings to be accessible free of charge—

- (a) for official or research purposes; and
- (b) for the purpose of publishing a report on the proceedings in a publication which is intended to be read mainly by social workers, probation officers, medical practitioners, dentists, child and youth care workers, nurses, psychologists, educationists, lawyers, criminologists, jurists or members of any other relevant profession.

Submission of statistics to Magistrates Commission

34. (1) Each regional head must, when preparing quarterly reports on the Implementation of the Medium Term Strategic Framework of the Department (MTSF), include in his or her implementation report, on a form which corresponds substantially with Form 18 of the Annexure, statistics as indicated in Form 18.

(2) The Director-General must, as soon as possible after receipt of the reports referred to in subregulation (1), consolidate the statistics in question and make them available to the Magistrates Commission in accordance with Form 18 of the Annexure.

Remuneration of persons not in employ of state

35. (1) The remuneration paid to persons not in the employ of the state as provided for in section 75(1)(j) of the Act must be paid by the state if the person acted by direction of the court.

(2) A person referred to in subregulation (1) is entitled to the following remuneration for each 24 hours or part thereof for which that person is absent from his or her residence or place of sojourn:

(a) The reasonable actual expenses if it is necessary to hire accommodation for the night; and

(b) (i) R200; or

(ii) the reasonable actual expenses incurred for meals on submission of proof of the expenses to the satisfaction of the court manager.

(3) The remuneration provided for in subregulation (2) is payable for the full period for which the person referred to in subregulation (1) is absent from his or her residence or place of sojourn.

(4) In calculating the period of absence for purposes of subregulation (2), a person referred to in subregulation (1) is allowed 24 hours for each distance of 300 kilometres or part thereof travelled.

(5) The remuneration provided for in subregulation (2) is not payable if the fare of a person referred to in subregulation (1) includes the cost of meals and accommodation.

(6) A person referred to in subregulation (1) may claim his or her actual real travel expenses: Provided that he or she may only use air transport at state expense only if the magistrate's court manager—

(a) is satisfied that the use thereof is warranted; and

(b) has approved that the person may make use of air transport.

(7) On satisfactory proof having been produced, a person referred to in subregulation (1) is entitled to be reimbursed for his or her reasonable actual expenses incurred in respect of parking and toll fees.

(8) A magistrate's court manager may, at the written request of a person referred to in subregulation (1), and on receipt of satisfactory proof from that person that he or she has suffered loss of earnings as a result of his or her assistance in a matter as provided for in section 49, 50, 62, 69, 70 or 71 of the Act, by direction of a court, order that the person be paid an amount equal to the actual loss of earnings he or she suffered, but not exceeding R2 500 per day, in addition to any other amount to which he or she is entitled under this regulation.

(9) If a person referred to in subregulation (1) is required to submit a professional report to the court, he or she is entitled to an amount determined by the magistrate's court manager, which may not exceed R500.

(10) The Director-General may authorise a deviation from the amounts provided for in subregulations (8) and (9), on the written request of a person referred to in subregulation (1), supporting his or her request by proof, to the satisfaction of the Director-General.

(11) The remuneration paid to a person not in the employ of the state as provided for in section 75(1)(j) of the Act must be paid by a party if the person acted at the request of that party, which amount will be an amount agreed upon by the party and the person not in the employ of the state.

Contribution orders

36. (1) A clerk must, at the request of the presiding officer of the court, issue a summons on a form which corresponds substantially with Form 12 of the Annexure, calling on a respondent to appear before the court at a time and place stated in the summons in order to show cause why a contribution or attachment of wages order should not be made against him or her, as provided for in section 161 of the Act.

(2) (a) A notice of an application by a presiding officer of the court for the variation, suspension, rescission or revival of a contribution or attachment of wages order shall be on a form which corresponds substantially with Form 13 of the Annexure and must be duly served on the respondent.

(b) An application by a respondent for the variation, suspension, rescission or revival of a contribution or attachment of wages order shall be made on a form which corresponds substantially with Form 14 of the Annexure, and shall be lodged with the clerk or the presiding officer of the court, as the case may be.

(3) A summons referred to in subregulation (1) and a notice referred to in subregulation (2)(a) shall be—

- (a) served personally on a person by a sheriff, clerk, or a person authorised by the presiding officer of the court;
- (b) submitted to the person by registered post; or
- (c) served or submitted in any other manner as directed by a presiding officer of the court.

(4) A contribution order or a provisional contribution order shall be made on a form which corresponds substantially with Form 15 of the Annexure, and a certified copy thereof shall be handed to the respondent or be sent to him or her by registered mail.

(5) The clerk shall send a copy of the said contribution order to—

- (a) the Director-General: Social Development; and
- (b) the social worker involved in the case.

(6) An order to an employer in terms of section 165 of the Act for the deduction of an amount from the wages of respondent in compliance

with a contribution order shall be made on a form which corresponds substantially with Form 16 of the Annexure and a certified copy thereof shall be handed to the respondent or be sent to him or her by registered mail by the clerk.

Patent errors

37. A court may, upon the application by any person affected by a decision of that court, or of its own accord, correct patent errors in any ruling in respect of which no appeal is pending.

Offences and penalties

38. Any person who submits false information, fails to submit any information if so required, or who does not adhere to a direction in terms of a provision of these Regulations is guilty of an offence and is on conviction liable to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Short title and commencement

39. These regulations are called the Regulations relating to Children's Courts and International Child Abduction, 2010 and shall come into operation on 1 April 2010.

ANNEXURE

FORM 1

REGISTER REGARDING MATTERS BROUGHT TO THE CHILDREN'S COURT IN TERMS OF SECTION 53 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 5]

File number:				Entry made by (name of clerk):	Date	Signature
IN THE MATTER OF:						
Full name(s) of child(ren)	Child					
	1					
	2					
	3					
Date of birth	Child					
	1					
	2					
	3					
Gender	Child					
	1					
	2					
	3					
AND:						
Full names of parents/ care-givers/ guardians						
PARTICULARS OF MATTER:						
Date notice/application is received:						
Reason for notice/application:						
Presiding officer:						
Referred: (Pre-hearing conference/Family group conference/other lay forum)	Yes		No			
	To:					
Date referred:						
Referred back to court:						
Date Received back:						
Date of hearing:						
Outcome reached:						
Date reached:						

Contribution orders: made/not made/considered:	Made		Not made		Under consideration				
Contribution orders under consideration:	Made		Not made		Date made/not made				

FORM 2

BRINGING MATTER TO CHILDREN'S COURT IN TERMS OF SECTION 53 OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 6]

Note:

1. Affidavits of other persons or other documentary evidence in support of the matter must be attached.
2. Your attention is drawn to the fact that the children's court may adjudicate the matter, refer the matter for mediation to a lay-forum or refer the matter for a family group conference. If the matter is referred back to the children's court the clerk will inform you accordingly.

File No:.....

[If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.]

PART A PARTICULARS OF CHILD(REN)										
Surname:										
	Full names: <i>(state surname of each child as well if surnames are not similar)</i>									Gender
Child 1										
Child 2										
Child 3										
Child 4										
Child 5										
ID. No./Date of birth:										
Child 1										/ /
Child 2										/ /
Child 3										/ /
Child 4										/ /
Child 5										/ /
Residential address(es): <i>(If the addresses are not the same for each child please indicate the addresses on a separate page.)</i>										

Code ()	
Residential telephone number: (if any)	
<i>(If the numbers are not the same for each child please indicate the numbers on a separate page.)</i>	
()	
Cellular number:(if any)	
Child 1	
Child 2	
Child 3	
Child 4	
Child 5	
Physical address (where documents can be served):	
<i>(If the addresses are not the same for each child please indicate the addresses on a separate page.)</i>	
Code ()	
Other relevant information which may assist the court to make a decision regarding the manner in which the matter could best be dealt with in terms of the Children's Act, 2005 (Act No. 38 of 2005)	
<i>(such as financial position, availability of transport, socio-economic status, if an interpreter will be needed and if special requirements are needed e.g. wheelchair access)</i>	
PART B	
PARTICULARS OF CHILD WHO IS AFFECTED BY OR INVOLVED IN THE MATTER/PERSON ACTING IN THE INTEREST OF THE CHILD ON BEHALF OF THE CHILD WHO CANNOT ACT IN HIS/HER OWN NAME/ MEMBER OF A GROUP OF CLASS OF CHILDREN/IN THE PUBLIC INTEREST (SECTION 53(2))	
Surname:	
Full names:	
ID. No./Date of birth:	/ /
Capacity or relationship of person acting in terms of section 53(2):	
Registration number of corporate body: (if applicable)	
Residential address:	

	Code ()
Phone number(h):	()
Cellular phone number:	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Business address:	
	Code ()
Phone number(b):	()
Fax number:	()
Physical address: <i>(where documents can be served)</i>	
	Code ()
E-mail address:	

**PART C
PARTICULARS OF PERSONS HAVING AN INTEREST IN THE MATTER**

Surname:	
Full names:	
ID. No./Date of birth:	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> / /
Capacity of person acting in terms of section 53(2)(b)-(e):	
Registration number of corporate body: <i>(if applicable)</i>	
Residential address <i>(if applicable)</i> :	
	Code ()
Phone number(h):	()
Cellular phone number:	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Business address:	
	Code ()
Phone number(b):	()
Fax number:	()

Physical address (where documents can be served):	
	Code ()
E-mail address:	

PART D: PARTICULARS OF MATTER	
Nature of matter brought to court: (Please give full details of the matter e.g., registration/amendment of parenting plans, removal of child to safe care, children in need of care and protection, placement in youth care centers, adoption etc.)	
Documents: Are there any documents relating to the matter? (If so please attach):	

Signed atthis.....day of.....20.....

.....
Signature/thumbprint/mark of person bringing the matter to court

.....
Full names of person witnessing person who made a thumbprint/mark

.....
Signature of witness to thumbprint/mark

FORM 3

NOTICE TO PARTIES TO ATTEND A PRE-HEARING CONFERENCE IN TERMS OF THE CHILDREN'S ACT, 2005 (ACT NO. 38 OF 2005)

REGULATIONS RELATING TO CHILDREN'S COURTS AND INTERNATIONAL CHILD ABDUCTION, 2010

[Regulation 12]