

REPUBLIC OF SOUTH AFRICA

CHILDREN'S BILL

(MINISTER FOR SOCIAL DEVELOPMENT)

[B -2002]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP KINDERS

(MINISTER VAN MAATSKAPLIKE ONTWIKKELING)

[W ... -2002]

BILL

To define the rights and responsibilities of children; to define parental responsibilities and rights; to determine principles and guidelines for the protection of children and the promotion of their well-being; to regulate matters concerning the protection and well-being of children, especially those that are the most vulnerable; to consolidate the laws relating to the welfare and protection of children; and to provide for incidental matters.

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CHAPTER 1**INTERPRETATION, OBJECTS AND APPLICATION OF THIS ACT****Interpretation**

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

“abandoned”, in relation to a child, means when a child –

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

“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 on a child;
- (b) sexually abusing a child;
- (c) committing an exploitative labour practice in relation to a child; or
- (d) exposing or subjecting a child to behaviour that may psychologically harm the child;

“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 prescribed overseas jurisdiction, means a similar certificate prescribed in the relevant bilateral or multilateral agreement;

“adopted child” means a child adopted by a person in terms of this Act or any legislation regulating the adoption of children before this Act took effect;

“adoption social worker” means –

- (a) a social worker in private practice –
 - (i) who has a speciality in adoption services registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978); and

- (ii) who is accredited in terms of section **278** (1) to provide adoption services; or
- (b) a social worker in the employ of a designated child protection organisation which is accredited in terms of section **278** (1) to provide adoption services;

“adoptive parent” means a person who has adopted a child in terms of this Act or any legislation regulating the adoption of children before this Act took effect;

“alternative care” means care of a child in accordance with section **187**;

“annual Division of Revenue Act” means the Act of Parliament that must be enacted annually in terms of section 214 of the Constitution;

“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;

“authorised officer”, in relation to any specific act, means a person who has no direct or indirect financial interest in the performance of that act and who is authorised in writing by a child and family magistrate 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 –

- (a) within available means, providing the child with –
 - (i) a suitable place to live; and
 - (ii) living conditions that are conducive to the child’s health, well-being and development;

- (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 and 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 rights set out in Chapter 4 of this Act;
- (e) guiding and directing 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, taking into account 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; and
- (i) generally, ensuring that the best interest of the child is the paramount concern in all matters affecting the child;

“care-giver” means any person other than the biological or adoptive parent who factually cares for a child, whether or not that person has parental responsibilities or rights in respect of the child, and includes –

- (a) a foster parent;
- (b) a kinship care-giver;
- (c) a relative who cares for a child in terms of an informal kinship care arrangement;
- (d) a staff member at a child and youth care centre where a child has been placed;
- (e) a person who cares for a child whilst the child is in temporary safe care;
- (f) a primary care-giver who is not the biological or adoptive parent of the child; or
- (g) the child at the head of a child-headed household to the extent that that child has assumed the role of primary care-giver;

“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 for such convention country under Article 6 of the Hague Convention on Inter-country Adoption;

“child” means a person under the age of 18 years, regardless of nationality;

“child affected by HIV/AIDS” means a child who is –

- (a) part of a household in which a person is ill with AIDS;
- (b) orphaned or abandoned because of AIDS;
- (c) HIV positive; or
- (d) ill with AIDS;

“child and family court magistrate” means –

- (a) a person appointed in terms of section 72 (1) as a child and family court magistrate; or
- (b) any existing magistrate assigned by the Minister of Justice to be a child and family court magistrate;

“child and family court registrar” or **“registrar”** means –

- (a) the child and family court registrar appointed in terms of section 92 (1) (a) for the area of a child and family court; or
- (b) an assistant child and family court registrar appointed in terms of section 92 (1) (b);

“child and youth care centre” means a facility described in section 210 (1);

“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 234;

“child in kinship care” means any child who has been placed in court-ordered kinship care;

“Children’s Protector” means the person appointed in terms of section 318 (1);

“collective foster care scheme” means a scheme providing for the reception of children in foster care in accordance with a foster care programme operated by –

- (a) a social, religious or other non-governmental organisation; or
- (b) a group of individuals, acting as care-givers of the children, and managed by a provincial department of social development or a designated child protection organisation;

“commercial sexual exploitation”, in relation to a child, means –

- (a) 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; or
- (b) the trafficking of a child for use in sexual activities, including prostitution or pornography;

“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 181, and includes a provisional

contribution order referred to in section **182** (2);

“control”, in relation to a child, means to be factually responsible for the safety, protection and well-being of the child at any point in time;

“convention country” means, in accordance with the wording of Article 45 of the Hague Convention on Inter-country Adoption –

- (a) a country specified in column A in Schedule **1** to this Act; or
- (b) any other 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;

“court” –

- (a) means a child and family court established by section **54**; and
- (b) except where the wording or the context indicates otherwise, includes any other court;

“court-ordered kinship care” means care of a child as described in section **198** (2);

“delegation”, in relation to a duty, includes an instruction to perform the duty;

“Department” means the national department responsible for the provision of social development services;

“designated child protection organisation” means an organisation designated in terms of section **116** to perform designated child protection services;

“designated child protection service” means a child protection service referred to in section **115**;

“designated social worker” means a social worker in the service of –

- (a) the Department or a provincial department of social development; or
- (b) a designated child protection organisation;

“Director-General” –

- (a) means the head of the Department; or
- (b) in relation to a provision of this Act of which the administration has been assigned by the President by proclamation to another national department or a provincial department, means the head of that national or provincial department;

“drop-in centre” means a facility referred to in section 244 (2);

“early childhood development services” means services referred to in section 106 (2);

“early intervention services” means services referred to in section 158 (1);

“exploitative labour practice” means performing, or assisting another person in performing, an act in contravention of section 240 (1);

“family advocate” means a family advocate appointed in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987);

“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 the child;
- (c) a primary care-giver of the child;
- (d) a grandparent, brother, sister, uncle or aunt of the child;
- (e) 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 198 (1);

“**foster child**” means any child who has been placed in foster care;

“**foster parent**” means a person who has foster care of a child, and includes an active member of an organisation operating a collective foster care scheme and who has been assigned responsibility for the foster care of a child, but excludes a kinship care-giver;

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

“**guardianship**”, in relation to a child, means –

- (a) administering and safeguarding the child’s property and property interests;
- (b) assisting or representing the child in administrative, contractual and other legal matters; or
- (c) giving or refusing any consent required by law in respect of the child, including –
 - (i) consenting to the child’s marriage;
 - (ii) consenting to the child’s adoption;
 - (iii) consenting to the child’s departure or removal from the Republic;
 - (iv) consenting to the child’s application for a passport; and
 - (v) consenting to the alienation or encumbrance of any immovable property of the child;

“**Hague Convention on Inter-country Adoption**” means the 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 2 to this Act;

“**Hague Convention on International Child Abduction**” means the Hague Convention on the Civil Aspects of International Child Abduction, adopted on 25 October 1980 at the Hague, a copy of the English text of which is set out in Schedule 3 to this Act;

“**informal kinship care arrangement**” means an informal arrangement in terms of which a

relative who is not the parent or guardian of a child cares for the child otherwise than in terms of an order of a child and family court;

“in especially difficult circumstances”, in relation to a child, means when a child is in a category referred to in section 231 (1);

“in need of care and protection”, in relation to a child, means when a child is in a situation as set out in section 166;

“integrated development plan”, in relation to a municipality, means the integrated development plan which a municipality must adopt in terms of section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“kinship care-giver” means a relative of a child who has court-ordered kinship care of a child;

“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 a province who is responsible for social development in the province;

“medical practitioner” means a medical practitioner, including a dentist, registered or deemed to be registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

“mental illness” means mental illness as defined in the Mental Health Act, 1973 (Act No. 18

of 1973);

“**Minister**” means the Cabinet member responsible for the protection and well-being of children;

“**Minister of Health**” means the Cabinet member responsible for the administration of health;

“**Minister of Justice**” means the Cabinet member responsible for the administration of justice;

“**municipality**” means a metropolitan, district or local 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 district municipality and a local municipality, “**municipality**” in such provision means the relevant local municipality;

“**National Child Protection Register**” means the register referred to in section 120;

“**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);

“**organ of state**” –

- (a) means an organ of state as defined in paragraphs (a) and (b) of section 239 of the Constitution; and
- (b) when appropriate, includes a court or a judicial officer;

“orphan” means a child who has no surviving parent caring for him or her after one of his or her parents has died;

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

“parental responsibilities”, in relation to a child means the responsibility –

- (a) to care for the child;
- (b) to have and maintain contact with the child; and
- (c) to act as the guardian of the child;

“parental rights”, in relation to a child means the right –

- (a) to care for the child;
- (b) to have and maintain contact with the child; and
- (c) to act as the guardian of the child;

“parent-substitute” means a person appointed in terms of section 38;

“partial care” means taking care of a child in accordance with section 145;

“partial care facility” means any premises or other place used partly or exclusively for the partial care of six or more children, which place may include –

- (a) a private home;
- (b) other privately owned or managed premises: or

- (b) a school, hospital or other state managed premises where partial care is provided by a person other than the school, hospital or other organ of state;

“party”, in relation to a matter before a child and family 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 primary care-giver of the child;
- (e) a prospective adoptive or foster parent or kinship care-giver of the child;
- (f) the department or the designated child protection organisation managing the case of the child; or
- (g) any other person admitted or recognised by the court as a party;

“permanency plan” means a documented plan referred to in section 176 (1) (a) (iii);

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

“prescribed overseas jurisdiction” means a country specified in column B in Schedule 1 with whom the Republic has concluded a bilateral or multilateral agreement on inter-country adoption;

“prevention services” means services referred to in section 158 (2);

“primary care-giver”, in relation to a child, means a person –

- (a) who has the primary parental responsibility or right in caring for the child and who exercises that responsibility and right;
- (b) who cares for a child with the implied or express consent of a person referred to in paragraph (a); or
- (c) who cares for a child whilst the child is in temporary safe care,

but excludes a person who receives remuneration other than a social security grant to care for the child;

“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 Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“quality assurance process” means a developmental quality assurance process in terms of which –

- (a) a team of people connected to a child and youth care centre makes an internal assessment of the centre;
- (b) a team of people unconnected to the centre conducts an independent assessment of the centre;
- (c) an organisational development plan for the centre covering matters prescribed by regulation is established by agreement between the teams; and
- (d) the unconnected team appoints a mentor to oversee implementation of the plan by the management of the centre;

“regulation” means a regulation made in terms of this Act;

“residential care programme” means a programme described in section 210 (2) which is or may be offered at a child and youth care centre;

“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 was made in terms of Chapter 12;

“school” means a public school or an independent school as defined in the South African Schools Act 84 of 1996;

“secure care” means the physical containment of children in a safe and healthy environment conducive to addressing behavioural or emotional difficulties;

“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; or
- (b) 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;

“shelter” means a facility referred to in section 244 (1);

“social security grant” means any of the grants or subsidies provided for in Chapter 23;

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

“**temporary safe care**”, in relation to a child, means care of a child in a child and youth care centre, shelter or private home or any other place of a kind that may be prescribed by regulation, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes a prison or police cell;

“**traditional authority**” means a traditional authority as defined in the Transitional Executive Council Act, 1993 (Act No. 151 of 1993);

“**this Act**” includes –

- (a) any regulation made in terms of this Act;
- (b) the national policy framework referred to in section 5;
- (b) the rules regulating the proceedings of the child and family courts in terms of section 75 (1) or (2);

“**traffic**”, in relation to a child, means to take a child from one place to another for the purposes of financial or other gain or favour and without lawful authority to do so;

“**undocumented migrant child**” means a child who is unlawfully in the Republic after an illicit entry into the Republic by the child or the child’s parents;

“UN Protocol to Prevent Trafficking in Persons” means the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime, 2000, a copy of the English text of which is set out in Schedule 4.

(2) 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.

Objects of this Act

2. The objects of this Act are –
- (a) to make provision for structures, services and means for promoting and monitoring the sound physical, intellectual, emotional and social development of children;
 - (b) to strengthen and develop community structures which can assist in providing care and protection for children;
 - (c) to protect children from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical and moral harm or hazards;
 - (d) to provide care and protection for children who are –
 - (i) suffering from maltreatment, abuse, neglect, degradation, discrimination, exploitation or any other physical and moral harm or hazards;
 - (ii) in need of care and protection; or
 - (iii) in especially difficult circumstances;
 - (e) to give effect to the Republic’s obligations concerning the well-being of children in terms of international instruments binding on the Republic; and
 - (f) generally, to promote the protection, development and well-being of children.

Conflicts with other legislation

3. (1) In the event of a conflict between a section of this Act and –

- (a) other national legislation relating to the protection and well-being of children, the section of this Act prevails;
- (b) 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
- (c) a municipal by-law relating to the protection and well-being of children, the section of this Act prevails.

(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 of the Constitution; and
- (c) a municipal by-law, the regulation made in terms of this Act prevails.

(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;
- (b) the national policy framework referred to in section 5; or
- (c) a rule regulating the proceedings of child and family courts in terms of section 75 (1).

CHAPTER 2

INTER-SECTORAL IMPLEMENTATION OF THIS ACT

Implementation of this Act

4. This Act must be implemented by organs of state in the national, provincial and local spheres of government subject to –

- (a) any specific section of this Act and regulations allocating roles and responsibilities; and

- (b) the national policy framework published in terms of section 5.

National policy framework

5. (1) The Minister –

- (a) must prepare a national policy framework to guide the implementation, enforcement and administration of this Act in order to secure the protection and well-being of children in the Republic;
- (b) must review the policy framework at least once every five years; and
- (c) may, when necessary, amend the policy framework.

(2) The Minister must publish the national policy framework and each amendment of the framework by notice in the Government Gazette.

(3) The national policy framework binds –

- (a) all organs of state in the national, provincial and local spheres of government;
- (b) all designated child protection organisations; and
- (c) any other non-governmental organisations involved in implementing government or government-aided programmes and projects concerning children.

Contents

6. (1) The national policy framework must –

- (a) be a coherent policy directive appropriate for the Republic as a whole to guide the protection and well-being of children;
- (b) provide for an integrated, coordinated and uniform approach by organs of state in all spheres of government and non-governmental organisations on which it is binding; and
- (c) be consistent with the provisions of this Act.

(2) The national policy framework must reflect the following core components:

- (a) national objectives to secure the protection and well-being of all children in the

Republic;

- (b) priorities and strategies to achieve those objectives, including strategies referred to in sections **106, 113, 161, 211** and **232**;
- (c) performance indicators to measure progress with the achievement of those objectives;
- (d) a framework for co-operative governance on a cross-functional and multi-disciplinary basis in the implementation of this Act;
- (e) the allocation to the different spheres of government and to different organs of state of primary and supporting roles and responsibilities in this regard;
- (f) the engagement of non-governmental organisations in the implementation, enforcement and administration of this Act and in the development and implementation of programmes and projects giving effect to this Act; and
- (g) measures to ensure adequate funds for securing the protection and well-being of all children in the Republic, including such funds as are required for the implementation, enforcement and administration of this Act .

Consultative process

7. (1) Before publishing the national policy framework or any amendment to the framework, the Minister must –
- (a) generally follow a consultative process as may be appropriate in the circumstances;
 - (b) consult with –
 - (i) Cabinet members whose departments are affected by the framework or amendment; and
 - (ii) organs of state in other spheres of government in accordance with the principles of co-operative government as set out in Chapter 3 of the Constitution; and
 - (c) allow public participation in the process in accordance with section **8**.

(2) The Minister may not publish the national framework, or any amendment to the framework, except with the concurrence of the Cabinet members whose departments are directly affected by the framework or amendment.

Public participation

8. (1) To allow the public to participate in the preparation of the national policy framework, or any amendment to the framework, the Minister must –

- (a) publish for public comment –
 - (i) the proposed framework, or the proposed amendment, in the *Government Gazette*; and
 - (ii) a brief summary of the proposed framework or amendment in one or more national newspapers; and
- (b) in a notice published in the *Government Gazette* and those newspapers, invite the public to submit to the Minister written representations on or objections to the proposed framework, or the proposed amendment, within 30 days of the date of publication of the notice in the *Government Gazette*.

(2) The Minister may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or a person designated by the Minister.

(3) The Minister must give due consideration to all representations or objections submitted or presented in terms of subsections (1) and (2).

(4) This section need not be applied in respect of a minor or technical change to the national policy framework.

CHAPTER 3

GENERAL PRINCIPLES

General principles

9. (1) The general principles set out in this section guide –
- (a) the passing of all provincial legislation, municipal by-laws and subordinate national legislation to the extent that such legislation and by-laws are applicable to children;
 - (b) the implementation of all legislation applicable to children, including this Act; and
 - (c) all proceedings, actions and decisions by any organ of state in any matter concerning a child or children in general.

(2) In all matters concerning a child the standard referred to in section 28 (2) of the Constitution that the child's best interest is of paramount importance, must be applied. What is in the best interest of a child must be determined with reference to section **10** of this Act.

- (3) 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, and the rights set out in Chapter 4 of this Act, subject to any lawful limitation;
 - (b) respect the child's inherent dignity;
 - (c) treat the child fairly and equitably; and
 - (d) protect the child from unfair discrimination on any ground, including on the grounds of the health or HIV/AIDS-status of the child or a family member of the child.

(4) If a matter concerning a child involves a selection between one parent and the other, or between one person and another, there should be no preference in favour of any parent or person solely on the basis of that parent or person's gender.

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

(6) If a child is in a position to participate meaningfully in any decision-making process in any matter concerning the child –

- (a) the child must be given that opportunity; and
- (b) proper consideration must be given to the child's views and preferences, bearing in mind the child's age, maturity and stage of development.

(7) 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.

(8) A person who has parental responsibilities and rights in respect of a child, and having regard to the age, maturity and stage of development of the child, the child as well where this is appropriate, must be informed of any action or decision taken in a matter concerning the child which significantly affects the child.

Best interest of the child standard

10. (1) Whenever a provision of this Act requires the best interest of the child standard to be applied, the following factors must be taken into consideration where relevant –

- (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 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 or rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other 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 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;
 - (ii) to maintain a connection with his or her family, extended family, tribe, culture or tradition;
- (g) the child's –
 - (i) age, maturity and stage of development;
 - (ii) gender; and
 - (iii) background and 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) 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 family environment;
- (j) 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 or degradation or exposing the child to violence or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (k) any family violence involving the child or a family member of the child; and

- (l) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.
- (2) In this section “**parent**” includes –
 - (a) the care-giver of a child; or
 - (b) any person who has parental responsibilities and rights in respect of a child.

CHAPTER 4

CHILDREN’S RIGHTS

Application

11. (1) The rights which a child has in terms of this Chapter 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, promote and fulfil the rights of children contained in this Chapter.

(3) Any provision of this Chapter binds all persons, natural or juristic, if, and 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.

Conflicts with other legislation

12. In the event of a conflict between a provision of this Chapter and any other legislation, the provision of this Chapter prevails except –

- (a) to the extent that such other legislation is or could be interpreted as a limitation of general application on such provision that is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including those listed in section 36 (1) (a) to (e) of the Constitution; or
- (b) as otherwise provided in section 3 (1) (b).

Unfair discrimination

13. (1) No organ of state, and no official, employee or representative of an organ of state, and no other person may unfairly discriminate directly or indirectly against a child on the ground of –

- (a) the race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth of the child or of any parent, guardian, care-giver or family member of the child; or
- (b) the family status, health status, socio-economic status, HIV-status or nationality of the child or of any parent, guardian, care-giver or family member of the child.

(2) Discrimination on any of the grounds listed in subsection (1) is presumed to be unfair unless it is established that the discrimination is fair.

Best interest of the child

14. (1) An organ of state, an official, employee or representative of an organ of state, or any other person in authority who has official control over a child, must, when acting in any matter concerning the child, apply the standard referred to in section 28 (2) of the Constitution that the child's best interest is of paramount importance.

(2) Every child capable of participating meaningfully in any judicial or administrative proceedings in a matter concerning that child has the right to participate in an appropriate way in those proceedings. Views expressed by the child must be given due consideration.

Name, nationality and identity

15. Every child has the right –

- (a) to be promptly registered in terms of the Registration of Births and Deaths Act. 1992 (Act No. 51 of 1992), if that child is a South African citizen; and

- (b) to the preservation of his or her identity and nationality, subject to the other provisions of this Act.

Family relationship

16. (1) Every child has the right not to be separated from his or her family or primary care-giver against the will of the family or primary care-giver and of the child where the child is capable of expressing a choice, except when that separation is in the best interest of the child.

(2) Every child separated from his or her parents has the right to maintain a personal relationship and regular contact with the parents, except when those personal relations and that contact are not in the best interest of the child.

Property

17. Every child who owns property has the right to the administration of that property in the best interest of that child.

Maltreatment, abuse, neglect, degradation, exploitation and other harmful practices

18. (1) Every child has the right to be protected, through administrative, social, educational, punitive or other suitable measures and procedures, from all forms of torture, physical violence, mental harassment, injury, maltreatment, abuse, neglect, degradation and exploitation.

(2) Every child who has been tortured, maltreated, harassed, abused, neglected, degraded or exploited has the right to have access to support services and, where appropriate, to medical treatment at state expense.

Harmful social and cultural practices

19. (1) Every child has the right not to be subjected to harmful social and cultural

practices which affect the well-being, health or dignity of the child.

(2) Every child –

- (a) below the minimum age set by law for a valid marriage has the right not to be given out in marriage or engagement; and
- (b) above that minimum age has the right not to be given out in marriage or engagement without his or her consent.

(3) Female genital mutilation or the circumcision of female children as a cultural practice is prohibited.

(4) Every male child has the right –

- (a) to refuse circumcision; and
- (b) not to be subjected to unhygienic circumcision.

(5) Every child has the right –

- (a) to refuse to be subjected to virginity testing, including virginity testing as part of a cultural practice; and
- (b) not to be subjected to unhygienic virginity testing.

Economic exploitation

20. Every child has the right to be protected, through administrative, social, educational, punitive or other suitable measures and procedures, from –

- (a) economic exploitation; and
- (b) performing any work –
 - (i) that is inappropriate for a person of that child's age; and
 - (ii) that places at risk the child's well-being, education, physical and mental health, and spiritual, moral or social development.

Education

- 21.** (1) Every child has the right to –
- (a) have access to education on the basis of equal opportunities for all;
 - (b) have access to educational and vocational information and guidance; and
 - (c) receive education and information through a medium which makes such education and information accessible to the child, having regard to the child's personal circumstances and any disability from which the child may suffer.
- (2) The education of a child must be directed towards –
- (a) the development of the child's personality, talents and intellectual and physical abilities to their fullest potential;
 - (b) the development of respect for the democratic values of human dignity, equality and freedom enshrined in our Constitution;
 - (c) the development of respect for the child's parents, cultural identity and values, and language;
 - (d) the preparation of the child for a responsible life in a free society, in the spirit of peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities on the basis of equality, non-discrimination and free association; and
 - (e) the development of respect for our natural and cultural heritage.

Basic health care

- 22.** Every child has the right to –
- (a) basic health care services and to have access to such services;
 - (b) confidential access to information on health promotion and the prevention of ill-health and disease, including HIV/AIDS, sexuality, and reproduction;
 - (c) confidentiality regarding his or her health status and the health status of a parent, care-giver or family member;

- (d) have access to clean drinking water; and
- (e) have access to sanitation services aimed at promoting their health and preventing infections and diseases.

Social security

23. (1) Every child has the right to social security, including access to social assistance if the parent or care-giver cannot or does not provide for the basic needs of a child.

(2) A child suffering from malnutrition or who is at risk of malnutrition has the right to have access to sufficient and appropriate food, including emergency measures by the state for a child whose survival is at stake.

Refugee and undocumented migrant children

24. Every child who is a refugee or seeking refugee status in accordance with international or domestic law, and every undocumented migrant child, whether unaccompanied or accompanied by a parent or other adult person, has –

- (a) the rights set out in this Chapter, as may be appropriate in the circumstances;
- (b) the right to be re-united with his or her parents or family if the child was separated from his or her parents or family; and
- (c) the right to receive humanitarian protection and assistance to realise the rights referred to in paragraphs (a) and (b).

Children with disabilities and chronic illnesses

25. (1) Every child with a physical, intellectual or psychiatric disability has the right –

- (a) to enjoy life in conditions which ensure dignity, promote self-reliance and facilitate active participation in the community; and
- (b) to receive special care; and
- (c) to receive reasonable financial assistance from the state.

(2) Every child who is chronically ill has the right to receive special care and reasonable financial assistance from the state.

Leisure and recreation

26. Every child has the right to rest and leisure and to engage in play and recreational activities appropriate to the child's age.

Access to child and family courts

27. Every child has the right to bring a matter to a child and family court, provided that matter falls within the jurisdiction of that court.

Responsibilities of children

28. Every child has responsibilities appropriate to the child's age and ability towards his or her family, society, the state, other legally recognised communities and the international community.

Age of majority

29. A child, whether male or female, attains the age of majority and become a major upon reaching the age of 18 years.

CHAPTER 5

PARENTAL RESPONSIBILITIES AND RIGHTS

Part 1: Acquisition and loss of parental responsibilities and rights

Parental responsibilities and rights

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

Parental responsibilities and rights of mothers

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

(2) If the child's mother is an unmarried child and the child's father does not have full parental responsibilities and rights, or has no parental responsibilities and rights in respect of the child, the guardian of the mother has those parental responsibilities and rights in respect of the child which that guardian has in respect of the mother.

(3) This section does not apply in respect of a child born from a surrogacy agreement.

Parental responsibilities and rights of married fathers

32. 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 her 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 or birth.

Parental responsibilities and rights of unmarried fathers

33. (1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section **32**, acquires parental responsibilities and rights in respect of the child –

- (a) if at any time after the child's birth he has lived with the child's mother –
 - (i) for a period of no less than 12 months; or
 - (ii) for periods which together amount to no less than 12 months;
- (b) if he, regardless of whether he has lived or is living with the mother, has cared for the child with the mother's informed consent –

- (i) for a period of no less than 12 months; or
- (ii) for periods which together amount to no less than 12 months;
- (c) upon confirmation by a court of a parental responsibilities and rights agreement in respect of the child in terms of section **34**; or
- (d) if, and to the extent that, parental responsibilities and rights have been granted to him by an order of court.

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

Parental responsibilities and rights agreements

34. (1) Subject to subsection (2), the biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of either section **32** or **33** may enter into an agreement with the mother or other person who has parental responsibilities and rights in respect of the child, providing for the acquisition by the father of such parental responsibilities and rights in respect of the child as are set out in the agreement.

(2) The mother or other person who has parental responsibilities and rights in respect of the child may only confer by agreement upon the biological father of the child 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 agreement.

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

- (4) A parental responsibilities and rights agreement –
 - (a) takes effect only if –
 - (i) registered with a child and family court registrar; or
 - (ii) made an order of court on application by the parties to the agreement; and

- (b) may be amended or terminated only by an order of a court 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.

Assignment of parental responsibilities and rights by orders of court

35. (1) Any person having an interest in the care, well-being or development of a child may apply to a court for an order assigning to the applicant full or any specific parental responsibilities and rights in respect of the child.

- (2) When considering an application the court must take into account –
 - (a) the relationship between the applicant and the child, and any other relevant person and the child;
 - (b) the degree of commitment that the applicant has shown towards the child; and
 - (c) the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child; and
 - (d) 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 to furnish it with a report and recommendations as to what is in the best interests of the child concerned; and
- (b) may suspend the first-mentioned application on any conditions it may determine.

(4) The assignment of parental responsibilities and rights 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.

Certain applications regarded as inter-country adoptions

36. When application is made in terms of section 35 (1) by a non-South African citizen for the allocation of full parental responsibilities and rights in respect of a child or to act as guardian of a child, the application must be regarded to be an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 19 of this Act.

Persons claiming paternity

37. (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), indentifying 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 traced; 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 procreation.

Assignment of parental responsibilities and rights to parent-substitutes

38. (1) A parent who has parental responsibilities and rights in respect of a child may appoint a suitable person as a parent-substitute and assign to that person that parent's parental

responsibilities and rights in respect of the child in the event of the parent's death.

(2) An appointment in terms of subsection (1) –

- (a) must be in writing and signed by the parent;
- (b) may form part of the will of the parent;
- (c) replaces any previous appointment, including any such appointment in a will, whether made before or after this section took effect; and
- (d) may at any time be revoked by the parent by way of a written instrument signed by the parent.

(3) A parent-substitute appointed in terms of subsection (1) acquires parental responsibilities and rights in respect of a child –

- (a) after the death of the parent; and
- (b) upon the parent-substitute's express or implied acceptance of the appointment.

(4) If two or more persons are appointed as parent-substitutes, any one or more or all of them may accept the appointment except if the appointment provides otherwise.

(5) A parent-substitute acquires only those parental responsibilities and rights –

- (a) which the parent had at his or her death; or
- (b) if the parent died before the birth of the child, which the parent would have had had the parent lived until the birth of the child.

(6) The assignment of parental responsibilities and rights to a parent-substitute does not affect the parental responsibilities and rights which another person has in respect of the child.

(7) In this section **“parent”** includes a person who has acquired parental responsibilities and rights in respect of a child.

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

- 39.** (1) A person referred to in subsection (3) may apply to a 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 **35** for the granting of parental responsibilities and rights in respect of the child to the applicant in terms of that section.

- (3) An application in terms of 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 an application the court must take into account –
- (a) the relationship between the child and the person whose parental responsibilities and rights are challenged;
 - (b) the degree of commitment that that person has shown towards the child; and
 - (c) any other fact that should, in the opinion of the court, be taken into account.

Extension of parental responsibilities and rights after child reaches age of 18 years

- 40.** (1) A court may on application by a person referred to in subsection (2) order that parental responsibilities and rights of a person in respect of a child be extended for a period of not more than three years after that child has reached the age of 18 years, if special

circumstances exist with regard to the protection and well-being of that child to warrant such an extension.

- (2) An application in terms of this section –
 - (a) must be made before the child reaches the age of 18 years; and
 - (b) may be brought by –
 - (i) the child;
 - (ii) the parent or primary care-giver of the child;
 - (iii) any other person who has parental responsibilities and rights in respect of the child; or
 - (iv) the Director-General or the head of social development in a province.

Court proceedings

41. (1) An application in terms of section **34** (3), **35** (1), **37** (1) (b), **39** (1) or **40** (1) may be brought before any court within whose area of jurisdiction the child concerned is ordinarily resident or happens to be.

(2) An application in terms of section **35** (1) for the allocation of full parental rights and responsibilities or to act as guardian of a child must contain reasons as to why the applicant is not applying for the adoption of the child.

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

(4) When considering an application the court must be guided by the principles set out in Chapter **3** 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 professional 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 –

- (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, to pay the costs of such representation.

(7) If it appears to a court in the course of any criminal or civil proceedings that a child involved in or affected by those proceedings is in need of care and protection, the court may order that the question whether the child is in need of care and protection be referred to a child and family court for decision.

(8) If the court hearing the application is a child and family court, this section must be read with Chapter 6.

Part 2: Co-exercise of parental responsibilities and rights

Co-holders of parental responsibilities and rights

42. (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 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 of those responsibilities and rights, and that co-holder remains competent and liable to exercise those responsibilities and rights.

(5) Except where this Act or an order of court provides otherwise, the following acts may not be concluded without the consent of all persons holding parental responsibilities and rights in respect of those acts:

- (a) the contracting of a marriage by the child;
- (b) the adoption of the child;
- (c) the departure or removal of the child from the Republic;
- (d) the application for a passport by or on behalf of the child; or
- (e) the alienation or encumbrance of immovable property belonging to the child, including any right to or interest in immovable property.

Major decisions involving a child

43. (1) Before a person holding parental responsibilities and rights in respect of a child takes any major decision involving the child, that person must give due consideration to any views and wishes expressed –

- (a) by the child, bearing in mind the child’s age, maturity and stage of development; and
- (b) by any co-holder of parental responsibilities and rights in respect of the child.

(2) The expression “**major decision involving the child**” for purposes of –

- (a) subsection (1) (a), means any decision –
 - (i) in connection with a matter listed in section 42 (5);
 - (ii) affecting contact between the child and a co-holder of parental responsibilities and rights;
 - (iii) regarding the assignment of parental responsibilities and rights in respect of the child to a parent-substitute in terms of section 38; or
 - (iv) which is likely to change significantly, 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; and
- (b) subsection (1) (b), means 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.

Care of child by persons not holding parental responsibilities and rights

44. (1) A person who has no parental responsibilities and rights in respect of a child but 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 or mental harm or hazards.

(2) A person referred to in subsection (1) may exercise any parental responsibilities and rights reasonably necessary to comply with that subsection, including the right to consent in terms of section 135 (3) to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or primary care-giver 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

Contents of parenting plans

45. (1) 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.

(2) 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) guardianship of the child.

(3) A parenting plan must comply with the best interest of the child standard as set out in section 10.

- (4) In preparing a parenting plan the parties may seek –
 - (a) the assistance of a family advocate; or
 - (b) mediation through a social worker or other appropriate person.

Formalities

46. (1) A parenting plan –
- (a) must be in writing and signed by the parties to the agreement; and
 - (b) may be registered with a child and family court registrar or made an order of court if the plan complies with section 45 and subsection (2) of this section.
- (2) An application for registration of a parenting plan must –
- (a) be in the format and contain the particulars prescribed by regulation; and
 - (b) be accompanied by –
 - (i) a copy of the plan; and
 - (ii) a statement by –
 - (aa) a family advocate that the plan was prepared after consultation with the family advocate, if section 45 (4) (a) applies; or
 - (bb) a social worker or other person contemplated in paragraph (b) of section 45(4) that the plan was prepared after mediation by such social worker or such person, if section 45 (4) (b) applies.

Amendment or termination of registered parenting plans

47. (1) A registered parenting plan may be amended or terminated only by an order of court on application –
- (a) by the co-holders of the parental responsibilities and rights;
 - (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.
- (2) Section 41 applies to any application in terms of subsection (1).

Part 4: Miscellaneous**Presumption of paternity in respect of child born out of wedlock**

48. If in any legal proceedings at which it has been placed in issue whether any particular

person is the father of a child born out of wedlock it is proved by judicial admission or otherwise that that person had sexual intercourse with the mother of the child at any time when that child could have been conceived, that person must, in the absence of evidence to the contrary, be presumed to be the biological father of the child.

Presumption on refusal to submit to taking of blood samples

49. If in any legal proceedings at which the paternity of a child has been placed in issue it is adduced in evidence or otherwise that any party to those proceedings 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, it must be presumed, until the contrary is proved, that such refusal is aimed at concealing the truth concerning the paternity of the child.

Effect of subsequent marriage of parents on children

50. (1) A child born of parents who marry each other 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.

Rights of children born of voidable marriages

51. (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, 1979 (Act No. 70 of 1979), and section 4 of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), with the necessary changes as the context may require, apply 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, 1979 (Act No. 70 of 1979), with the necessary changes as the context may require, apply to the rescission or variation of a maintenance order, or an order relating to the care or guardianship of, or access to, a child, or the suspension of a maintenance order or an order relating to access to a child, made by virtue of subsection (3) of this section.

- (5) A reference in any legislation –
- (a) to a maintenance order or an order relating to the care or guardianship of, or access to, a child in terms of the Divorce Act, 1979 (Act No. 70 of 1979), must be construed as a reference also to a maintenance order or an order relating to the care 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, 1979, 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 in 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.

Rights of children conceived by artificial insemination

52. (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 insemination of one spouse, any child born of that spouse as a result of such artificial insemination must for all purposes be regarded to be the child of those spouses as if the gamete or gametes of those spouses were used for such artificial insemination.

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

(2) Whenever the gamete or gametes of any person have been used for the artificial insemination of a woman with her written consent, any child born of that woman as a result of such artificial insemination must for all purposes be regarded to be the child of that woman.

(3) No right, responsibility, duty or obligation arises between a child born of a woman as a result of artificial insemination and any person whose gamete or gametes have been used for such artificial insemination and the blood relations of that person, except when –

- (a) that person is the woman who gave birth to that child; or
- (b) that person is the husband of such woman at the time of such artificial insemination.

(4) For purposes of this section –

- (a) **“artificial insemination”**, in relation to a woman –
 - (i) means the introduction by other than natural means of a male gamete or gametes into the internal reproductive organs of that woman;
 - (ii) means the extraction of female gametes from one woman and the transfer of these gametes into the uterus of another woman, followed by fertilization of these gametes through natural means either *in utero* or *in vivo*;
 - (iii) means the flushing and transfer of the product of a union of a male and female gamete or gametes which have been brought together outside the human body, in the womb of that woman, or
 - (iv) means the flushing and transfer of the product of a union of a male and female gamete or gametes which has been created by natural means, either *in utero* or *in vivo*, from one woman to the uterus of another woman, for the purpose of human reproduction; and

- (b) **“gamete”** means either of the two generative cells essential for human reproduction.

Access to biographical and medical information concerning genetic parents

53. (1) A child born as a result of artificial insemination or surrogacy is entitled to have access to –

- (a) any medical information concerning that child’s genetic parents; and
- (b) any biographical 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)(a) and (b) may not reveal the identity of the person whose gamete or gametes have been used for such artificial insemination or the identity of the surrogate mother.

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

Effect of surrogate motherhood agreement on status of child

53A. (1) The effect of a valid surrogate motherhood agreement will be that –

- (a) a child or children born of a surrogate mother in accordance with the agreement is or are for all purposes the child or children of the commissioning parent or parents from the moment of the birth of the child concerned;
- (b) the surrogate mother will be 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 will have no rights of parenthood or custody of the child;
- (d) the surrogate mother or her husband, partner or relatives will have no right of access to the child unless provided for in the agreement between the parties;

- (e) subject to section 53B of this Act and the provisions of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), no surrogate mother may terminate the agreement and end the pregnancy after the artificial fertilization of the surrogate mother has taken place;
- (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) Failure to comply with the requirements of the Surrogacy Act, 2002 (Act No.xx of 2002) or the surrogate motherhood agreement will not affect the determination of parenthood under this Act.

Termination of surrogate motherhood agreement

53B. (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 will terminate the order entered pursuant to section xy of the Surrogacy Act, 2002 (Act No.xx of 2002)¹ 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 interests of the child.

(3) The surrogate mother will incur no liability to the commissioning parents for exercising her rights of termination pursuant to this section, except for compensation for any payments made by the commissioning parents in terms of the Surrogacy Act, 2002 (Act No. xx of 2002).

¹ Such provision to provide that the surrogate motherhood agreement must be in writing and confirmed by the court.

Effect of termination of surrogate motherhood agreement

53C. The effect of the termination of a surrogate motherhood agreement in terms of section 53B of this Act will be that –

- (a) where the agreement is terminated after the child is born any parental rights established in terms of section 1 above will be terminated and will be vested in the surrogate mother and her husband or life-long partner, if any.
- (b) where the agreement is terminated before the child is born, the child is the child of the surrogate mother and her husband or life-long partner, if any, from the moment of the child's birth;
- (c) the surrogate mother and her husband or life-long partner, if any, shall be obliged to accept the obligation of parenthood;
- (d) subject to subsections (1) and (2) above, the commissioning parents will have no rights of parenthood and can only obtain such rights through adoption;
- (e) subject to subsections (1) and (2) above, the child shall have no claim for maintenance or of succession against the commissioning parents or any of their relatives.

CHAPTER 6

CHILD AND FAMILY COURTS

Part 1: Establishment, status and jurisdiction

Establishment

- 54.** (1) A child and family court is hereby established for –
- (a) each magisterial district determined in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and
 - (b) each magisterial region determined in terms of that Act.
- (2) Child and family courts function under the administrative control of the chief magistrate of the district or the court president of the region.

Status

55. A child and family court is a court of record with a similar status to that of a magistrate's court.

Seat of court

- 56.** (1) A child and family court sits –
- (a) at a place within its area designated by the Minister of Justice; and
 - (b) in a room which –
 - (i) is located and designed in a manner aimed at putting children at ease;
 - (ii) is conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings; and
 - (iii) may not be a room in which a court of another kind ordinarily sits.
- (2) Subsection (1) (b) does not apply if no other room than a court room is available and suitable.

Jurisdiction

- 57.** (1) A child and family court has jurisdiction in respect of –
- (a) all matters mentioned in section **58**; and
 - (b) all matters in which application is made for an order mentioned in section **59**.
- (2) The child and family 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 happens to be; 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 or happens to be.
- (3) If there is uncertainty with regard to which court has jurisdiction in a particular matter, the child and family court of the area where the child happens to be at the time of the

first referral of the matter to the court has jurisdiction in that matter.

Matters court may adjudicate

- 58.** (1) A child and family court may adjudicate any matter involving –
- (a) the care or guardianship of, or contact with, a child;
 - (b) the assignment, exercise, restriction, suspension or termination of parental responsibilities or rights;
 - (d) paternity of a child;
 - (e) artificial procreation of a child, excluding a dispute between contracting parties regarding compensation;
 - (f) maintenance and support of a child;
 - (g) the provision of –
 - (i) early childhood development services; or
 - (ii) prevention or early intervention services;
 - (h) a child in need of care and protection or in especially difficult circumstances;
 - (i) maltreatment, abuse, neglect, degradation or exploitation of a child;
 - (k) domestic violence affecting a child;
 - (l) the protection of a child;
 - (m) the temporary safe care of a child;
 - (n) alternative care of a child;
 - (o) the adoption of a child, including an inter-country adoption;
 - (p) the appointment of a parent-substitute;
 - (q) the departure, removal or abduction of a child from the Republic;
 - (r) a social security grant to or in respect of a child;
 - (s) a child and youth care centre, a partial care facility or a shelter or drop-in centre, or any other facility purporting to be a care facility for children;
 - (t) the age of majority or the contractual or legal capacity of a child;
 - (u) the safeguarding of a child’s interest in property;
 - (v) any other matter relating to the care, protection or well-being of a child provided for

in this Act; or

- (w) a delictual claim arising from a matter referred to above.

(2) A child and family court –

- (a) may try or convict a person for non-compliance with an order of a child and family court or contempt of such a court;
- (b) may not try or convict a person in respect of a criminal charge other than in terms of paragraph (a); and
- (c) is bound by the law as applicable to magistrates' courts when exercising criminal jurisdiction in terms of paragraph (a).

Orders court may make

59. (1) A child and family 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 relative designated by the court to be the kinship care-giver of the child;
- (iii) in the care of a child and youth care centre; or
- (iv) 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 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, 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 an obligation 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;
- (xi) allowing a person to contact a child on the conditions as specified in the court order;
- (xii) directing that a person's name be listed in or removed from –
 - (aa) the National Child Protection Register; or
 - (bb) any other record concerning child abusers; or
- (xiii) instructing the return of a child to South Africa from abroad;
- (i) A parental responsibilities and rights order, which includes an order –
 - (i) assigning some or all parental responsibilities or rights in respect of a child to any person;
 - (ii) extending any parental responsibilities or rights which any person has in respect of a child;
 - (iii) suspending or restricting a person's capacity to exercise any parental responsibilities or rights in respect of a child;
 - (iv) terminating a person's parental responsibilities or rights in respect of a child: Provided that a parent may not be deprived of the right to have contact with a child except when contact with the child is not in the child's best interest;
 - (v) restoring a person's parental responsibilities or rights in respect of a child; or
 - (vi) instructing a person to sign a parental responsibilities and rights undertaking in respect of a child.
- (j) A contribution order, or a maintenance order in terms of the Maintenance Act, 1998 (Act No. 99 of 1998);
- (k) An order granting damages or compensation to or by a child arising from a matter referred to in section 58 (1) (v) or (w);
- (l) An order instructing a person to carry out an investigation in terms of section 67;
- (m) Any other order which a child and family court may make in terms of any other provision of this Act.

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

Competence of child and family district court

60. A child and family district court is a court of first instance in –

- (a) any uncontested case concerning –
 - (i) a matter which a child and family court may adjudicate in terms of section **58**;
or
 - (ii) an application for an order which a child and family court may make in terms of section **59**; or
- (b) any contested case concerning –
 - (i) a matter which a child and family court may adjudicate in terms of section **58** and which is referred to it by the child and family court registrar, but excluding a matter mentioned in section **61** (2); or
 - (ii) an application for an order which a child and family court may make in terms of section **59** and which is referred to it by the registrar, but excluding an application for an order that may be made in a matter mentioned in section **61** (2).

Competence of child and family regional court

61. (1) A child and family regional court is –

- (a) a court of first instance in any contested case concerning –
 - (i) a matter mentioned in subsection (2);
 - (ii) any other matter which a child and family court may adjudicate in terms of section **58** and which is referred to that regional court by the child and family court registrar;
 - (iii) an application for an order that may be made in a matter mentioned in subsection (2);
 - (iv) any other application for an order a child and family court may make in terms

- of section 59 and which is referred to that regional court by the registrar; or
- (v) any matter or issue referred to it by a child and family district court in terms of section 62; and
 - (b) a court of appeal or review in respect of all judgements and orders made by a child and family district court within its region.

(2) A child and family regional court is a court of first instance, to the exclusion of a child and family district court, in contested cases concerning the following matters, including orders that may be made in those matters:

- (a) a matter with an international dimension or implication, including –
 - (i) the adoption of a child by a foreigner;
 - (ii) the cross-border abduction of a child; or
 - (iii) child trafficking across national borders;
- (b) an issue involving sexual abuse of a child by a parent or care-giver;
- (c) a dispute arising from the artificial procreation of a child;
- (d) a contested paternity issue;
- (e) a dispute involving a parental responsibility or right in respect of a child or the restriction, suspension or termination of such responsibility or right;
- (f) a dispute involving the determination of the capacity of a child –
 - (i) to contract; or
 - (ii) to consent to a marriage; and
- (g) the safeguarding of a child’s interest in property.

Referral of matters to child and family regional court

62. (1) A child and family district court hearing a contested matter may stop its proceedings concerning that matter, or any specific issue in the matter, and refer the matter, or that issue, to the child and family regional court having jurisdiction in the area if it is of the opinion that the matter, or that issue, should be heard by the child and family regional court because of –

- (a) the complexity of the matter or that issue;
- (b) the implications of any order that may be made in the matter or that issue; or
- (c) any uncertainty about its jurisdiction in the matter or that issue.

(2) Before it refers a matter, or any issue in the matter, in terms of subsection (1) to the child and family regional court, a child and family district court may –

- (a) take any steps necessary to safeguard and protect a child from any impending harm; and
- (b) make an appropriate interim order.

(3) If a matter, or any issue in the matter, is referred in terms of subsection (1), the record of the proceedings in the child and family district court concerning the matter or that issue –

- (a) must be transferred to the child and family regional court; and
- (b) may be used by the regional court in its hearing of the case.

Referral of matters to other courts

63. (1) A child and family regional court hearing a matter may stop its proceedings concerning that matter, or any specific issue in the matter, and refer the matter, or that issue, to the High Court if is of the opinion that the matter, or that issue, should be heard by the High Court because of –

- (a) the complexity of the matter or that issue;
- (b) the implications of any order that may be made in the matter or that issue; or
- (c) any uncertainty about its jurisdiction in the matter or that issue.

(2) A child and family regional or district court hearing a matter may stop its proceedings concerning that matter, or any specific issue in the matter, and refer the matter, or that issue, to another child and family court or to a magistrate’s court if is of the opinion that –

- (a) the matter, or that issue, should be heard by that other court because of any uncertainty about its jurisdiction in the matter or that issue; or
- (b) justice would be served by such referral and that it would be in the best interest of the child to do so.

(3) Before it refers a matter, or any issue in the matter, in terms of subsection (1) or (2), the child and family court may –

- (a) take any steps necessary to safeguard and protect a child from imminent harm; and
- (b) make an appropriate interim order.

(4) If a matter, or any issue in the matter, is referred in terms of subsection (1) or (2), the record of the proceedings in the child and family court concerning the matter or that issue –

- (a) must be transferred to the High Court or that other court; and
- (b) may be used by the High Court or that other court in its hearing of the case.

Referral of matters by other courts to child and family court

64. (1) A court, other than a child and family court, hearing a matter in which the interests of a child are directly affected, may stop or suspend its proceedings concerning that matter, or any specific issue in the matter, and order that the matter, or that issue, be referred to a child and family court for a decision if –

- (a) justice would be served by such referral; and
- (b) it would be in the best interest of the child to do so.

(2) An issue in a matter before a criminal court may not be referred to a child and family court in terms of subsection (1) without the consent of the Director of Public Prosecutions.

General powers

- 65.** (1) A child and family court may –
- (a) make any order it is empowered to make in terms of this Act;
 - (b) grant interdicts and auxiliary relief;
 - (c) extend, withdraw, suspend, vary or review any of its orders;
 - (d) impose or vary deadlines with respect to any of its orders;
 - (e) make appropriate orders as to costs in matters before the court;
 - (f) consult with a child or other party in chambers after recording the reasons for such consultation; or
 - (g) have a person removed from the court and provide written reasons for the removal.
- (2) A child and family court may for the purposes of this Act estimate the age of a person who appears to be a child in the prescribed manner.

Lay-forum hearings

- 66.** (1) A child and family court may, before it decides a matter or an issue in a matter, order a lay forum hearing for an attempt to settle the matter or issue out of court, which may include –
- (a) mediation by a family advocate, a social worker or other professionally qualified person;
 - (b) a family group conference contemplated in section 97; or
 - (c) mediation by a traditional authority.
- (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.

Inquiries and investigations

67. (1) A child and family court may, subject to section **174(6)**, before it decides a matter, order a person –

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

(2) An inquiry or further investigation must be carried out –

- (a) in accordance with any procedures prescribed by regulation; and
- (b) subject to any directions and conditions determined in the court order.

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

- (a) remove a child in terms of sections **168** and **169**;
- (b) question any person;
- (c) record any information by any method; and
- (d) carry out any specific instruction of the court.

(4) The court may authorise a police officer accompanying the designated social worker or person authorised to conduct the inquiry or further investigation to, by force, if necessary –

- (a) conduct any search;
- (b) question any person;
- (c) demand the name, address and identification number of any person on or residing or suspected to be residing on those premises;
- (d) record any information by any method;
- (e) seize any item which, on reasonable suspicion, is involved in any offence which has

been or is being committed in terms of this Act;

- (f) arrest any person, and
- (g) carry out any specific instruction of the court.

Appeals

68. (1) Any party involved –

- (a) in a matter before a child and family district court may appeal against a decision of the court to the child and family regional court having jurisdiction in the area or to the High Court; or
- (b) in a matter before a child and family regional court may appeal against a decision of the court to the High Court.

(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 **58** (2) (c).

Part 2: Composition

Composition

69. (1) A child and family court consists of –

- (a) a child and family magistrate; or
- (b) a panel composed of –
 - (i) a child and family magistrate; and
 - (ii) one or more assessors.

(2) A child and family court must sit as a panel if the child and family magistrate designated to hear a matter considers the engagement of an assessor or assessors with appropriate expertise for the case necessary or desirable –

- (a) in the best interest of the child involved in the matter;
- (b) given the circumstances of the matter or the nature of any issue in the matter or any issue that is likely to arise in the course of the hearing; or

(c) to facilitate communication between the court and the child or any other party.

(3) In considering the engagement of an assessor or assessors, the child and family magistrate must take into account all relevant factors, including –

- (a) the cultural, social and linguistic environment from which the child originates or in which the child grew up;
- (b) the physical, mental and emotional development and the educational background of the child;
- (c) the cultural, social and linguistic background of a party in the matter;
- (d) the complexity of any issue in the matter or any issue that is likely to arise in the course of the hearing; and
- (e) the implications of any order that is sought or is likely to be made at the conclusion of the hearing.

(4) A child and family magistrate must record the reasons why an assessor or assessors have not been engaged in a specific matter.

(5) Section 34 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the rules issued in terms of this Act, apply to a person engaged as an assessor in terms of this Act.

Qualifications of child and family magistrates

70. (1) Only the following persons may be child and family court magistrates:

- (a) a person appointed in terms of section 72 (1) as a child and family court magistrate; or
- (b) any existing magistrate assigned by the Minister of Justice to be a child and family court magistrate.

(2) A person referred to in subsection (1) (a) must have –

- (a) a qualification in law specified by regulation;
- (b) a sound knowledge of –
 - (i) child and family law;

- (ii) child and family court procedures; and
- (iii) the resources available for the social development of children;
- (c) a basic understanding of child development, psychology and family relationships; and
- (d) the linguistic skills and ability to communicate effectively with dysfunctional families and traumatised children.

Qualifications of assessors

- 71.** (1) A person may be engaged as an assessor in a matter only if –
- (a) that person is qualified in terms of section **70** to be a child and family magistrate; or
 - (b) the name of that person appears on the list compiled in terms of section **72** (3).
- (2) A person referred to in subsection (1) (b) must have –
- (a) the qualifications or experience in social work prescribed by regulation; or
 - (b) the linguistic skills and ability to communicate effectively with dysfunctional families and traumatised children.

Appointment of child and family magistrates and assessors

72. (1) The Minister of Justice must appoint, on the recommendation of the Magistrates' Commission, a sufficient number of persons complying with section **70** (2) as child and family magistrates.

(2) The Magistrates Act, 1993 (Act No. 90 of 1993), read with such changes as the context may require, applies with regard to the conditions of service, remuneration, vacation of office and discharge of a person appointed in terms of subsection (1).

(3) The Minister of Justice acting with the concurrence of the Minister must compile a list of persons that may be engaged as assessors in matters before the child and family courts.

(4) A person engaged as an assessor in a matter before a child and family court is entitled to the remuneration and allowances prescribed by regulation, if that person is not employed in a full- time capacity in the service of the state.

Oath of office

73. (1) A person may be engaged as a child and family magistrate or an assessor only after that person has taken an oath or made an affirmation in the form prescribed by regulation.

(2) Subsection (1) does not apply to a magistrate in terms of the Magistrates Courts' Act, 1944 (Act No. 32 of 1944).

Training of child and family magistrates and assessors

74. The Minister of Justice, acting on the advice of the Minister, may establish training courses for child and family magistrates and assessors.

Part 3: Court proceedings

Procedural rules

75. (1) The Minister of Justice may, subject to subsections (2) and (3), by notice in the *Government Gazette* –

- (a) make rules to regulate the proceedings of child and family courts, including –
 - (i) the issuing and serving of summonses, subpoenas, notices and other process in connection with such proceedings; and
 - (ii) the execution of court orders;
- (b) amend or repeal rules made in terms of paragraph (a).

(2) The provisions of the Magistrates' Courts Act, 1944, (Act No. 32 of 1944) and the rules made in terms of that Act, read with such changes as the context may require, apply, subject to the other provisions of this Act, to a child and family court in so far as those

provisions relate to –

- (a) the issue and service of process;
- (b) the appearance in court of advocates and attorneys;
- (c) the appointment and powers of assessors;
- (d) the execution of court orders;
- (e) contempt of court; and
- (f) penalties for –
 - (i) non-compliance with court orders;
 - (ii) obstruction of the execution of judgements; and
 - (iii) contempt of court.

(3) 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 specially qualified or trained interpreters.

Who may approach court

76. Except where otherwise provided in this Act, any person, including a child, may bring a matter which falls within the jurisdiction of a child and family court, to a child and family court registrar for referral to a child and family court.

Legal representation

77. (1) A person who is a party in a matter before a child and family court is entitled to appoint a legal representative of his or her own choice and at his or her own expense.

(2) If a person who is a party in a matter does not appoint a legal representative in terms of subsection (1) that person may apply to the appropriate authority to be represented by –

- (a) a family advocate; or
- (b) a child and family law practitioner whose name appears on the Family Law Roster and instructed by the Legal Aid Board in accordance with the Legal Aid Act, 1969 (Act No. 22 of 1969).

(3) The child and family court magistrate may assist an unrepresented party in the proceedings before the court with the presentation of that party's case.

Legal representation of children

78. (1) Notwithstanding the provisions of section 77, a child involved in a matter before a child and family court is entitled to legal representation.

(2) (a) A child may appoint a legal representative of own choice and at own expense to represent the child in such matter.

(b) If a legal representative appointed in terms of paragraph (a), does not serve the interests of the child in the matter or serves the interests of any other party in the matter, the court must terminate the appointment.

(3) If no legal representative is appointed in terms of subsection (2) (a), the court must inform the parent or care-giver of the child or a person who has parental responsibilities and rights in respect of the child, if present at the proceedings, and the child, if the child is capable of understanding, of the child's right to legal representation.

(4) If no legal representative is appointed in terms of subsection (2) (a) after the court has complied with subsection (3), or if the court has terminated the appointment of a

legal representative in terms of subsection (2)(b), the court may, subject to subsection (5), order that legal representation be provided for the child at the expense of the state.

(5) The court must order that legal representation be provided for the child at the expense of the state if –

- (a) it is requested by the child;
- (b) it is recommended in a report by a social worker or an adoption social worker;
- (c) it appears or is alleged that the child has been abused or deliberately neglected;
- (d) any recommendation of a social worker who has investigated the circumstances of the child that the child be placed in alternative care, is contested by –
 - (i) the child;
 - (ii) a parent or care-giver of the child;
 - (iii) a person who has parental responsibilities and rights in respect of the child; or
 - (iv) a would-be adoptive parent, foster parent or kinship care-giver of the child;
- (e) two or more adults are applying in separate applications for the placement of the child with them;
- (f) any other party besides the child is or is to be legally represented at the hearing;
- (g) the court has terminated the appointment of a legal representative in terms of subsection (2)(b);
- (h) in any other situation where it appears that the child will benefit substantially from representation either in regard to the proceedings themselves or in regard to achieving the best possible outcome for the child; or
- (i) substantial injustice would otherwise result.

(6) The court must record its reasons if it declines to issue an order in terms of subsections (4) or (5).

(7) A child who must be represented at state expense must be represented by –

- (a) a family advocate;

- (b) a child and family law practitioner whose name appears on the Family Law Roster and who is instructed by the senior family advocate of the area; or
- (c) the child and family court registrar, if it is an urgent matter which does not allow for the appointment of a person referred to in paragraph (a) or (b).

(8) If the court makes an order in terms of subsection (4), the child and family court registrar must, subject to subsection (7)(c), request the senior family advocate of the area to instruct a family advocate or a legal practitioner on the Family Law Roster, to represent the child.

Attendance at proceedings

- 79.** Proceedings of a child and family 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) the person in whose control the child is;
 - (d) a person who has been instructed in terms of section **80** by the child and family court registrar to attend those proceedings;
 - (e) the legal representative of a person who is entitled to legal representation;
 - (f) a witness in the matter, while that witness appears before the court;
 - (g) a family member of the child who obtained the court’s permission to be present, other than a family member who is present in terms of paragraph (b), (c) or (d);
 - (h) a person who obtained permission to be present from the registrar for purposes of training or research; and
 - (i) a designated social worker managing the case.

Compulsory attendance of persons involved in proceedings

- 80.** (1) The child and family court registrar may, by written notice, request a party in a matter before a child and family 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 child and family court.

(2) The person in whose control the child is must ensure that the child attends those proceedings except if the registrar or the court directs otherwise.

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

81. The following persons have the right to adduce evidence in a matter before a child and family court, and, with the permission of the child and family magistrate, 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.

Witnesses

82. (1) The clerk of a child and family court must summon 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 child and family magistrate presiding in the matter;
- (b) the child and family court registrar;
- (c) a person whose rights may be affected by an order that may be made by the court in those proceedings; or
- (d) the legal representative of a person mentioned in paragraph (c).

(2) A summons mentioned 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 summoned in terms of subsection (1) or required by a child and family magistrate presiding to give evidence.

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

(5) A person summoned in terms of subsection (1) (c) or (d) is not entitled to an allowance from state funds except if the child and family magistrate presiding in the matter so orders.

Conduct of proceedings

83. (1) The child and family magistrate presiding in a matter before a child and family court controls the conduct of the proceedings, and may –

- (a) call or allow any person present at the proceedings to give evidence or to produce a book, document or other written instrument;
- (b) elicit any information from or question that person;
- (c) allow an assessor or the child and family court registrar to question or cross-examine that person; or
- (d) 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 interest of that child.

(3) Child and family 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.

Participation of children

84. (1) The child and family magistrate presiding in a matter before a child and family 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, is able to participate meaningfully 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 meaningfully in the proceedings or is unwilling to express a view or preference in the matter; and
- (c) stop the questioning or cross-examination of a child if the court finds that it is not in the best interests of the child.

(2) A child who is a party or a witness in a matter before a child and family court may 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 interest of the child; and
 - (b) must record the reasons for any order in terms of paragraph (a).

Professional reports ordered by court

85. (1) A child and family court may for the purposes of deciding a matter before it, or any issue in the matter, order, at state expense if necessary –

- (a) that a child or other person involved in the matter must be examined by a medical practitioner or assessed by a psychologist or other professional person; or
- (b) that an investigation must be carried out by a family advocate or a social worker to establish the circumstances of –
 - (i) the child;
 - (ii) the parents or a 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) the person in whose control the child is; or
 - (vi) any other relevant person.

(2) A person who carried out an examination or investigation in terms of subsection (1) may be required by the court to present the findings of the examination or investigation to the court by –

- (a) testifying before the court; or
- (b) submitting a written report to the court subject to section **86** (2) and (3).

Evidence

86. (1) A child and family court may, when appropriate and subject to this Act and the rules of the child and family court –

- (a) allow hearsay evidence provided such evidence is relevant;
- (b) allow evidence of previous similar conduct provided such evidence is relevant; and
- (c) dispense with any rule of evidence as applicable to proceedings in a court of law.

(2) A written report purported to be compiled and signed by a medical practitioner, psychologist, family advocate, social worker or other professional 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 child and family court, or in respect of another person involved in the matter, or the circumstances of such other person, is on its mere production to the child and family court hearing the matter admissible as evidence of the facts stated in the report.

(3) If a person's rights are prejudiced by a report referred to in subsection (2) the court must –

- (a) disclose the contents of the report to that person if that person is present at 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.

Questions of law

87. If at any stage of proceedings before a child and family regional court it appears to the court that any question of law relevant to the matter before it ought to be decided by the High Court or the Constitutional Court, it may –

- (a) either at the request of a party to the proceedings or on its own initiative, allow that party to apply, or request a family advocate to apply, within a period determined by

the court, to the High Court or the Constitutional Court for leave to bring the question before the High Court or the Constitutional Court;

- (b) make any interim order it finds necessary; and
- (c) suspend the proceedings pending the decision of the High Court or the Constitutional Court.

Decisions

88. (1) All questions of fact in a matter before a child and family court are decided –

- (a) by the child and family magistrate presiding in the matter, if the child and family magistrate sits –
 - (i) without an assessor or assessors; or
 - (ii) with one assessor and there is a difference of opinion; or
- (b) by the majority of the panel, if the child and family magistrate sits with two assessors.

(2) (a) All questions of law in a matter before a child and family court, and all questions as to whether a question before the court is a question of fact or a question of law, are decided by the child and family magistrate presiding in the matter.

(b) If the child and family magistrate sits with an assessor or assessors, the child and family magistrate may –

- (i) adjourn the hearing in respect of a question referred to in paragraph (a); and
- (ii) sit alone for the hearing and decision of that question.

(3) A child and family court must give and record reasons for its decisions and findings.

Adjournments

89. (1) The proceedings of a child and family court may be adjourned only –

- (a) on good cause shown, taking into account the best interest of the child;
- (b) for a period of not more than 30 days at a time; and

(2) A child and family magistrate may excuse any person from appearing at adjournment proceedings.

Monitoring of court orders

90. (1) A child and family 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) To monitor compliance with an order made by a child and family 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 specified 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 of the order, if necessary through a criminal prosecution in a magistrate’s court or in terms of section 58 (2).

(4) Any person may report any alleged non-compliance with an order of a child and family court, or any alleged worsening of the circumstances of a child following a court

order, to the child and family court registrar, who must deal with the matter in accordance with section 94.

Protection of court case records

- 91.** No person has access to child and family 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 interest 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 102 are complied with.

Part 4: Child and family court registrars

Appointment

- 92.** (1) The Minister must in accordance with legislation governing the public service appoint –
- (a) a person as the child and family court registrar for –
 - (i) each region within which a child and family regional court has been established; and
 - (ii) each district within which a child and family district court has been established; and
 - (b) so many additional child and family court registrars and support staff as may be needed.

(2) Additional child and family court registrars perform their functions in terms of this Act subject to the directions of the child and family court registrar appointed for the area.

Qualifications

- 93.** A child and family court registrar must have –
- (a) the qualifications specified by regulation;

- (b) a sufficient understanding of the needs and stages of development of children;
- (c) mediation skills; and
- (d) a sufficient knowledge of legal measures, processes and resources available for the protection of children.

Screening of matters

- 94.** (1) A child and family court registrar must –
- (a) receive all matters brought to or referred to a child and family court;
 - (b) determine in respect of each matter whether it –
 - (i) may be brought before a child and family court;
 - (ii) requires a pre-hearing conference or further investigation before it is brought before a child and family court;
 - (iii) should not first be referred to a lay forum for an attempt to settle the matter out of court, which may include –
 - (aa) mediation by a family advocate, a social worker or other professionally qualified person;
 - (bb) a family group conference as provided for in section 97; or
 - (cc) mediation by a tribal authority; or
 - (iv) should not first be referred to a child and family court magistrate in chambers.
- (2) If the registrar determines that a matter requires further investigation before it is brought before a child and family court, the registrar must –
- (a) designate a person to carry out the investigation; and
 - (b) determine the issue to be investigated.
- (3) Before determining that a matter should be referred to a lay forum, the registrar must take into account all relevant factors, including –
- (a) the vulnerability of the child;
 - (b) the ability of the child to participate in the lay forum proceedings;

- (c) the power relationships within the family; and
- (d) the nature of any allegations made by parties in the matter.

(4) If the matter involves alleged child abuse, the alleged perpetrator may not be present at, or participate in the proceedings of, the lay forum except if the alleged perpetrator has acknowledged, and has accepted responsibility for, that abuse.

Referral of matters to child and family courts

95. (1) If a child and family court registrar determines that a matter may be brought before a child and family court, that registrar must in accordance with sections **60** or **61** refer the matter either to –

- (a) the child and family district court; or
- (b) the regional child and family court registrar for a decision whether the matter should be heard by the child and family regional court.

(2) If a regional child and family court registrar determines that a matter may be brought before a child and family court, that registrar must in accordance with sections **60** or **61**, refer the matter either to –

- (a) the child and family regional court; or
- (b) the child and family district court.

Pre-hearing conferences

96. (1) If a matter brought to or referred to a child and family court is contested, the child and family court registrar may hold a pre-hearing conference 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 must attend and may participate in the conference unless the registrar decides otherwise.

(4) The registrar –

- (a) presides at the conference;
- (b) must ensure that 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) must give a report on the conference to the court when the matter is heard.

Family group conferences

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

(2) The registrar must –

- (a) appoint a suitably qualified person or organisation to facilitate at the family group conference;
- (b) must ensure that 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) must give a report on the conference to the court when the matter is heard.

Other lay-forums

98. (1) The child and family court registrar may refer a matter brought or referred to a child and family court to any appropriate lay forum, including a tribal authority, for an

attempt to settle the matter by way of mediation out of court.

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

(3) The registrar must –

- (a) ensure that 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) give a report on the proceedings before the lay forum to the court when the matter is heard.

Compulsory attendance at pre-hearing conferences

99. (1) The child and family court registrar may, by written notice, require a person who is a party in a matter brought to or referred to a child and family court or who is a family member of the child involved in such a matter, to attend a pre-hearing conference to be held in terms of section **96**.

Settling of matters out of court

100. (1) If a matter is settled out of court and the settlement is accepted by all parties involved in the matter, the child and family court registrar may submit the settlement, or must submit the settlement if a social worker in the service of a provincial department of social welfare so requests, to the child and family court for confirmation or rejection.

(2) The court must consider the settlement and, if it is in the best interest 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.

Other functions

- 101.** The child and family court registrar –
- (a) must attend every child and family court hearing;
 - (b) may present evidence and information, including professional reports, to the court;
 - (c) with the permission of the court, may question or cross-examine a witness or party before the court; and
 - (d) must, when necessary, arrange legal representation for a child before the court.

Part 5: Miscellaneous matters

Publication of information relating to proceedings

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

Child and family matters heard by other courts

103. (1) The establishment of child and family courts in terms of this Act does not affect the jurisdiction of any other court.

(2) When hearing a matter within the jurisdiction of a child and family court, a court of similar or higher status than a child and family court –

- (a) is bound by the principles set out in Chapter 3; and
- (b) must take into account the provisions of this Act.

Transitional matters

104. Every children’s court designated in terms of section 4 (2) of the Children’s Act 1960 (Act No. 33 of 1960), or section 5 of the Child Care Act, continues to function until it is abolished in terms of section 361 (2).

Regulations

105. (1) The Minister of Justice may, with the concurrence of the Minister, make regulations concerning –

- (a) the carrying out and monitoring of further investigations in terms of section **94** (2), procedures regulating such investigations and the gathering of evidence;
- (b) the holding of pre-hearing conferences in terms of section **96**, procedures regulating such conferences and information that must be submitted to a child and family court;
- (c) the holding and monitoring of family group conferences or other lay forums in terms of sections **97** and **98**, procedures regulating such conferences and other lay forums and information that must be submitted to a child and family court;
- (d) the qualifications and experience of persons facilitating family group conferences, including special requirements that apply to persons facilitating in matters involving the alleged abuse of children;
- (e) the compilation of a Family Law Roster, the qualifications, skills and experience of persons for inclusion in the Roster, the requirements with which those persons must comply, and the removal of persons from the Roster;
- (f) a code of conduct for legal practitioners representing parties in the child and family courts;
- (g) documents in connection with matters brought to a child and family court registrar and records of the proceedings of child and family 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 child and family court;
- (i) the submission of court statistics and progress reports on those matters to the

Magistrates' Commission; and

(j) any other matter that may facilitate the application of this Chapter.

(2) Section 354 (2) and (3), read with such changes as the context may require, applies to the making of regulations in terms of subsection (1) of this section.

CHAPTER 7

EARLY CHILDHOOD DEVELOPMENT

Definitional provision

106. (1) Early childhood development means the process of emotional, intellectual, physical and social development of children from birth to the age of nine years.

(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 primary caregiver, on a regular basis to children up to nine years old.

Strategies concerning early childhood development to be included in national policy framework

106A. (1) The Minister, in consultation with the Minister for Education, must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at securing a properly resourced, coordinated and managed early childhood development system, which must include –

(a) mechanisms for the planning, development and implementation of designated early childhood development services and programmes;

(b) strategies for expanding the range of early childhood development services and programmes;

(c) criteria for the selection and designation of early childhood development services and programmes;

(d) minimum standards for early childhood development services and programmes;

- (e) mechanisms to ensure impartiality in the provision of early childhood development services and programmes; and
- (f) measures to ensure that budgetary requirements and procedures are complied with to secure adequate funds for the provision of early childhood development services and programmes.

Provision of early childhood development services

107. (1) Early childhood development services complying with the minimum requirements prescribed by regulation must be provided by –

- (a) a partial care facility providing partial care services for any children up to the age of nine years;
- (b) a child and youth care centre which has in its care any children up to the age of nine years; or
- (c) a primary school as part of its regular education programmes.

(2) Any other person or organisation not disqualified in terms of section **108** may provide early childhood development services, provided that those services comply with the minimum requirements prescribed by regulation.

(3) Any early childhood development services provided in terms of this section must be appropriate to the needs of the children to whom the services are provided.

Persons unsuitable to work with children disqualified from providing early childhood development services

108. A person unsuitable to work with children may not provide or assist in the provision of early childhood development services.

Notices of enforcement

109. (1) A provincial head of social development, a municipality or the head of a

provincial education department may by way of a written notice of enforcement instruct –

- (a) the person operating or managing a partial care facility or a child and youth care centre or a primary school referred to in section **107** (1) which does not provide early childhood development services, to comply with that section within a period specified in the notice;
- (b) the person operating or managing a partial care facility, a child and youth care centre or a primary school referred to in section **107** (1) which does provide early childhood development services but of a standard that does not comply with the minimum requirements prescribed by regulation, to comply with those minimum requirements within a period specified in the notice; or
- (c) a person referred to in section **107** (2) who provides early childhood development services which do not comply with the minimum requirements prescribed by regulation –
 - (i) to stop the provision of those services; or
 - (ii) to comply with those minimum requirements within a period specified in the notice.

(2) The powers conferred in terms of subsection (1) may be exercised by –

- (a) a provincial head of social development in relation to a child and youth care centre and a partial care facility;
- (b) a municipality only in relation to a partial care facility or a person referred to in section **107** (2); or
- (c) the head of a provincial education department only in relation to a primary school.

Assistance

110. (1) A provincial head of social development may assist a partial care facility or a child and youth care centre which in terms of section **107** (1) must provide early childhood development services, to comply with the minimum requirements mentioned in that section.

(2) A municipality may assist a partial care facility which in terms of section **107** (1) must provide early childhood development services, to comply with the minimum requirements mentioned in that section.

(3) The head of a provincial education department may assist a primary school which in terms of section **107** (1) must provide early childhood development services, to comply with the minimum requirements mentioned in that section.

Inspection of early childhood development services

111. (1) A provincial head of social development, a municipality or the head of a provincial education department may authorise a person to inspect the provision of early childhood development services, in order to determine whether the provision of the services complies with the minimum requirements mentioned in section **107** (1) and (2).

(2) Section **352** (2) and (3), read with such changes as the context may require, applies to any inspection in terms of subsection (1) of this section.

- (3) The powers referred to in subsections (1) and (2) may be exercised by –
- (a) a provincial head of social development only in relation to a child and youth care centre;
 - (b) a municipality only in relation to a partial care facility or a person referred to in section **107** (2); or
 - (c) the head of a provincial education department only in relation to a primary school.

Regulations

112. The Minister may make regulations in terms of section **354** concerning –

- (a) the minimum requirements with which early childhood development services must comply;
- (b) the compulsory monitoring of ECD services; and

- (c) any other matter necessary to facilitate the implementation of this Chapter.

CHAPTER 8

PROTECTION OF CHILDREN

Part 1: Child protection system

Strategies concerning child protection to be included in national policy framework

113. (1) The Minister must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at securing a properly resourced, coordinated and managed child protection system, which must include –

- (a) inter-sectoral mechanisms for the planning, development and implementation of designated child protection services focussed primarily on children who are at risk of immediate harm;
- (b) strategies for expanding the range of child protection mechanisms;
- (c) criteria for the selection and designation of child protection organisations to assist in the provision of designated child protection services;
- (d) measures to implement quality control over designated child protection services provided by organs of state and designated child protection organisations; and
- (e) measures to ensure that budgetary requirements and procedures are complied with to secure adequate funds for the provision of designated child protection services.

Establishment of an inter-sectoral mechanism to co-ordinate child protection system

113A. (1) The Minister, in consultation with Cabinet, may establish an inter-sectoral mechanism to co-ordinate and manage the child protection system.

- (2) The mechanism must -
 - (a) commission appropriate research for purposes of a national needs analysis and for preparing preliminary child protection budget estimates for each sector;
 - (b) set up and coordinate inter-sectoral task teams to deal with issues such as training and

selection of child protection personnel; minimum standards; workload norms and guidelines for protocol development; conditions of service for child protection workers; planning, administration and staff deployment; and contracting and purchase-of-service agreements between government and NGO=s for the delivery of child protection services;

- (c) oversee the selection of an appropriate institution to serve as a clearing house for research and information regarding all aspects of child abuse and neglect, including programmes to address these problems;
- (d) provide guidelines for, assist in and monitor provincial coordinating structures for child protection;
- (e) negotiate with training institutions for curriculum development and the training of personnel in all the relevant sectors;
- (f) develop a comprehensive plan for the financing of child protection services as a component of the National Plan of Action;
- (g) monitor the system of mandatory reporting of child abuse and the data emerging from the system;
- (h) develop educative and awareness campaigns on virginity testing, circumcision, and corporal punishment ;and
- (i) perform such other functions as the Minister may prescribe.

Provision of designated child protection services

114. Designated child protection services may be provided by –

- (a) the Department;
- (b) a provincial department responsible for social development in a province; and
- (c) a designated child protection organisation.

Nature of designated child protection services

115. Designated child protection services include –

- (a) services aimed at supporting –

- (i) the performance by child and family court registrars of their functions;
- (ii) the proceedings of child and family courts; and
- (iii) the implementation of court orders;
- (b) services relating to –
 - (i) early intervention services ordered by the court;
 - (ii) the reunification of children in alternative care with their families;
 - (iii) the integration of children into alternative care arrangements;
 - (iv) the placement of children in alternative care; and
 - (v) 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 permanency plans for children removed, or at risk of being removed, from their family; and
- (f) any other social work service that may be prescribed by regulation.

Designation of child protection organisations

116. (1) The Director-General or provincial head for social development may designate any appropriate organisation as a child protection organisation to perform in the relevant province all or any specific designated child protection services. A designated child protection organisation may not perform inter-country adoption services unless authorised thereto by the Central Authority.

- (2) A designation in terms of subsection (1) –
 - (a) must be in writing; and
 - (b) may be made on such conditions as the Director-General or provincial head may determine.

Existing child welfare organisations

117. (1) Any organisation which, when section **116** takes effect, was a prescribed welfare organisation within the meaning of the Child Care Act must be regarded as having been designated in terms of section **116** 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 to be a designated child protection organisation for a period of five years from the date on which section **116** takes effect except if its designation is withdrawn in terms of section **119** before the expiry of that period.

Delegation of powers and duties to designated child protection organisations

118. (1) The Director-General or provincial head for social development may delegate to a designated child protection organisation such powers and duties in terms of this Act as may be necessary for the proper provision of designated child protection services by the organisation.

(2) Section **356**, read with such changes as the context may require, applies in respect of any delegation in terms of subsection (1).

Withdrawal of designations

119. The Director-General or provincial head for social development may withdraw the designation of a child protection organisation to perform any, or any specific, designated child protection services –

- (a) if the organisation –
 - (i) breaches or fails to comply with any conditions subject to which the designation was made;
 - (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.

Part 2: National Child Protection Register

Keeping of National Child Protection Register

120. (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.

(3) Both Parts A and B of the Register must be kept confidential and information in the Register may be accessed and disclosed only as provided for in this Act.

(4) 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

Purpose of Part A of Register

121. The purpose of Part A of the National Child Protection Register is –

- (a) to have a record of abuse or deliberate neglect inflicted on specific children;
- (b) to use the information in the Register in order to protect these children from further abuse or deliberate neglect;
- (c) to monitor cases and services to such children;
- (d) to determine patterns and trends of abuse or deliberate neglect of children; and
- (e) 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.

Contents of Part A of Register

- 122.** (1) Part A of the National Child Protection 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 section 167 (5) (c) (iii);
 - (b) all convictions of parents, care-givers and family members of children on charges involving the abuse or deliberate neglect of the child; and
 - (c) all determinations by a child and family court that a child is in need of care 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 name, physical address and identification number of the child;
 - (ii) the nature and a brief account of the incident, including the place and date of the incident;
 - (iii) the name, physical address and identification number of the parents or care-giver of the child; and
 - (iv) the name and physical address of the child and youth care centre, partial care centre 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 name, physical address and identification number of the child;
 - (ii) the name, physical address and identification number of the convicted person;
 - (iii) 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;
 - (iv) details of the relationship between the convicted person and the child;
 - (c) in the case of a determination by a child and family court referred to in subsection (1)(c) –
 - (i) the name, physical address and identification number of the child;

- (ii) a brief summary of the court's reasons for finding the child to be in need of care; and
- (iii) the name, physical address and identification number of the parents or caregiver of the child; and
- (d) any other information as may be prescribed by regulation.

Access to Part A of Register

123. Only the Director-General and officials of the Department designated by the Director-General have access to Part A of the National Child Protection Register, but the Director-General may, on such conditions as the Director-General may determine, allow access to –

- (a) a child and family court registrar for the purpose of performing his or her functions in terms of this Act;
- (b) 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;
- (c) designated child protections organisations;
- (d) any unit of the South African Police Service tasked with child protection; or
- (e) any other person for the purpose of conducting research on child abuse or deliberate neglect or related issues.

Disclosure of information in Part A of Register

124. (1) No person may disclose any information in Part A of the National Child Protection 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 subsection (2) on written request by such person;

- (e) for the purpose of legal proceedings; or
- (f) when ordered by a court to do so.

(2) (a) 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 the Register, and if so, the reasons why his or her name was entered in the Register.

(b) Inquiries in terms of paragraph (a) whether a person's name appears in Part A of the Register must be directed in the prescribed format to the Director-General on a confidential basis.

(c) The Director-General must respond to such inquiries and indicate whether the relevant person's name is in Part A of the Register within 21 days.

Part B of Register

Purpose of Part B of Register

125. The purpose of Part B of the National Child Protection 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 from these persons.

Contents of Part B of Register

126. Part B of the National Child Protection Register must be a record of persons found in terms of section **127** to be unsuitable to work with children, and must reflect the following:

- (a) the name of the person;
- (b) the last known physical address of the person;
- (c) the identification number of the person;
- (d) a brief summary of the reasons why the person was found to be unsuitable to work with children; and
- (e) any other information as may be prescribed by regulation.

Finding persons unsuitable to work with children

127. (1) A finding that a person is unsuitable to work with children may be made by –

- (a) a child and family court;
- (b) any other court in any criminal or civil proceedings in which that person is involved either as a party or a witness; or
- (c) any administrative forum in any disciplinary proceedings concerning the conduct of that person relating to a child.

(2) A finding in terms of subsection (1) may be made by a court or administrative forum 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.

(3) The question whether a person is unsuitable to work with children, may be heard by the court or administrative forum either in the course of or at the end of its proceedings.

(4) A person must be found unsuitable to work with children on conviction of murder, attempted murder, sexual abuse or assault with the intent to do grievous bodily harm with regard to a child.

Disputes concerning findings

128. (1) The person in respect of whom a finding in terms of section **127** 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 an administrative forum.

(2) A finding in terms of section **127(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.

All findings to be reported to Director-General

129. (1) The registrar of the relevant court, or the relevant administrative forum, or, if the finding was made on application in terms of section **127 (2)**, the person who brought the application must notify the Director-General in writing –

- (a) of any finding in terms of section **127** that a person is unsuitable to work with children; and
- (b) of any appeal or review lodged by the affected person.

(2) The Director-General may not enter a person’s name in Part B of the National Child Protection Register –

- (a) until the time for noting of an appeal or review has expired; or
- (b) if an appeal or review has been noted, until the appeal or review proceedings have been concluded.

Legal consequences of entry of name in Part B of Register

130. (1) No person whose name appears in Part B of the National Child Protection Register may –

- (a) manage or operate, or participate or assist in managing or operating, a child and youth care centre, a partial care facility, a shelter or drop-in centre, or a collective foster care scheme;
- (b) work with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school, or in implementing a collective foster care scheme, either as an employee, volunteer or in any other capacity;
- (c) be permitted to become the foster parent, kinship care-giver or adoptive parent of a child;

- (d) work in any unit of the South African Police Service tasked with child protection; or
- (e) work in other form of employment or activity as may be prescribed.

(2) No person managing or operating 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) 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 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 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; or
 - (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.

Access to Part B of Register

131. Only the Director-General and officials of the Department designated by the Director-General have access to the Register, but 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 130 in relation to schools under the jurisdiction of that department.

Disclosure of information in Part B of Register

132. (1) Before a person is allowed to work –

- (a) with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre or a school, the person managing or operating the centre, facility, shelter or school must establish whether or not that person's name appears in Part B of the National Child Protection Register;
- (b) with 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; or
- (c) 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.

(2) 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.

(3) Inquiries in terms of subsection (1) or (2) whether a person's name appears in Part B of the Register must be directed to the Director-General on a confidential basis.

(4) The Director-General must respond to such inquiries and indicate whether the relevant person's name is in Part B of the Register within 21 days.

Disclosure of names in Part B of Register prohibited

133. No person may disclose the fact that the name of a particular person appears in Part B of the National Child Protection Register except –

- (a) within the scope of that person's powers and duties in terms of this Act or any other legislation;
- (b) to a person or institution referred to in section 132 (1) or (2) on written request by

- such person or institution;
- (c) for the purpose of legal proceedings; or
 - (d) when ordered by a court to do so.
 - (e) when the disclosure is made to a person whose name appears in Part B of the Register.

General

Removal of name from Register

134. (1) A person whose name appears in either Part A or Part B of the National Child Protection Register 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.

(2) Application for the removal of a name and particulars from the Register may be made –

- (a) to any court, including a child and family court;
- (b) to the Director-General, if the entry was made in error; or
- (c) to a child and family court, if the Director-General refuses an application in terms of paragraph (b).

(3) An application in terms of subsection (1) (a) 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.

Part 3: Protective measures relating to health of children

Consent to medical treatment and surgical operations

135. (1) Subject to section 5(2) of the Choice on Termination of Pregnancy Act (Act 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) or (5).

(2) (a) A child may consent, subject to paragraph (b), to medical treatment or a surgical operation, provided the child –

- (i) is at least 12 years of age; and
- (ii) is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment or operation.

(b) A child may not consent to a surgical operation in terms of paragraph (a) without the assistance of –

- (i) the parent of the child; or
- (ii) the primary care-giver of the child.

(3) The parent or primary care-giver of a child may, subject to section **43**, consent to the medical treatment of or 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 does not have the mental capacity to understand the benefits, risks and social implications of the treatment or operation.

(4) 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.

(5) A child and family court may consent to the medical treatment of or a surgical operation on a child if –

- (a) the child has been abandoned; or

- (b) the parent or primary care-giver of the child –
 - (i) unreasonably refuses to give consent or to assist the child in giving consent;
 - (ii) is physically or mentally incapable of giving consent or assisting the child in giving consent;
 - (iii) is deceased; or
 - (iv) cannot readily be traced.

(6) No parent or primary care-giver of a child may refuse to assist a child in terms of subsection (2) (b) or withhold consent in terms of subsection (3) by reason only of religious or other beliefs, unless that parent or primary care-giver can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

HIV-testing

- 136.** (1) No child may be tested for HIV except when –
- (a) this is in the best interest 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) 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;
 - (d) the head 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
 - (e) a child and family 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.

HIV-testing for adoption purposes

137. If HIV-testing of a child under three years of age is done for foster or adoption purposes, the state must pay the cost of such test.

Counselling before and after HIV-testing

- 138.** (1) A child may be tested for HIV only after proper counselling 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) If a test is positive, post-test counselling must be provided 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.

Confidentiality of information on HIV/AIDS status of children

139. (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 legislation;
- (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 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 head 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 child and family court, if –
 - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and

- disclosure is in the best interest of the child; or
- (ii) the child or the parent or care-giver of the child is incapable of giving consent.

Access to contraceptives

140. (1) No person may refuse –

- (a) to sell condoms to a child; or
- (b) to provide a child with condoms 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 provided –

- (a) the child is at least twelve 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 contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 167.

Part 4: Other protective measures

Applications to terminate or suspend parental responsibilities and rights

141. (1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a 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 the 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) When considering an application the court must be –

- (a) guided by the principles set out in Chapter 2 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 reunify 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; and
 - (v) the probabilities of arranging for the child to be adopted or placed in another form of permanent family care.

(4) Section 41, read with such changes as the context may require, applies in respect of any proceedings in terms of this section.

Corporal punishment

142. (1) A person who has control of a child, including a person who has parental responsibilities and rights in respect of the child, must respect to the fullest extent possible the child's right to physical integrity as conferred by section 12 (1) (c), (d) and (e) of the

Constitution.

(2) The common law defence of reasonable chastisement available to persons referred to in subsection (1) in any court proceedings is hereby abolished.

(3) Any legislation and any rule of common or customary law authorising corporal punishment of a child by a court, including the court of a traditional leader, is hereby repealed to the extent that it authorises such punishment.

(4) No person may administer corporal punishment to a child at any school; child and youth care centre, partial care facility or shelter or drop-in centre.

(5) The Department must take all reasonable steps to ensure that –

- (a) education and awareness-raising programmes concerning the effect of subsections (1), (2), (3) and (4) are implemented across the country; and
- (b) programmes promoting appropriate discipline at home and at school are available across the country.

Child safety at places of entertainment

143. (1) A person providing entertainment to children in 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 stairs, escalators, lifts or other mechanical means;
- (b) the majority of the people attending the entertainment are children; and
- (c) the number of people 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 who can safely be accommodated in the premises or

- enclosure and each part of the premises or enclosure;
- (b) station a sufficient number of adult attendants to prevent more people 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) 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 subsection (2) is complied with.

(4) (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 subsection (2) is complied with.

(b) Section 352 (2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a) of this subsection.

Regulations

144. The Minister may make regulations in terms of section 354 –

- (a) prescribing criteria for determining organisations which may be designated as child protection organisations;
- (b) prescribing 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;

- (c) prescribing a broad risk assessment framework to guide decision-making in the provision of designated child protection services;
- (d) prescribing –
 - (i) criteria for determining persons who may conduct investigations into cases of alleged child abuse or neglect; and
 - (ii) the powers and responsibilities of those persons;
- (e) 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;
- (f) prohibiting or regulating cultural practices violating the physical integrity of children;
- (g) prescribing criteria for finding persons unsuitable to work with children;
- (h) prescribing criteria for the assessment of applications for the removal of names of persons from either Part A or Part B of the National Child Protection Register;
- (i) prescribing any other matter necessary to facilitate the implementation of this Chapter.

CHAPTER 9

PARTIAL CARE

Definitional provision

145. Partial care is provided when a person, whether for or without reward, takes care of a child on behalf of the parent or care-giver during specific hours of the day or night, or for a temporary period, in terms of a private arrangement between the parent or care-giver and the provider of the service, but excludes the taking care of a child –

- (a) in terms of an informal kinship care arrangement;
- (b) by a school as part of tuition, training and other activities provided by the school;
- (c) as a boarder in a school hostel or other residential facility managed as part of a school; or
- (d) by a hospital or other medical facility as part of the treatment provided to the child.

Partial care facilities to be registered

146. (1) Any person may establish or operate a partial care facility provided that the facility –

- (a) is registered with the municipality in which that place is situated;
- (b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and
- (c) complies with the minimum norms and standards mentioned in section **151**.

Existing places of care

147. As from the date on which section **146** 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 section **146** as a partial care facility.

Notices of enforcement

148. (1) A municipality or the provincial head of social development may by way of a written notice of enforcement instruct –

- (a) a person operating an unregistered partial care facility –
 - (i) to stop operating that facility; or
 - (ii) to apply for registration in terms of section **146** within a period specified in the notice; or
- (b) a person 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 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 **146**, continue operating the facility during that period and, if that person applies for registration, until that person's application has been processed.

Application for registration and renewal of registration

149. (1) An application for registration or conditional registration of a partial care facility or for the renewal of a registration must –

- (a) be lodged with the municipality in which the facility is situated in accordance with a procedure prescribed by regulation;
- (b) contain the particulars prescribed by regulation; and
- (c) be accompanied by –
 - (i) any documents that may be prescribed by regulation; and
 - (ii) such fee as may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the municipality 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 municipality may allow a late application on good cause shown.

Consideration of applications

150. (1) The municipality must –

- (a) consider an application for registration or conditional registration or for the renewal of a registration, and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and
- (b) issue to the applicant a certificate of registration or conditional registration or renewal of registration on a form prescribed by regulation, if the application is granted.

(2) When considering an application, the municipality must take into account all relevant factors, including whether –

- (a) the facility complies with the minimum norms and standards mentioned in section **151**;
- (b) the applicant is a fit and proper person to operate a partial care facility;

- (c) the applicant has the necessary skills, funds and resources available to provide the partial care services of the type applied for; and
- (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.

(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 municipality must consider a report of a social worker before deciding an application for registration, conditional registration or renewal of registration.

Minimum norms and standards

151. Premises or a place used as a partial care facility must have –

- (a) a safe area for the children to play;
- (b) adequate space and ventilation;
- (c) safe drinking water;
- (d) hygienic and adequate toilet facilities;
- (e) access to disposal of refuse services or other adequate means of disposal of refuse generated at the facility; and
- (f) a hygienic area for the preparation of food for the children.

Conditional registration

152. The registration or renewal of the registration of a partial care facility may be granted on such conditions as the municipality 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 registration will remain valid; and
- (c) providing for any other matters that may be prescribed by regulation.

Cancellation of registration

153. (1) A municipality 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 –
 - (i) the minimum norms and standards mentioned in section **151**; or
 - (ii) 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 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 municipality 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 municipality may assist a registration holder to comply with minimum norms and standards mentioned in section **151** or any provisions of this Act, where the cancellation was due to non-compliance with those norms and standards, requirements or provisions.

Appeals to child and family court

154. An applicant aggrieved by a decision of a municipality in terms of section **150** or **152**,

or a registration holder aggrieved by a decision of a municipality in terms of section **153**, may

–

- (a) lodge an appeal against that decision with the MEC for social development; or
- (b) apply to a child and family court or other court to review that decision.

Role of municipalities

155. (1) A municipality must –

- (a) maintain a record of all available partial care facilities in its area; and
- (b) conduct regular inspections of partial care facilities in its area to enforce the provisions of this Act.

(2) A municipality’s integrated development plan must include strategies for the provision of partial care facilities in its area, which must include measures –

- (a) facilitating the establishment and operation of sufficient partial care facilities in its area;
- (b) prioritising those types of partial care facilities most urgently required; and
- (c) facilitating the identification and provision of suitable premises.

Death of children in partial care facilities

156. (1) If a child dies on the premises of a partial care facility or following an occurrence at the facility, the person operating the partial care facility must within 24 hours of the child’s death report such death to the Children’s Protector.

(2) The Children’s Protector must in terms of section **326** investigate the circumstances of the child’s death if there are allegations or indications that the child died because of abuse or neglect.

Regulations

157. The Minister may make regulations in terms of section **354** concerning –

- (a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;
- (b) the different types of partial care that may be provided in terms of such registrations;
- (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 partial care facilities;
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 10

PREVENTION AND EARLY INTERVENTION SERVICES

Definitional provision

- 158.** (1) Early intervention services means social work services which are –
- (a) designed to serve the purposes mentioned in section **159**; and
 - (b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care in order to avoid such intervention;
- (2) Prevention services means social work services –
- (a) designed to serve the purposes mentioned in section **159**; 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 unchecked, may lead to statutory intervention;

Purposes of prevention and early intervention services or programmes

- 159.** (1) A range of prevention and early intervention services or programmes must be provided for the purposes of –
- (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;
- (c) establishing appropriate interpersonal relationships within the family;
 - (d) promoting the well-being of children and the realisation of their full potential;
 - (e) preventing the neglect, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;
 - (f) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;
 - (g) diverting children away from the child and youth care system and the criminal justice system; and
 - (h) avoiding the removal of a child from the family environment.
- (2) Prevention and early intervention services or programmes may include –
- (a) assisting families to obtain the basic necessities of life; and
 - (b) empowering families to obtain such necessities for themselves.

Provision of prevention and early intervention services

160. (1) The Minister may, from money appropriated by Parliament, provide or fund prevention and early intervention services to families, parents, care-givers and children.

- (2) In implementing subsection (1) –
- (a) families who lack the means of providing proper shelter, food and other basic necessities of life to their children must be a priority; and
 - (b) prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and resolving their problems.

National policy framework to include strategies for securing provision of prevention and early intervention services

161. The Minister must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at securing the provision of prevention and early

intervention services to families, parents, care-givers and children across the country, including strategies –

- (a) to ensure an integrated approach among all spheres of government in the planning of sound and stable family structures;
- (b) to establish an equitable distribution of resources among all spheres of government to ensure the involvement of all such spheres in the provision of prevention and early intervention services;
- (c) to build the capacity of government in all spheres to cope with the need for prevention and early intervention services where such capacity is lacking; and
- (d) to develop an efficient and adequate infra-structure for the provision of prevention and early intervention services.

Role of municipalities in prevention and early intervention services

162. (1) A metropolitan and local municipality may perform such prevention and early intervention services as may be allocated to municipalities in terms of the national policy framework referred to in section 5.

(2) A metropolitan and local municipality must –

- (a) determine and keep the statistics prescribed by regulation of the estimated total number of children in the age groups prescribed by regulation in its area;
- (b) submit at intervals prescribed by regulation statistics in respect of children in its area to such organs of state as may be specified by regulation;
- (c) at least once every three years make a needs analysis of children in its area in a manner prescribed by regulation;
- (d) apply those statistics and such needs analysis for the purposes of budgeting and the provision of services, including –
 - (i) the provision of recreational facilities for children in its area;
 - (ii) access to basic nutrition, shelter, health care and social services;
- (e) take all reasonable steps to secure the environmental safety of children in its area; and

- (f) make provision for home visiting of new-born babies.

Role of traditional authorities in prevention and early intervention services

163. In implementing section **162**, a municipality may by agreement with a traditional authority in its area designate aspects of the functions referred to in that section to the traditional authority.

Court may order early intervention services

164. (1) Before making an order concerning the temporary or permanent removal of a child from that child's' family environment, a child and family court may order -

- (a) the provincial department of social development, a designated child protection organisation, or any other relevant organ of state to provide early intervention services in respect of the child and the family or parent or care-giver of the child if the court considers the provision of such services appropriate in the circumstances;

- (b) the child's family and the child to participate in a recognised 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 social worker's report setting out progress with early intervention services rendered to the child and the family or the parent or care-giver, 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 services 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 and imminently at risk.

Reports of social workers to include summary of prevention and early intervention services

165. When a report of a 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 services provided in respect of that child and the family, parent or care-giver of the child.

CHAPTER 11

THE CHILD IN NEED OF CARE AND PROTECTION

Part 1: Identification of a child in need of care and protection

Definitional provision

166. A child is in need of care and protection if –

- (a) the person having the parental responsibility to care for the child –
 - (i) deliberately fails to fulfil that responsibility in respect of that child in a material respect;
 - (ii) sexually abuses the child or a sibling of the child;
 - (iii) has inflicted life-threatening injury on the child or a sibling of the child;
 - (iv) has murdered a sibling of the child; or
 - (v) has disappeared or cannot be traced;
- (b) there is no person exercising the parental responsibility to care for the child; or
- (c) the child –
 - (i) has been abandoned, orphaned or is without any visible means of support;
 - (ii) displays behaviour which cannot be controlled by the parent or care-giver;
 - (iii) lives or works on the streets or begs for a living;
 - (iv) is addicted to a dependence producing substance and is without any support to

- obtain treatment for such dependency;
- (v) lives in circumstances that expose the child to commercial sexual exploitation or to being trafficked;
 - (vi) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;
 - (vii) 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 injure the physical, mental or social well-being of the child;
 - (viii) is in a state of physical or mental neglect;
 - (ix) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibility or a family member of the child, or by a person under whose control the child is; or
 - (x) is subjected to an exploitative labour practice.

Reporting of children in need of care and protection

167. (1) Any teacher, medical practitioner, dentist, nurse, social worker, member of staff at a partial care facility, shelter, drop-in centre, or child and youth care centre, school or other person involved with a child in a professional capacity and who on personal observation concludes that the child has been injured as a result of abuse, sexual abuse or deliberate neglect, must report that conclusion to a designated child protection organisation, police officer or child and family court registrar.

(2) Any other person who believes that a child is in need of care and protection because of injury as a result of abuse, deliberate neglect or sexual abuse, may report that belief to a designated child protection organisation, police officer or child and family court registrar.

(3) A person referred to in subsection (1) or (2) must, if required to do so by a

designated child protection organisation, a police officer or a child and family court registrar, on affidavit substantiate that conclusion or belief to that person.

(4) A medical practitioner or a registered midwife performing a termination of pregnancy on a child must, despite any provision of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996) requiring confidentiality, comply with subsection (1) if the pregnancy was due to sexual abuse of the child.

(5) A designated child protection organisation, a police officer or a child and family court registrar to whom a report has been made in terms of subsection (1) or (2), must

–

- (a) make an initial assessment of the report;
- (b) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and
- (c) if the report is substantiated by such investigation, without delay –
 - (i) take steps to ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;
 - (ii) initiate proceedings in terms of this Chapter for the protection of the child; and
 - (iii) submit such particulars concerning the matter as may be prescribed by regulation to –
 - (aa) the Director-General for inclusion in Part A of the National Child Protection Register, if there are reasonable grounds for believing that the child has been abused or deliberately neglected; and
 - (bb) the provincial head of social development.

(6) In respect of reports made in good faith in accordance with this section, the provisions of section 359 will apply.

Referral of children in need of care and protection by other courts to the child and

family court

168. (1) If it appears to a court in the course of any criminal or civil proceedings that a child involved in or affected by those proceedings is in need of care and protection, the court may order that the question whether the child is in need of care and protection be referred to a child and family court for decision.

(2) If it appears to a court in the course of any proceedings in terms of the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), the Divorce Act, 1979 (Act No. 70 of 1979), or the Domestic Violence Act, 1998 (Act No. 116 of 1998), that allegations of abuse or neglect made in respect of a child of any of the parties to the proceedings are well-founded, the court may suspend the proceedings pending the outcome of an inquiry by the child and family court into the question whether the child is in need of care and protection.

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

Removal of children to temporary safe care by order of child and family magistrate

169. (1) If, on evidence given by a designated social worker on oath or affirmation before a child and family magistrate, it appears to the magistrate that a child who resides or happens to be in the area of that magistrate is in need of care and protection, the magistrate may order that the question of whether the child is in need of care and protection be referred to a child and family court for decision.

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

(3) In deciding 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 child and family court may exercise any of the functions assigned to it in terms of section 67(1) to (4).

(4) An order issued in terms of subsection (2) must identify the child in sufficient detail to execute the order, but need not state the name of the child.

(5) A police officer or designated social worker authorised by a court order may –

(a) by force if necessary –

(i) enter any premises mentioned in the order; and

(ii) remove the child from the premises; and

(b) on those premises exercise any power mentioned in section 67 (3) (a) to (e) or carry out any specific instructions of the magistrate.

(6) The person who has removed a child in terms of the court order must without delay –

(a) inform the primary care-giver of the child of the removal of the child, if that person can readily be traced; and

(b) bring the matter to the child and family court registrar for referral to a child and family court in terms of section 95.

Removal of children to temporary safe care without court order

170. (1) A police officer, a designated social worker or an authorised officer 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; and

(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.

(2) The person who has removed and placed a child in temporary safe care without a court order must without delay –

- (a) inform the primary care-giver of the child of the removal of the child, if that person can readily be traced;
- (b) inform the relevant child and family court registrar of the removal of the child; and
- (c) bring the matter to the child and family court registrar for referral to a child and family court in terms of section **95**.

(3) Misuse of a power referred to in subsection (1) by a social worker in the service of a designated child protection organisation, is a ground for the withdrawal of that organisation's designation in terms of section **119**.

Voluntary temporary safe care

171. (1) The parent or care-giver of a child, or a person who finds a lost child, may place the child in temporary safe care for a maximum period of 72 hours if –

- (a) that parent or person is temporarily unable to care for the child;
- (b) the child is in need of care and protection and needs immediate emergency protection; and
- (c) the person in whose care the child is to be put, agrees to receive the child.

(2) If the child placed in temporary safe care is not reunited with its parent or primary care-giver within the 72 hour period, the person in whose care the child is placed must immediately bring the child before the child and family court for a determination in terms of section **174**.

Other children in need of care and protection

172. If there are reasonable grounds for believing that a child, other than a child placed in temporary safe care in terms of section **168**, **169** or **170**, is in need of care and protection, any

of the following persons may bring the matter to the child and family court registrar for referral to a child and family court in terms of section **95**:

- (a) a police officer, social worker or authorised officer;
- (b) a person who has parental responsibility in respect of the child or under whose control the child is; or
- (c) the Director-General.

Preconditions for removal of children in need of care and protection to temporary safe care

173. The best interest 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.

Part 2: Child and family court processes

Decision of question whether child is in need of care and protection

174. (1) A child and family court must decide the question of whether a child who was the subject of proceedings in terms of section **168, 169, 170** or **172** is in need of care and protection.

(2) The child concerned must be brought before the court hearing the matter except if the child and family court registrar or the court decides otherwise.

- (3) The court hearing the matter may –
- (a) adjourn the matter for a period not exceeding 14 days at a time; and
 - (b) order that the child, pending decision of the matter, 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 under whose control the child is;
- (iv) be put under the control of a family member or other relative of the child; or
- (v) be placed in temporary safe care.

(4) 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 **175**, taking into account section **164**.

- (5) If the court finds that the child is not in need of care and protection, the court must –
- (a) make an order that the child, if the child is in temporary safe care, be returned to the person in whose control the child was before the child was put in temporary safe care; or
 - (b) decline to make an order, if the child is not in temporary safe care.

(6) 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 a report of a social worker which report must be in the prescribed format.

Orders when child is found to be in need of care and protection

- 175.** (1) If a child and family court finds that a child is in need of care and protection, the court may make any order which is in the best interest of the child, which may be or include an order –
- (a) referred to in section **59**;
 - (b) confirming that the person under whose control the child is may retain control 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;
 - (c) that the child be returned to the person under whose control 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;
 - (d) that the person under whose control the child was make arrangements for the child to be taken care of in a partial care facility, if the court finds that the child became in need of care and protection because the person under whose control the child was lacked the time to care for the child;

- (e) that an emergency court grant be paid to the child to provide for the basic needs of the child until the person under whose control the child is becomes able to provide for those basic needs, if the court finds that the child became in need of care and protection because the person under whose control the child was and the person who is legally obliged to maintain the child lacked the means to care for the child;
- (f) 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) court-ordered kinship care, if the child has a relative who is able, suitable and willing to be entrusted with the care of the child;
 - (ii) foster care with a suitable foster parent;
 - (iii) foster care with a group of persons or an organisation operating a collective foster care scheme;
 - (iv) temporary safe care, pending an application for the adoption of the child;
 - (v) shared care where different care-givers or centres alternate in taking responsibility for the care of the child at different times or periods; or
 - (vi) a child and youth care centre designated in terms of section 177 which provides a residential care programme suited to the child's needs;
- (g) if the child lives in a child-headed household, that the child must remain in that household subject to section 234;
- (h) that the child be placed in a facility designated by the court which is managed by an organ of state, or registered, recognised or monitored in terms of legislation, for the care and education of children with disabilities or chronic illnesses, if the court finds that –
 - (i) the child has a physical or mental disability or chronic illness; and
 - (ii) it is in the best interest of the child to be cared for in such facility;
- (i) that the child be sent to a child and youth care centre designated in terms of section 177 which provides a secure care programme suited to the needs of the child, if the court finds –
 - (i) that the parent or care-giver cannot control the child; or
 - (ii) that the child displays criminal behaviour;
- (j) that the child receive appropriate treatment or attendance, if needs be at state expense, if the court finds that the child is in need of medical, psychological or other treatment or attendance;

- (k) that the child be admitted as an inpatient or outpatient to an appropriate facility, if the court finds that the child is in need of treatment for addiction to a dependence-producing substance; or
 - (l) interdicting a person from maltreating, abusing, neglecting or degrading the child, or from having any contact with the child, if the court finds that –
 - (i) the child has been or is being maltreated, abused, neglected or degraded by that person;
 - (ii) the relationship between the child and that person is detrimental to the well-being or safety of the child; or
 - (iii) the child is exposed to a substantial risk of imminent harm.
- (2) The court which makes an order 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) (f) (i), (ii) or (iii), may include a condition –
 - (i) rendering the placement of the child subject to supervision by a social worker or other person designated by the court; or
 - (ii) requiring the person in whose care the child has been placed, to co-operate with the supervising social worker or other person 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 child and family 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.

Court orders to be aimed at securing stability in the child's life

- 176.** (1) Before a child and family court gives an order in terms of section **175** for the removal of the child from the care of the child's parent or care-giver, the court must –

- (a) obtain and consider a report by a 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 particulars prescribed by regulation; 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 or care-giver under the supervision of a social worker, provided that the child's safety and well-being must receive first priority;
 - (ii) placing the child in alternative care for a short period to allow for the reunification of the child and the parent or care-giver with the assistance of a social worker;
 - (iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent or care-giver;
 - (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 very young child who has been abandoned by its parent(s) must be made available for adoption with the minimum possible delay except when this is not in the best interest of the child.

(3) When issuing an order involving the removal of the child from the care of the child's parent or care-giver, the court may include in the court order instructions as to the implementation of the permanency plan for the child.

Placement of children in child and youth care centres

177. (1) A child and family 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 child and family 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 or programmes 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 or programmes.

(3) The MEC for social development in the relevant province must place the child in a child and youth care centre offering the residential care programme or programmes 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 MEC 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.

Duration and extension of orders

178. (1) An order made by a child and family court in terms of section **175** –

- (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 –
 - (i) by a child and family court for a period of not more than two years at a time; or
 - (ii) in terms of section **179**, in the case of supervised or alternative care.

(2) Subject to section 196, no court order referred to in subsection (1) extends beyond the date on which the child in respect of whom it was made reaches the age of 18 years.

Extension of placement orders by MEC for social development

179. (1) An order of a child and family court placing a child under supervised or alternative care may be extended by the MEC for social development following a process prescribed by regulation.

- (2) Such a process must provide for –
- (a) consultation with –
 - (i) the child;
 - (ii) the parent and any other person who has parental responsibilities and rights in respect of the child;
 - (iii) where appropriate, the management of the centre where the child is placed; and
 - (iv) any alternative care-giver of that child.
 - (b) written reasons to be given to the child, the parent, such other person, the management of the centre, and alternative care-giver for any decision by the MEC for social development to extend or not to extend the order; and
 - (c) an appeal against such decision to a child and family court by –
 - (i) by the child, the parent, such other person, the management of the centre or alternative care-giver; or
 - (ii) any social worker who has an interest in the matter.

Regulations

180. The Minister may make regulations in terms of section 354 prescribing –

- (a) the particulars which permanency plans must contain;
- (b) the manner in, and time-intervals at which, permanency plans must be evaluated; and
- (c) procedures for determining whether a child has been abandoned; and
- (d) any other matter that may be necessary to facilitate the implementation of this Chapter.

CONTRIBUTION ORDERS

Issue of contribution orders

181. (1) A child and family 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 child and family 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 registrar of the first-mentioned court must immediately inform the clerk of the last mentioned court of such variation, suspension, rescission or revival.

Jurisdiction

182. (1) A contribution order may be made, varied, suspended, rescinded or revived by the child and family 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 or happens to be.

(2) A provisional contribution order may be made by a child and family 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).

Effect of contribution orders

183. (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, 1998 (Act No. 99 of 1998), and the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), as may be appropriate.

(2) Sections 31 and 40 of the Maintenance Act, 1998, read with such changes as the context may require, apply to a person who refuses or fails to comply with a contribution order.

Payments to be made to person determined by court

184. A contribution order must instruct the respondent to pay the sum stated therein to the clerk of the child and family court or to such other person as the court may determine.

Attachment of wages of respondents

185. (1) A child and family 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 pay that amount to the clerk of the court or to any other person 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 the clerk of the child and family court or to such other person as is specified in the order.

Change of residence or work by respondent

186. (1) A respondent against whom a contribution order is in force must –

- (a) give notice, in writing, to the clerk of the child and family 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.

CHAPTER 13

CHILDREN IN ALTERNATIVE CARE

Definitional provision

187. A child is in alternative care if the child has been placed –

- (a) in foster care;
- (b) in court-ordered kinship care;
- (c) in the care of a child and youth care centre following an order of a court in terms of this Act or the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
- (d) in temporary safe care.

Free and subsidised state services

188. A child in alternative care is entitled to –

- (a) free basic education in state schools;
- (b) subsidised school uniforms, shoes and stationary;
- (c) free basic health care;
- (d) subsidised public transport; and
- (e) exemption from payment of any fees when applying for official documents from any organ of state.

Leave of absence

189. (1) Leave of absence may, subject to such limitations and conditions as may be prescribed by regulation, 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 care the child has been placed, but if the child has been placed in the care of such a person under the supervision of a social worker, leave of absence may be granted by that person only with the approval of the social worker; and
- (c) by the head of social development in the relevant province, in the case of a child in temporary safe care.

(2) (a) The management, person referred to in subsection (1), social worker or the head of social development in the province –

- (i) may at any time cancel any leave of absence granted in terms of subsection (1); and
- (ii) must cancel such leave if the MEC for social development in the province so directs.

(b) In the case of foster care, the supervising social worker may at any time cancel any leave of absence granted in terms of subsection (1).

(c) When a child's leave of absence has been cancelled, the management, person referred to in subsection (1), social worker or the head of social development must request the child to return to the child and youth care centre or person, or to the place where the child is in temporary safe care.

Children absconding from alternative care

190. (1) Any police officer, social worker or authorised officer may without a warrant 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) A child so apprehended –

- (a) must without delay be brought before a child and family court magistrate; and
- (b) may, until brought before a child and family court magistrate, be kept in temporary safe care.

(3) When the child is brought before a child and family court magistrate, the magistrate 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 magistrate 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 MEC for social development in the relevant province in terms of subsection (5), if the magistrate is of 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.

(4) The child and family court magistrate must –

- (a) report to the MEC for social development in the relevant province the result of an inquiry in terms of subsection (3); and
- (b) notify the MEC of any order made in terms of subsection (3) (c).

(5) When an order has been made in terms of subsection (3) (c) (ii) the MEC may, after consideration of the report of the child and family court magistrate and such inquiry as the MEC may consider necessary –

- (a) deal with the child in terms of section **191, 193 or 195**; or
- (b) 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.

Transfer of children in alternative care

191. (1) The MEC for social development in the relevant province may, subject to subsection (4), by order in writing transfer a child in alternative care from the child and youth care centre or person in whose care or temporary safe care that child has been placed to any other child and youth care centre or person. The MEC may not transfer a child to a child and youth care centre in another province without the permission of the MEC for social development in that other province.

(2) An order issued by the MEC in terms of subsection (1) must be regarded as having varied the court order in terms of which the child was placed in alternative care.

(3) (a) If the MEC transfers a child in terms of subsection (1) to the care of the child's parent, guardian or former care-giver under the supervision of a social worker, the order must specify the requirements with which the child and that parent, guardian or former care-giver must comply.

(b) If any requirement referred to in paragraph (a) is breached or not complied with, the social worker concerned may bring the child before a child and family court, which may, after an inquiry, vary the order issued by the MEC or make a new order in terms of section **175**.

(4) Before the MEC issues an order in terms of subsection (1), a social worker designated by the MEC must consult –

- (a) the child;
- (b) the parent or primary care-giver of the child, if available;
- (c) the child and youth care centre or person in whose care or temporary safe care that child has been placed; and
- (d) the child and youth care centre or person to whom the child is to be transferred.

(5) If the MEC transfers a child from a secure care child and youth care centre to a less

restrictive child and youth care centre or to the care of a person, the MEC must be satisfied that the transfer will not be prejudicial to other children,

(6) No order in terms of subsection (1) may be carried out without ratification by a child and family court if the child is transferred –

- (a) from the care of a person to a child and youth care centre; or
- (b) from the care of a child and youth care centre to a secure care or more restrictive child and youth care centre.

Change in residential care programmes

192. (1) The MEC for 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 MEC may transfer the child to another child and youth care centre or to a person in terms of section **191**.

(3) No determination in terms of subsection (1) may be carried out without ratification by a child and family court if that determination requires the application to the child of a residential care programme –

- (a) which includes the secure care of the child; or
- (b) which is more restrictive than the child's current programme.

Removal of children who are already in alternative care

193. (1) A child and family magistrate or the MEC for 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 (3) –

- (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 child and family court magistrate issuing a notice of removal in terms of subsection (1) must submit a report to the MEC for social development in the relevant province on the reasons for the notice.

(3) The MEC must, within six months from the date on which a child has been moved and put in temporary safe care in terms of subsection (1), and after such inquiry as the MEC may consider necessary –

- (a) deal with the child in terms of section **191** or **195**; or
- (b) order that the child be returned to the child and youth care centre or person in whose care or temporary care the child was immediately before the subsection (1) notice was issued.

Provisional transfer from alternative care

194. (1) The MEC for 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 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 reunify the child with the child’s family, if applicable; and
 - (b) a report on such assessment and reunification has been submitted to and considered by the MEC.

- (3) A notice of provisional transfer is subject to the condition that –
- (a) the provisional transfer must be managed under the supervision of a social worker to establish

and test the feasibility of -

- (i) reunification of the child with the child's family;
 - (ii) integration into an alternative family; or
 - (iii) a transfer to another child and youth care centre or any other form of placement;
- (b) the MEC may at any time revoke the provisional transfer; and
 - (c) the MEC must revoke the transfer if the child and the social worker so requests.

(4) The MEC may at the end of, or at any time during, the trial period transfer the child from alternative care in terms of section **195**.

(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.

Permanent discharges from alternative care

195. (1) The MEC for 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 reunify the child with the child's family, if applicable; and
 - (b) a report on such assessment and reunification has been submitted to and considered by the MEC.

(3) A notice of discharge relieves the child and youth care centre or person in whose care or temporary safe care that child has been placed, from any further responsibilities in relation to the child.

Discharges from alternative care after reaching age of 18 years

196. (1) A child placed in alternative care, is entitled, after having reached the age of 18 years, to continue staying in that care until the end of the year in which that person reached the age of 18 years.

(2) An MEC for social development may on application by a person placed as a child in alternative care, allow that person to remain in that care until the end of the year in which that person reaches the age of 21 years if –

- (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 education or training.

Death of children in alternative care

197. (1) If a child in alternative care dies, the management of the child and youth care centre or person in whose care the child has been placed must within 24 hours of the child's death report such death to the Children's Protector.

(2) The Children's Protector must in terms of section **325** investigate the circumstances of the child's death if there are allegations or indications that the child died because of abuse or neglect.

CHAPTER 14

FOSTER CARE AND CARE BY RELATIVES

Definitional provision

198. (1) A child is in foster care if the child has in terms of an order of a child and family court or in terms of section **194** or **195** been placed in the care of a person who is not the parent or guardian of the child, but foster care excludes the placement of a child –

- (a) in court-ordered kinship care;
- (b) in temporary safe care; or
- (c) in the care of a child and youth care centre.

(2) A child is in court-ordered kinship care if the child has in terms of an order of a child and family court been placed in the care of a relative who is not the parent or guardian of the child, but court-ordered kinship care excludes the placement of a child in the temporary safe care of a relative.

Part 1: Foster care and court-ordered kinship care

Initial proceedings

199. Before a child and family court places a child in foster care or kinship care, the court must comply with Part 2 of Chapter 11 to the extent that the provisions of that Part are applicable to the particular case.

Prospective foster parents or kinship care-givers

200. (1) A prospective foster parent or kinship care-giver must be –

- (a) a fit and proper person to be entrusted with the foster care or kinship care of the child;
- (b) willing and able to undertake, exercise and maintain the responsibilities of such care; and
- (c) properly assessed by a social worker for compliance with paragraphs (a) and (b).

(2) A person unsuitable to work with children is not a fit and proper person to be entrusted with the foster care or kinship care of a child.

Determination of placement of children in foster care

201. (1) Before a child and family court places a child in foster care in terms of section 175, the court must consider a report by a 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 or kinship care to the child.

(2) A social worker must, in the case of a refugee or undocumented immigrant child, make inquiries with the United Nations High Commissioner for Refugees or a service agency working in a relevant refugee community to identify suitable persons who are willing and able to provide foster care

or kinship care to the child.

- (3) 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 or kinship care to the child.

Number of children to be placed in foster or kinship care per household

- 202.** (1) Not more than six children may be placed in foster care or kinship care with a single person or two persons sharing a common household, except where –
- (a) the children are siblings or related; or
 - (b) the court considers this for any other reason to be in the best interest of all the children.

(2) More than six children may be placed in foster care in terms of a collective foster care scheme which provides for the children to be grouped in houses accommodating not more than six children per house or such other number of children per house as the court may determine.

Duration of kinship care orders and stable foster care placements

- 203.** (1) A child and family court may despite section **178(1)(a)** and after having considered the need for creating stability in the child’s life, issue a kinship care order for more than two years, or extend such an order for more than two years at a time, if –
- (a) the child has been abandoned by the biological parents;
 - (b) the child’s biological parents are deceased;
 - (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.

(2) A child and family court may despite section **178(1)(a)**, after a child has been in foster care for more than two years and after having considered the need for creating stability on 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.

Reunification of child with biological parents

204. (1) If a child and family court placing a child in foster care or kinship 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 referred to in section 175 (3) (a) which provide for a social worker to facilitate such reunification.

(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 social worker appointed to facilitate the reunification must submit a report to the child and family 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 child and family court considering the report may –

- (a) order that the social worker must continue facilitating the reunification;
- (b) order the termination of the reunification services if there are no prospects of reunification;
- (c) terminate the services of the social worker with respect to the child;
- (d) terminate some or all of the parental responsibilities and rights of the biological parents; or
- (e) assign additional parental responsibilities and rights to the foster parent or kinship care-giver.

Responsibilities and rights of foster parents and kinship care-givers

205. (1) The foster parent or kinship care-giver of a child has those parental responsibilities and rights in respect of the child as set out in –

- (a) the order of the child and family court placing the child in the foster care or kinship care of that foster parent or kinship care care-giver;

- (b) an order of the child and family court amending the initial order;
- (c) an order of court in terms of section 35;
- (d) a parenting plan between the parent or guardian of the child and the foster parent or kinship care-giver in terms of Part 3 of Chapter 5; or
- (e) any applicable provisions of this Act.

(2) An order of the child and family court may give parental rights and responsibilities to a foster parent or kinship care-giver in addition to those normally necessary for a foster parent or kinship care-giver 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.

(3) A child and family court may in terms of section 90 monitor the suitability of the placement of a child in foster care or court-ordered kinship care.

Termination of foster care and court-ordered kinship care

206. (1) Foster care and court-ordered kinship care may be terminated by a child and family court only if it is in the best interest of the child.

(2) Before terminating the foster care or court-ordered kinship 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 or kinship care-giver; and
 - (ii) the child and the family of the foster parent or kinship care-giver; 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 or in court-ordered kinship care with the kinship care-giver;

- (iii) placing the child in any other alternative care; or
- (iv) adoption of the child.

Part 2: Informal kinship care arrangements

Responsibilities and rights of relatives in terms of informal kinship care arrangements

- 207.** (1) A relative caring for a child in terms of an informal kinship care arrangement –
- (a) has the parental responsibilities and rights in respect of the child –
 - (i) as provided for in section **44** and any other provisions of this Act; and
 - (ii) as a court may assign to that relative in terms of section **35**; and
 - (b) may on behalf of the child’s parent or guardian –
 - (i) consent to medical treatment of or an operation on the child in terms of section **135** (3); or
 - (ii) assist the child in terms of section **135** (2) (b) to consent to such operation;
 - (c) may on behalf of the child, apply to any organ of state for any grant or other aid in respect of which the child may qualify, including a social security grant;
 - (d) may guide and discipline the child;
 - (e) may consent to the child going on journeys, including educational, cultural, sports and holiday excursions; and
 - (f) may perform such other acts as may be prescribed by regulation.

(2) A relative caring for a child in terms of an informal kinship care arrangement may exercise the responsibilities and rights referred to in subsection (1) only to the extent that care of the child is not provided by the parent, guardian or other person to whom parental rights and responsibilities in respect of the child has been assigned.

(3) Consent or assistance in terms of subsection (1) (b) may only be given or provided with the written authority of the parent or guardian except if –

- (a) the child –
 - (i) has been abandoned by the parent or guardian; or

- (ii) is an orphan; or
- (b) the whereabouts of the parent or guardian are unknown.

Termination of informal kinship care arrangements

208. An informal kinship care arrangement may at any time be terminated by –

- (a) the parent or guardian of the child reclaiming his or her right to care for the child, except when a child and family court orders otherwise;
- (b) the relative caring for the child in terms of the arrangement; or
- (c) the child and family court on application by the child or any person with an interest in the care of the child.

Regulations

209. The Minister may make regulations in terms of section **354** –

- (a) regulating the establishment, functioning and management of collective foster care schemes;
- (b) prescribing minimum norms and standards to which collective foster care schemes, and any foster care programmes provided in terms of such schemes, must comply;
- (c) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 15

CHILD AND YOUTH CARE CENTRES

Definitional provision

210. (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 or programmes suited for the children in the facility, but excludes –

- (a) a partial care facility;
- (b) a shelter or drop-in centre;
- (c) a boarding school;
- (d) a school hostel or other residential facility attached to a school; or

- (e) 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 be or include a programme designed for –

- (a) the reception, care and bringing-up of children otherwise than in their family environment;
- (b) the reception, care and bringing-up 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) the reception and temporary safe care of children to protect them from harm or neglect;
- (e) 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;
- (f) the reception and voluntary temporary safe care of children in terms of section **171**;
- (g) the reception and care of, and the provision of tuition or training to, children ordered by a court to receive tuition or training;
- (h) the reception and secure care of children awaiting trial or sentence;
- (i) the reception and secure care of children with behavioural and emotional difficulties, for the purpose of providing counselling, tuition and training to them;
- (j) the reception, secure care and training of children in terms of an order under –
 - (i) the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
 - (ii) section **175** (1) (i) or **191** of this Act; or
- (k) 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 programme or programmes, offer the following services:

- (a) the provision of appropriate care, tuition and training to children with physical or mental

disabilities or chronic illnesses, including HIV/AIDS;

- (b) the treatment of children for addiction to dependence producing substances; or
- (c) any other service that may be prescribed by regulation.

Strategies to ensure sufficient provision of child and youth care centres

211. (1) The Minister must include in the national policy framework referred to in section 5 a comprehensive national strategy aimed at ensuring the establishment of an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions.

(2) The MEC or *municipality*² must –

- (a) maintain a record of all available child and youth care centres in its area; and
- (b) plan strategies for the establishment of an appropriate spread of child and youth care centres in its area providing the required range of residential care programmes.

(3) The MEC or *municipality* must implement subsection (2) in accordance with, and subject to any limitations as may be determined in, the national policy framework referred to in section 5.

Part 1: Establishment and registration of child and youth care centres

² Note: “Child care facilities” appears in Part B of Schedule 4 of the Constitution, and as such forms part of the matters in respect of which the legislative competence of Parliament and the provincial legislatures is limited. In terms of section 156 (1) of the Constitution municipalities have executive authority in respect of and “the right to administer” these matters. The right to administer child care facilities would include the establishment and administration of a registration system as provided for in this chapter of the Bill. While section 156 (1) of the Constitution read with section 155 (7) allows Parliament to “regulate” the exercise by municipalities of their executive authority referred to in section 156 (1), municipalities cannot be excluded from establishing or administering such facilities.

Departmental practice and the Project Committee maintain that the administration of **residential care facilities** (e.g. children’s homes) should not be a municipal competency and would prefer that the establishment and administration of such centres be dealt with at provincial level. These aspects are covered fully in the report (Par. 18.5.2). To highlight the issue, the word ‘municipality’ is placed in italic font.

Establishment of child and youth care centres by organs of state

212. (1) The Minister, an MEC for social development, a *municipality* acting within its own statutory functions may establish and operate child and youth care centres, provided that any such centre –

- (a) is managed and maintained in accordance with this Act; and
- (b) complies with –
 - (i) the minimum norms and standards mentioned in section 227; and
 - (ii) 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.

(2) A child and youth care centre may be established by –

- (a) the Minister only with the concurrence of the Minister of Finance; and
- (b) an MEC for social development only with the concurrence of the member of the Executive Council who is responsible for finance in the province.

Existing government children’s homes, places of safety, secure care facilities, schools of industries and reform schools

213. (1) As from the date on which section 212 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 212 as a child and youth care centre providing a residential care programme mentioned in section 210 (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 212 as a child and youth care centre providing residential care programmes mentioned in section 210 (2) (c) and (d);
 - (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 212 as a child and youth care centre providing a residential care programme mentioned in
-

- section **210** (2) (h);
- (d) an existing school of industries established or deemed to have been established in terms of the Union Education Act, 1917, must be regarded as having been established in terms of section **212** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (g);
 - (e) an existing reform school established or deemed to have been established in terms of the Union Education Act, 1917, must be regarded as having been established in terms of section **212** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (j); and
 - (f) the facilities mentioned in paragraphs (a) to (e) of this subsection continue to be administered by the organ of state which administered them immediately before that date, but the President, at any future date, may by proclamation assign the administration of the facilities mentioned in paragraphs (d) and (e) to the Minister.

(2) Until the administration of the facilities mentioned in subsection (1) (d) and (e) are assigned to the Minister, the Cabinet member responsible for education must in relation to those facilities and the children in those facilities perform the functions vested in an MEC for social development in terms of this Act.

Establishment of child and youth care centres by other persons

214. (1) Any person or organisation may establish or 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; and
- (c) complies with the minimum norms and standards mentioned in section **227**.

(2) Subsection (1) also applies to a child and youth care centre established in terms of section **212** if the operation and management of the centre have been contracted out to a private person.

Existing registered children's homes

215. As from the date on which section **214** 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 **214** as a child and youth care centre providing a residential care programme mentioned in section **210** (2) (a).

Notices of enforcement

216. (1) A provincial head of social development or a *municipality* 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 **217** 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 **214** be given permission by the provincial head of social development to continue operating the centre during that period and, if that person applies for registration, until that person's application has been finalised.

Application for registration or renewal of registration

217. (1) An application for registration of a child and youth care centre referred to in section **214**, or for the renewal of such a registration, must –

- (a) be lodged with the MEC for social development in the relevant province in accordance with a procedure prescribed by regulation;³

³ The vesting of the registration system in the provincial Departments for social development goes beyond the mere regulation of municipal executive power and falls within the constitutional constraint on Parliament set

- (b) contain the particulars prescribed by regulation; 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;
 - (iii) any documents that may be prescribed by regulation; and
 - (iv) such fee as may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the MEC for 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 MEC for social development may allow a late application on good cause shown.

Consideration of applications

218. (1) The MEC for social development must –

- (a) consider an application for registration or for the renewal of a registration, and either refuse the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and
- (b) issue to the applicant a certificate of registration or renewal of registration on a form prescribed by regulation if the application is granted.

(2) When deciding an application, the MEC for social development must take into account all relevant factors, including whether –

- (a) the child and youth care centre complies with –

- (i) the minimum norms and standards mentioned in section 227; 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; and
 - (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.

(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 MEC for social development must consider a report of a social worker before deciding an application for registration or renewal of registration.

Conditional registration

219. The registration or renewal of the registration of a child and youth care centre may be granted on such conditions as the MEC for social development may determine, including conditions –

- (a) specifying the type of residential care programme or programmes that may or must be provided in terms of the registration;
- (b) stating the period for which the registration will remain valid; and
- (c) providing for any other matters that may be prescribed by regulation.

Amendment of registration

220. The MEC for social development in the relevant province may on application by the holder of a registration of a child and youth care centre, amend the registration by written notice to that person.

Cancellation of registration

221. (1) The MEC for 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 minimum norms and standards mentioned in section **227**;
 - (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 centre in terms of section **229**;
- 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 MEC for 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, a provincial head of social development or a *municipality* may assist a registration holder to comply with the minimum norms and standards mentioned in section **227**, or any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated, or any provisions of the organisational development plan established for

the centre in terms of section 229, where the cancellation was due to a failure to comply with those norms and standards, requirements or plan.

(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 MEC for 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.

Voluntary closure of child and youth care centres

222. The holder of a registration of a child and youth care centre may close the centre by –

- (a) giving written notice to the MEC for social development in the relevant province; and
- (b) surrendering the certificate of registration to the MEC for social development for cancellation.

Children in child and youth care centres to be closed

223. If a child and youth care centre is to be closed in terms of section 221 or 222 every child placed in that centre must be dealt with in terms of section 191.

Appeals against and reviews of certain decisions

224. An applicant aggrieved by a decision of an MEC for social development in terms of section 218 or 219, or a registration holder aggrieved by a decision of an MEC for social development in terms of section 221, may –

- (a) lodge an appeal with the Minister against that decision; or
- (b) apply to a child and family court or other court to review that decision.

Part 2: Operation and management of child and youth care centres

Management boards

225. (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 Minister, in the case of a child and youth care centre which is operated by the Minister;
 - (b) the MEC for social development in the relevant province, in the case of a child and youth care centre which is operated by the province;
 - (c) *the relevant municipality, in the case of a child and youth care centre which is operated by the municipality; and*
 - (d) the registration holder in accordance with a procedure prescribed by regulation, in the case of a privately operated child and youth care centre.

(3) No person unsuitable to work with children may be appointed or continue to serve as a member of a management board.

(4) 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.

Managers and staff of child and youth care centres

226. (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 after following an interview process prescribed by regulation.

(3) No person unsuitable to work with children may be appointed or designated in terms of subsection (1) or continue to serve at a child and youth care centre.

(4) The number of staff appointed or designated must be in accordance with any staff-to-children ratios that may be –

- (a) prescribed by regulation; or
- (b) required in the conditions of registration of the centre.

Minimum norms and standards

227. (1) The management of a child and youth care centre must take all reasonable steps to ensure that the centre complies with the minimum norms and standards as prescribed.

Management system

228. 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 by regulation;
 - (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 way that is conducive to implementing the residential care programme or programmes offered at the centre.

Quality assurance process

229. (1) The provincial head for social development must ensure that a quality assurance process is carried out in accordance with the regulations every three years in respect of each child and youth care centre.

- (2) 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 –
 - (a) the MEC for social development in the province; and
 - (b) the Children’s Protector.

Part 3: Miscellaneous**Regulations**

230. The Minister may in terms of section **354** make regulations prescribing –

- (a) the procedure to be followed and the fees to be paid 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 matters with which applicants must comply before, during or after the lodging of their applications;
- (c) consultation processes that must be followed in connection with such applications;
- (d) any additional factors that must be taken into account when deciding such applications;
- (e) 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;
- (f) the format and contents of registration certificates;
- (g) methods and procedures to enforce compliance with registration conditions;
- (h) matters in connection with the physical attributes, operation and management of child and youth care centres, including the setting of minimum norms and standards in this regard;
- (i) matters in connection with residential care programmes provided at child and youth care centres, including the setting of minimum norms and standards for –
 - (i) the core components of such programmes; and
 - (ii) the implementation of such programmes;
- (j) the provision of programmes at child and youth care centres to meet the developmental, therapeutic and recreational needs of children;
- (k) an assessment of and the formulation of an individual developmental and permanency plan for each child;
- (l) the powers and duties of the management boards of child and youth care centres;
- (m) the composition of management boards, which may include representation for staff and residents;

- (n) 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;
- (o) 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;
- (p) matters relating to training, minimum qualifications and experience for staff of child and youth care centres;
- (q) matters relating to the responsibilities of, and interaction between, the management board and the staff and residents of a child and youth care centre;
- (r) the reporting responsibilities of management boards and staff towards the department, person or organisation operating the child and youth care centre;
- (s) the format 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;
- (t) the rights of children in child and youth care centres;
- (u) management, disciplinary and other practices in child and youth care centres;
- (v) 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;
- (viii) the role of the Children's Protector in monitoring child and youth care centres;
- (w) any other matter that may facilitate the implementation of this Chapter.

CHAPTER 16

CHILDREN IN ESPECIALLY DIFFICULT CIRCUMSTANCES

Definitional provision

231. (1) Children in especially difficult circumstances are –

- (a) children affected by malnutrition;
- (b) children affected by HIV/AIDS;
- (c) children with disabilities;
- (d) children with chronic illnesses;
- (e) children who are subject to exploitative labour practices;
- (f) children living or working on the streets;
- (g) children in child-headed households; and
- (h) children who are subject to commercial sexual exploitation.

(2) This Chapter may not be read as limiting the application of Chapter **11** in respect of a child within any of the above categories who is in need of care and protection.

Strategies concerning children in especially difficult circumstances to be included in national policy framework

232. (1) The Minister must include in the national policy framework referred to in section **5** a comprehensive national strategy aimed at identifying, assisting and promoting the best interest of children in especially difficult circumstances, which must –

- (a) include strategies aimed at –
- (i) combating malnutrition among children and providing malnourished children or children at risk of malnutrition access to sufficient and appropriate food, including emergency measures for children whose survival is at stake;
 - (ii) encouraging orphaned, abandoned or impoverished children or children affected by HIV/AIDS or other chronic illnesses to remain in their homes or communities and discouraging such children from abandoning their education to live and work on the streets;
 - (iii) identifying child-headed households and supporting their functioning in the community;
 - (iv) assisting children with disabilities or chronic illnesses to have access to educational, rehabilitation and health care services and empowering them to develop their self-reliance and potential;
 - (v) empowering parents or care-givers of children with disabilities or chronic illnesses to care for their children in the home environment and educating parents or care-givers of such children on matters affecting their children;
 - (vi) combating exploitative labour practices and rehabilitating children subjected to such practices;
 - (vii) preventing children from leaving their home environment to live and work on the streets;
 - (viii) providing street children with access to basic nutrition, basic health care services and shelter, including drop-in centres and halfway homes;
 - (ix) providing outreach programmes for and counselling to street children, rehabilitating them and reunifying them with their families;
 - (x) integrating street children into the education system, or into a system that includes both education and other services to meet the needs of street children;
 - (xi) educating children not to become involved in prostitution and pornography or from being sexually abused;
 - (xii) providing children who are subject to commercial sexual exploitation with access to basic nutrition, basic health care services and shelter, including drop-in centres and

- halfway homes; and
- (xiii) providing outreach programmes for and counselling to children who are subject to commercial sexual exploitation;
 - (xiv) providing impoverished children free access to primary and basic health care services, including at shelters and drop-in centres and through the use of mobile clinics;
 - (xv) providing incentives for private sector health care institutions to provide impoverished children access to their services; and
 - (xvi) providing impoverished children with free primary and secondary education;
- (b) set out the responsibilities of and participating roles for municipalities and provincial organs of state in the development and implementation of programmes and projects giving effect to those strategies; and
- (c) promote the engagement of non-governmental organisations in the development and implementation of programmes and projects giving effect to those strategies.

Preventative measures against malnutrition

233. (1) The MEC for social development, in consultation with the MEC for Health, must take appropriate steps to combat malnutrition amongst children in the province in order to increase the rate of child survival.

(2) To increase the rate of child survival and to combat malnutrition, both the Minister and the MECs for social development, in consultation with the Minister and MECs for Health, must initiate programmes providing for a package of services comprising supplementary nutrition, immunization, health and referral services for children below six years of age, as well as feeding schemes and health check-up, immunization and supplementary nutrition for pregnant and lactating women.

(3) The programmes referred to in subsection (2) may include assistance to non-governmental organisations providing food, shelter, clothes, skills development, child care and health promotion services.

Child-headed households

234. (1) A provincial head of social development may recognise a household as a child-headed household if –

- (a) the parent or primary care-giver of the household is terminally ill or has died because of AIDS or another cause;
- (b) no adult family member is available to provide care for the children in the household; and
- (c) a child has assumed the role of primary care-giver in respect of a child or children in the household.

(2) A child-headed household must function under the general supervision of an adult designated by –

- (a) a child and family court; or
- (b) an organ of state or non-governmental organisation determined by the provincial head of social development.

(3) The adult person referred to in subsection (2) –

- (a) may collect and administer for the child-headed household any social security grant or other grant or assistance to which the household is entitled; and
- (b) is accountable to the child and family court, or the provincial department of social development, or to another organ of state or a non-governmental organisation designated by the provincial head of social development, for the administration of any money received on behalf of the household.

(4) The adult person referred to in subsection (2) may not take any decisions concerning such household and the children in the household without consulting –

- (a) the child at the head of the household; and
- (b) given the age, maturity and stage of development of the other children, also those other children.

(5) The child heading the household may, subject to the supervision and advice of the adult

person referred to in subsection (2), take all day- to-day decisions relating to the household and the children in the household as if that child was an adult primary care-giver.

(6) A child-headed household may not be excluded from any aid, relief or other programme for poor households 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.

Municipal monitoring and support of children in especially difficult circumstances

235. Each metropolitan and local municipality must –

- (a) determine and keep the statistics prescribed by regulation of the estimated total number of –
 - (i) child-headed households in its area;
 - (ii) lost and abandoned children in its area;
 - (iii) street children in its area;
 - (iv) children with disabilities and chronic illnesses in its area; and
 - (v) children subjected to commercial sexual exploitation in its area;
- (b) regularly monitor the location and socio-economic conditions of those households and of each of those categories of children;
- (c) at least once every three years make a needs analysis prescribed by regulation of those households and each of those categories of children;
- (d) submit at intervals prescribed by regulation the statistics required by regulation in respect of those households and each of those categories of children to organs of state specified by regulation; and
- (e) apply those statistics and the needs analysis for purposes of budgeting and the provision of services, including access to basic nutrition, shelter, health care and social services.

Schools to assist in identifying certain children in especially difficult circumstances

236. The principal of a public or private school must on a confidential basis –

- (a) identify children who are frequently absent from school because of being in need of care and protection;
- (b) take all reasonable steps to assist them in returning to school or to discourage them from

leaving school; and

- (c) submit the names and addresses of those children to the provincial head of social development.

Consent to medical treatment and operations

237. (1) If a medical practitioner or nurse considers any medical treatment or operation necessary in the interest of the health of a street child or a child in a child-headed household, the superintendent of a hospital or other person designated by the superintendent may on behalf of the child's parent or guardian –

- (a) consent to such medical treatment or operation in terms of section **135** (3); or
 (b) assist the child in terms of section **135** (2) (b) to consent to such operation.

(2) Subsection (1) does not apply in respect of the medical treatment of a child who is at least 12 years of age and is of sufficient maturity and has the mental capacity to consent to such treatment in terms of section **135** (2) (a).

(3) A child's age may for the purpose of subsection (3) be estimated by the relevant superintendent or the other designated person.

Reunification of street children with their families

238. A social worker facilitating the reunification of a street child with the child's family 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
 (b) provide counselling to both the child and the family before and after reunification.

Child pornography on the Internet

239. An Internet service provider operating in the Republic must take all reasonable steps to block access through its server to sites providing child pornography on the Internet.

Children subject to exploitative labour practices

240. (1) No person may –

- (a) employ a child who is under the age of 15 years;
 - (b) force a child to perform labour for that or any other person, whether for reward or not; or
 - (c) encourage, induce or force a child, or allow a child, to perform labour that –
 - (i) is inappropriate for a person of that child's age; or
 - (ii) places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- (2) Subsection (1) (a) does not prevent the performance of labour by a child, whether for reward or not –
- (a) subject to the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), in an advertisement, in sport or in an artistic or cultural event, provided that such engagement does not place the child's well-being, education, physical or mental health or spiritual, moral or social development at risk; or
 - (b) in work which is carried out within the framework of a programme registered in terms of the Non Profit Organisations Act, 1997 (Act No. 71 of 1997), and that is designed to promote personal development and vocational training.
- (3) The Minister must take all reasonable steps to assist in ensuring the enforcement of the prohibition on illegal child labour, including steps providing for the confiscation in terms of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), of assets acquired through the use of illegal child labour.

Provincial monitoring of children subject to exploitative labour practices

241. The MEC for social development in consultation with the MEC for labour must –

- (a) conduct an annual survey in respect of –
 - (i) the number of children who are subject to exploitative labour practices in the province; and
 - (ii) the economic sectors in which the children are involved;
- (b) submit the statistics prescribed by regulation in respect of such children to an organ of state specified by regulation; and

- (c) plan and allocate resources for the extrication of children from labour and related services.

Child labour defined

242. In this Act child labour refers to any situation where the child provides labour in exchange for payment and includes –

- (a) any situation where the child provides labour but somebody else receives remuneration on the child's behalf;
- (b) any situation where the child provides labour as an assistant to somebody else and his or her labour is deemed to be the labour of that other person for the purposes of payment;
- (c) any situation where the child's labour is used for gain by any individual or institution whether or not the child benefits directly or indirectly; and
- (d) any situation where there is in existence a contract for services where the party providing the services is a child whether the person using the services does so directly or by agent.

Regulations

243. The Minister may make regulations in terms of section **354** concerning –

- (a) adult supervision of child-headed households;
- (b) the administration of grants paid to child-headed households;
- (c) the implementation of outreach programmes and the establishment, registration and management of drop-in centres, shelters and halfway homes for street children, including children who are subject to commercial sexual exploitation;
- (d) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 17

SHELTERS AND DROP-IN CENTRES

Definitional provision

244. (1) A shelter is a facility located at a specific place which is managed for the purpose of providing basic services, including overnight accommodation and food, to children, including street

children, who voluntarily attend the facility but who are free to leave.

(2) A drop-in centre is a facility located at a specific place which is managed for the purpose of providing basic services, excluding overnight accommodation, to children, including street children, who voluntarily attend the facility but who are free to leave.

Shelters and drop-in centres to be registered

245. Any person or organisation may establish or operate a shelter or drop-in centre provided that the shelter or drop-in centre –

- (a) is registered with the municipality in which that shelter or drop-in centre is situated;
- (b) is managed and maintained in accordance with any conditions subject to which the shelter or drop-in centre is registered; and
- (c) complies with –
 - (i) the minimum norms and standards mentioned in section **250**; and
 - (ii) the structural, safety, health and other requirements of the municipality.

Existing shelters

246. As from the date on which section **245** takes effect an existing shelter registered in terms of the Child Care Act, must be regarded as having been registered as a shelter in terms of section **245**.

Notices of enforcement

247. (1) A municipality or the provincial head of social development may by way of a written notice of enforcement instruct –

- (a) a person or organisation operating an unregistered shelter or drop-in centre –
 - (i) to stop operating that shelter or drop-in centre; or
 - (ii) to apply for registration in terms of section **245** within a period specified in the notice;
 or
- (b) a person or organisation operating a registered shelter or 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 shelter or 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 245, be given permission by the municipality or the provincial head of social development to continue operating the shelter or drop-in centre during that period and, if that person applies for registration, until that person's application has been finalised.

Application for registration and renewal of registration

248. (1) An application for registration or conditional registration of a shelter or drop-in centre or for the renewal of a registration must –

- (a) be lodged, in accordance with a procedure prescribed by regulation, with the municipality in which the facility is or will be situated;
- (b) contain the particulars prescribed by regulation; and
- (c) be accompanied by –
 - (i) any documents that may be prescribed by regulation; and
 - (ii) such fee as may be prescribed by regulation.

(2) An applicant must provide such additional information relevant to the application as the municipality 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 municipality may allow a late application on good cause shown.

Consideration of applications

249. (1) The municipality must –

- (a) consider an application for registration or conditional registration or for the renewal of a registration, and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions; and
- (b) issue to the applicant a certificate of registration, conditional registration or renewal of registration on a form prescribed by regulation if the application is granted.

(2) When considering an application, the municipality must take into account all relevant factors, including whether –

- (a) the shelter or drop-in centre complies with –
 - (i) the minimum norms and standards mentioned in section **250**; and
 - (ii) the structural, safety, health and other requirements of the municipality;
- (b) the applicant is a fit and proper person to operate a shelter or drop-in centre;
- (c) the applicant has the necessary skills, funds and resources available to operate the shelter or drop-in centre; and
- (d) each person employed or engaged in the shelter or drop-in centre is a fit and proper person to assist in operating a shelter or 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 shelter or drop-in centre.

(4) The municipality must consider a report of a social worker before deciding an application for registration, conditional registration or renewal of registration.

Minimum norms and standards

250. (1) Premises used as a shelter or drop-in centre must have –

- (a) a safe area for the children to play;
- (b) adequate space and ventilation;
- (c) safe drinking water;
- (d) hygienic and adequate toilet facilities;
- (e) access to disposal of refuse services or other adequate means of disposal of refuse generated at the shelter or drop-in centre; and
- (f) a hygienic area for the preparation of food for the children.

(2) Premises used as a shelter must, in addition, have –

- (a) safe sleeping facilities; and

- (b) staff available at the shelter around the clock.

Conditional registration

251. The registration or renewal of the registration of a shelter or drop-in centre may be granted on such conditions as the municipality 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 registration will remain valid; and
- (c) providing for any other matters that may be prescribed by regulation.

Cancellation of registration

252. (1) A municipality may cancel the registration of a shelter or drop-in centre by written notice to the registration holder if –

- (a) the shelter or drop-in centre is not maintained in accordance with –
 - (i) the minimum norms and standards mentioned in section **250**; 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 shelter or 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 shelter or drop-in centre; or
- (e) a person who is not a fit and proper person to assist in operating a shelter or drop-in centre is employed at or engaged in operating the shelter or 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 shelter or drop-in centre.

(3) The municipality 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 municipality may assist a registration holder to comply with the minimum norms and standards mentioned in section **250**.

Appeals against and revisions of certain decisions

253. An applicant aggrieved by a decision of a municipality in terms of section **249** or **251**, or a registration holder aggrieved by a decision of a municipality in terms of section **252**, may –

- (a) lodge an appeal with the MEC for social development against that decision; or
- (b) apply to a child and family court or other court, to review that decision.

Role of municipalities

254. (1) A municipality must –

- (a) maintain a record of all available shelters and drop-in centres in its area; and
- (b) conduct regular inspections of shelters and drop-in centres in its area to enforce the provisions of this Act.

(2) A municipality's integrated development plan must include strategies for the provision of shelters and drop-in centres in its area, which must include measures –

- (a) facilitating the establishment of sufficient shelters and drop-in centres in its area;
- (b) prioritising those types of shelters and drop-in centres most urgently required; and
- (c) facilitating the identification and provision of suitable premises.

Death of children in shelters or drop-in centres

255. (1) If a child dies on the premises of a shelter or drop-in centre or following an occurrence at the shelter or drop-in centre, the person operating the shelter or drop-in centre must within 24 hours of the child's death report such death to the Children's Protector.

(2) The Children's Protector must in terms of section **326** investigate the circumstances of

the child's death if there are allegations or indications that the child died because of abuse or neglect.

Regulations

256. The Minister may make regulations in terms of section **354** concerning –

- (a) the procedure to be followed and the fees to be paid in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations;
- (b) the different services that may be provided in terms of such registrations;
- (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 shelters and drop-in centres;
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 18

ADOPTIONS

Children who may be adopted

257. Any child may be adopted provided –

- (a) the adoption is in the best interest of the child; and
- (b) the provisions of this Chapter are complied with.

Persons who may adopt a child

258. (1) A child may be adopted –

- (a) jointly by –
 - (i) a husband and wife;
 - (ii) partners in a permanent domestic conjugal life-partnership; or
 - (iii) other persons sharing a common household and forming a 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 conjugal life-partner is the parent of the child ;
- (d) by the biological father of a child born out of wedlock;
- (e) by the foster parent or parents of the child; or
- (f) by the kinship care-giver of the child.

(2) A prospective adoptive parent or parents 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) A person unsuitable to work with children is not a fit and proper person to adopt a child.

(4) (a) The foster parent or kinship care-giver of a child has the right to be considered as a prospective adoptive parent when the child becomes available for adoption.

(b) The foster parent or kinship care-giver of a child, must be regarded as having elected not to apply for the adoption of the child if that foster parent or kinship care-giver fails to apply for the adoption of the child within 30 days after a notice calling on that foster parent or kinship care-giver to do so has been served on that foster parent or kinship care-giver by the child and family court registrar.

(5) A relative of a child other than a kinship care-giver who, prior to the adoption, has given notice to the child and family court registrar 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.

Consent to adoption

259. (1) A child may be adopted only if consent for the adoption has been given by –

- (a) each parent of the child, whether the parents are married or not;
- (b) any other person who holds guardianship in respect of the child; and
- (c) the child, if the child is of an age, maturity and stage of development to understand the implications of –
 - (i) being adopted; and
 - (ii) the consent given.

(2) Subsection (1) (a) and (b) excludes a parent or person referred to in section **261**, and a child may be adopted without the consent of such a parent or person.

(3) If the parent of a child wishes the child to be adopted by a particular person or persons, the parent must state the name of that person or persons in the consent: Provided that the eligibility as an adoptive parent or parents of such person or persons must be determined by the court in terms of section **258(2)**.

(4) Consent referred to in subsection (1) and given –

- (a) in the Republic, must be –
 - (i) signed by the consenting person in the presence of a child and family court registrar;
 - (ii) verified by the registrar in a manner prescribed by regulation; and
 - (iii) filed by the registrar pending an application for the adoption of the child; or
- (b) outside the Republic, must be –
 - (i) signed by the consenting person in the presence of a person prescribed by regulation;
 - (ii) verified in a manner and by a person prescribed by regulation; and
 - (iii) submitted to and filed by a child and family court registrar pending an application for the adoption of the child

(5) The court may 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 a person prescribed by regulation; or
- (b) was not verified in a manner or by a person prescribed by regulation.

(6) A parent of a child or a person referred to in subsection (1) (b) 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.

Freeing orders

260. (1) The court, on application by the Department, a designated child protection organization 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 **259** 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 **259** must support an application for a freeing order in terms of subsection (1).

(3) A freeing order in terms of subsection (1) must authorise a designated child protection organisation or an individual 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 court refuses to grant an application for the adoption of the child;
- (b) the order is terminated by the court on the ground that it is no longer in the best interest of the child; or
- (c) the parent or person who gave consent withdraws consent for the adoption of the child in terms of section **259** (6).

(5) A freeing order relieves a parent or person from the duty to contribute to the maintenance of the child pending the adoption, unless otherwise ordered by the court.

When consent not required

261. (1) The consent of a parent of the child or any other person who has parental

responsibilities or rights in respect of the child is not necessary for the adoption of the child, if that parent or person –

- (a) is incompetent to give consent due to mental illness;
- (b) has abandoned the child, or if the whereabouts of that parent or person cannot be established, or if the identity of that parent or person 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 referred to in section **263** within 30 days of service of the notice.

(2) If the parent referred to in subsection (1) is the biological father of the child, consent for the adoption is also not necessary if –

- (a) that person 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 acknowledge in a manner set out in subsection (3) that he is the biological father of the child;
- (b) the child was conceived from an incestuous relationship between that person and the mother;
- (c) the child was conceived as a result of the rape of the mother for which that person was convicted; or
- (d) a child and family court, following an allegation by the mother, makes a finding, on a balance of probabilities, that the child was conceived as a result of the rape of the mother by that person.

(3) A person referred to in subsection (2) (a) can for the purposes of that subsection acknowledge that he is the biological father of a child in any of the following ways:

- (a) by giving a written acknowledgment that he is the biological father of the child either to the mother or the child and family court registrar 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).

(4) A child and family 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 for the adoption of a child.

Gathering of information for proposed adoptions

262. (1) When a child becomes available for adoption, the child and family court registrar must take all reasonable steps to establish –

- (a) the name and address of each person whose consent for the adoption is required in terms of section **259**; and
- (b) the name and address of any person whose consent would have been necessary had it not been for section **261**, and the ground 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 **259**, and who wants the court to dispense with any other person's consent on a ground set out in section **261**, must submit a statement to that effect to the registrar.

(3) A child and family court registrar may request the Director-General: Home Affairs to disclose any information contained in the registration of birth of a child, including the identity and other particulars of a person who has acknowledge 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 whose consent for the adoption is necessary in terms of section **259** or whose consent for the adoption would have been necessary had it not been for section **261**, the social worker must without delay submit a report containing that information to the registrar.

Notice to be given of proposed adoptions

263. (1) When a child becomes available for adoption, the child and family court registrar must without delay serve a notice on each person whose consent, on information available to the registrar, is in terms of section **259** required for the adoption.

(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 with whom the mother is not married, request him to consent to or withhold consent for the adoption, or to apply in terms of section **264** 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.

Application for adoption orders

264. (1) An application for the adoption of a child must –

- (a) be made to a child and family court in a manner prescribed by regulation;
- (b) be accompanied by an assessment referred to in section **258** (2) (d); and
- (c) contain such particulars as may be prescribed by regulation.

(2) When an application for the adoption of a child is brought before a child and family court, the child and family court registrar must submit to the court –

- (a) any consents for the adoption of the child filed with a child and family court registrar in terms of section **259** (4);
- (b) any information established by a child and family court registrar in terms of section **262** (1);
- (c) any written responses to requests in terms of section **263** (2);
- (d) a report on any failures to respond to those requests; and

- (e) any other information that may assist the court or as may be prescribed by regulation.

(3) An applicant has no access to any documents lodged with the court by other parties except with the permission of the court.

Consideration of adoption applications

265. (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 or parents; and
 - (iii) the prospective adoptive parent or parents;
- (b) all reasonable preferences expressed by a parent and stated in the consent; and
- (c) a report in a format prescribed by regulation on the proposed adoption by –
 - (i) a social worker in the service of the Department or a provincial department of social development; or
 - (ii) an adoption social worker.

(2) A child and family court considering an application may make an order for the adoption of a child only if –

- (a) the adoption would be in the best interest of the child;
- (b) the prospective adoptive parent or parents comply with section 258;
- (c) consent for the adoption has been given in terms of section 259, subject to section 266;
- (d) no such consent has been withdrawn in terms of section 259 (6); and
- (e) section 258 (4) has been complied with, in the case of an application for the adoption of a child in foster care or kinship care by a person or persons other than the child’s foster parent or kinship care-giver.

Unreasonable withholding of consent

266. (1) If a parent or person referred to in section 259 (1) withholds consent for the adoption of

a child, a child and family 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 interest 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.

Effects of adoption order

267. (1) An adoption order, except when otherwise provided in the order, terminates –

- (a) all parental responsibilities and rights any person, including a parent, step-parent or partner in a domestic conjugal life-partnership, had in respect of the child immediately before the adoption;
- (b) all claims to contact with the child by any relative of a person referred to in paragraph (a); and
- (c) all rights and responsibilities the child had in respect of a person referred to in paragraph (a) or (b) immediately before the adoption;
- (d) any previous order made in respect of the placement of the child; and
- (e) any order made in terms of section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in respect of the child.

(2) An adoption order –

- (a) confers full parental responsibilities and rights in respect of the adopted child upon the adoptive parent or parents as referred to in section **258**(1);
- (b) confers the surname of the adoptive parent on the adopted child, except when otherwise provided in the order;
- (c) does not prohibit any marriage or sexual intercourse between the child and any other person, except the adoptive parent, which would have been permitted had the child not been adopted;

or

- (d) 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;
- (e) does not affect any rights to property the child acquired before the adoption.

(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.

Rescission of adoption orders

268. (1) A child and family 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 parental responsibilities or rights in respect of the child immediately before the adoption;
- (c) the adoptive parent or parents of the child; or
- (d) a child and family court registrar.

(2) Any application in terms of subsection (1) must be lodged within a reasonable time not exceeding two years from the date of the adoption.

Grounds for rescission of adoption orders

269. (1) A child and family court may rescind an adoption order but only if –

- (a) rescission of the order is in the best interest of the child; or
- (b) subsection (2) or (3) applies.

(2) An adoption order may be rescinded if –

- (a) the child at the time of the adoption suffered from –
 - (i) mental illness;
 - (ii) a congenital disorder; or
 - (iii) an injury of a serious nature;
- (b) the adoptive parent or parents were ignorant of that fact at the time of adoption; and

- (c) the adoptive parent or parents acted with reasonable care by having the child examined as soon as the child's condition became apparent.

(3) An adoption order may be rescinded if –

- (a) the applicant is the parent of the child whose consent was required for the adoption order to be made, but whose consent was not obtained; or
- (b) at the time of making the adoption order the adoptive parent or parents did not qualify in terms of section **258** for obtaining the order of adoption.

Notice of application for rescission

270. Notice of an application for rescission of an adoption order must be given to –

- (a) the child concerned;
- (b) the adoptive parent or parents of that child, if any other person brings the application;
- (c) all persons who have consented or objected to the adoption in terms of section **259**, if the child or the adoptive parent or parents bring the application;
- (d) the Central Authority in the case of an inter-country adoption; and
- (e) any other person who the court finds has a sufficient interest in the matter.

Effects of rescission

271. (1) As from the date on which the rescission of an adoption order takes effect –

- (a) section **267** (2) and (3) no longer applies in respect of the child concerned; and
- (b) all responsibilities, rights and other matters terminated by section **267** (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 that child be kept in temporary safe care until an appropriate placement order can be made.

Recording of adoption in births register

272. (1) After an adoption order has been made by a child and family court in respect of a child whose birth has been registered in the Republic, the adoptive parent or parents of the child must apply in terms of any applicable legislation 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;
 - (b) the birth certificate of the child; and
 - (c) a fee prescribed in terms of any applicable legislation, if any.

Registration of birth and recording of adoption of child born outside Republic

273. (1) After an adoption order has been made by a child and family court in respect of a child born outside the Republic, the adoptive parent or parents of the child must apply in terms of any applicable legislation to the Director-General: Home Affairs to register the birth of the child and to record the adoption of the child in the births register.

- (2) An application in terms of subsection (1) must be accompanied by –
- (a) the relevant adoption order;
 - (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 child and family magistrate specifying the age or estimated age of the child;
 - (c) the birth registration form prescribed by regulation, completed as far as possible and signed by the adoptive parent or parents; and
 - (d) a fee prescribed in terms of any applicable legislation, if any.

Adoption register

274. (1) A person designated by the Director-General as the adoption registrar must keep a register of –

- (a) the registration numbers allocated to records of adoption cases;
- (b) the personal details of adopted children, their parents and adoptive parents, and other personal details as may be prescribed by regulation;
- (c) particulars of successful appeals against and rescissions of adoption orders; and
- (d) all other information in connection with adoptions as may be prescribed by regulation.

(2) A child and family court registrar must –

- (a) keep record of all adoption cases by a child and family court, including all adoption orders issued by the court, in the manner prescribed by regulation;
- (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 documents relating to the adoption as may be prescribed by regulation, to the adoption registrar; and
- (c) in the case of an inter-country adoption, forward copies of such documents to the Central Authority.

Access to adoption register

275. (1) The information contained in the adoptions 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 research or any official purposes subject to conditions determined by the Director-General;
or
- (e) by an order of court, if the court finds that such disclosure is in the best interest of the adopted child.

(2) The Director-General may require a person to receive counselling before disclosing any information contained in the adoptions register to that person in terms of subsection (1) (a), (b),

(c) or (e).

No consideration in respect of adoptions

276. (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 or outside the Republic;
- (b) procure or assist in procuring a child for the purposes of adoption in or outside the Republic;
- (c) place or arrange the placement of a child for the purposes of adoption in or outside the Republic; or
- (d) induce a person to give up a child for adoption in or outside the Republic.

(2) Subsection (1) does not apply to –

- (a) the biological mother of a child receiving compensation for –
 - (i) loss of earnings due to pregnancy;
 - (ii) medical expenses incurred in connection with her pregnancy, birth of the child and follow-up treatment;
 - (iii) expenses incurred for counselling; or
 - (iv) any other expenses as may be prescribed by regulation;
- (b) a lawyer receiving reasonable fees and expenses for legal services provided in connection with an adoption;
- (c) the Central Authority receiving prescribed fees;
- (d) a designated child protection organization accredited in terms of section **116** to provide adoption services, receiving the prescribed fees declared to the Director-General;
- (e) an organ of State; or
- (f) any other persons as may be prescribed by regulation.

Only certain persons allowed to provide adoption services

277. (1) No person may provide adoption services except –

- (a) a social worker in the service of the Department or a provincial department for social development;
- (b) a designated child protection organisation accredited in terms of section **116** to provide

- adoption services;
- (c) an adoption social worker; or
 - (d) the Central Authority in the case of inter-country adoptions.

(2) A welfare organisation referred to in section 117 which was lawfully engaged in providing adoption services when this section took effect, may despite subsection (1) continue with such services for a period of five years without being accredited in terms of section 278 to provide adoption services, but must within that period apply for such accreditation in terms of section 278.

Accreditation of social workers and designated child protection organisations to perform adoption work

- 278.** (1) The Director-General may in terms of a process prescribed by regulation accredit –
- (a) a social worker in private practice as an adoption social worker to provide adoption services; and
 - (b) a designated child protection organisation to provide adoption services.

(2) The Director-General must keep a register of all adoption social workers and designated child protection organisations accredited to perform adoption services.

Advertising

279. (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) the publication of a notice authorised by the Director-General;
 - (c) an advertisement by a designated child protection organization accredited to provide adoption services for purposes of recruitment, according to prescribed guidelines;

- (d) an announcement of an adoption placement or an adoption; or
- (e) other forms of advertisements specified by regulation.

Regulations

280. The Minister may make regulations in terms of section 354 –

- (a) prescribing procedures for determining whether a child has been abandoned by a parent or other person who has parental responsibilities 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 organizations to prevent conflict of interests from arising;
- (e) prescribing advertising guidelines for recruitment purposes;
- (f) prescribing any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 19

INTER-COUNTRY ADOPTIONS

Purposes of this Chapter

281. The purposes of this Chapter are –

- (a) to give effect to the Hague Convention on Inter-country Adoption;
- (b) to give effect to certain bilateral arrangements for inter-country adoption; and
- (c) generally to regulate inter-country adoptions.

Hague Convention on Inter-country Adoption to have force of law

282. (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.

Central Authority

283. (1) The Director-General is the Central Authority for the Republic for the purposes of the Hague Convention on Inter-country Adoption.

(2) The Director-General must perform the functions assigned by the Convention to Central Authorities.

(3) On application in terms of section **278**, the Director-General may accredit a designated child protection organisation to perform inter-country adoption services, and approve an adoption practice, provided the prescribed requirements are met.

(4) The Director-General may contract with designated child protection organisations accredited in terms of section **278** to perform inter-country adoption services according to approved adoption practices.

(5) Subject to subsection (4), only the Director-General may receive fees and make the necessary payments in respect of inter-country adoptions.

Delegation of functions

284. (1) When the Minister so authorises, the Central Authority of the Republic may in terms of section **357** delegate any powers or duties of the Central Authority under the Hague Convention on Inter-country Adoption to a person in the public service with the rank of director or higher.

(2) When the Minister so authorises, any powers or duties of the Central Authority in terms of Articles 15 to 21 of the Convention may, to the extent determined by the Minister, be performed by –

- (a) another organ of state; or
- (b) a designated child protection organisation accredited in terms of section 278 to perform inter-country adoption services.

Authority for South African adoption organisations to act in convention countries

285. The Central Authority may authorise a designated child protection organisation accredited in terms of section 278 to perform inter-country adoption services, to act in a convention country.

Authority for adoption agencies of convention countries to act in Republic

286. If authorised by the Central Authority, an adoption agency accredited in a convention country may perform inter-country adoption services in the Republic.

Access to information

287. Subject to section 275, read with such changes as the context may require, the Central Authority may disclose to an adult 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 adult's origin.

Report on person lodging application for inter-country adoption

288. (1) If a person referred to in section 258 wishes to adopt a child from a convention country or a prescribed overseas jurisdiction, the Central Authority or the principal officer of a designated child protection organisation accredited in terms of section 278 to perform inter-country adoption services must –

(a) prepare a report that complies with article 15 of the Hague Convention on Inter-country Adoption or the terms of the bilateral or multilateral agreement, as the case may be; and

(b) submit the report to the child and family court which is to consider the adoption application in terms of section 265, read with such changes as the context may require.

(2) When submitting a report in terms of subsection (1) to the court, the principal officer of the designated child protection organisation must at the same time submit a copy of the report to the Central Authority.

(3) The Central Authority must send a copy of the report and the court order to the Central Authority of the convention country or the prescribed overseas jurisdiction, as the case may be.

Inter-country adoption of children from other countries

289. (1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a convention country or a prescribed overseas jurisdiction, may apply to a child and family court for an order for the adoption of the child.

(2) After considering the report prepared in terms of section **288**, the court may make an order for the adoption of a child if the requirements of sections **258** and **265** are complied with and the court is satisfied that –

- (a) the child is in the Republic;
- (b) the child is not prevented from residing permanently in the Republic –
 - (i) under a law of the Republic; or
 - (ii) because of an order of a court of the Republic;
- (c) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention on Inter-country Adoption or the relevant bilateral or multilateral agreement, as the case may be;
- (d) the Central Authority of the convention country or the relevant prescribed overseas jurisdiction, as the case may be, has agreed to the adoption of the child; and
- (e) the Central Authority of the Republic has agreed to the adoption of the child.

Inter-country adoption of children from the Republic

290. (1) A person habitually resident in a convention country or a prescribed overseas jurisdiction and who wishes to adopt a child habitually resident in the Republic may apply to the child and family court for an order for the adoption of the child.

(2) The court may make an order for the adoption of the child if the requirements of sections **258** and **265** are complied with and the court is satisfied that –

- (a) the child is in the Republic;
- (b) 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;
- (c) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention on Inter-country Adoption or the relevant bilateral or multilateral agreement, as the case may be;
- (d) the Central Authority of the convention country or the relevant prescribed overseas jurisdiction, as the case may be, has agreed to the adoption of the child; and
- (e) the Central Authority of the Republic has agreed to the adoption of the child.

Issue of adoption compliance certificate

291. If the court has made an order for the adoption of a child in terms of section **289** or **290**, the Central Authority may issue an adoption compliance certificate.

Recognition of inter-country adoptions

292. (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) Subsections (1) and (2) do not apply if a declaration is made in terms of section **296**.

Effect of recognition of adoption

293. (1) If the adoption of a child is recognised in terms of section **292**, the adoption has in the Republic the effects as set out in section **267**.

(2) If the laws of the convention country where the adoption was granted do not provide that the adoption of the child terminates the legal relationship between the child and the individuals who, immediately before the adoption, were the child's parents, section **267** of this Act does not apply to the adoption unless –

- (a) an order is made in terms of section **295**; or
- (b) a decision is made in the convention country to convert the adoption in accordance with article 27 of the Hague Convention on Inter-country Adoption.

(3) Subsection (2) does not apply if a declaration is made in terms of section **296**.

Evidential value of adoption compliance certificate

294. Subject to section **296**, 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.

Order terminating legal relationship between child and parents

295. If the laws of a convention country do not provide that the adoption of a child terminates the legal relationship between the child and the persons who, immediately before

the adoption, were the child's parents, a child and family court may, on application by any of the parties to an adoption in that convention country, make an order terminating the legal relationship between the child and those persons, if –

- (a) the child was or is habitually resident in that convention country;
- (b) the child was adopted by a person who is habitually resident in the Republic;
- (c) an adoption compliance certificate issued in the convention country is in force for the adoption;
- (d) the child is allowed to enter the Republic and to reside permanently in the Republic; and
- (e) in the case of a refugee child, sufficient provision is made for the child to retain and foster ties with his or her family, tribe, and country of origin.

Refusal to recognise inter-country adoption or Article 27 decisions contrary to public policy

296. (1) A child and family court may on application by the Central Authority make an order declaring that an adoption to which section **292** 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 a court 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.

Adoption of children from prescribed overseas jurisdiction by South African residents

297. The adoption in a prescribed overseas jurisdiction of a child habitually resident in that overseas jurisdiction by a person habitually resident in the Republic, shall be recognised in the Republic if an adoption compliance certificate issued by a competent authority of that overseas jurisdiction is in force for the adoption.

Effect of recognition

298. If the adoption of a child is recognised in terms of section **297**, the adoption has the

effects as set out in section **267**.

Evidential value of adoption compliance certificate

299. An adoption compliance certificate issued in a prescribed overseas jurisdiction, or an adoption order certified by a competent authority of such an overseas jurisdiction as having been made in accordance with the law of that country, is evidence, for the purposes of the law of the Republic, that the adoption to which the certificate or order relates was carried out under the law of that overseas jurisdiction.

Recognition of foreign adoptions other than in convention countries and prescribed overseas jurisdictions

300. (1) This section applies to the adoption of a child whether before or after this section took effect –

- (a) in a country other than the Republic, a convention country or a prescribed overseas jurisdiction, and
- (b) by an adoptive parent or parents who, at the time when the adoption proceedings commenced, were –
 - (i) resident in that country for 12 months or more, or
 - (ii) domiciled in that country.

(2) An adoption to which this section applies has the effects as set out in section **267** 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) under the law of that country the adoptive parent or parents –
 - (i) have parental rights in relation to the child superior to that of the adopted child's biological parent or parents; and
 - (ii) are generally placed in the position of a parent or parents of the adopted child.

(3) Despite subsection (2), a child and family court, including a court dealing with an application under section 301, may on application by an interested person, refuse to recognise an adoption to which this section applies if the procedure followed, or the law applied, in connection with the adoption –

- (a) involved a denial of natural justice or of a person's fundamental human rights; or
- (b) did not comply with the requirements of substantial justice.

(4) A court that refuses to recognise an adoption may, at the time of refusing or at a later time, give leave to a person to seek an order for the adoption of the child concerned in terms of the provisions of Chapter 18.

(5) In any proceedings before a court, including proceedings under section 301, it must be presumed, unless the contrary appears from the evidence, that an order for the adoption of a child made in a country referred to in subsection (1) complied with subsection (2).

(6) Nothing in this section affects any right that was acquired by, or became vested in, any person before the commencement of this section.

Declaration of validity of foreign adoption

301. (1) Any of the parties to an adoption in a country referred in section 300 may apply to a child and family court for a declaration that the order complies with that section.

- (2) In any application in terms of this section, the court may –
- (a) direct that notice of the application be given to such persons (including the Central Authority) as the court thinks fit;
 - (b) direct that any person be made a party to the application; or
 - (c) permit any person having an interest in the matter to intervene in, and become a party to, the proceedings.

(3) If the court makes a declaration in terms of subsection (1), it may include in the declaration such particulars in relation to the adoption, the adopted child and the adoptive parent or parents as the court considers relevant for the declaration.

- (4) A declaration in terms of this section –
- (a) binds the state, whether or not notice was given to the Central Authority; and
 - (b) binds any person –
 - (i) who was a party to the court proceedings or who claimed through such a party; or
 - (ii) to whom notice of the application for the declaration was given;
 - (c) does not affect –
 - (i) the rights of any other person, or
 - (ii) any earlier judgement, order or decree of a court or other body of competent jurisdiction.

(5) A declaration in terms of this section is, upon production by any person in a court, admissible as evidence in any proceedings before the court.

Prior approval for children to be brought into Republic for adoption

302. (1) Before a child not habitually resident in the Republic is brought into the Republic for adoption, the prospective adoptive parents must obtain the approval of the Central Authority.

- (2) The Central Authority must grant approval provided –
- (a) the biological parent or guardian of the child placing the child for adoption has been provided with information about adoption and the alternatives to adoption;
 - (b) the prospective adoptive parent or parents have been provided with information about the medical, social and cultural history of the child's biological family;
 - (c) a home study of the prospective adoptive parent or parents in accordance with such requirements as may be prescribed by regulation has been carried out and the

prospective adoptive parents have been approved as a suitable person or persons for the adoption of the child; and

- (d) the consents of such persons as are required in the country in which the child is resident have been obtained.

(3) The Central Authority must preserve for the child any information obtained about the medical, social and cultural history of the child's biological family.

(4) The provisions of this section do not apply to a child who is brought into the Republic for adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child's biological parent.

Prior approval for children to be sent out of Republic for adoption

303. (1) Before a child habitually resident in the Republic is placed for adoption in another country, the prospective adoptive parent or parents must obtain the approval of the Central Authority or a designated child protection organisation accredited in terms of section 278 to perform inter-country adoption services.

(2) The Central Authority or designated child protection organisation may grant approval only if –

- (a) a home study of the prospective adoptive parent or parents has been carried out in accordance with such requirements as may be prescribed by regulation, and the prospective adoptive parent or parents have been approved as a suitable person or persons for the adoption of the child;
- (b) the consents of such persons as are required in terms of this Act have been obtained; and
- (c) efforts to place the child for adoption with a parent or parents resident in the Republic were unsuccessful during a period of six months from the date on which application for approval was lodged.

(3) 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 relative of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

Processing or facilitating inter-country adoption

304. No person may process or facilitate an inter-country adoption otherwise than in terms of this Chapter.

CHAPTER 20 CHILD ABDUCTION

Purposes of this Chapter

305. 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.

Hague Convention on International Child Abduction to have force of law

306. 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.

Central Authority

307. (1) The Director-General is the Central Authority for the Republic for the purposes of the Hague Convention on International Child Abduction.

(2) The Director-General must perform the functions assigned by the Convention to Central Authorities.

Delegation of powers and duties

308. When the Minister so authorises, the Central Authority of the Republic may in terms of

section 357 delegate any powers or duties of the Central Authority under the Hague Convention on International Child Abduction to a person in the public service with the rank of director or higher.

Additional powers of court

309. (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 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.

Role of family advocate

310. A family advocate must act on behalf of a child in all applications in terms of Hague Convention on International Child Abduction.

Unlawful removal or detention of children

311. (1) No person may without lawful authority or reasonable excuse or otherwise than in the exercise of his or her parental responsibilities or rights –

- (a) remove a child from the control of a person who has lawful control of the child; or
- (b) detain a child with the result that the child is kept out of the control of a person entitled to lawful control of 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.

Unlawful taking or sending of children out of Republic

312. (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 **39** (5); or
 - (ii) 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.

Regulations

313. The Minister, acting with the concurrence of the Minister of Justice, may in terms of section **289** make regulations –

- (a) to give effect to any provisions of the Hague Convention on International Child Abduction;
- (b) prescribing fees, and providing for the recovery of any expenditure incurred, in connection with the application of the Convention.

TRAFFICKING OF CHILDREN

Purposes of this Chapter

- 314.** The purposes of this Chapter are –
- (a) to give effect to the UN Protocol to Prevent Trafficking in Persons;
 - (b) to give effect to certain bilateral or multilateral agreements relating to trafficking in children; and
 - (c) generally to regulate trafficking in children.

UN Protocol to Prevent Trafficking in Persons to have force of law

315. The UN Protocol to Prevent Trafficking in Persons is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act.

Assistance to children who are victims of trafficking

- 316.** (1) The Director-General, without delay and with due regard to the safety of a child, must –
- (a) facilitate and accept the return of a South African child who is a victim of trafficking;
 - (b) at the request of another state that is a party to the UN Protocol to Prevent Trafficking in Persons or to a bilateral or multilateral agreement relating to trafficking in children, verify whether a child who is a victim of trafficking is a national of the Republic or had the right of permanent residency in the Republic;
 - (c) issue such travel documents or other authorisations as may be needed to enable a child who is a victim of trafficking to travel to and re-enter the Republic.

(2) Subsection (1) applies to any child who, at the time of entry into the territory of the country to which the child had been trafficked, had permanent residence in South Africa.

Trafficking of children prohibited

- 317.** (1) No person may traffic a child for the purpose of –
- (a) commercial sexual exploitation;
 - (b) an exploitative labour practice; or

- (c) the removal of body parts.
- (2) If a court finds that the parent or care-giver of a child or any other person who has parental rights in respect of a child, has trafficked the child, the court may –
- (a) suspend all parental rights of that parent, care-giver or person pending an inquiry by a child and family court; and
 - (b) put that child in temporary safe care pending the placement of the child in alternative care.

CHAPTER 22

CHILDREN'S PROTECTOR

Part 1: Appointment, status and function

Appointment of Children's Protector

- 318.** (1) The Minister must appoint a person as the Children's Protector.
- (2) The Children's Protector –
- (a) functions separately from the Department; and
 - (b) is a public entity for the purpose of the Public Finance Management Act.

Function

- 319.** The Children's Protector must without fear, favour or prejudice monitor the implementation of this Act by –
- (a) organs of state in all spheres of government; and
 - (b) persons and non-governmental organisations involved in the protection and well-being of children.

Qualifications

- 320.** (1) The Children's Protector must –
- (a) be a South African citizen;
 - (b) be a fit and proper person to hold the office of Children's Protector; and
 - (c) have appropriate qualifications and experience in the protection and well-being of children.

(2) The following persons are disqualified from becoming or remaining in the post of, the Children's Protector:

- (a) a person holding office as a member of Parliament, a provincial legislature or a municipal council; or
- (b) a person who has been removed from office in terms of section **323**.

Appointment procedure

321. (1) Whenever necessary, the Minister must through advertisements in the media circulating nationally and in each of the provinces, invite nominations for appointment as the Children's Protector.

- (2) Any nomination in terms of subsection (1) must be supported by –
- (a) the personal details of the applicant;
 - (b) particulars of the applicant's qualifications and experience in the protection and well-being of children; and
 - (c) any other information that may be prescribed by regulation.

(3) (a) The Minister must submit all nominations received in terms of subsection (1) to the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, who must convene a joint sitting of the Portfolio Committee on social development and the Select Committee on social development to consider the nominations and prepare a shortlist of not more than three person for appointment as the Children's Protector.

(b) If an insufficient number of viable nominations were received, the Minister must, before complying with paragraph (a), repeat the process set out in subsection (1).

(4) The joint sitting of the Portfolio Committee and the Select Committee must be conducted in accordance with the Joint Rules of Parliament.

(5) The Minister must consider the shortlist prepared in terms of subsection (3) and either –

(a) refer the shortlist back to the joint sitting of the Portfolio Committee and the Select Committee for reconsideration; or

(b) appoint one person as the Children’s Protector from the shortlist.

(6) If the Minister refers the shortlist of nominations back to the joint sitting of the Portfolio Committee and the Select Committee, the Committees in joint session must reconsider the shortlist and either confirm the shortlist of nominations or prepare another shortlist from the viable nominations received.

(7) The Minister must appoint a person shortlisted in terms of subsection (6) as the Children’s Protector.

Term of office and conditions of appointment

322. (1) A person appointed as Children’s Protector holds office –

(a) for a term of five years; and

(a) on such conditions of service as must be determined by the Minister.

(2) When the term of a person appointed as Children’s Protector expires, that person is eligible for re-appointment subject to section **321**.

Removal from office

323. (1) The Minister may remove the Children's Protector from office on the ground of misconduct, incapacity or incompetence.

(2) The Children's Protector may be removed from office on the ground of misconduct or incompetence only after a finding to that effect has been made by a board of inquiry appointed by the Minister.

Filling of vacancy

324. A vacancy in the office of Children's Protector must be filled by following the procedure set out in section 321.

Part 2: Powers and duties

Complaints and reports

325. (1) Any person may lodge a complaint with the Children's Protector about any matter concerning the implementation of this Act.

(2) The Children's Protector must consider a complaint lodged in terms of subsection (1) and may –

- (a) conduct an investigation;
- (b) take any steps that may be necessary to resolve the complaint; or
- (c) refer the complaint to any appropriate authority, including the child and family court registrar.

(3) The Children's Protector must investigate any report made in terms of section 156, 197 or 255.

Inspection of child and youth care centres, partial care facilities, shelters, drop-in centres and other premises

326. (1) The Children's Protector may –

- (a) routinely or on receipt of a complaint referred to in section 325 or of a report referred

to in section **156, 197** or **255**, inspect any child and youth care centre, partial care facility or shelter or drop-in centre, whether that centre, facility, shelter or drop-in centre is registered or not; or

(b) on receipt of a complaint referred to in section **325** or of a report referred to in section **197**, inspect any other premises to which the complaint or report refers.

(2) The Children's Protector may authorise any other person to carry out an inspection in terms of subsection (1) (a) or (b).

(3) When carrying out an inspection, the Children's Protector and any person authorised by the Children's Protector in terms of subsection (2), have all the powers and must comply with all the duties set out in section **352**.

Access to information

327. The Director-General, a provincial head of department or a municipality must furnish the Children's Protector with such information in their possession as the Children's Protector may request for the purpose of any investigation in terms of section **325** (2) (a) or (3) or any inspection in terms of section **326** (1) (a) or (b).

Reports after investigations and inspections

328. After completion of an investigation in terms of section **325** (2) (a) or (3) or an inspection in terms of section **326** (1) (a) or (b), the Children's Protector must compile a report on the investigation or inspection and submit that report, together with any recommendations, to –

- (a) the Minister;
- (b) the MEC for social development in the province or the municipality concerned, as may be appropriate;
- (c) the child and family court registrar, if action is needed in terms of Chapter **11**; and
- (d) the Director of Public Prosecutions, if the investigation or inspection revealed suspected criminal conduct.

General powers

329. The Children's Protector may –

- (a) appoint staff, subject to section **333**;
- (b) obtain, by agreement, the services of any person, including an organ of state, for the performance of a specific act, task or assignment;
- (c) acquire or dispose of any right in or to movable property, or hire any immovable property;
- (d) open and operate its own bank accounts;
- (e) invest any of its money, subject to the Public Finance Management Act;
- (f) insure itself against –
 - (i) any loss, damage or risk;
 - (ii) any liability it may incur in the application of this Act;
- (g) institute or defend any legal action; or
- (h) perform legal acts, including acts in association with or on behalf of any other person or organ of state.

Annual report

330. The Children's Protector must annually compile a report on his or her activities and submit the report to Parliament and each provincial legislature.

Part 3: Administration

Office of the Children's Protector

331. There is an Office of the Children's Protector consisting of –

- (a) the Children's Protector;
- (b) the Deputy Children's Protector, appointed in terms of section **332**;
- (c) staff, appointed in terms of section **333**; and
- (d) persons seconded to the Office in terms of section **334**.

Deputy Children's Protector

332. (1) The Children's Protector must appoint a staff member as the Deputy Children's Protector.

- (2) The Deputy Children's Protector acts as Children's Protector if –
- (a) the Children's Protector is, for any reason, unable to perform the functions of office; or
 - (b) the office of Children's Protector is vacant.

Employment of staff

333. (1) The Children's Protector must with the concurrence of the Minister determine a staff establishment necessary for the work of the Children's Protector, and may appoint persons in posts on the staff establishment.

(2) An employee of the Children's Protector is employed subject to the terms and conditions of employment determined by the Children's Protector within the financial limits set by the Minister with the concurrence of the Minister of Finance.

Secondment of persons to Office of Children's Protector

334. (1) A person in the service of another organ of state may be seconded to the Office of the Children's Protector by agreement between the Children's Protector and such organ of state.

(2) Persons seconded in terms of subsection (1) perform their duties under the supervision of the Children's Protector.

Delegation of powers and duties

335. (1) When necessary for the proper performance of the function mentioned in section 319, the Children's Protector may delegate a power or duty assigned to the Children's Protector in terms of this Act to –

- (a) the Deputy Children's Protector;

- (b) another staff member; or
- (c) a person seconded to the service of the Office of the Children's Protector.

(2) A delegation in terms of subsection (1) –

- (a) is subject to any limitations, conditions and directions which the Children's Protector may impose;
- (b) must be in writing; and
- (c) does not divest the Children's Protector of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Children's Protector may 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.

Funding

336. The funds of the Children's Protector consists of –

- (a) money appropriated for the purposes of the Children's Protector by Parliament on the vote of the Department;
- (b) donations and other voluntary payments made to the Children's Protector with the approval of the Minister; and
- (c) income derived from proceeds of investments made by the Children's Protector in terms of section **329** (e).

Financial accountability

337. The Children's Protector is a public entity for purposes of the Public Finance Management Act (Act No 1 of 1999), and must to that end comply with the provisions of that Act.

CHAPTER 23

FUNDING, GRANTS AND SUBSIDIES

Part 1: Funding

Funds for implementation of this Act to be included in departmental and municipal draft budgets

338. (1) When the Department or a provincial department responsible for social development in a province prepares its draft budget for a coming financial year in terms of the Public Finance Management Act (Act No 1 of 1999), the Department or provincial department must –

- (a) consider and determine its funding requirements for the implementation of this Act; and
- (b) include in the draft budget an amount for this purpose which it considers appropriate.

(2) When a municipality involved in the implementation of this Act prepares its draft budget for a coming financial year in terms of the Local Government: Municipal Finance Management Act, 2002, the municipality must –

- (a) consider and determine its funding requirements for the implementation of this Act; and
- (b) include in the draft budget an amount for this purpose which it considers appropriate.

(3) This section may not be interpreted as limiting a provincial legislature or municipal council in the exercise of its power to appropriate funds for the purpose of the province or municipality as it deems fit.

Part 2: Social security scheme for children

Administration of social security scheme for children

339. (1) The Director-General must establish and administer a social security scheme within the financial resources as may from time to time be available to the Department, for the

payment of the following grants and subsidies in respect of children:

- (a) a child grant;
- (b) a foster and court-ordered kinship care grant;
- (c) an informal kinship care grant;
- (d) an adoption grant;
- (e) an emergency court grant;
- (f) a supplementary special needs grant;
- (g) a subsidy to enable children with disabilities to obtain assistive devices;
- (h) fees to non-governmental organisations contracted to the State who, in terms of this Act, carry out services on behalf of the State;
- (i) subsidies to non-governmental organizations performing activities to implement programmes and projects giving effect to this Act;
- (i) a subsidy to encourage the provision of early childhood development services.

(2) All grants, subsidies and fees must be paid in accordance with this Chapter from money as may be appropriated annually by Parliament for the purpose of the social security scheme on the vote of the Department.

(3) The Minister must subject to the other provisions of this Chapter determine –

- (a) the amount of each grant, subsidy or fee payable during a financial year;
- (b) the period for which and the time when such grant, subsidy or fee is to be paid;
- (c) the eligibility and assessment criteria for each grant or subsidy; and
- (d) appropriate accountability requirements to ensure that a grant, subsidy or fee is utilised for the purpose for which it is paid.

Provincial and municipal support in administration of social security scheme

340. (1) The Director-General may –

- (a) by agreement with the provincial head of social development or a municipality assign aspects of the administration of the social security scheme mentioned in section 339 to the province or municipality; and

(b) to the extent necessary to give effect to the agreement, transfer funds in accordance with the annual Division of Revenue Act to the province or municipality subject to

–

- (i) the Public Finance Management Act; and
- (ii) such conditions as the Director-General may determine or as may be specified in the annual Division of Revenue Act.

(2) It is a condition of the assignment of aspects of the administration of the social security scheme to a province or municipality in terms of subsection (1), that the province or municipality, when giving effect to the assignment, must apply this Act despite any other legislation applicable in the province or municipality relating to grants and subsidies in respect of children.⁴

- (3) This section does not affect the competence of a province or municipality –
- (a) to administer its own social security schemes for children; or
 - (b) to pay grants or subsidies in respect of children from its own funds.

Child grant

341. (1) The child grant is payable on a universal basis in respect of all children in need who are South African citizens and resident in the Republic, and must be paid to the primary care-giver of the child.

(2) The social security scheme mentioned in section **339** must be administered in such a way so as to ensure, in particular, that the child grant –

- (a) reaches child-headed households and other households where children, because of

⁴ Note: The reason for this provision is that, as an Act constitutionally assigned to the provinces, Parliament cannot amend the Social Assistance Act, 1992, to regulate provincial involvement in the administration of the social security scheme provided for in this Chapter. The best way to get around this problem would be to “neutralise” the Social Assistance Act and to compel provinces to apply this Act in stead. The Social Assistance Act contains a number of very useful provisions which should also apply to this Chapter’s social security scheme, but these provisions could be incorporated into the Children’s Bill by way of regulations. See section 351 in this regard.

poverty, AIDS or chronic illness, are at risk of –

- (i) abandoning their education to take up adult responsibilities in the household; or
- (ii) leaving the home environment;
- (b) discourages children from leaving the home environment because of poverty, AIDS or chronic illness;
- (c) encourages children who because of poverty, AIDS or chronic illness have abandoned their education or have left the home environment, to resume their education or to return to their homes;
- (d) assists in enabling indigent parents and care-givers to care for their children in the home environment; and
- (e) assists child and youth care centres –
 - (i) in caring for children in the centre who become chronically ill;
 - (ii) in protecting children with AIDS in the centre from opportunistic infections; and
 - (iii) in providing specialist care for children with disabilities or chronic illnesses in the centre.

Foster and court-ordered kinship care grant

342. (1) The foster and court-ordered kinship care grant is payable in respect of all children who are in foster care or kinship care and are resident in the Republic, and must be paid to –

- (a) the foster parent or kinship care-giver of the child; or
- (b) if the foster parent or kinship care-giver is not the primary care-giver of the child, to the primary care-giver;
- (c) the Department or a designated child protection organization in the case of a collective foster care scheme.

(2) The child grant is not payable in respect of a child if the foster and court-ordered kinship care grant is payable in respect of the child.

Informal kinship care grant

343. (1) Subject to the means test in terms of section **347**, the informal kinship care grant –

- (a) is payable in respect of all children who are cared for in terms of informal kinship care arrangements, who are South African citizens and who are resident in the Republic; and
- (b) must be paid to the relative of the child who cares for the child.

(2) The informal kinship care grant is not payable in respect of a child if the child grant is payable and has been claimed or received in respect of the child.

Adoption grant

344. (1) Subject to the means test in terms of section **347**, the adoption grant is payable in respect of all adoptive children who are South African citizens and who are resident in the Republic, and must be paid to the adoptive parent of the child.

(2) The adoption grant is payable in addition to the child grant payable in respect of the child.

Emergency court grant

345. (1) Subject to the means test in terms of section **347**, the emergency court grant is payable by order of a child and family court in respect of a child who is –

- (a) resident in the Republic; and
- (b) at risk of being removed into alternative care because of poverty.

(2) The emergency court grant must be paid to –

- (a) the parent of the child; or
- (b) if the parent is not the primary care-giver of the child, to the primary care-giver.

(3) The emergency court grant is payable for a maximum period of three months.

(4) The emergency court grant is not payable in respect of a child if the child grant, the foster care grant, the court-ordered kinship care grant, the informal kinship care grant or the adoption grant is payable in respect of the child.

Supplementary special needs grant

346. (1) Subject to the means test in terms of section 347, the supplementary special needs grant is payable in respect of all children who are South African citizens and have –

- (a) chronic illnesses, including HIV/AIDS; or
- (b) moderate to severe disabilities.

(2) The supplementary special needs grant must be paid to –

- (a) the parent of the child; or
- (b) if the parent is not the primary care-giver of the child, to the primary care-giver.

(3) The supplementary special needs grant is payable in addition to any other grant payable in respect of the child.

(4) Payment of a subsidy in respect of assistive devices does not preclude the payment of a supplementary special needs grant.

(5) The supplementary special needs grant is payable only after the degree of the child's chronic illness or disability has been assessed in terms of objective prescribed assessment procedures and criteria.

Means testing

347. (1) The court-ordered kinship care grant, the informal kinship care grant, the adoption grant, the emergency court grant, or the supplementary special needs grant is payable only if –

- (a) the gross annual income of the recipient of the grant is less than an amount prescribed by regulation; and

(b) the value of the net assets of the recipient does not exceed an amount prescribed by regulation.

(2) Different income and net asset values may be prescribed for different grants.

Subsidies for assistive devices

348. (1) Subject to the means test in terms of section 347, a subsidy to enable children with disabilities to obtain assistive devices of a kind prescribed by regulation, is payable in respect of children with disabilities who are South African citizens and resident in the Republic.

(2) The subsidy must, on submission of an invoice substantiating the purchase of an assistive device, be paid to –

- (a) the primary care-giver of the child, if the primary care-giver has paid the purchase price; or
- (b) the supplier, if the purchase price has not yet been paid.

Subsidies or fees payable to designated child protection organisations engaged in implementing this Act

349. (1) A subsidy or fee to promote the implementation of programmes and projects giving effect to this Act, including the national policy framework mentioned in section 5, is payable to all designated child protection organisations contracted to the state to assist in implementing such programmes and projects.

(2) In respect of children in child and youth care centres, the subsidy is payable in respect of each child in such facility in addition to the programme funding relating to the overall functioning of the centre.

Proof of eligibility for grants and subsidies

350. A person claiming a grant or subsidy in terms of this Chapter must at the time of the application or claim supply proof –

- (a) in the case of an individual, that that individual and the child in respect of whom the grant is claimed –
 - (i) are South African citizens; and
 - (ii) are resident in the Republic; and
- (b) in the case of a child and youth care centre, that –
 - (i) that centre is registered with the provincial department of social development in terms of section **214**; and
 - (ii) the child in respect of whom the grant is claimed, is a South African citizen and resident in the centre; and
- (c) in the case of other designated child protection organisations, that that organisation is contracted to the state to implement programmes and projects giving effect to this Act.

Regulations

- 351.** The Minister may make regulations in terms of section **354** prescribing –
- (a) the manner in which the social security scheme referred to in section **339** must be administered;
 - (b) the manner in which and the places where persons may claim grants, subsidies or fees referred to in section **339**;
 - (c) the manner in which and the places where persons may receive payment of grants, subsidies or fees;
 - (d) the circumstances in which grants, subsidies or fees may be paid and the conditions that must be complied with for payment;
 - (e) the assessment procedure and criteria to be used for the consideration of grants or subsidies;
 - (f) the amounts of the grants, subsidies or fees payable;
 - (g) measures –
 - (i) to ensure proper financial management of the social security scheme and any grants made in terms of the scheme; and
 - (ii) to prevent fraudulent claims;
 - (h) minimum norms and standards for service delivery by designated child protection

- organisations in receipt of subsidies or fees engaged in implementing this Act;
- (i) in the case of children in a child and youth care centre, the manner in which per capita and programme funding is to be determined;
 - (j) the stopping or suspension of the payment of grants or subsidies to persons who –
 - (i) have become ineligible for such grants or subsidies; or
 - (ii) do not utilise a grant or subsidy for the purpose for which it is paid;
 - (k) the recovery of payments from ineligible persons or persons not utilising a grant or subsidy for the purpose for which it is paid;
 - (l) the manner in which and the conditions on which appeals may be lodged against decisions of the Director-General in terms of this Chapter;
 - (m) any matter dealt with in the Social Assistance Act, 1992 (Act No. 59 of 1992), concerning payments in respect of children, which is not covered in this Chapter; and
 - (n) any other matter concerning the administration of the social security scheme referred to in section 339.

CHAPTER 24

ENFORCEMENT OF THIS ACT

Inspection of child and youth care centres, partial care facilities, shelters and drop-in centres

352. (1) A child and family court magistrate or 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 identity card.

(3) A child and family court magistrate or 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 minimum norms and standards referred to in section **151, 227, or 250** applicable to it;
 - (ii) other minimum norms and standards as may be prescribed by regulation;
 - (iii) any structural, safety, health and other requirements of the municipality; 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 child and family magistrate or 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 by regulation.

(4) A child and family magistrate or person authorised in terms of subsection (1) must –

(a) provide a receipt for any record, document, article or substance removed in terms of subsection (2) (d) or (f); and

(b) return anything removed within a reasonable period unless seized for the purpose of evidence.

(5) (a) A child and family court magistrate must submit a report to the MEC for social development on any inspection carried out by that magistrate in terms of this section.

(b) 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.

Offences

353. (1) A person is guilty of an offence if that person –

(a) commits an act in contravention of the prohibition set out in section **19** (3);

(b) contravenes a provision of section **44** (4), **102**, **108**, **124** (1), **130** (1), (2) or (3), **133**, **277** (1), **279**, **311**, **312** or **317** (1);

(c) fails to comply with a provision of section **80** (2), **130** (5), or **143**;

(d) fails to comply with a request in terms of section **80** (1);

(e) misappropriates money for which that person is accountable in terms of section **234** (3);

(f) fails to comply with section **107** (1), **146** (1), **214** (1) or **245** (1) after that person has been instructed by way of a notice of enforcement in terms of section **109**, **148**, **216** or **247** to comply with the relevant section;

(g) fails to stop operating an unregistered child and youth care centre, partial care facility,

shelter or drop-in centre after that person has been instructed by way of a notice of enforcement in terms of section **148, 216** or **247** to stop operating that child and youth care centre, partial care facility, shelter or drop-in centre;

(h) fails to stop providing early childhood development services after that person has been instructed by way of a notice of enforcement in terms of section **109** to stop providing those services;

(i) directly or indirectly counsels, induces or aids any child to whom leave of absence has been granted in terms of section **189**, 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;

(j) hinders or obstructs –

(i) a police officer or designated social worker in the execution of a warrant issued in terms of section **169** (2);

(ii) a police officer, social worker or authorised officer when removing a child to temporary safe care in terms of section **170** (1);

(k) hinders or interferes with a person in the execution of official duties in terms of section **352**;

(l) fails to comply with a request of a person in the execution of official duties in terms of section **352** or furnishes false or misleading information to such a person when complying with such a request; or

(m) falsely professes to be a person authorised in terms of section **352** or an assistant of such a person.

(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 or a shelter or drop-in centre;

(b) assumes the foster care, kinship care or temporary safe care of a child; or

(c) applies for the foster care, kinship care, temporary safe care or adoption of a child.

(3) A parent or care-giver of a child is guilty of an offence if that parent or care-giver –

- (a) abuses or deliberately neglects the child;
- (b) abandons the child.

(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 aid.

(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, within a reasonable of gaining information of that occurrence, fails to report the occurrence to the South African Police Service.

(6) A person convicted of an offence in terms of subsection (1), (2), (3), (4) or (5) is liable to a fine as may be determined in terms of applicable legislation, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

CHAPTER 25

ADMINISTRATION OF ACT

Regulations

- 354.** (1) The Minister may make regulations prescribing –
- (a) any matter referred to in sections **112, 144, 180, 209, 230, 256, 280, 313** and **351**;
 - (b) any matter that may be prescribed by regulation in terms of this Act;
 - (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) any other matter that may facilitate the implementation of this Act.

- (2) Regulations made in terms of subsection (1) may –
- (a) apply –
- (i) generally throughout the Republic or only in a specified area or category of areas;
 - (ii) generally to all persons or only to a specified category of persons; or
 - (iii) generally to all child and youth care centres, partial care facilities or shelters or drop-in centres or only to a specified 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 or 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.

Delegation of powers and duties by Minister

355. (1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to –

- (a) the Director-General;
- (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 *Government Gazette*;
- (b) at any time withdraw a delegation.

Delegation of powers and duties by MECs for social development

356. (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
- (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 *Government Gazette*; and
- (b) at any time withdraw a delegation.

Delegation of powers and duties by Director-General and provincial heads of social development

357. (1) The Director-General or a provincial head of social development may delegate any power or duty assigned to him or her in terms of this Act to –

- (a) an official in the public service;
- (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 or 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 Director-General or the provincial head of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Director-General or 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.

Outsourcing of services

358. (1) The Minister or an MEC for social development in a province may, subject to the national policy framework referred to in section 5, by agreement with a designated child protection organisation or other appropriate person, assign the provision of any service that may or must be provided in terms of this Act, to that organisation or person.

(2) The Minister or MEC 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 355 or 356, as may be appropriate, and read with such changes as the context may require, applies in respect of any delegation in terms of subsection (2).

Limitation of liability

359. No organ of state, organisation or person is liable to any person and on any ground in respect of anything done in good faith in the administration of this Act or the exercise of a power or function conferred, assigned, delegated or imposed in terms of this Act.

CHAPTER 26**MISCELLANEOUS MATTERS****Repeal of legislation**

360. The legislation referred to in the second column of Schedule 4 is hereby amended to the extent indicated in the third column of the Schedule.

Transitional matters

361. (1) Any thing done in terms of legislation repealed in terms of section 360 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.

(2) (a) Despite section **360**, a children's court designated in terms of section 4 (2) of the Children's Act 1960 (Act No. 33 of 1960), or section 5 of the Child Care Act, continues to function until it is abolished by the Minister of Justice by notice in the *Gazette*.

(b) Until it is abolished, a children's court referred to in paragraph (a) functions as if it were a child and family court established in terms of this Act, except that cases which were pending on the date on which section **360** takes effect must be disposed of in terms of the legislation applicable to such court immediately before that date.

Short title and commencement

362. (1) This Act is called the Children's Act, 2002, and takes effect on a date fixed by the President by proclamation.

(2) Different dates may be determined in terms of subsection (1) for different provisions of this Act.

SCHEDULE 1**CONVENTION COUNTRIES AND PRESCRIBED FOREIGN JURISDICTIONS**

Column A: Convention countries	Column B: Prescribed foreign jurisdictions

SCHEDULE 2

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 intercountry 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 intercountry 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 intercountry 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 intercountry adoption is in the child's best interests;
- (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 intercountry 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 intercountry 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 intercountry 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 intercountry 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 intercountry 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 3

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

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- PREAMBLE
- CHAPTER I: SCOPE OF THE CONVENTION
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- CHAPTER III: RETURN OF CHILDREN
- CHAPTER IV: RIGHTS OF ACCESS
- CHAPTER V: GENERAL PROVISIONS
- CHAPTER VI: FINAL CLAUSES

- 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 organizations 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 or 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 or 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 VI - 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 fulfillment 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 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 4**TEXT OF THE UN PROTOCOL TO PREVENT TRAFFICKING IN PERSONS**

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions*Article 1*

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

*Article 5**Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons*Article 6**Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases,

in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

*Article 11**Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. State Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 16**Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

*Article 18**Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

*Article 19**Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

SCHEDULE 5
LEGISLATION REPEALED

No. and year	Title	Extent of repeal
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