

REPUBLIC OF SOUTH AFRICA

CHILDREN'S BILL

*(As introduced in the National Assembly as a section 76-Bill; explanatory summary of Bill
published in Government Gazette No. ???? of 2003)
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

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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; to consolidate the laws relating to the welfare and protection of children; and to provide for matters connected therewith.

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BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

INTERPRETATION, OBJECTS, APPLICATION AND
IMPLEMENTATION OF ACT

Interpretation

1. (1) In this Act, unless the context indicates otherwise— 5
- “**abandoned**”, in relation to a child, means a child who—
- (a) has obviously been deserted by the parent, guardian or care-giver; or
- (b) has, for no apparent reason, had no contact with the parent, guardian, or care-giver for a period of at least three months;
- “**abuse**”, in relation to a child, means any form of harm or ill-treatment 10
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 or allowing a child to be sexually abused;
- (c) bullying by another child;
- (d) committing an exploitative labour practice in relation to a child; or 15
- (e) exposing or subjecting a child to behaviour that may psychologically or emotionally harm the child;
- “**adopted child**” means a child adopted by a person in terms of this Act or any law regulating the adoption of children before this Act took effect;
- “**adoption compliance certificate**”— 20
- (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 foreign jurisdiction, means a similar certificate prescribed in the relevant bilateral or multilateral agreement;
- “**adoption registrar**” means the person designated by the Director-General in 25
terms of section 247(1);
- “**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 30
- (ii) who is accredited in terms of section 251(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 251(1) to provide adoption services;
- “**adoption working agreement**”, for the purpose of chapter 17, means a written 35
agreement entered into by an accredited child protection organisation in the Republic with an equivalent organisation in another country to facilitate inter-country adoptions between the Republic and the country concerned;
- “**adoptive parent**” means a person who has adopted a child in terms of this Act or any law regulating the adoption of children before this Act took effect; 40
- “**alternative care**” means care of a child in accordance with section 167;
- “**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 45
municipality has been established which do not fall within the area of a local municipality;
- “**artificial fertilisation**” means the introduction by other than natural means of a male gamete or gametes into the internal reproductive organs of a female person for the purpose of human reproduction, including— 50
- (a) the bringing together outside the human body of a male and a female gamete or gametes with a view to placing the product of a union of such gametes in the womb of a female person; or
- (b) the placing of the product of a union of male and female gametes which have been brought together outside the human body, in the womb of a female 55
person;
- “**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 the presiding officer of the children’s court to perform that act; 60

“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;
 - (ii) living conditions that are conducive to the child’s health, well-being and development; and
 - (iii) the necessary financial support;
- (b) safeguarding and promoting the well-being of the child;
- (c) protecting the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical 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 3 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 family member who cares for a child in terms of an informal kinship care arrangement;
- (d) a person who cares for a child whilst the child is in temporary safe care;
- (e) a primary care-giver who is not the biological or adoptive parent of the child; or
- (f) the child at the head of a child-headed household to the extent that that child has assumed the role of primary care-giver;

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

“child and youth care centre” means a facility described in section 191(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 136;

“child labour” means the provision of labour by a child 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 an agent;

“clerk of the children’s court” means the person appointed by the Director-General: Justice and Constitutional Development as the clerk of the children’s court of the relevant Magistrate’s Court;

“cluster foster care 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) trafficking in a child for use in sexual activities, including prostitution or pornography;

“commissioning parent” means a person who enters into a surrogate motherhood agreement with a surrogate mother;

“contact”, in relation to a child, means—

- (a) maintaining a personal relationship with the child; and
- (b) if the child lives with someone else—
 - (i) communication on a regular basis with the child in person, including—
 - (aa) visiting the child; or
 - (bb) being visited by the child; or
 - (ii) communication on a regular basis with the child in any other manner, including—
 - (aa) through the post; or
 - (bb) by telephone or any other form of electronic communication;

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

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

“court” means—

- (a) a children’s court as provided for in section 42; and
- (b) for the purpose of Chapter 20, the High Court.

“court-ordered kinship care” means care of a child as described in section 180(3);

“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 107 to perform designated child protection services;

“designated child protection service” means a child protection service referred to in section 106;

“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” means the Director-General of the Department, or where the context indicates the Director-General of another Department, that Director-General;

“Divorce Act” means the Divorce Act, 1979 (Act No. 70 of 1979);

“divorce court” means the divorce court established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929);

“drop-in centre” means a facility referred to in section 213(2);

“early childhood development programmes” means programmes referred to in section 91(3);

“early childhood development services” means services referred to in section 91(2);

“early intervention services” means services referred to in section 143(1);

“exploitation”, in relation to a child, includes—

- (a) all forms of slavery or practices similar to slavery;
- (b) commercial sexual exploitation;
- (c) servitude;
- (d) forced labour or services;
- (e) the worst forms of child labour prohibited in terms of section 141; and
- (f) the removal of body parts;

“family advocate” means a family advocate appointed in terms of the Mediation in Certain Divorce Matters Act;

“family member”, in relation to a child, means—

- (a) a parent of the child;

- (b) any other person who has parental responsibilities and rights in respect of 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 180(1);

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

“**gamete**” means either of the two generative cells essential for human reproduction;

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

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

“**High Court**” means the High Court as contemplated in section 166 of the Constitution;

“**in need of care and protection**”, in relation to a child, means a child who is in a situation contemplated in section 150;

“**kinship care-giver**” means a family member of a child who has court-ordered kinship care of a child;

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

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

“**marriage**” means a marriage—

- (a) recognised in terms of South African law or customary law; or
- (b) concluded in accordance with a system of religious law subject to specified procedures, and any reference to a husband, wife, widower, widow, divorced person, married person or spouse must be construed accordingly;

“**MEC for social development**” means the member of the Executive Council of a province who is responsible for social development in the province;

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

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

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

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

“**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 a provision means the relevant local municipality;

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

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

“**organ of state**” means an organ of state as defined in paragraphs (a) and (b) of section 239 of the Constitution;

“**orphan**” means a child who has no surviving parent caring for him or her;

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

“**parental responsibilities and rights**”, in relation to a child means the responsibility and 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 26;

“**partial care**” means taking care of a child in accordance with section 76;

“**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
- (c) 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 children’s court, means—

- (a) a child involved in the matter;
- (b) a parent;
- (c) a person who has parental responsibilities and rights in respect of the child;
- (d) a 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 157(1)(a)(iii);

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

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

“**prescribed**” means prescribed by regulation as contemplated in section 75, 90, 103, 142, 160, 179, 190, 212, 227, 253, 279 and 299;

“**presiding officer**” means a presiding officer of a children’s court designated in terms of section 42(1);

“**prevention services**” means services referred to in section 145(2);

“**primary care-giver**”, in relation to a child, means—

- (a) a person who has the parental responsibility or right in caring for the child and who exercises that responsibility and right;
- (b) a person who cares for a child with the implied or express consent of a person referred to in paragraph (a);
- (c) a foster parent;
- (d) a child and youth care worker at a child and youth care centre where a child has been placed; or

(e) a person 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 Health 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 191(2) which is or must 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 11;

“school” means—

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

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

“secure care” means the physical containment 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;

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

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

“shelter” means a facility referred to in section 213(1);

“social service professionals”, includes probation officers, development workers, child and youth care workers, youth workers and social security workers who are registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978) once a professional board has been established for a particular professional group;

“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;

“surrogate mother” means an adult woman who enters into a surrogate motherhood agreement with the commissioning parent or parents;

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

“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 care of a child in a prison or police cell;

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

“this Act” includes—

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

(b) the rules regulating the proceedings of the children’s courts in terms of section 52(1) or (2);

“traffic”, in relation to a child, means the recruitment, transportation, transfer, harbouring or receipt of children 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 giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

“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 3.

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

(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 conflict must be resolved in terms of section 156 of the Constitution.
- (2) In the event of a conflict between a regulation made in terms of this Act and—
 - (a) an Act of Parliament, the Act of Parliament prevails;
 - (b) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution; and
 - (c) a municipal by-law, the conflict must be resolved in terms of section 156 of the Constitution.
- (3) For the proper application of subsection (2)(b) the Minister must in terms of section 146(6) of the Constitution submit all regulations made in terms of this Act and which affect a province, to the National Council of Provinces for approval.
- (4) In this section “regulation” means—
 - (a) a regulation made in terms of this Act; and
 - (b) a rule regulating the proceedings of children’s courts in terms of section 52(1).

Implementation of Act

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

(2) Recognising that competing social and economic needs exist, the state must, in the implementation of this Act, take reasonable measures within its available resources to achieve the progressive realisation of the objects of this Act.

CHAPTER 2

GENERAL PRINCIPLES

General principles

5. (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) 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 3 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 status of the child or a family member of the child.
- (3) If a matter concerning a child involves a selection between one parent and the other, or between one care-giver or person and another, there should be no preference in favour of any parent, care-giver or person solely on the basis of that parent, care-giver or person’s gender.
- (4) 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.
- (5) 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.
- (6) 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 child standard

6. (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 care-giver or person relevant in those circumstances;
- (b) the attitude of the parents, or any specific parent, towards—
 - (i) the child; and
 - (ii) the exercise of parental responsibilities or rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
- (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from—
 - (i) both or either of the parents; or
 - (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
- (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- (f) the need for the child—
 - (i) to remain in the care of his or her parent, family and extended family; and
 - (ii) to maintain a connection with his or her family, extended family, 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 caring 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, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (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 any person who has parental responsibilities and rights in respect of a child.

CHAPTER 3

CHILDREN'S RIGHTS

Application

7. (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 and promote the rights of children contained in this Chapter.

(3) A provision of this Chapter binds a natural or a juristic person, 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.

Provisions of Chapter take precedence over other law

8. 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.

Best interest of child paramount

9. In all matters concerning a child the standard referred to in section 28 (2) of the Constitution and section 6 of this Act that the child's best interest is of paramount importance, must be applied.

Child participation

10. Every child capable of participating meaningfully in any matter concerning that child has the right to participate in an appropriate way in those proceedings and views expressed by the child must be given due consideration.

Rights of children

11. (1) Every child has the right—

- (a) to a name and a nationality from birth;
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practices;
- (f) not to be required or permitted to perform work or provide services that—
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35 of the Constitution, the child may be detained only for the shortest appropriate period of time, and has the right to be—
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
- (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interests are of paramount importance in every matter concerning the child.

Harmful social and cultural practices

12. (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) Taking into consideration the child's age, maturity and stage of development, 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.

Information on health care

- 13.** Every child has the right to—
- (a) have access to information on health promotion and the prevention of ill-health and disease, sexuality, and reproduction; and
 - (b) confidentiality regarding his or her health status and the health status of a parent, care-giver or family member, except when maintaining such confidentiality is not in the best interests of the child.

Access to courts

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

Enforcement of rights

- 15.** (1) Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights or this Chapter has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.
- (2) The persons who may approach a court, are:
- (a) Anyone acting in their own interest;
 - (b) anyone acting on behalf of another person who cannot act in their own name;
 - (c) anyone acting as a member of, or in the interest of, a group or class of persons;
 - (d) anyone acting in the public interest; and
 - (e) an association acting in the interest of its members.

Responsibilities of children

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

Age of majority

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

CHAPTER 4

PARENTAL RESPONSIBILITIES AND RIGHTS

Part 1

Acquisition and loss of parental responsibilities and rights

Parental responsibilities and rights

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

Parental responsibilities and rights of mothers

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

(2) If the biological mother of the child 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 that mother has those parental responsibilities and rights in respect of the child which that guardian has in respect of that mother.

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

Parental responsibilities and rights of married fathers

20. 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 and birth.

Parental responsibilities and rights of unmarried fathers

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

- (a) if at 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.

(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

22. (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 20 or 21 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) Only the High Court may confirm a parental responsibilities and rights agreement that relates to the guardianship of a child.

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

(5) Subject to subsection (3), a parental responsibilities and rights agreement—

- (a) takes effect only if—
 - (i) registered with the family advocate; or
 - (ii) made an order of the High Court, a divorce court in a divorce matter or the children's court on application by the parties to the agreement; and
- (b) may be amended or terminated only by an order of the High Court, a divorce court or a children's 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 order of court

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

(2) Only the High Court may issue an order that relates to the guardianship of a child.

(3) 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;
- (c) the extent to which the applicant has contributed towards expenses in connection with the birth and maintenance of the child;
- (d) the best interest of the child; and
- (e) any other fact that should, in the opinion of the court, be taken into account.

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

- (a) must request a family advocate, social worker or psychologist to furnish it with a report and recommendations as to what is in the best interest of the child concerned; and
- (b) may suspend the first-mentioned application on any conditions it may determine.

(5) 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

24. When application is made in terms of section 23(1) by a non-South African citizen for the assignment of full parental responsibilities and rights in respect of a child or to act as guardian of a child, the application must be regarded as an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 17 of this Act.

Persons claiming paternity

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

- (a) apply for an amendment to be effected to the registration of birth of the child in terms of section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), identifying him as the father of the child, if the mother consents to such amendment; or
- (b) apply to a court for an order confirming his paternity of the child, if the mother—
 - (i) refuses to consent to such amendment;
 - (ii) is incompetent to give consent due to mental illness;
 - (iii) cannot be located; or
 - (iv) is deceased.

(2) This section does not apply to—

- (a) the biological father of a child conceived through the rape of or incest with the child's mother; or
- (b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation.

Assignment of parental responsibilities and rights to parent-substitutes

26. (1) A parent who is the sole natural guardian and 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 his or her parental responsibilities and rights in respect of the child in the event of his or her 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

- 27.** (1) A person referred to in section 28 may apply to the High Court, a divorce court in a divorce matter or a children's court for an order—
- (a) suspending for a period, or terminating, any or all of the parental responsibilities and rights which a specific person has in respect of a child; or
 - (b) extending or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.
- (2) An application in terms of subsection (1) may be combined with an application in terms of section 23 for the assignment of responsibilities and rights in respect of the child to the applicant in terms of that section.

Who may approach court

- 28.** (1) An application for an order referred to in section 27 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.
- (2) When considering an application referred to in section 27 the court must take into account—
- (a) the relationship between the child and the person whose parental responsibilities and rights are being challenged;
 - (b) the degree of commitment that the person has shown towards the child;
 - (c) the best interests of the child; and
 - (d) any other fact that should, in the opinion of the court, be taken into account.

Court proceedings

- 29.** (1) An application in terms of section 22(5)(a)(ii) or (b), 23(1), 25(1)(b) or 27(1) may be brought before the High Court, a divorce court in a divorce matter or a children's court within whose area of jurisdiction the child concerned is ordinarily resident.
- (2) An application in terms of section 23(1) for the assignment 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 contemplated in subsection (1) may grant the application unconditionally or on such conditions as it may determine, or may refuse the

application, but an application may be granted only if it is in the best interests of the child.

(4) When considering an application contemplated in subsection (1) the court must be guided by the principles set out in Chapters 2 and 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 if substantial injustice would otherwise result, to pay the costs of such representation.

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

Part 2

Co-exercise of parental responsibilities and rights

Co-holders of parental responsibilities and rights

30. (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 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 child

31. (1) Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in subsection (2) 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) A decision referred to in subsection (1) is, for purposes of—

- (a) subsection (1)(a), any decision—

- (i) in connection with a matter listed in section 30(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 26; 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), 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

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

- (a) safeguard the child's health, well-being and development; and
- (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical 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 subsection (1), including the right to consent to any medical examination or treatment of the child if such consent cannot reasonably be obtained from the parent or 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

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

(3) A parenting plan must comply with the best interest of the child standard as set out in section 6.

(4) In preparing a parenting plan the parties must seek—

- (a) the assistance of a family advocate, social worker or psychologist; or
- (b) mediation through a social worker or other appropriate person.

Formalities

34. (1) A parenting plan—

- (a) must be in writing and signed by the parties to the agreement; and
- (b) subject to subsection (2), may be registered with a family advocate or made an order of court.

- (2) An application 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, social worker or psychologist contemplated in section 33(4)(a) that the plan was prepared after consultation with such family advocate, social worker or psychologist; or
 - (bb) a social worker or other appropriate person contemplated in section 33(4)(b) that the plan was prepared after mediation by such social worker or such person.

Amendment or termination of registered parenting plans

- 35.** (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 29 applies to an application in terms of subsection (1).

Part 4

Miscellaneous

Presumption of paternity in respect of child born out of wedlock

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

Refusal to submit to taking of blood samples

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

Effect of subsequent marriage of parents on children

38. (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

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

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

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

(4) Section 8(1) and (2) of the Divorce Act, 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 custody or guardianship of, or access to, a child in terms of the Divorce Act must be construed as a reference also to a maintenance order or an order relating to the 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 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 fertilisation

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

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

(2) Subject to section 290, whenever the gamete or gametes of any person have been used for the artificial fertilisation of a woman, any child born of that woman as a result of such artificial fertilisation must for all purposes be regarded to be the child of that woman.

(3) No right, responsibility, duty or obligation arises between a child born of a woman as a result of artificial fertilisation and any person whose gamete or gametes have been used for such artificial fertilisation 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 was the husband of such woman at the time of such artificial fertilisation.

Access to biographical and medical information concerning genetic parents

41. (1) A child born as a result of artificial fertilisation or surrogacy is entitled to have access to—

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

(2) Information disclosed in terms of subsection (1) may not reveal the identity of the person whose gamete or gametes have been used for such artificial fertilisation 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) is disclosed.

CHAPTER 5

CHILDREN'S COURTS

Part 1

Establishment, status and jurisdiction

Children's courts and presiding officers

42. (1) For the purposes of this Act, every magistrate's court, as defined in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall be a children's court and shall

have jurisdiction on any matter arising from the application of this Act for the area of its jurisdiction.

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

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

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

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

(6) The Minister of Justice and Constitutional Development may, after consultation with the head of an administrative region as mentioned in subsection (3), by notice in the *Gazette* define the area of jurisdiction of each children's court and increase or reduce the area of jurisdiction of each children's court.

(7) The Children's Courts hearings must, as far as is practicable, be held in a room which—

- (a) is furnished and designed in a manner aimed at putting children at ease;
- (b) is conducive to the informality of the proceedings and the active participation of all persons involved in the proceedings without compromising the prestige of the court; and
- (c) is not ordinarily used for the adjudication of criminal trials.

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

(9) The publication of a notice referred to in subsection (6) does not affect proceedings which have been instituted but not yet completed at the time of such publication.

Status

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

Jurisdiction of children's courts

44. (1) A children's court has jurisdiction in respect of—

- (a) all matters that a children's court may adjudicate mentioned in section 45(1) and (2); and
 - (b) all matters in which application is made for an order mentioned in section 46.
- (2) The children's court that has jurisdiction in a particular matter is—
- (a) the court of the area in which the child involved in the matter is ordinarily resident; or
 - (b) if more than one child is involved in the matter, the court of the area in which any of those children is ordinarily resident.

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

Matters children's courts may adjudicate

45. (1) For purposes of this Act, a children's court may adjudicate any matter involving—

- (a) the protection and well-being of a child;
- (b) the care of, or contact with, a child;
- (c) paternity of a child;
- (d) support of a child;
- (e) the provision of—
 - (i) early childhood development services; or
 - (ii) prevention or early intervention services;
- (f) maltreatment, abuse, neglect, degradation or exploitation of a child, except criminal prosecutions in this regard;
- (g) the temporary safe care of a child;
- (h) alternative care of a child;

- (i) the adoption of a child, including an inter-country adoption;
 - (j) a child and youth care centre, a partial care facility or a shelter or drop-in centre, or any other facility purporting to be a care facility for children; or
 - (k) any other matter relating to the care, protection or well-being of a child provided for in this Act.
- (2) A children's court —
- (a) may try or convict a person for non-compliance with an order of a children's 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).
- (3) Pending the establishment of family courts by an Act of Parliament, the High Courts and Divorce Courts have exclusive jurisdiction over the following matters contemplated in this Act:
- (a) The guardianship of a child;
 - (b) the assignment, exercise, extension, restriction, suspension or termination of parental responsibilities or rights;
 - (c) artificial fertilisation of a child;
 - (d) the appointment of a parent-substitute;
 - (e) the departure, removal or abduction of a child from the Republic;
 - (f) applications requiring the return of a child to the Republic from abroad;
 - (g) the age of majority or the contractual or legal capacity of a child; and
 - (h) the safeguarding of a child's interest in property.
- (4) Nothing in this Act shall be construed as limiting the inherent jurisdiction of the High Courts as upper guardians of all children.

Orders children's courts may make

- 46.** (1) A children's court may make the following orders:
- (a) An alternative care order, which includes an order placing a child—
 - (i) in the care of a person designated by the court to be the foster parent of the child;
 - (ii) in the care of a family member 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, training, treatment or rehabilitation programme where this is necessary for the protection or well-being of a child;
- (vii) instructing a person who has failed to fulfil a statutory duty towards a child to appear before the court and to give reasons for the failure;
- (viii) instructing an organ of state to assist a child in obtaining access to a public service to which the child is entitled, failing which, to appear through its representative before the court and to give reasons for the failure;
- (ix) instructing that a person be removed from a child's home;
- (x) limiting access of a person to a child or prohibiting a person from contacting a child; or
- (xi) allowing a person to contact a child on the conditions as specified in the court order;
- (i) a contribution order in terms of this Act;
- (j) an order instructing a person to carry out an investigation in terms of section 50;
- (k) any other order which a children's court may make in terms of any other provision of this Act.

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

Referral of children to children's court by other courts

47. (1) If it appears to any court in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection as is contemplated in section 150, the court must order that the question whether the child is in need of care and protection be referred to a children's 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, the Maintenance Act 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—

- (a) may suspend the proceedings pending the outcome of an inquiry by the children's court into the question whether the child is in need of care and protection; and
- (b) must request the Director for Public Prosecutions to attend to the allegations of abuse or neglect.

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

Additional powers

48. (1) A children's court may—

- (a) grant interdicts and auxiliary relief;
- (b) extend, withdraw, suspend, vary or monitor any of its orders;
- (c) impose or vary time deadlines with respect to any of its orders;
- (d) make appropriate orders as to costs in matters before the court;
- (e) order the removal of a person from the court after noting the reason for the removal on the court record.

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

Lay-forum hearings

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

- (a) mediation by a family advocate, social worker, social service professional or other professionally qualified person;
- (b) a family group conference contemplated in section 70; or
- (c) mediation contemplated in section 71.

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

- (a) the vulnerability of the child;
- (b) the ability of the child to participate in the proceedings;
- (c) the power relationships within the family; and
- (d) the nature of any allegations made by parties in the matter.

Investigations

50. (1) A children's court may, subject to section 155(6), before it decides a matter, order any person—

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

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

- (a) in accordance with any 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 any other person authorised by the court to conduct the investigation or further investigation to enter any premises mentioned in the court order, either alone or in the presence of a police official, and on those premises—

- (a) remove a child in terms of sections 47 and 151;
- (b) investigate the circumstances of the child;
- (c) record any information; and
- (d) carry out any specific instruction of the court.

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

- (a) enter the premises mentioned in the court order and conduct any search;
- (b) question any person;
- (c) request the name, address and identification details of any person on or residing or suspected to be residing on those premises;
- (d) record any information; and
- (e) carry out any specific instruction of the court.

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

Appeals

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

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

Part 2

Court proceedings

Rules and court proceedings

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

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

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

- (a) appropriate questioning techniques for—
 - (i) children in general;
 - (ii) children with intellectual or psychiatric difficulties or with hearing or other physical disabilities which complicate communication;
 - (iii) traumatised children; and
 - (iv) very young children; and
- (b) the use of suitably qualified or trained interpreters.

Who may approach court

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

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

- (a) A child who is affected by or involved in the matter to be adjudicated;
- (b) anyone acting in the interest of the child;
- (c) anyone acting on behalf of a child who cannot act in his or her own name;
- (d) anyone acting as a member of, or in the interest of, a group or class of children;
- (e) anyone acting in the public interest.

Legal representation

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

Legal representation of children

55. (1) Notwithstanding the provisions of section 54, a child involved in a matter before a children's court is entitled to legal representation.

(2) (a) A child may request the court to appoint a legal practitioner to represent him or her in such matter.

(b) If a legal practitioner appointed in terms of paragraph (a) does not serve the interests of the child in the matter, the court may terminate the appointment.

(3) If no legal practitioner 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 practitioner 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 order that a legal practitioner be assigned to the child by the state, and at state expense, if substantial injustice would otherwise result.

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

(6) If the court makes an order in terms of subsection (4), the clerk of the children's court must request the Legal Aid Board to instruct a legal practitioner to represent the child.

Attendance at proceedings

- 56.** Proceedings of a children's court are closed and may be attended only by—
- (a) a person performing official duties in connection with the work of the court or whose presence is otherwise necessary for the purpose of the proceedings;
 - (b) the child involved in the matter before the court and any other party in the matter;
 - (c) a person who has been instructed in terms of section 57 by the clerk of the children's court to attend those proceedings;
 - (d) the legal representative of a person who is entitled to legal representation;
 - (e) a person who obtained permission to be present from the presiding officer of the children's court; and
 - (f) the designated social worker managing the case.

Compulsory attendance of persons involved in proceedings

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

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

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

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

- (a) A child involved in the matter;
- (b) a parent of the child;
- (c) a person who has parental responsibilities and rights in respect of the child;
- (d) a care-giver of the child;
- (e) a person whose rights may be affected by an order that may be made by the court in those proceedings; and
- (f) a person who the court decides has a sufficient interest in the matter.

Witnesses

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

- (a) the presiding officer in the matter;
- (b) the child or a person whose rights may be affected by an order that may be made by the court in those proceedings; or
- (c) the legal representative of a person mentioned in paragraph (b).

(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 summonsed in terms of subsection (1) or required by the presiding officer to give evidence.

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

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

Conduct of proceedings

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

- (a) call any person to give evidence or to produce a book, document or other written instrument;
- (b) question or cross-examine that person; or
- (c) to the extent necessary to resolve any factual dispute which is directly relevant in the matter, allow that person to be questioned or cross-examined by—
 - (i) the child involved in the matter;
 - (ii) the parent of the child;
 - (iii) a person who has parental responsibilities and rights in respect of the child;
 - (iv) a care-giver of the child;
 - (v) a person whose rights may be affected by an order that may be made by the court in those proceedings; or
 - (vi) the legal representative of a person who is entitled to a legal representative in those proceedings.

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

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

Participation of children

61. (1) The presiding officer in a matter before a children's court must—

- (a) allow a child involved in the matter to express a view and preference in the matter if the court finds that the child, given the child's age, maturity and stage of development, 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) intervene in the questioning or cross-examination of a child if the court finds that this would be in the best interests of the child.

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

Professional reports ordered by court

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

- (a) the child;
- (b) the parents or a parent of the child;
- (c) a person who has parental responsibilities and rights in respect of the child;
- (d) a care-giver of the child;
- (e) the person in whose control the child is; or
- (f) any other relevant person.

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

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

- (b) be required by the court to present the findings of the investigation to the court by—
 - (i) testifying before the court; or
 - (ii) submitting a written report to the court.

Evidence

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

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

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

- (a) disclose the relevant parts of the report to that person within the prescribed period prior to the date of the hearing of the matter if that person is a party to the proceedings; and
- (b) give that person the opportunity—
 - (i) to question or cross-examine the author of the report in regard to a matter arising from the report; or
 - (ii) to refute any statement contained in the report.

Adjournments

64. (1) The proceedings of a children's court may be adjourned only—

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

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

Monitoring of court orders

65. (1) A children's court may monitor—

- (a) compliance with an order made by it in a matter; or
- (b) the circumstances of a child following an order made by it.

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

- (a) when making that order, may order—
 - (i) any person involved in the matter to appear before it at any future date; or
 - (ii) that reports by a designated social worker be submitted to the court within a specified period or from time to time as specified in the order;
- (b) at any time after making an order or when a report of non-compliance mentioned in subsection (4) is referred to it, may call or recall any person involved in the matter to appear before it.

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

- (a) inquire whether the order has been or is being complied with, and if not, why the order has not been complied with or is not being complied with;
- (b) confirm, vary or withdraw the order; or
- (c) enforce compliance with the order, if necessary through a criminal prosecution in a magistrate's court or in terms of section 45(2).

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

Protection of court case records

- 66.** Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person has access to children's court case records, except—
- (a) for the purpose of performing official duties in terms of this Act;
 - (b) in terms of an order of court if the court finds that such access would not compromise the best interests of the child;
 - (c) for the purpose of a review or appeal; or
 - (d) for the purpose of bona fide research or the reporting of cases in law reports, provided the provisions of section 74 are complied with.

Part 3

Clerks of Children's Courts

Appointment or designation of clerks of children's courts

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

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

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

Referral of matters to children's court by clerk of children's court

68. If a clerk of the children's court is of the opinion that any child is in need of care and protection, the clerk of the children's court must, in the prescribed manner, cause that child to be brought before the children's court of the district in which the child resides by any police official, designated social worker, social service professional, authorised officer or by a parent, guardian or other person caring for the child.

Pre-hearing conferences

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

- (a) mediate between the parties;
- (b) settle disputes between the parties to the extent possible; and
- (c) define the issues to be heard by the court.

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

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

(4) The court may—

- (a) prescribe how and by whom the conference should be set up, conducted and by whom it should be attended; and
- (b) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court.
- (c) consider the report on the conference when the matter is heard.

Family group conferences

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

(2) The children's court must—

- (a) appoint a suitably qualified person or organisation to facilitate at the family group conference;
- (b) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and
- (c) consider the report on the conference when the matter is heard.

Other lay-forums

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

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

(3) The children's court may—

- (a) prescribe the manner in which a record is kept of any agreement or settlement reached between the parties and any fact emerging from such conference which ought to be brought to the notice of the court; and
- (b) consider a report on the proceedings before the lay forum to the court when the matter is heard.

Settling of matters out of court

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

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

- (a) confirm the settlement and make it an order of court;
- (b) before deciding the matter, refer the settlement back to the parties for reconsideration of any specific issues; or
- (c) reject the settlement.

Other functions

73. The clerk of the children's court—

- (a) may attend every children's court hearing; and
- (b) must, when ordered by the court in terms of section 55, arrange legal representation for a child before the court.**Part 4**

Miscellaneous matters

Publication of information relating to proceedings

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

Regulations

75. (1) The Minister of Justice and Constitutional Development, after consultation with the Minister, may make regulations concerning—

- (a) the procedures to be followed at or in connection with the proceedings of children's courts;
- (b) the form of any application, authority, certificate, consent, notice, order, process, register or subpoena to be made, given, issued or kept;

- (c) the carrying out and monitoring of investigations in terms of section 50(2), procedures regulating such investigations and the gathering of evidence;
 - (d) the holding of pre-hearing conferences in terms of section 69, procedures regulating such conferences and information that must be submitted to a children's court;
 - (e) the holding and monitoring of family group conferences or other lay forums in terms of sections 70 and 71, procedures regulating such conferences and other lay forums and information that must be submitted to a children's court;
 - (f) the qualifications and experience of persons facilitating family group conferences, including special requirements that apply to persons facilitating in matters involving the alleged abuse of children;
 - (g) documents in connection with matters brought to a children's court and records of the proceedings of children's courts, including regulations determining—
 - (i) the person by whom, the period for which and the manner in which those documents and records must be kept; and
 - (ii) access to those documents and records;
 - (h) the keeping of records with regard to matters brought to and dealt with by the children's court;
 - (i) the submission of court statistics and progress reports on those matters to the Magistrates' Commission established by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993);
 - (j) the payment of remuneration to persons who are not in the employ of the state as contemplated in sections 49, 50, 62, 69, 70 and 71;
 - (k) any other matter required or permitted to be prescribed by regulations under this Act.
- (2) Section 299(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 6

PARTIAL CARE

Partial care

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

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

Provision of partial care

77. (1) A facility established or service provided by an organ of state or a non-governmental organisation for the provision of partial care only qualifies for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine the national norms and standards after consultation with the MECs for Social Development, the Financial and Fiscal Commission and the Minister of Finance.

Partial care facilities to be registered

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

- (a) is registered with the provincial government of the province where that facility is situated;

- (b) is managed and maintained in accordance with any conditions subject to which the facility is registered; and
 - (c) complies with the minimum norms and standards mentioned in section 83.
- (2) The Minister by regulation may exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

Existing places of care

79. As from the date on which section 78 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 78 as a partial care facility.

Notices of enforcement

80. (1) A 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 78 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 78, 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

81. (1) An application for registration or conditional registration of a partial care facility or for the reinstatement or renewal of a registration must—

- (a) be lodged with the provincial head of social development of the province where 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) a report by a designated social worker on the viability of the application;
 - (ii) 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 provincial head of social development may determine.

(3) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

Consideration of applications

82. (1) The provincial head of social development 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 provincial head of social development must take into account all relevant factors, including whether—

- (a) the facility complies with the minimum norms and standards mentioned in section 83;
- (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 provincial head of social development must consider the report contemplated in section 80(1)(c)(i) of a designated social worker before deciding an application for registration, conditional registration or renewal of registration.

Minimum norms and standards for partial care

- 83.** 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

- 84.** The registration or renewal of the registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including conditions—
- (a) specifying the type of partial care that may or must be provided in terms of the registration;
 - (b) stating the period for which the registration will remain valid; and
 - (c) providing for any other matters that may be prescribed by regulation.

Cancellation of registration

- 85.** (1) The provincial head of social development may cancel the registration or conditional registration of a partial care facility by written notice to the registration holder if—
- (a) the facility is not maintained in accordance with—
 - (i) the minimum norms and standards mentioned in section 83; 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 provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e)—
- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
 - (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.
- (3) The provincial head of social development may assist a registration holder to comply with minimum norms and standards mentioned in section 83 or any provisions of this Act where the cancellation was due to non-compliance with those norms and standards, conditions, requirements or provisions.

Appeals

- 86.** An applicant aggrieved by a decision of a provincial head of social development in terms of section 82 or 84, or a registration holder aggrieved by a decision of a provincial head of social development in terms of section 85, may—

- (a) lodge an appeal against that decision with the MEC for social development; or
- (b) apply to a court of competent jurisdiction to review that decision.

Record and inspection of and provision for partial care facilities

- 87.** (1) A provincial head of social development must—
- (a) maintain a record of all available partial care facilities in the province; and
 - (b) conduct regular inspections of partial care facilities in the province in collaboration with the municipality where the partial care facilities are situated to enforce the provisions of this Act.
- (2) Provincial strategies 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 the province;
 - (b) prioritising those types of partial care facilities most urgently required; and
 - (c) facilitating the identification and provision of suitable premises.

Assignment of functions to municipalities

88. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 78, 80, 81, 82, 84, 85 and 87 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

(2) The senior official referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to an official in the employ of the municipality.

(3) A delegation in terms of subsection (2)—

- (a) is subject to any limitations, conditions and directions which the delegating official may impose;
- (b) must be in writing; and
- (c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.

(4) The delegating official may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
- (b) at any time withdraw a delegation.

(5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 82, or the conditions on which registration was granted in terms of section 84, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a partial care facility in terms of section 85 may—

- (a) lodge an appeal with the municipal council against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Death of children in partial care facilities

89. (1) If a child dies while in partial care or following an occurrence at a partial care facility, the person operating the partial care facility must immediately after the child's death report such death to a police official and the Director-General.

(2) The police official must investigate the circumstances of the death of such child in accordance with section 3 of the Inquests Act, 1959 (Act No. 58 of 1959).

Regulations

90. The Minister may make regulations in terms of section 299 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; and
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 7

EARLY CHILDHOOD DEVELOPMENT

Early childhood development

91. (1) Early childhood development, for the purposes of this Act, means the process of emotional, mental, spiritual, moral, physical and social development of children from birth to school-going age.

(2) Early childhood development services means services—

- (a) intended to promote early childhood development; and
- (b) provided by a person, other than a child's parent or primary caregiver, on a regular basis to children up to school-going age.

(3) Early childhood development programmes means programmes structured to provide early childhood services.

Strategies concerning early childhood development

92. The Minister, after consultation with the Minister for Education, must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system.

Provision of early childhood development services

93. (1) Early childhood development services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine the national norms and standards after consultation with the MECs for Social Development, the Financial and Fiscal Commission and the Ministers of Finance and Education.

Minimum standards for early childhood development services

94. (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 school-going age;
- (b) a child and youth care centre which has in its care any children up to school-going age.

(2) Any other person or organisation not disqualified in terms of section 96(3) 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.

Early Childhood Development programmes to be registered

95. (1) A person operating or managing a partial care facility or a child and youth care centre where early childhood development services are provided must register the early childhood development programme in terms of which such early childhood development services are provided with the provincial head of social development.

(2) An application for registration or conditional registration of an early childhood development programme or for the reinstatement or renewal of a registration must—

- (a) be lodged with the provincial head of social development of the province where the partial care facility or child and youth care centre 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.
- (3) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.
- (4) An application for the renewal of registration or conditional registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.
- (5) The Minister by regulation may exempt any person or organisation from the requirement to register, on conditions that the Minister may prescribe.

Consideration of applications

- 96.** (1) The provincial head of social development 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 in the form prescribed by regulation, if the application is granted.
- (2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether—
- (a) the early childhood development programme complies with the minimum requirements prescribed by regulation;
 - (b) the applicant is a fit and proper person to provide early childhood development services;
 - (c) the applicant has the necessary skills, funds and resources available to provide the early childhood development services in accordance with the early childhood development programme applied for; and
 - (d) the early childhood development programme meets the emotional, mental, spiritual, moral, physical and social development needs of the children in that partial care facility or child and youth care centre.
- (3) A person unsuitable to work with children is not a fit and proper person to provide or assist in the provision of early childhood development services or programmes.
- (4) The provincial head of social development must consider a report of a social worker before deciding an application for registration, conditional registration or renewal of registration.

Conditional registration

- 97.** The registration or renewal of the registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including conditions—
- (a) specifying the type of early childhood development service 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

- 98.** (1) A provincial head of social development may cancel the registration or conditional registration of an early childhood development programme by written notice to the registration holder if—
- (a) the programme is not run in accordance with the minimum requirements prescribed by regulation;
 - (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 provide early childhood development services; or

- (e) a person who is not a fit and proper person to provide or assist in the provision of early childhood development services provides or assists in the provision of such services.
- (2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1) (a), (b), (c) or (e)—
- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
 - (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.
- (3) A provincial head of social development may assist a registration holder to comply with the minimum requirements prescribed by regulation or any provisions of this Act where the cancellation was due to non-compliance with those minimum requirements, conditions or provisions.
- (4) The cancellation of the registration or conditional registration of an early childhood development programme in terms of subsection (1) does not affect the registration or conditional registration of a partial care facility or a child and youth care centre.

Notices of enforcement

99. A provincial head of social development 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 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 or a child and youth care centre 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 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.

Assistance

100. A provincial head of social development may give advice to a partial care facility or a child and youth care centre providing early childhood development services in terms of section 93(1) on complying with the minimum requirements mentioned in that section.

Assessment of early childhood development services

101. (1) A provincial head of social development may authorise a person to assess the provision of early childhood development services or the content of early childhood development programmes, in order to determine whether the provision of the services or the content of the programme complies with the minimum requirements contemplated in section 93(1) and (2).

(2) Section 297(2) and (3), read with such changes as the context may require, applies to any assessment in terms of subsection (1) of this section.

Assignment of functions to municipality

102. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99, 100 and 101 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

(2) The senior official referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to an official in the employ of the municipality.

- (3) A delegation in terms of subsection (2)—
- (a) is subject to any limitations, conditions and directions which the delegating official may impose;
 - (b) must be in writing; and
 - (c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.
- (4) The delegating official may—
- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
 - (b) at any time withdraw a delegation.
- (5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 96, or the conditions on which registration was granted in terms of section 97, or a registration holder aggrieved by a decision of the official referred to in subsection (1) to cancel the registration of an early childhood development programme in terms of section 98 may—
- (a) lodge an appeal with the municipal council against that decision; or
 - (b) apply to the competent division of the High Court to review that decision.

Regulations

- 103.** The Minister may make regulations in terms of section 299 concerning—
- (a) the minimum requirements with which early childhood development services or programmes must comply;
 - (b) 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;
 - (c) the assessment and compulsory monitoring of early childhood development services or programmes offered at partial care facilities and child and youth care centres; and
 - (d) 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

104. The Minister must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed child protection system.

Reporting of children in need of care and protection

105. (1) Any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, legal practitioner, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on personal observation concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.

(2) Any person who believes that a child is in need of care and protection because of abuse, sexual abuse or deliberate neglect, may report that belief to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court.

(3) A person referred to in subsection (1) or (2) must substantiate that conclusion or belief to the provincial department of social development, a designated child protection organisation, a police official or a clerk of the children's court.

(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) The provincial department of social development, designated child protection organisation or clerk of the children's court to whom a report has been made in terms of subsection (1), (2) or (6), 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) 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 Act 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) A police official to whom a report has been made in terms of subsection (1) or (2) must ensure the safety and well-being of the child concerned if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the report and any steps that have been taken with regard to the child.

(7) The provincial department of social development, designated child protection organisation or clerk of the children's court who has conducted an investigation as contemplated in subsection (5) may, if he or she is satisfied that it is in the best interest of the child not to be removed from his or her home or place where he or she resides, but that the removal of the alleged offender from such home or place would secure the safety and well-being of the child, request a police official to take the steps referred to in section 153.

Provision of designated child protection services

106. (1) Designated child protection services provided by an organ of state or a designated child protection organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine the national norms and standards after consultation with the MECs for Social Development, the Financial and Fiscal Commission and the Minister of Finance.

(3) 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.

(4) Designated child protection services include—

- (a) services aimed at supporting—
 - (i) the performance by clerks of the children's court of their functions;
 - (ii) the proceedings of children's 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

107. (1) The Director-General or provincial head of social development may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform in the relevant province all or any specific designated child protection services.

(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

108. (1) Any organisation which, when section 107 takes effect, was a designated welfare organisation within the meaning of the Child Care Act must be regarded as having been designated in terms of section 107 as a child protection organisation to perform the designated child protection services which it performed immediately before that section took effect.

(2) An organisation referred to in subsection (1) is regarded to be a designated child protection organisation for a period of five years from the date on which section 107 takes effect, unless its designation is withdrawn in terms of section 110 before the expiry of that period.

Delegation of powers and duties to designated child protection organisations

109. (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) Sections 303 and 304, read with such changes as the context may require, apply to any delegation in terms of subsection (1).

Withdrawal of designations

110. 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 service—

- (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

111. (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.

Confidentiality of Register

112. (1) All Parts of the Register must be kept confidential and information in the Register may be accessed and disclosed only as provided for in this Act.

(2) The Director-General must take adequate steps—

- (a) to protect the information in the Register; and
- (b) if the Register is kept in electronic format, to secure the Register from unauthorised intrusion.

Part A of Register

Purpose of Part A of Register

- 113.** 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 have a record of the circumstances surrounding the abuse or deliberate neglect inflicted on the children referred to in paragraph (a);
 - (c) to use the information in the Register in order to protect these children from further abuse or neglect;
 - (d) to monitor cases and services to such children;
 - (e) to share information between professionals that are part of the child protection team;
 - (f) to determine patterns and trends of abuse or deliberate neglect of children; and
 - (g) to use the information in the Register for planning and budgetary purposes to prevent the abuse and deliberate neglect of children and protect children on a national, provincial and municipal level.

Contents of Part A of Register

- 114.** (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 105(5)(c)(iii);
 - (b) all convictions of all persons on charges involving the abuse or deliberate neglect of a child; and
 - (c) all findings by a children’s court that a child is in need of care because of abuse or deliberate neglect of the child.
- (2) Part A of the Register must reflect—
- (a) in the case of reported incidents referred to in subsection (1)(a)—
 - (i) the full names, surname, physical address and identification number of the child;
 - (ii) the nature and a brief account of the incident, including the place and date of the incident;
 - (iii) the full names, surname, 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 full names, surname, physical address and identification number of the child;
 - (ii) the full names, surname, physical address, identification number and occupation 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; and
 - (iv) details of the relationship between the convicted person and the child;
 - (c) in the case of a finding by a children’s court referred to in subsection (1)(c)—
 - (i) the full names, surname, physical address and identification number of the child;
 - (ii) a brief summary of the court’s reasons for finding the child to be in need of care;
 - (iii) information on the outcome of the court’s finding on the child;
 - (iv) the full names, surname, physical address and identification number of the parents or care-giver of the child; and
 - (v) a brief summary of the services rendered to the child found to be in need of care; and
 - (d) any other information as may be prescribed by regulation.

Access to Part A of Register

115. Only the Director-General and officers 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 provincial head of social development, or an official of a provincial department of social development designated by the head of that department, for the purpose of performing his or her functions in terms of this Act;
- (b) designated child protection organisations;
- (c) a member of the unit of the South African Police Service tasked with child protection; or
- (d) any other person for the purpose of conducting research on child abuse or deliberate neglect or related issues: Provided that the information referred to in section 114(2)(a)(i) must be excluded.

Disclosure of information in Part A of Register

116. (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 section 117 on written request by such person; or
- (e) when ordered by a court to do so.

(2) The general rule with regard to the disclosure of information in Part A of the Register is that it must be in the best interest of the child, unless the information is disclosed following on an inquiry in terms of section 117.

Inquiries on information in Part A of Register

117. (1) Anyone has the right, upon presentation of sufficient proof of his or her identity, to establish whether or not his or her name appears in Part A of the Register, and if so, the reasons why his or her name was entered in the Register.

(2) Inquiries in terms of subsection (1) 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.

(3) 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 working days.

Part B of Register

Purpose of Part B of Register

118. 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 against abuse from these persons.

Contents of Part B of Register

119. Part B of the National Child Protection Register must be a record of persons found in terms of section 120 to be unsuitable to work with children, and must reflect the following:

- (a) the full names and surname 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

- 120.** (1) A finding that a person is unsuitable to work with children may be made by—
- (a) a children's court;
 - (b) any other court in any criminal or civil proceedings in which that person is involved either as a party or a witness; or
 - (c) any forum established or recognised by legislation 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 a forum contemplated in subsection (1) of its own volition or on application by—
- (a) an organ of state involved in the implementation of this Act;
 - (b) a prosecutor, if the finding is sought in criminal proceedings; or
 - (c) a person having a sufficient interest to protect children.
- (3) The question whether a person is unsuitable to work with children may be heard by the court or legislative forum in disciplinary proceedings either in the course of or at the end of its proceedings.
- (4) In criminal proceedings, a person must be found unsuitable to work with children on conviction of murder, attempted murder, rape, sexual abuse or assault with the intent to do grievous bodily harm with regard to a child.
- (5) A finding in terms of subsection (1)(b) that a person is unsuitable to work with children is not dependent upon a finding of guilty or innocent in the criminal trial of that person.

Disputes concerning findings

- 121.** The person in respect of whom a finding in terms of section 120 has been made may—
- (a) appeal against the finding to a higher court, if the finding was made by a court, or
 - (b) have the finding reviewed by a court, if the finding was made by a forum contemplated in section 120(3).

Findings to be reported to Director-General

- 122.** (1) The registrar of the relevant court, or the relevant administrative forum, or, if the finding was made on application in terms of section 120(2), the person who brought the application, must notify the Director-General in writing—
- (a) of any finding in terms of section 120 that a person is unsuitable to work with children; and
 - (b) of any appeal or review lodged by the affected person.
- (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.

Consequences of entry of name in Part B of Register

- 123.** (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, a cluster foster care scheme, a school, a club or association providing services to children;
 - (b) work with children at a child and youth care centre, a partial care facility, a shelter or drop-in centre, a school, a club or association providing services to children, or in implementing a cluster foster care scheme, either as an employee, volunteer or in any other capacity;
 - (c) be permitted to become the foster parent, 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 any 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.

Disclosure of entry of name in Part B of Register

124. 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

125. (1) Only the following persons have access to Part B of the Register:

- (a) the Director-General;
- (b) officers of the Department designated by the Director-General;
- (c) a provincial head of social development; and
- (d) officers of the provincial department of social development designated by the provincial head of social development.

(2) The Director-General may, on such conditions as the Director-General may determine, allow officers of a provincial education department designated by the head of that department access to Part B of the Register for the purpose of implementing section 123 in relation to schools under the jurisdiction of that department.

Establishment of information in Part B of Register

126. (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 in writing 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 working days.

Disclosure of names in Part B of Register prohibited

127. (1) 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 126(1) or (2) on written request by such person or institution;
- (c) when ordered by a court to do so; or
- (d) when the disclosure is made to a person whose name appears in Part B of the Register.

(2) The general rule with regard to the disclosure of information in Part B of the Register is that it must be in the best interest of the child, unless the information is disclosed following on an inquiry in terms of section 126.

Removal of name from Register

128. (1) A person whose name appears in 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 children's court;
- (b) to the Director-General, if the entry was made in error; or
- (c) to the High Court if the Director-General refuses an application in terms of paragraph (b).

(3) An application in terms of subsection (1) to remove a person's name and particulars from Part B of the Register on the ground that the affected person has been rehabilitated, may only be made after at least five years have lapsed since the entry was made and after considering the prescribed criteria.

Part 3

Protective measures relating to health of children

Consent to medical treatment and surgical operations

129. (1) Subject to section 5(2) of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996), a child may be subjected to medical treatment or a surgical operation only if consent for such treatment or operation has been given in terms of either subsection (2), (3), (4) 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 31, 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 High Court or children's 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

- 130.** (1) Subject to section 132, no child may be tested for HIV except when—
- (a) it 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) the provincial head of social development, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (d) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test;
 - (e) the superintendent or person in charge of a hospital, if—
 - (i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a test; and
 - (ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or
 - (f) a children's court, if—
 - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld; or
 - (ii) the child or the parent or care-giver of the child is incapable of giving consent.

HIV-testing for foster care or adoption purposes

131. If HIV-testing of a child is done for foster care or adoption purposes, the state must pay the cost of such tests where circumstances permit.

Counselling before and after HIV-testing

- 132.** (1) A child may be tested for HIV only after proper counselling, by an appropriately trained person, of—
- (a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; and
 - (b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.
- (2) Post-test counselling must be provided by an appropriately trained person to—

- (a) the child, if the child is of sufficient maturity to understand the implications of the result; and
- (b) the child's parent or care-giver, if the parent or care-giver has knowledge of the test.

Confidentiality of information on HIV/AIDS status of children

133. (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 is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
 - (b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
 - (c) a designated child protection organisation arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;
 - (d) the superintendent or person in charge of a hospital, if—
 - (i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and
 - (ii) the child has no parent or care-giver and there is no designated child protection organisation arranging the placement of the child; or
 - (e) a children's court, if—
 - (i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best 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

134. (1) No person may refuse—

- (a) to sell condoms to a child over the age of 12 years; or
 - (b) to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge.
- (2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child provided—
- (a) the child is at least 12 years of age;
 - (b) proper medical advice is given to the child; and
 - (c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.
- (3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 105.

Part 4

Other protective measures

Applications to terminate or suspend parental responsibilities and rights

135. (1) The Director-General, a provincial head of social development or a designated child protection organisation may apply to a High Court, or a divorce court in divorce matters or a children's court for an order—

- (a) suspending for a period, terminating or transferring any or all of the parental responsibilities and rights which a specific person has in respect of a child; or
 - (b) restricting or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.
- (2) An application in terms of subsection (1) may be brought without the consent of a parent or care-giver of 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 Chapters 2 and 3 to the extent that those principles are applicable to the matter before it; and
 - (b) take into account all relevant factors, including—
 - (i) the need for the child to be permanently settled, preferably in a family environment, taking into consideration the age and stage of development of the child;
 - (ii) the success or otherwise of any attempts that have been made to reunite the child with the person whose parental responsibilities and rights are challenged;
 - (iii) the relationship between the child and that person;
 - (iv) the degree of commitment that that person has shown towards the child; and
 - (v) the probabilities of arranging for the child to be adopted or placed in another form of alternative care.
- (4) Section 29, read with such changes as the context may require, applies in respect of any proceedings in terms of this section.

Child-headed households

- 136.** (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;
 - (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 children's court; or
 - (b) an organ of state or a non-governmental organisation determined by the provincial head of social development.
- (3) The organ of state or non-governmental organisation 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) may place a child-headed household in a cluster foster care scheme;
 - (c) is accountable to the provincial department of social development or the children's court for the administration of any money received on behalf of the household.
- (4) The adult referred to in subsection (2) and the organ of state or non-governmental organisation referred to in subsection (3) 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 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.

Unlawful removal or detention of children

- 137.** (1) No person may without lawful authority or reasonable grounds—
- (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

- 138.** (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 30(5) from persons holding relevant parental responsibilities and rights in respect of that child; 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.

Corporal punishment

139. (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) 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.

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

- (4) 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

140. (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, including children, who attend the entertainment exceeds 50.

(2) A person providing entertainment to children in the circumstances specified in subsection (1) must—

- (a) determine the number of people, including children, who can safely be accommodated 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, including children, being admitted to the premises or enclosure, or any part of the premises or enclosure, than the number of people determined in terms of paragraph (a) for the premises or enclosure or that part of the premises or enclosure;
 - (c) control the movement of people admitted to the premises or enclosure, or any part of the premises or enclosure, while entering or leaving the premises or enclosure or that part of the premises or enclosure; and
 - (d) take all reasonable precautions for the safety of the children and other people attending the entertainment.
- (3) No alcohol or tobacco products may be sold to children at places of entertainment.
- (4) If the person providing the entertainment is not the owner of the premises or enclosure where the entertainment is provided, the owner or the owner's agent must take all reasonable steps to ensure that subsections (2) and (3) are complied with.
- (5) (a) A person authorised by a municipality in whose area a premises or enclosure is situated where entertainment described in subsection (1) is or is to be provided, or on reasonable suspicion is or is to be provided, may enter such enclosure in order to inspect whether subsections (2) or (3) are complied with.
- (b) Section 297(2) and (3), read with such changes as the context may require, applies to any inspection in terms of paragraph (a) of this subsection.

Worst forms of child labour prohibited

- 141.** (1) No person may—
- (a) employ a child who is under the age of 15 years;
 - (b) use, procure, offer or employ a child for purposes of commercial sexual exploitation;
 - (c) use, procure, offer or employ a child for illicit activities, including drug production and trafficking;
 - (d) force a child to perform labour for that or any other person, whether for reward or not; or
 - (e) encourage, induce or force a child, or allow a child, to perform labour that—
 - (i) by its nature or the circumstances is likely to harm the health, safety or morals of a child; 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 the worst forms of 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 such child labour.

Regulations

- 142.** The Minister may make regulations in terms of section 299—
- (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 persons contemplated in subparagraph (i);
- (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 Part B of the National Child Protection Register; and
- (i) prescribing any other matter necessary to facilitate the implementation of this Chapter.

CHAPTER 9

PREVENTION AND EARLY INTERVENTION SERVICES

Prevention and early intervention services

- 143.** (1) Early intervention services means social development services which are—
- (a) designed to serve the purposes mentioned in section 144; and
 - (b) provided to families where there are children identified as being vulnerable to or at risk of harm or removal into alternative care;
- (2) Prevention services means social development services—
- (a) designed to serve the purposes mentioned in section 144; and
 - (b) provided to families with children in order to strengthen and build their capacity and self-reliance to address problems that may or are bound to occur in the family environment which, if unchecked, may lead to statutory intervention.

Purposes of prevention and early intervention services or programmes

- 144.** (1) Prevention and early intervention services or programmes must focus on:
- (a) Preserving a child's family structure;
 - (b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of their children;
 - (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;
 - (b) empowering families to obtain such necessities for themselves.
- (3) Prevention and early intervention services must involve and promote the participation of families, parents, care-givers and children in identifying and resolving their problems.

Provision of prevention and early intervention services

- 145.** (1) Prevention and early intervention services provided by an organ of state, a designated child protection organisation or a non-governmental organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine the national norms and standards after consultation with the MECs for Social Development, the Financial and Fiscal Commission and the Minister of Finance.

(3) In implementing subsection (1) families who lack the means of providing proper shelter, food and other basic necessities of life to their children must be given priority.

Strategies for securing provision of prevention and early intervention services

146. The Minister must include in the departmental strategy 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.

Assignment of functions to municipalities

147. The provincial head of social development may assign the performance of any of the services described in section 145(1) to a municipality by agreement, if the provincial head of social development is satisfied that the municipality has the necessary capacity to provide the assigned services.

Court may order early intervention services

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

- (a) the provincial department of social development, a designated child protection organisation, any other relevant organ of state or any other person or organisation to provide early intervention 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 designated social worker's report setting out progress with early intervention services rendered to the child and the family, parent or care-giver of the child, must be submitted to the court.

(4) After considering the report, the court may—

- (a) decide the question whether the child should be removed; or
- (b) order the continuation of the early intervention 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 to include summary of prevention and early intervention services

149. When a report of a designated social worker is produced before a court in order to assist a court in determining a matter concerning a child, the report must contain a summary of any prevention and early intervention services provided in respect of that child and the family, parent or care-giver of the child.

CHAPTER 10

CHILD IN NEED OF CARE AND PROTECTION

Part 1

Identification of child in need of care and protection

Child in need of care and protection

150. A child is in need of care and protection if, at the time of referral in terms of section 47 or reporting in terms of section 105, the child—

- (a) has been abandoned, orphaned or is without any visible means of support;
- (b) displays behaviour which cannot be controlled by the parent or care-giver;

- (c) lives or works on the streets or begs for a living;
- (d) is addicted to a dependence-producing substance and is without any support to obtain treatment for such dependency;
- (e) has been exploited or lives in circumstances that expose the child to exploitation;
- (f) lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being;
- (g) may be at risk if returned to the custody of the parent, guardian or care-giver of the child as there is reason to believe that he or she will live in or be exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
- (h) is in a state of physical or mental neglect; or
- (i) 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.

Removal of children to temporary safe care by court order

151. (1) If, on evidence given by any person on oath or affirmation before a presiding officer it appears that a child who resides in the area of that presiding officer is in need of care and protection, the presiding officer must order that the question of whether the child is in need of care and protection be referred to a children's court for decision.

(2) A presiding officer 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 children's court may exercise any of the functions assigned to it in terms of section 50(1) to (3).

(4) An order issued in terms of subsection (2) must identify the child in sufficient detail to execute the order.

(5) A person authorised by a court order may, either alone or accompanied by a police official—

- (a) enter any premises mentioned in the order;
- (b) remove the child from the premises; and
- (c) on those premises exercise any power mentioned in section 50(3)(a) to (d).

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

(7) The person who has removed a child in terms of the court order must—

- (a) without delay but within 24 hours inform the primary care-giver of the child of the removal of the child, if that person can readily be traced; and
- (b) not later than the first court day bring the matter to the clerk of the children's court for referral to a children's court in terms of section 68.

(8) 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.

Removal of children to temporary safe care without court order

152. (1) A designated social worker or a police official may remove a child and place the child in temporary safe care without a court order if there are reasonable grounds for believing—

- (a) that the child—
 - (i) is in need of care and protection; and
 - (ii) needs immediate emergency protection;
- (b) that the delay in obtaining a court order for the removal of the child and placing the child in temporary safe care may jeopardise the child's safety and well-being; and

- (c) that the removal of the child from his or her home environment is the best way to secure that child's safety and well-being.
- (2) If a designated social worker has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the social worker must—
 - (a) without delay but within 24 hours inform the primary care-giver of the child of the removal of the child, if that person can readily be traced;
 - (b) not later than the next court day inform the relevant clerk of the children's court of the removal of the child.
- (3) If a police official has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the police official must—
 - (a) without delay but within 24 hours inform the primary care-giver of the child of the removal of the child, if that person can readily be traced;
 - (b) without delay but within 24 hours notify the provincial department of social development or a designated child protection organisation of the removal of the child and where the child has been placed in temporary safe care; and
 - (c) not later than the next court day inform the relevant clerk of the children's court of the removal of the child and the provincial department of social development or the designated child protection organisation notified in terms of paragraph (b).
- (4) 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 possible removal of the alleged offender in terms of section 153 from the home or place where the child resides, and the safety and well-being of the child as the first priority.
- (5) Misuse of a power referred to in subsection (1) by a designated social worker in the service of a designated child protection organisation—
 - (a) constitutes unprofessional or improper conduct as contemplated in section 27(1)(b) of the Social Service Professions Act, 1978 (Act No. 110 of 1978) by that social worker; and
 - (b) is a ground for an investigation into the possible withdrawal of that organisation's designation.
- (6) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995).
- (7) Any person who removes a child must comply with the prescribed procedure.

Written notice to alleged offender

- 153.** (1) A police official to whom a report as contemplated in section 105(1) or (2) or a request as contemplated in section 105(7) has been made, may, if he or she is satisfied that it will be in the best interest of the child if the alleged offender is removed from the home or place where the child resides, issue a written notice which—
- (a) specifies the names, surname, residential address, occupation and status of the alleged offender;
 - (b) calls upon the alleged offender to leave the home or place where the child resides and refrain from entering such home or place or having contact with the child until the court hearing specified in paragraph (c);
 - (c) calls upon the alleged offender to appear at a children's court at a place and on a date and at a time specified in the written notice to advance reasons why he or she should not be permanently prohibited from entering the home or place where the child resides: Provided that the date so specified shall be the first court day after the day upon which the notice is issued; and
 - (d) contains a certificate under the hand of the police official that he or she has handed the original of such written notice to the alleged offender and that he or she has explained to the alleged offender the importance thereof.
- (2) The police official must forthwith forward a duplicate original of the written notice to the clerk of the children's court.
- (3) The mere production to the court of the duplicate original referred to in subsection (2) is prima facie proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender.

(4) The provisions of section 55 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) apply, with the necessary changes, to a written notice handed to an alleged offender in terms of subsection (1).

(5) A children's court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued, appears, may summarily inquire into the circumstance which gave rise to the issuing of the notice.

(6) The court may, after having considered the circumstances which gave rise to the issuing of the written notice and after having heard the alleged offender—

- (a) issue an order prohibiting the alleged offender from entering the home or place where the child resides or from having any contact with the child, or both from entering such home or place and having contact with the child, for such period of time as the court deems fit;
- (b) order that the alleged offender may enter the home or the place where the child resides or have contact with the child upon such conditions as would ensure that the best interests of the child are served;
- (c) order that the alleged offender will be responsible for the maintenance of his family during the period contemplated in paragraph (a); and
- (d) make any other order with regard to the matter as the court deems fit.

(7) Misuse of a power referred to in subsection (1) by a police official constitutes grounds for disciplinary proceedings against such police official as contemplated in section 40 of the South African Police Service Act, 1995 (Act No. 68 of 1995).

Siblings in need of care and protection

154. If there are reasonable grounds for believing that a sibling of a child placed in temporary safe care in terms of section 47, 151 or 152 is in need of care and protection, any of the following persons may bring the sibling before the children's court to determine whether the sibling is in need of care and protection:

- (a) A designated social worker or authorised officer;
- (b) a person under whose care the child placed in temporary safe care is; or
- (c) the provincial head of social development.

Part 2

Children's court processes

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

155. (1) A children's court must decide the question of whether a child who was the subject of proceedings in terms of section 47, 151, 152 or 154 is in need of care and protection.

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

(3) The children's 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 156, taking into account the possibility of an order for early intervention services in terms of section 148.

(5) If the court finds that the child is not in need of care and protection, the court—

- (a) must make an order that the child, if the child is in temporary safe care, be returned to the person in whose control the child was before the child was put in temporary safe care;
- (b) may make an order for early intervention services in terms of section 148; or
- (c) must 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 designated social worker, which report must be in the prescribed format.

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

156. (1) If a children's court finds that a child is in need of care and protection the court may make any order which is in the best interest of the child, which may be or include an order—

- (a) referred to in section 46;
- (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 at the expense of such person, 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) 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 family member 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 cluster foster care scheme;
 - (iv) temporary safe care, pending an application for, and finalisation of, 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 158 that provides a residential care programme suited to the child's needs;
- (f) if the child lives in a child-headed household, that the child must remain in that household subject to section 136;
- (g) 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 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;
- (h) that the child be placed in a child and youth care centre selected in terms of section 158 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;
- (i) 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;
- (j) 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
- (k) 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 that makes an order contemplated in subsection (1) may order that the child concerned be kept in temporary safe care until such time as effect can be given to the court's order.

(3) An order made by the court in terms of subsection (1)—

(a) is subject to such conditions as the court may determine which, in the case of the placement of a child in terms of subsection (1)(e)(i), (ii), (iii), (iv) or (v), may include a condition—

- (i) rendering the placement of the child subject to supervision services by a designated social worker or authorised officer;
- (ii) rendering the placement of the child subject to reunification services being rendered to the child and the child's parents, care-giver or guardian, as the case may be, by a designated social worker or authorised officer; or
- (iii) requiring the person in whose care the child has been placed, to co-operate with the supervising designated social worker or authorised officer or to comply with any requirement laid down by the court, failing which the court may reconsider the placement; and

(b) may be reconsidered by a children's court at any time, and be confirmed, withdrawn or amended as may be appropriate.

(4) If a court finds that a child is not in need of care and protection the court may nevertheless issue an order referred to in subsection (1) in respect of the child, excluding a placement order.

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

157. (1) Before a children's court gives an order in terms of section 156 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 designated social worker on the conditions of the child's life, which must include—

- (i) an assessment of the developmental, therapeutic and other needs of the child;
- (ii) details of family preservation services that have been considered or attempted; and
- (iii) a documented permanency plan taking into account the child's age and developmental needs aimed at achieving stability in the child's life and containing the 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 designated social worker, provided that the child's safety and well-being must receive first priority;
- (ii) placing the child in alternative care for a limited 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 designated social worker facilitating the reunification of a child with the child's family in terms of subsection (1)(b)(ii) must—

- (a) investigate the causes why the child left the family home;
- (b) address those causes and take precautionary action to prevent a recurrence; and
- (c) provide counselling to both the child and the family before and after reunification.

(3) A very young child who has been orphaned or abandoned by its parents must be made available for adoption in the manner and time-period prescribed except when this is not in the best interest of the child.

(4) 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

158. (1) A children's court may issue an order placing a child in the care of a child and youth care centre only if another option is not appropriate.

(2) If a children's court decides that a child should be placed in the care of a child and youth care centre, the court must—

- (a) determine the residential care programme 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 provincial head of social development in the relevant province must place the child in a child and youth care centre offering the residential care programme 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 provincial head of social development must, as a general rule, select a centre offering the programme ordered by the court which is located as close as possible to the child's family or community.

Duration and extension of orders

159. (1) An order made by a children's court in terms of section 156—

- (a) lapses on expiry of—
 - (i) two years from the date the order was made; or
 - (ii) such shorter period for which the order was made; and
- (b) may be extended by a children's court for a period of not more than two years at a time.

(2) When deciding on an extension of the period of a court order in terms of subsection (1), the court must take cognisance of the views of—

- (a) the child;
- (b) the parent and any other person who has parental responsibilities and rights in respect of the child;
- (c) where appropriate, the management of the centre where the child is placed; and
- (d) any alternative care-giver of that child.

(3) Subject to section 176, 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.

Regulations

160. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 299 prescribing—

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

CHAPTER 11

CONTRIBUTION ORDERS

Issue of contribution orders

161. (1) A children's court may make an order instructing a respondent to pay a sum of money or a recurrent sum of money—

- (a) as a contribution towards the maintenance or treatment of, or the costs resulting from the other special needs of a child—

- (i) placed in alternative care; or
 - (ii) temporarily removed by order of the court from the child's family for treatment, rehabilitation, counselling or another reason; or
 - (b) as a short-term emergency contribution towards the maintenance or treatment of, or the costs resulting from, the other special needs of a child in urgent need.
- (2) A contribution order takes effect from the date on which it is made unless the court orders that it takes effect from an earlier or later date.
- (3) A children's court may vary, suspend or rescind a contribution order or revive the order after it has been rescinded.
- (4) If a court other than the court which made a contribution order varies, suspends, rescinds or revives the order in terms of subsection (3), the clerk of the first-mentioned court must immediately inform the clerk of the last mentioned court of such variation, suspension, rescission or revival.

Jurisdiction

- 162.** (1) A contribution order may be made, varied, suspended, rescinded or revived by the children's court of the area in which—
- (a) the respondent is ordinarily resident, carries on business or is employed; or
 - (b) the child involved in the matter is ordinarily resident.
- (2) A provisional contribution order may be made by a children's court having jurisdiction in terms of subsection (1)(b) against a respondent resident in any country which is a proclaimed country within the meaning of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), or a designated country within the meaning of the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989 (Act No. 6 of 1989).

Effect of contribution orders

- 163.** (1) A contribution order and a provisional contribution order have the effect of a maintenance order and a provisional maintenance order in terms of the Maintenance Act and the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), as may be appropriate.
- (2) Sections 31 and 40 of the Maintenance Act, read with such changes as the context may require, apply to a person who refuses or fails to comply with a contribution order.

Payments to be made to person determined by court

- 164.** A contribution order must instruct the respondent to pay the sum stated therein to the clerk of the children's court or to such other person as the court may determine.

Attachment of wages of respondents

- 165.** (1) A children's court which has made a contribution order against a respondent may—
- (a) order the employer of the respondent—
 - (i) to deduct the amount of the contribution which that respondent has been ordered to pay, from the respondent's wages, salary or remuneration; and
 - (ii) to 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 children's court or to such other person as is specified in the order.

Change of residence or work by respondent

- 166.** A respondent against whom a contribution order is in force must—
- (a) give notice, in writing, to the clerk of the children's court which made the order of any change in that person's residential address or place of work; and
 - (b) state in that notice the new residential address or the name and address of the new employer.

CHAPTER 12

CHILDREN IN ALTERNATIVE CARE

Alternative care

167. 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.

Leave of absence

168. (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 alternative 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 designated social worker, leave of absence may be granted by that person only with the approval of that 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) The management, person referred to in subsection (1), designated social worker or the head of social development in the province—

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

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

(4) When a child's leave of absence has been cancelled, the management, person referred to in subsection (1), designated 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 in alternative care prohibited from leaving Republic

169. (1) A child in alternative care may not leave the Republic without the written approval of the Director-General first being obtained.

(2) In granting approval in terms of subsection (1), the Director-General may prescribe any terms and conditions to protect the best interest of the child in alternative care.

Children absconding from alternative care

170. (1) Any police official, designated social worker or authorised officer may apprehend a child in alternative care who—

- (a) has absconded from the child and youth care centre or person in whose foster care or court-ordered kinship 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 foster care or court-ordered kinship care or temporary safe care that child has been placed and who on cancellation or expiration of such leave of absence fails to return to that centre or person.

(2) If a police official, designated social worker or authorised officer contemplated in subsection (1) has reasonable grounds to believe that a child is in or on certain premises, the police official, designated social worker or authorised officer may, without a warrant, enter and search the premises for the purpose of apprehending the child.

(3) A police official referred to in subsection (1) may use such force as may be reasonably necessary to overcome any resistance against the entry or search of the premises as contemplated in subsection (1), including the breaking of any door or window of such premises: Provided that the police official shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter such premises.

(4) On apprehending a child in alternative care who has absconded or failed to return in terms of subsection (1), the police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk, and notify the provincial department of social development or a designated child protection organisation of the fact the child has been apprehended and of any steps that have been taken with regard to the child.

(5) A child so apprehended or a child who returns, of his or her own accord, to the centre or person in whose alternative care he or she was before absconding—

(a) must without delay be brought before a presiding officer of a children's court; and

(b) may, until brought before a presiding officer of a children's court, be kept in temporary safe care in terms of section 152.

(6) When the child is brought before a presiding officer of a children's court, the presiding officer must—

(a) order that the child be put in the temporary safe care of a child and youth care centre or appropriate facility or person determined by the presiding officer and kept there until the proceedings in terms of this section are completed and any order made or action taken in terms of this section is given effect to;

(b) inquire into the reasons why the child absconded from, or failed to return to, the relevant child and youth care centre or person, and may for this purpose question the child; and

(c) order that the child—

(i) be returned to that centre or person;

(ii) may not be returned to that centre or person pending any action by the MEC for social development in the relevant province in terms of subsection (6), if the presiding officer is of the opinion that there are good reasons why the child should not be returned to that centre or person; or

(iii) be placed in another form of alternative care.

(7) The presiding officer of the children's court must order the clerk of the children's court to—

(a) report to the MEC for social development in the relevant province the result of an inquiry in terms of subsection (6); and

(b) notify the MEC of any order made in terms of subsection (6) (c).

(8) When an order has been made in terms of subsection (6) (c) (ii) the MEC may, after consideration of the report of the children's court and such inquiry as the MEC may consider necessary—

(a) transfer the child in terms of section 171;

(b) remove the child from alternative care in terms of section 173;

(c) discharge the child from alternative care in terms of section 175; or

(d) order that the child be returned to the child and youth care centre or person in whose care or temporary safe care that child has been placed.

Transfer of children in alternative care

171. (1) The MEC for social development in the relevant province may, subject to subsection (5), 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.

(2) 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 and without the prescribed financial arrangements regarding the placement being made.

(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 designated 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 designated social worker concerned may bring the child before a children's court, which may, after an inquiry, vary the order issued by the MEC or make a new order in terms of section 156.

(4) Before the MEC issues an order in terms of subsection (1), a designated social worker 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 children's 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.

(7) An order in terms of subsection (1) may not have the effect of extending the original placement order made by the court in terms of section 156 unless the order has been extended in terms of section 159(1)(b).

Change in residential care programmes

172. (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 171.

(3) No determination in terms of subsection (1) may be carried out without ratification by a children's 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.

(4) A determination in terms of subsection (1) may not have the effect of extending the original placement order made by the court in terms of section 156 unless the order has been extended in terms of section 159(1)(b).

Removal of children who are already in alternative care

173. (1) A presiding officer of a children's court 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 presiding officer of the children's court issuing a notice of removal in terms of subsection (1) must order the clerk of the children's court to 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) transfer the child in terms of section 171;
- (b) discharge the child from alternative care in terms of section 175; or
- (c) 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

174. (1) A provincial head of social development may, in the best interest of a child at any time whilst the child is in alternative care, issue a notice directing that the child be provisionally transferred from alternative care into another form of care that is not more restrictive, as from a date specified in the notice, for a trial period of not more than six months.

(2) A notice of provisional transfer in terms of subsection (1) may be issued only after—

- (a) procedures prescribed by regulation have been followed—
 - (i) to assess the best interest of the child; and
 - (ii) to reunite the child with the child's immediate family or other family members, if applicable; and
 - (b) a report on such assessment and reunification has been submitted to and considered by the 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 designated social worker to establish and test the feasibility of—
 - (i) reunification of the child with the child's immediate family or other family members;
 - (ii) integration into another 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 designated social worker so requests.

(4) The MEC may at the end of or at any time during the trial period confirm the child's placement or permanently discharge the child from alternative care in terms of section 175.

(5) The notice of provisional transfer shall be considered proof of eligibility for any form of state support which would have been payable if the transfer had been permanent.

Permanent discharges from alternative care

175. (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 reunite the child with the child's immediate family or other family members, if applicable; and
- (b) a report on such assessment and reunification by a designated social worker has been submitted to and considered by the MEC.

(3) A notice of discharge relieves the child and youth care centre from any further responsibilities in relation to the child.

Discharges from alternative care after reaching age of 18 years

176. (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.

Appeals against and reviews of certain decisions

177. A child or person aggrieved by a decision of an MEC for social development in terms of section 170(8), 171, 172, 173, 174, 175, or 176 may—

- (a) lodge an appeal with the Minister against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Death of children in alternative care

178. (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 immediately after the child's death report such death to a police official and the Director-General.

(2) The police official must investigate the circumstances of the death of such child in accordance with section 3 of the Inquests Act, 1959 (Act No. 58 of 1959).

Regulations

179. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 299 prescribing—

- (a) limitations or conditions for leave of absence from alternative care;
- (b) the manner in which children in alternative care must be transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care;
- (c) fees payable to a child and youth care centre on transfer or provisional transfer of a child in alternative care to that centre;
- (d) the manner in which applications for extension of alternative care beyond 18 years of age are to be made; and
- (e) any other matter that may be necessary to facilitate the implementation of this Chapter.

CHAPTER 13

FOSTER CARE AND CARE BY FAMILY MEMBERS

Foster care

180. (1) A child is in foster care if the child has been placed in the care of a person who is not the parent or guardian of the child as a result of—

- (a) an order of a children's court;
 - (b) a transfer in terms of section 171; or
 - (c) discharge in terms of section 175.
- (2) 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.

(3) A child is in court-ordered kinship care if the child has in terms of an order of a children's court been placed in the care of a family member 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 family member.

Purposes of foster care and court-ordered kinship care

181. The purposes of foster care and court-ordered kinship care are to—

- (a) protect and nurture children by providing a safe, healthy environment with positive support;
- (b) support, encourage and facilitate relationships between children, their parents and other family members and to strengthen and preserve families and family relationships whenever it is in the best interests of the child;
- (c) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships intended to last a lifetime; and

- (d) respect the individual and family by demonstrating respect for cultural, ethnic and community diversity.

Part 1

Foster care and court-ordered kinship care

Initial proceedings

182. Before a children's court places a child in foster care or kinship care, the court must follow the children's court processes stipulated in Part 2 of Chapter 10 to the extent that the provisions of that Part are applicable to the particular case.

Prospective foster parents or kinship care-givers

- 183.** (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 designated 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

- 184.** (1) Before a children's court places a child in foster care by court order in terms of section 156, the court must consider a report by a designated social worker about—
- (a) the cultural, religious and linguistic background of the child; and
 - (b) the availability of a suitable person with a similar background to that of the child who is willing and able to provide foster care or kinship care to the child.
- (2) A designated social worker must, in the case of a refugee or undocumented migrant child, make inquiries with the United Nations High Commissioner for Refugees, a service agency working in a relevant refugee community or the relevant Government department 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

- 185.** (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 cluster 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

- 186.** (1) A children's court may, despite the provisions of section 159(1)(a) regarding the duration of a court order 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 children's court may, despite the provisions of section 159(1)(a) regarding the duration of a court order, after a child has been in foster care for more than two years and after having considered the need for creating stability in the child's life, order that—
- (a) no further social worker supervision is required for that placement;
 - (b) no further social worker reports are required in respect of that placement; and
 - (c) the foster care placement subsists until the child turns 18 years, unless otherwise directed.
- (3) Despite the provisions of subsections (2) and (3), a social worker must visit a child in foster care or a child in court-ordered kinship care at least once every two years to evaluate the placement.

Reunification of child with biological parents

187. (1) If a children's 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 providing for a designated social worker to facilitate such reunification as contemplated in section 156(3)(a).

(2) If the child has not been reunited with the child's biological parents two months before the expiry of the initial court order or any extension of the order, the designated social worker appointed to facilitate the reunification must submit a report to the children's court—

- (a) explaining why the child was not reunited with the biological parents; and
 - (b) recommending any steps that may be taken to stabilise the child's life.
- (3) The children's court considering the report may—
- (a) order that the designated social worker must continue facilitating the reunification;
 - (b) order the termination of the reunification services if there are no prospects of reunification; or
 - (c) terminate the services of the designated social worker with respect to the child.

Responsibilities and rights of foster parents and kinship care-givers

188. (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 children's 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 children's court amending the initial order;
- (c) an order of court assigning parental responsibilities and rights in terms of section 23;
- (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 4; or
- (e) any applicable provisions of this Act.

(2) An order of the children's 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 children's court may in terms of section 65 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

189. (1) Foster care and court-ordered kinship care may be terminated by a children's 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.

Regulations

190. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 299—

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

CHAPTER 14

CHILD AND YOUTH CARE CENTRES

Child and youth care centre

191. (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 include a programme designed for—

- (a) the reception, care and development of children otherwise than in their family environment;
- (b) the reception, care and development of children on a shared basis with the parent or other person having parental responsibilities;
- (c) the reception and temporary safe care of children pending their placement;
- (d) the reception and temporary safe care of children to protect them from abuse or neglect;
- (e) the reception and temporary safe care of trafficked or commercially sexually exploited children;
- (f) 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;
- (g) the reception, development and secure care of children awaiting trial or sentence;
- (h) the reception, development and secure care of children with behavioural and emotional difficulties;
- (i) the reception, development and secure care of children in terms of an order—

- (i) under the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (ii) in terms of section 156(1)(h) placing the child in a child and youth care centre which provides a secure care programme; or
- (iii) in terms of section 171 transferring a child in alternative care; or
- (j) the reception and care of children for any other purpose that may be prescribed by regulation.

(3) A child and youth care centre may in addition to its residential care programmes, offer—

- (a) the provision of appropriate care and development of children with physical or mental disabilities or chronic illnesses;
- (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

192. (1) The Minister, after consultation with the Ministers of Education and of Health, must include in the departmental strategy a strategy framework aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions.

(2) The MEC must—

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

Establishment of child and youth care centres

193. (1) A child and youth care centre established by an organ of state or a designated child protection organisation only qualifies for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine the national norms and standards after consultation with the MECs for Social Development, the Financial and Fiscal Commission and the Ministers of Finance and Education.

Part 1

Establishment and registration of child and youth care centres

Establishment of child and youth care centres by organs of state

194. (1) The MEC for social development of a province must, from money appropriated by the relevant provincial legislature, establish and operate child and youth care centres for that province.

(2) Such child and youth care centres—

- (a) must be managed and maintained in accordance with this Act; and
- (b) must comply with—
 - (i) the minimum norms and standards for child and youth care centres contemplated in section 209; 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.

Existing government children's homes, places of safety, secure care facilities, schools of industry and reform schools

195. As from the date on which section 194 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 194 as a child and youth care centre providing a residential care programme referred to in section 191(2)(a);

- (b) an existing state operated place of safety established or deemed to have been established in terms of the Child Care Act must be regarded as having been established in terms of section 194 as a child and youth care centre providing residential care programmes referred to in section 191(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 194 as a child and youth care centre providing a residential care programme referred to in section 191(2)(h);
- (d) a public school for learners with special education needs contemplated in section 12(3) of the South African Schools Act, 1996 (Act No. 84 of 1996), must be regarded as having been established in terms of section 194 as a child and youth care centre providing a residential care programme referred to in section 191(2)(g) or (j), as the case may be; and
- (e) the facilities mentioned in paragraphs (d) and (e) may be assigned to the MEC for social development by the relevant Premier.

Establishment of child and youth care centres by accredited organisations

196. (1) Any accredited 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 for child and youth care centres contemplated in section 209.

(2) Subsection (1) also applies to a child and youth care centre established in terms of section 194 if the centre is operated by an accredited organisation.

Existing registered children's homes

197. As from the date on which section 196 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 196 as a child and youth care centre providing a residential care programme mentioned in section 191(2)(a).

Notices of enforcement

198. (1) A provincial head of social development may by way of a written notice of enforcement instruct—

- (a) a person or organisation operating an unregistered child and youth care centre—
 - (i) to stop operating that centre; or
 - (ii) to apply for registration in terms of section 199 within a period specified in the notice; or
- (b) a person or organisation operating a registered child and youth care centre otherwise than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person or organisation operating an unregistered child and youth care centre and who is instructed in terms of subsection (1)(a)(ii) to apply for registration within a specified period may, despite the provisions of section 196 regarding the establishment of child and youth care centres by accredited organisations, 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

199. (1) An application for registration of a child and youth care centre established by accredited organisations as referred to in section 196 or for the renewal of such a registration must—

- (a) be lodged with the provincial head of social development in the relevant province in accordance with a procedure prescribed by regulation;

- (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 provincial head of social development may determine.
- (3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

Consideration of applications

- 200.** (1) The provincial head of social development must—
- (a) consider an application for registration or for the renewal of a registration and either refuse the application or grant the registration or renewal with or without conditions, having regard to subsection (2); and
 - (b) issue to the applicant a certificate of registration or renewal of registration in the form prescribed by regulation if the application is granted.
- (2) When deciding an application the provincial head of social development must take into account all relevant factors, including whether—
- (a) the child and youth care centre complies with—
 - (i) the minimum norms and standards for child and youth care centres contemplated in section 209; 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 provincial head of social development must consider a report of a designated social worker before deciding an application for registration or renewal of registration.

Conditional registration

- 201.** The registration or renewal of the registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine, including conditions—
- (a) specifying the type of residential care programme 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

- 202.** The provincial head of 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

- 203.** (1) The provincial head of social development in the relevant province may cancel the registration of a child and youth care centre by written notice to the registration holder if—
- (a) the centre is not maintained in accordance with—

- (i) the minimum norms and standards for child and youth care centres contemplated in section 209;
 - (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 as part of the quality assurance process in terms of section 211; or
 - (iv) any other requirements of this Act;
- (b) any condition subject to which the registration or renewal of registration was issued is breached;
- (c) the registration holder or the management of the centre contravenes or fails to comply with a provision of this Act;
- (d) the registration holder becomes a person who is not a fit and proper person to operate a child and youth care centre; or
- (e) a person who is not a fit and proper person to assist in operating a child and youth care centre is employed at or involved in activities at the centre.
- (2) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating a child and youth care centre.
- (3) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e) —
- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
 - (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.
- (4) The Director-General or a provincial head of social development may assist a registration holder to comply with—
- (a) the minimum norms and standards for child and youth care centres contemplated in section 209;
 - (b) any structural, safety, health and other requirements of the municipality in which the child and youth care centre is situated; or
 - (c) any provisions of the organisational development plan established for the centre in terms of the quality assurance process contemplated in section 211, where the cancellation was due to a failure to comply with those norms and standards, requirements or process.
- (5) The cancellation of a registration which has not been suspended takes effect from a date specified in the notice referred to in subsection (1), which may not be earlier than 90 days from the date on which that notice was given, except if—
- (a) the provincial head of social development and the holder of the registration agree on an earlier date; or
 - (b) the safety or protection of the children in the centre requires an earlier date.

Voluntary closure of child and youth care centres

- 204.** The holder of a registration of a child and youth care centre may close the centre by—
- (a) giving written notice to the provincial head of social development in the relevant province; and
 - (b) surrendering the certificate of registration to the provincial head of social development for cancellation.

Children in child and youth care centres to be closed

205. If a child and youth care centre is to be closed as a result of the cancellation of its registration in terms of section 203 or voluntary closure of the centre in terms of section 204 every child placed in that centre must be transferred in terms of section 171.

Appeals against and reviews of certain decisions

206. An applicant aggrieved by a decision of a provincial head of social development with regard to the consideration of an application for registration or renewal of registration in terms of section 200, or the conditions on which registration was granted in terms of section 201, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a child and youth care centre in

terms of section 203, may apply to the MEC for social development or the High Court to review that decision.

Part 2

Operation and management of child and youth care centres

Management boards

207. (1) Each child and youth care centre must have a management board consisting of no fewer than six and no more than nine members.

(2) The members of a management board are appointed by—

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

(3) In appointing members of the management board, equitable representation by all stakeholders, including the community in which the child and youth care centre is located, must be ensured.

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

(5) A management board functions in terms of the regulations, and may exercise the powers and must perform the duties conferred on it in terms of this Act.

(6) The management board must create a children's forum as part of the management board to ensure the participation of resident children in the operation of the centre.

Managers and staff of child and youth care centres

208. (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 for child and youth care centres

209. 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 for child and youth care centres as prescribed.

Management system

210. 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 manner that is conducive to implementing the residential care programme or programmes offered at the centre.

Quality assurance process

211. (1) The provincial head for social development must ensure that a quality assurance process is carried out in respect of each child and youth care centre in the manner and at the intervals as prescribed.

(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 the MEC for social development in the province.

Part 3

Miscellaneous

Regulations

212. The Minister may, where appropriate after consultation with the Ministers of Education and of Health, in terms of section 299 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 of 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 to 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; and
- (w) any other matter that may facilitate the implementation of this Chapter.

CHAPTER 15

SHELTERS AND DROP-IN CENTRES

Shelters and drop-in centres

213. (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.

Establishment of shelters and drop-in centres

214. (1) Shelters and drop-in centres established by an organ of state, designated child protection organisation or non-governmental organisation only qualify for funding from money appropriated by a provincial legislature if it complies with the national norms and standards mentioned in subsection (2).

(2) The Minister must determine the national norms and standards after consultation with the MECs for Social Development, the Financial and Fiscal Commission and the Minister of Finance.

Shelters and drop-in centres to be registered

215. 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 provincial head of social development of the province where 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 for shelters and drop-in centres contemplated in section 220; and
 - (ii) the structural, safety, health and other requirements of the municipality.

Existing shelters

216. As from the date on which section 215 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 215.

Notices of enforcement

217. (1) The provincial head of social development may by way of a written notice of enforcement instruct—

- (a) a person or organisation operating an unregistered 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 215 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 215, be given permission by 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

218. (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 provincial head of social development 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 provincial head of social development may determine.

(3) An application for the renewal of registration must be made at least 90 days before the registration is due to expire, but the provincial head of social development may allow a late application on good cause shown.

Consideration of applications

219. (1) The provincial head of social development must—

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

(2) When considering an application, the provincial head of social development must take into account all relevant factors, including whether—

- (a) the shelter or drop-in centre complies with—
 - (i) the minimum norms and standards for shelters and drop-in centres contemplated in section 220; 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 provincial head of social development must consider a report of a designated social worker before deciding an application for registration, conditional registration or renewal of registration.

Minimum norms and standards for shelters and drop-in centres

220. (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 24 hours a day.

Conditional registration

221. The registration or renewal of the registration of a shelter or drop-in centre may be granted on such conditions as the provincial head of social development may determine, including conditions—

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

Cancellation of registration

222. (1) A provincial head of social development 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 for shelters and drop-in centres contemplated in section 220; 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 provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)(a), (b), (c) or (e) —

- (a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and
- (b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(4) A provincial head of social development may assist a registration holder to comply with the minimum norms and standards for shelters and drop-in centres contemplated in section 220.

Appeals against and review of certain decisions

223. An applicant aggrieved by a decision of a provincial head of social development with regard to the consideration of an application for registration, conditional

registration or renewal of registration in terms of section 219, or the conditions on which registration was granted in terms of section 221, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a shelter or drop-in centre in terms of section 222 may—

- (a) lodge an appeal with the MEC for social development against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Record and inspection of and provision for shelters and drop-in centres

224. (1) A provincial head of social development 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 the province in collaboration with the municipality where the shelters and drop-in centres are situated to enforce the provisions of this Act.

(2) A province's strategies must include strategies for the provision of shelters and drop-in centres in the province, which must include measures—

- (a) facilitating the establishment of sufficient shelters and drop-in centres in the province;
- (b) prioritising those types of shelters and drop-in centres most urgently required; and
- (c) facilitating the identification and provision of suitable premises.

Assignment of functions to municipality

225. (1) The provincial head of social development may, by agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 215, 217, 218, 219, 221 and 222 to the most senior official responsible for social welfare services in the municipality if the provincial head of social development is satisfied that the municipality has the capacity to perform the functions concerned.

(2) The senior official referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to an official in the employ of the municipality.

(3) A delegation in terms of subsection (2)—

- (a) is subject to any limitations, conditions and directions which the delegating official may impose;
- (b) must be in writing; and
- (c) does not divest the delegating official of the responsibility concerning the exercise of the power or the performance of the duty.

(4) The delegating official may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
- (b) at any time withdraw a delegation.

(5) An applicant aggrieved by a decision of an official in the employ of a municipality with regard to the consideration of an application for registration, conditional registration or renewal of registration in terms of section 219, or the conditions on which registration was granted in terms of section 221, or a registration holder aggrieved by a decision of a provincial head of social development to cancel the registration of a shelter or drop-in centre in terms of section 222 may—

- (a) lodge an appeal with the municipal council against that decision; or
- (b) apply to the competent division of the High Court to review that decision.

Death of children in shelters or drop-in centres

226. (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 immediately after the child's death report such death to a police official and the Director-General.

(2) The police official must investigate the circumstances of the death of such child in accordance with section 3 of the Inquests Act, 1959 (Act No. 58 of 1959).

Regulations

227. The Minister, after consultation with the Minister of Justice and Constitutional Development where review of decisions by the courts are regulated, may make regulations in terms of section 299 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 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 16

ADOPTION

Adoption

228. A child is adopted if the child has been placed in the permanent care of a person who is not the parent or guardian of the child as a result of a court order that has the effects contemplated in section 240.

Purposes of adoption

229. The purposes of adoption are to—

- (a) protect and nurture children by providing a safe, healthy environment with positive support;
- (b) promote the goals of permanency planning by connecting children to other safe and nurturing family relationships intended to last a lifetime; and
- (c) respect the individual and family by demonstrating respect for cultural, ethnic and community diversity.

Children who may be adopted

230. 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 child

231. (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 may not be disqualified from adopting a child based on his or her financial status.

(4) Any person who adopts a child may apply for means-tested social assistance where applicable.

(5) A person unsuitable to work with children is not a fit and proper person to adopt a child.

(6) (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 clerk of the children's court or the sheriff.

(7) A family member of a child other than a kinship care-giver who, prior to the adoption, has given notice to the clerk of the children's court that he or she is interested in adopting the child has the right to be considered as a prospective adoptive parent when the child becomes available for adoption.

Consent to adoption

232. (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; and
- (b) any other person who holds guardianship in respect of the child.

(2) Subsection (1) excludes a parent or person referred to in section 234 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.

(4) The eligibility of the particular person or persons contemplated in subsection (3) as an adoptive parent or parents must be determined by the court in terms of section 231(2).

(5) Consent referred to in subsection (1) and given—

- (a) in the Republic, must be—
 - (i) signed by the person consenting in the presence of a clerk of the children's court;
 - (ii) verified by the clerk of the children's court in the manner prescribed by regulation; and
 - (iii) filed by the clerk of the children's court pending an application for the adoption of the child; or
- (b) outside the Republic, must be—
 - (i) signed by the person consenting in the presence of 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 clerk of the children's court pending an application for the adoption of the child.

(6) The court may on good cause shown condone any deficiency in the provision of a consent given outside the Republic in that the consent—

- (a) was not signed in the presence of a person prescribed by regulation; or
- (b) was not verified in a manner or by a person prescribed by regulation.

(7) 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

233. (1) The court, on application by the Department, a provincial department of social development, a designated child protection organisation 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 232 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 232 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 a person to exercise parental responsibilities and rights in respect of the child pending the adoption of the child.

(4) A freeing order lapses if—

- (a) the court refuses to grant an application in terms of section 237 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 child, parent or person who gave consent withdraws consent for the adoption of the child in terms of section 232(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

234. (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 of the proposed adoption referred to in section 236 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 acknowledged in a manner set out in subsection (3) that he is the biological father of the child; or
- (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.

(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 clerk of the children's court before the child reaches the age of six months;
- (b) by voluntarily paying maintenance in respect of the child;
- (c) by paying damages in terms of customary law; or
- (d) by causing particulars of himself to be entered in the registration of birth of the child in terms of section 10(1)(b) or section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).

(4) A children's court may on a balance of probabilities make a finding as to the existence of a ground on which a parent or person is excluded in terms of this section from giving consent for the adoption of a child.

Gathering of information for proposed adoptions

235. (1) When a child becomes available for adoption, the clerk of the children's court 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 232; and
- (b) the name and address of any person whose consent would have been necessary had it not been for section 234, and the grounds on which such person's consent is not required.

(2) A person who has consented to the adoption of a child in terms of section 232 and who wants the court to dispense with any other person's consent on a ground set out in section 234, must submit a statement to that effect to the clerk of the children's court.

(3) A clerk of the children's court may request the Director-General: Home Affairs to disclose any information contained in the registration of birth of a child, including the identity and other particulars of a person who has acknowledged being the father or the mother of the child.

(4) If a social worker involved in the proposed adoption of a child obtains information regarding the identity and whereabouts of a person whose consent for the adoption is necessary in terms of section 232 or whose consent for the adoption would have been necessary had it not been for section 234, the social worker must without delay submit a report containing that information to the clerk of the children's court.

Notice to be given of proposed adoptions

236. (1) When a child becomes available for adoption, the clerk of the children's court must without delay serve a notice on each person whose consent is in terms of section 232 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 237 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

237. (1) An application for the adoption of a child must—

- (a) be made to a children's court in a manner prescribed by regulation;
- (b) be accompanied by an assessment referred to in section 231(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 children's court, the clerk of the children's court must submit to the court—

- (a) any consents for the adoption of the child filed with a clerk of the children's court in terms of section 232(5);
- (b) any information established by a clerk of the children's court in terms of section 235(1);
- (c) any written responses to requests in terms of section 236(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

238. (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 an adoption social worker.

(2) A children's 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 231;

- (c) consent for the adoption has been given in terms of section 232, subject to section 239;
- (d) no such consent has been withdrawn in terms of section 232(6); and
- (e) section 231(6) 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

239. (1) If a parent or person referred to in section 232(1) withholds consent for the adoption of a child a children's court may, despite the absence of such consent, grant an order for the adoption of the child if the court finds that—

- (a) consent has unreasonably been withheld; and
- (b) the adoption is in the best 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

240. (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 family member of a person referred to in paragraph (a);
- (c) all rights and responsibilities the child had in respect of a person referred to in paragraph (a) or (b) immediately before the adoption; and
- (d) any previous order made in respect of the placement of the child.

(2) An adoption order—

- (a) confers full parental responsibilities and rights in respect of the adopted child upon the adoptive parent or parents as contemplated in section 231(1);
- (b) confers the surname of the adoptive parent on the adopted child, except when otherwise provided in the order;
- (c) does not permit any marriage or sexual intercourse between the child and any other person which would have been prohibited had the child not been adopted;
- (d) 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

241. (1) A High Court or children's court of competent jurisdiction 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; or
- (c) the adoptive parent or parents of the child.

(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

242. (1) An adoption order may be rescinded only if—

- (a) rescission of the order is in the best interest of the child; or
- (b) subsection (2) applies.

(2) 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 231 for obtaining the order of adoption.

Notice of application for rescission

- 243.** Notice of an application for rescission of an adoption order must be given to—
- (a) the adoptive parent or parents of that child, if any other person brings the application;
 - (b) all persons who have consented or objected to the adoption in terms of section 232, if the child or the adoptive parent or parents bring the application;
 - (c) the Central Authority in the case of an inter-country adoption; and
 - (d) any other person who the court finds has a sufficient interest in the matter.

Effects of rescission

- 244.** (1) As from the date on which the rescission of an adoption order takes effect—
- (a) the effects of the adoption order as determined in section 240(2) and (3) no longer applies in respect of the child concerned; and
 - (b) all responsibilities, rights and other matters terminated by section 240(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

245. (1) After an adoption order has been made by a children's court in respect of a child whose birth has been registered in the Republic, the adoptive parent or parents of the child must apply in terms of the 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 as registered by the adoption registrar;
 - (b) the birth certificate of the child;
 - (c) the prescribed birth registration form; and
 - (d) a fee prescribed in terms of any applicable legislation, if any.

Registration of birth and recording of adoption of child born outside Republic

246. (1) After an adoption order has been made by a children's court in respect of a child born outside the Republic, the adoptive parent 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 birth register.

- (2) An application in terms of subsection (1) must be accompanied by—
- (a) the relevant adoption order as registered by the adoption registrar;
 - (b) the birth certificate of the adopted child or, if the birth certificate is not available—
 - (i) other documentary evidence relating to the date of birth of the child; or
 - (ii) a certificate signed by a presiding officer of a children's court specifying the age or estimated age of the child;
 - (c) the 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

- 247.** (1) A person designated by the Director-General as the adoption registrar must, in the prescribed manner, record information pertaining to and keep a register of—
- (a) the registration numbers allocated to records of adoption cases;

- (b) the personal details of adopted children, of their biological parents and of their adoptive parents;
 - (c) particulars of successful appeals against and rescissions of adoption orders; and
 - (d) all other information in connection with adoptions as may be prescribed by regulation.
- (2) A clerk of the children's court must—
- (a) keep record of all adoption cases by a children's 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 the documents referred to in paragraph (b) to the Central Authority.

Access to adoption register

- 248.** (1) The information contained in the adoption register may not be disclosed to any person, except—
- (a) to an adopted child after the child has reached the age of 18 years;
 - (b) to the adoptive parent of an adopted child after the child has reached the age of 18 years;
 - (c) to the biological parent or a previous adoptive parent of an adopted child after the child has reached the age of 18 years, but only if the adoptive parent and the adopted child give their consent in writing;
 - (d) for any official purposes subject to conditions determined by the Director-General;
 - (e) by an order of court, if the court finds that such disclosure is in the best interest of the adopted child; or
 - (f) for purposes of research provided that no information that would reveal the identity of an adopted child or his or her adoptive or biological parent is revealed.
- (2) The Director-General may require a person to receive counselling before disclosing any information contained in the adoptions register to that person in terms of subsection (1)(a), (b), (c) or (e).

No consideration in respect of adoptions

- 249.** (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; or
 - (b) 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 child protection organisation designated in terms of section 107 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

- 250.** (1) No person may provide adoption services except—

- (a) a designated child protection organisation accredited in terms of section 251 to provide adoption services;
- (b) an adoption social worker;
- (c) the Central Authority in the case of inter-country adoptions; or
- (d) a designated child protection organisation accredited in terms of section 258 to provide inter-country adoption services.

(2) A welfare organisation referred to in section 108 which was lawfully engaged in providing adoption services when this section took effect may, despite the provisions of subsection (1), continue with such services for a period of two years without being accredited in terms of section 251 to provide adoption services, but must within that period apply for such accreditation in terms of section 251.

Accreditation to perform adoption work

251. (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

252. (1) No person may publish or cause to be published in any form or by any means an advertisement dealing with the placement or adoption of a specific child.

(2) Subsection (1) does not apply in respect of—

- (a) the publication of a notice in terms of this Act or a court order;
- (b) an advertisement by a designated child protection organisation accredited to provide adoption services for purposes of recruitment, according to prescribed guidelines; or
- (d) other forms of advertisements specified by regulation.

Regulations

253. The Minister, after consultation with the Minister for Justice and Constitutional Development where court orders are regulated, may make regulations in terms of section 299—

- (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 organisations 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 17

INTER-COUNTRY ADOPTIONS

Purposes of Chapter

254. 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;
- (c) to provide for the recognition of certain foreign adoptions; and
- (d) generally to regulate inter-country adoptions.

Hague Convention on Inter-country Adoption to have force of law

255. (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

256. (1) For purposes of the Hague Convention on Inter-country Adoption, “Central Authority” —

- (a) in relation to the Republic, means the Director-General; or
- (b) in relation to a convention country, means a person or office designated by such convention country under Article 6 of the Hague Convention on Inter-country Adoption;

(2) The Director-General must perform the functions assigned by the Convention to Central Authorities.

Delegation of functions

257. (1) The Central Authority of the Republic may in terms of section 303 delegate any powers or duties of the Central Authority under the Hague Convention on Inter-country Adoption to an officer in the Department.

(2) 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 Central Authority, be performed by—

- (a) another organ of state; or
- (b) a designated child protection organisation accredited in terms of section 258 to perform inter-country adoption services.

Accreditation of child protection organisations for inter-country adoption

258. (1) The Central Authority may, on application by a designated child protection organisation—

- (a) accredit the organisation to perform inter-country adoption services; and
- (b) approve adoption working agreements contemplated in section 259, provided the prescribed requirements are met.

(2) The Central Authority may accredit a designated child protection organisation to perform inter-country adoption services for such period and on such conditions as may be prescribed.

(3) A designated child protection organisation accredited in terms of this section to perform inter-country adoption services—

- (a) may receive the prescribed fees and make the necessary payments in respect of inter-country adoptions; and
- (b) must annually submit audited financial statements to the Central Authority of fees received and payments made.

Entering into adoption working agreements

259. (1) A designated child protection organisation accredited in terms of section 258 to perform inter-country adoption services may enter into an adoption working agreement with an accredited adoption agency in another country.

(2) A child protection organisation referred to in subsection (1)—

- (a) must provide the Central Authority with certified copies of all adoption working agreements entered into by that child protection organisation for approval thereof; and
- (b) may not act in terms of any such adoption working agreements before it has been approved by the Central Authority.

Adoption of children from Republic by persons in convention countries

260. (1) A person habitually resident in a convention country who wishes to adopt a child habitually resident in the Republic must apply to the central authority of the convention country concerned.

(2) If the central authority of the convention country concerned is satisfied that the applicant is eligible and suitable to adopt, it shall prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any requirements as may be prescribed and transmit the report to the Central Authority of the Republic.

(3) If a suitable child is available for adoption, the Central Authority will prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and any requirements as may be prescribed and forward it to the central authority of the convention country concerned.

(4) If the Central Authority and the central authority of the convention country concerned both agree on the adoption, the Central Authority will refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 238.

(5) The court may make an order for the adoption of the child if the requirements of section 231 regarding persons who may adopt children are complied with, the application has been considered in terms of section 238 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 and any requirements as may be prescribed;
- (d) the central authority of the convention country has agreed to the adoption of the child; and
- (e) the Central Authority of the Republic has agreed to the adoption of the child.

(6) This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

Adoption of children from Republic by persons in non-convention countries

261. (1) A person habitually resident in a non-convention country who wishes to adopt a child habitually resident in the Republic must apply to the competent authority of the non-convention country concerned.

(2) If the competent authority of the non-convention country concerned is satisfied that the applicant is eligible and suitable to adopt, it shall prepare a report on that person in accordance with the prescribed requirements and transmit the report to the Central Authority in the Republic.

(3) If a suitable child is available for adoption, the Central Authority will prepare a report on the child in accordance with the prescribed requirements and transmit it to the competent authority in the non-convention country concerned.

(4) If the Central Authority and the competent authority in the non-convention country concerned both agree on the adoption, the Central Authority will refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 238.

(5) The court may make an order for the adoption of the child if the requirements of section 231 regarding persons who may adopt children are complied with, the application has been considered in terms of section 238 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 prescribed requirements;

- (d) the competent authority of the non-convention country concerned has agreed to the adoption of the child; and
 - (e) the Central Authority of the Republic has agreed to the adoption of the child.
- (6) This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.

Issue of adoption compliance certificate

262. If the children's court has approved the adoption of a child in terms of section 260 or 261, the Central Authority may issue an adoption compliance certificate.

Adoption of children from convention countries by persons in Republic

263. (1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a convention country must apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is eligible and suitable to adopt, it shall prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any requirements as may be prescribed and transmit the report to the central authority of the convention country concerned.

(3) If a suitable child is available for adoption, the central authority of the convention country concerned shall prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and transmit it to the Central Authority.

(4) If the Central Authority and the central authority of the convention country concerned both agree on the adoption, the central authority in that country will refer the application for adoption for the necessary consent in that country.

Adoption of children from non-convention countries by persons in Republic

264. (1) A person habitually resident in the Republic who wishes to adopt a child habitually resident in a non-convention country must apply to the Central Authority.

(2) If the Central Authority is satisfied that the applicant is eligible and suitable to adopt, it shall prepare a report on that person in accordance with the requirements of the non-convention country concerned and transmit the report to the competent authority of that country.

(3) If a suitable child is available for adoption, the competent authority of the non-convention country concerned shall prepare a report on the child in accordance with the prescribed requirements and transmit it to the Central Authority.

(4) If the Central Authority and the competent authority of the non-convention country concerned both agree on the adoption, the competent authority of that country will refer the application for adoption for the necessary consent in that country.

Recognition of inter-country adoption of children from convention countries

265. (1) The adoption in a convention country of a child habitually resident in that convention country by a person habitually resident in the Republic shall be recognised in the Republic if an adoption compliance certificate issued in that country is in force for the adoption.

(2) The adoption in a convention country of a child habitually resident in that convention country by a person habitually resident in another convention country shall be recognised in the Republic if an adoption compliance certificate issued in the convention country where the adoption was granted is in force for the adoption.

(3) If an adoption compliance certificate was not issued in the relevant convention country, the Central Authority may issue a declaration recognising the adoption.

(4) A declaration in terms of subsection (3) is, upon production by any person in a court, admissible as evidence in any proceedings before the court.

(5) The adoption of a child referred to in subsections (1) and (2) shall not be recognised if a declaration is made in terms of section 269 that an adoption or a decision in terms of article 27 of the Hague Convention on Inter-country Adoption has no effect in the Republic.

Evidential value of adoption compliance certificate of convention country

266. Subject to section 269 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.

Recognition of inter-country adoption of children from non-convention countries

267. The Central Authority may issue a declaration recognising the adoption of a child in a non-convention country if—

- (a) the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made;
- (b) the adoption in that country has the same effect it would have if the order was made in the Republic.

Effect of recognition of inter-country adoption

268. If the adoption of a child is recognised in terms of section 265 or 267, the adoption has in the Republic the effects as set out in section 240.

Refusal to recognise inter-country adoption or Article 27 decisions

269. (1) The Central Authority may declare that an adoption to which section 265 or 267 applies or a decision made in terms of article 27 of the Hague Convention on Inter-country Adoption may not be recognised in the Republic if the adoption or decision is manifestly contrary to public policy in the Republic, taking into account the best interests of the relevant child.

(2) If the Central Authority declares that an adoption or decision referred to in subsection (1) may not be recognised, the adoption or decision has no effect in the Republic.

Application to Children’s Court for inter-country adoption of children

270. (1) In the event of a refusal to recognise an inter-country adoption as contemplated in section 269, an application for the adoption of a child from a convention country or a non-convention country may be made to the children’s court.

(2) The provisions of Chapter 16, with the necessary changes which the context may require, applies to the adoption of a child referred to in subsection (1).

Access to information

271. Subject to the provisions of section 248 with regard to access to the adoption register, read with such changes as the context may require, the Central Authority may disclose to a person older than 18 years who, as a child, was adopted in accordance with the Hague Convention on Inter-country Adoption, any information in the records of the Central Authority concerning that person’s origin.

Processing or facilitating inter-country adoption

272. No person may process or facilitate an inter-country adoption otherwise than in terms of this Chapter.

CHAPTER 18

CHILD ABDUCTION

Purposes of Chapter

273. 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

274. 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

275. (1) For purposes of the Hague Convention on International Child Abduction, “Central Authority”—

- (a) in relation to the Republic, means the Chief Family Advocate appointed by the Minister of Justice and Constitutional Development in terms of the Mediation in Certain Divorce Matters Act; or
- (b) in relation to a convention country, means a person or office designated for such convention country under Article 6 of the Hague Convention on International Child Abduction;

(2) The Chief Family Advocate must perform the functions assigned by the Convention to Central Authorities.

Delegation of powers and duties

276. (1) The Central Authority of the Republic may, subject to such conditions as he or she may impose, delegate or assign any powers or duties conferred or imposed upon him or her under the Hague Convention on International Child Abduction to any Family Advocate appointed in terms of the Mediation in Certain Divorce Matters Act.

(2) The delegation, assignment and conditions imposed must be in writing.

Powers of court

277. (1) In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3 of the Hague Convention on International Child Abduction, a High Court may, prior to the making of an order for the return of the child, request the Central Authority to provide a report on the domestic circumstances of the child prior to the alleged abduction.

(2) The court may, prior to the making of an order for the return of the child, order interim protective relief for the child, the applicant or the defendant.

(3) The court must, in considering an application in terms of this Chapter for the return of a child, afford that child the opportunity to raise an objection to being returned and in so doing must give due weight to that objection, taking into account the age and maturity of the child.

Legal representation

278. A legal representative must represent the child, subject to section 55, in all applications in terms of the Hague Convention on International Child Abduction.

Regulations

279. (1) The Minister of Justice and Constitutional Development may 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.

(2) A regulation made under subsection (1) may prescribe a penalty of a fine or of imprisonment for a period not exceeding 12 months for any contravention thereof or failure to comply therewith.

CHAPTER 19**TRAFFICKING IN CHILDREN****Purposes of Chapter**

280. 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

281. 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

282. (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 residence 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 in children prohibited

283. (1) No person may traffic in children.

(2) The consent of a child who is a victim of trafficking to the intended exploitation is no defence to a charge of contravening subsection (1).

(3) If a court finds that the parent or care-giver of a child or any other person who has parental responsibilities and rights in respect of a child, has contravened subsection (1) in respect of that child, the court may—

- (a) suspend all parental responsibilities and rights of that parent, care-giver or person pending an inquiry by a children's court; and
- (b) put that child in temporary safe care pending the placement of the child in alternative care.

Victims of child trafficking found in Republic

284. (1) Any child who is the victim of trafficking and who is found under circumstances which indicate that he or she is a child contemplated in section 150—

- (a) must immediately be brought before the Children's Court for the district in which he or she was found in order to determine whether such child is a child in need of care and protection in accordance with the process set out in section 155; and
- (b) may, pending such hearing, be placed in temporary safe care.

(2) The Children's Court may order that a child contemplated in subsection (1) be assisted in applying for asylum in terms of the Refugees Act, 1998 (Act No. 130 of 1998).

CHAPTER 20

SURROGATE MOTHERHOOD

Surrogate motherhood agreement must be in writing and confirmed by High Court

285. (1) No surrogate motherhood agreement is valid unless—

- (a) the agreement is in writing and is signed by all the parties thereto;
- (b) the agreement is entered into in the Republic;
- (c) at least one of the commissioning parents, or where the commissioning parent is a single person, that person, is at the time of entering into the agreement domiciled in the Republic;
- (d) the surrogate mother and her husband or partner, if any, are at the time of entering into the agreement domiciled in the Republic;
- (e) the agreement is confirmed by the High Court within whose area of jurisdiction the commissioning parent or parents are domiciled or habitually residing.

(2) A court may, on good cause shown, dispose with the requirement set out in subsection (1)(d).

Consent of husband, wife or partner

286. (1) Where a commissioning parent is married or involved in a permanent relationship, the court may not confirm the agreement unless the husband, wife or partner of the commissioning parent has given his or her written consent to the agreement and has become a party to the agreement.

(2) Where the surrogate mother is married or involved in a permanent relationship, the court may not confirm the agreement unless her husband or partner has given his or her written consent to the agreement and has become a party to the agreement.

(3) Where a husband or partner of a surrogate mother who is not the genetic parent of the child unreasonably withholds his or her consent, the court may confirm the agreement.

Genetic origin of child

287. No surrogate motherhood agreement is valid unless the conception of the child contemplated in the agreement is to be effected by the use of the gametes of both commissioning parents or, if that is not possible due to biological, medical or other valid reasons, the gamete of at least one of the commissioning parents or, where the commissioning parent is a single person, the gamete of that person.

Confirmation by court

288. A court may not confirm a surrogate motherhood agreement unless—

- (a) the commissioning parent or parents are not able to give birth to a child and that the condition is permanent and irreversible;
- (b) the commissioning parent or parents—
 - (i) are in terms of this Act competent to enter into the agreement;
 - (ii) are in all respects suitable persons to accept the parenthood of the child that is to be conceived; and
 - (iii) understand and accept the legal consequences of the agreement and this Act and their rights and obligations in terms thereof.
- (c) the surrogate mother—
 - (i) is in terms of this Act competent to enter into the agreement;
 - (ii) is in all respects a suitable person to act as surrogate mother;
 - (iii) understands and accepts the legal consequences of the agreement and this Act and her rights and obligations in terms thereof;
 - (iv) is not using surrogacy as a source of income;
 - (v) has entered into the agreement for altruistic reasons and not for commercial purposes;
 - (vi) has a documented history of at least one pregnancy and viable delivery; and
 - (vii) has a living child of her own.

- (d) the agreement includes adequate provisions for the custody, care, upbringing and general welfare of the child that is to be born in a stable home environment, including the child's position in the event of the death of the commissioning parents or one of them, or their divorce or separation before the birth of the child;
- (e) in general, having regard to the personal circumstances and family situations of all the parties concerned, but above all the interests of the child that is to be born, the agreement should be confirmed.

Artificial fertilisation of surrogate mother

289. (1) No artificial fertilisation of the surrogate mother may take place—

- (a) before the surrogate motherhood agreement is confirmed by the court;
- (b) after the lapse of 18 months from the date of the confirmation of the agreement in question by the court.

(2) Any artificial fertilisation of a surrogate mother in the execution of an agreement contemplated in this Act must be done in accordance with the provisions of the Human Tissue Act, 1983 (Act No. 65 of 1983).

Effect of surrogate motherhood agreement on status of child

290. (1) The effect of a valid surrogate motherhood agreement is that—

- (a) any child born of a surrogate mother in accordance with the agreement is for all purposes the child of the commissioning parent or parents from the moment of the birth of the child concerned;
- (b) the surrogate mother is obliged to hand the child over to the commissioning parent or parents as soon as is reasonably possible after the birth;
- (c) the surrogate mother or her husband, partner or relatives has no rights of parenthood or custody of the child;
- (d) the surrogate mother or her husband, partner or relatives have no right of access to the child unless provided for in the agreement between the parties;
- (e) subject to sections 291 and 293, the surrogate motherhood agreement may not be terminated after the artificial fertilisation of the surrogate mother has taken place; and
- (f) the child will have no claim for maintenance or of succession against the surrogate mother, her husband or partner or any of their relatives.

(2) Any surrogate motherhood agreement that does not comply with the provisions of this Act is invalid and any child born as a result of any action taken in execution of such an arrangement is for all purposes be deemed to be the child of the woman that gave birth to that child.

Termination of surrogate motherhood agreement

291. (1) A surrogate mother who is also a genetic parent of the child concerned may, at any time prior to the lapse of a period of sixty days after the birth of the child, terminate the surrogate motherhood agreement by filing written notice with the court.

(2) The court must terminate the confirming the agreement in terms of section 285 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 incurs no liability to the commissioning parents for exercising her rights of termination in terms of this section, except for compensation for any payments made by the commissioning parents in terms of section 294.

Effect of termination of surrogate motherhood agreement

292. The effect of the termination of a surrogate motherhood agreement in terms of section 291 is that—

- (a) where the agreement is terminated after the child is born, any parental rights established in terms of section 290 are terminated and vest in the surrogate mother, her husband or partner, if any, or if none, the commissioning father;

- (b) where the agreement is terminated before the child is born, the child is the child of the surrogate mother, her husband or partner, if any, or if none, the commissioning father, from the moment of the child's birth;
- (c) the surrogate mother and her husband or partner, if any, or if none, the commissioning father, is obliged to accept the obligation of parenthood;
- (d) subject to paragraphs (a) and (b), the commissioning parents have no rights of parenthood and can only obtain such rights through adoption;
- (e) subject to paragraphs (a) and (b), the child has no claim for maintenance or of succession against the commissioning parents or any of their relatives.

Abortion

293. (1) A surrogate motherhood agreement is terminated by an abortion that may be carried out in terms of the Choice on Termination of Pregnancy Act, 1996 (Act No. 92 of 1996).

(2) For the purposes of the Choice on Termination of Pregnancy Act, 1996, the decision to undergo an abortion lies with the surrogate mother, but the person carrying out the abortion procedure must inform the commissioning parents of the circumstances and allow them to consult with the surrogate mother before an abortion is carried out.

(3) The surrogate mother incurs no liability to the commissioning parents for exercising her right to an abortion pursuant to this section except for compensation for any payments made by the commissioning parents in terms of section 294 where the decision to abort is taken for any reason other than on medical grounds.

Payments in respect of surrogacy prohibited

294. (1) Subject to subsections (2) and (3), no person may in connection with a surrogate motherhood agreement give or promise to give to any person, or receive from any person, a reward or compensation in money or in kind.

(2) No promise or agreement for the payment of any compensation to a surrogate mother or any other person in connection with a surrogate motherhood agreement or the execution of such an agreement is enforceable, except a claim for—

- (a) compensation for expenses that relate directly to the artificial fertilisation and pregnancy of the surrogate mother, the birth of the child and the confirmation of the surrogate motherhood agreement;
- (b) loss of earnings suffered by the surrogate mother as a result of the surrogate agreement;
- (c) insurance to cover the surrogate mother for anything that may lead to death or disability brought about by the pregnancy.

(3) Any person who renders a bona fide professional legal or medical service with a view to the confirmation of a surrogate motherhood agreement in terms of section 288 or in the execution of such an agreement, is entitled to reasonable compensation therefor.

Identity of parties

295. (1) The identity of the parties to court proceedings with regard to a surrogate motherhood agreement may not be published without the written consent of the parties concerned.

(2) No person may publish any facts that reveal the identity of a person born as a result of a surrogate motherhood agreement.

Prohibition of certain acts

296. (1) No person may artificially fertilise a woman in the execution of a surrogate motherhood agreement or render assistance in such an artificial fertilisation, unless that artificial fertilisation is authorised by a court in terms of the provisions of this Act.

(2) No person may in any way for or with a view to compensation make known that any person is or might possibly be willing to enter into a surrogate motherhood agreement.

CHAPTER 21

ENFORCEMENT OF ACT

Inspection of child and youth care centres, partial care facilities, shelters and drop-in centres

297. (1) A person authorised by the Director-General, a provincial head of social development or a municipality may enter any child and youth care centre, partial care facility, shelter or drop-in centre or any place which on reasonable suspicion is being used as an unregistered child and youth care centre, partial care facility, shelter or drop-in centre, in order—

- (a) to inspect that centre, facility, shelter or place and its management; or
- (b) to observe or interview any child, or cause a child to be examined or assessed by a medical officer, social worker, psychologist or psychiatrist.

(2) (a) An identity card prescribed by regulation must be issued to each person authorised in terms of subsection (1).

(b) When inspecting such a centre, facility, shelter or place, a person authorised in terms of subsection (1) must, on demand, produce such an identity card.

(3) A person authorised in terms of subsection (1) may for the purposes of that subsection—

- (a) determine whether the centre, facility, shelter or place complies with—
 - (i) the minimum norms and standards referred to in section 83, 209 or 220 applicable to it;
 - (ii) other 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 authorised officer, 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 person authorised in terms of subsection (1) must—

- (a) provide a receipt for any record, document, article or substance removed in terms of subsection (3)(d) or (f); and
- (b) return anything removed within a reasonable period unless seized for the purpose of evidence.

(5) A person authorised in terms of subsection (1) must submit a report to the Director-General, the provincial head of social development or a municipality, as may be appropriate, on any inspection carried out by that person in terms of this section.

Offences

298. (1) A person is guilty of an offence if that person—

- (a) commits an act in contravention of the prohibition set out in section 12(3);
- (b) contravenes a provision of section 32(4), 74, 95, 116(1), 123(1), (2) or (3), 127, 133(1), 137, 138, 139(3), 249, 250(1), 252, 272, 283(1), 294, 295 or 296;

- (c) fails to comply with a provision of section 57(2), 89, 105(1), 124, 126(1), 134(1), 140, 178 or 226;
 - (d) fails to comply with a request in terms of section 57 (1);
 - (e) misappropriates money for which that person is accountable in terms of section 136(3);
 - (f) fails to comply with section 78(1), 95(1), 196(1) or 215(1) after that person has been instructed by way of a notice of enforcement in terms of section 80, 99, 198 or 217 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 80, 198 or 217 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 99 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 168 not to return to the child and youth care centre or person in whose care or temporary safe care that child has been placed, or prevents the child from returning to that centre or person after the expiration of the period of leave or after the cancellation of such leave;
 - (j) remove a child in alternative care from the Republic without the prior written approval for such removal first being obtained in terms of section 169;
 - (k) knowing that a child in alternative care has absconded from or failed to return to that care, directly or indirectly counsels, induces or aids that child not to return to such care, or harbours or prevents the child from returning to that care;
 - (l) hinders or obstructs—
 - (i) a police official or designated social worker in the execution of a warrant issued in terms of section 151(2);
 - (ii) a police official, social worker or authorised officer when removing a child to temporary safe care in terms of section 152(1);
 - (iii) a police official, social worker or authorised officer when apprehending a child who has absconded from alternative care in terms of section 170(1);
 - (m) hinders or interferes with a person in the execution of official duties in terms of section 297;
 - (n) fails to comply with a request of a person in the execution of his or her official duties in terms of section 50(4) or section 297 or furnishes false or misleading information to such a person when complying with such a request;
 - (o) falsely professes to be a person authorised in terms of section 50(4) or 297 or an assistant of such a person;
 - (p) has been issued with a written notice as contemplated in section 153(1) and—
 - (i) refuses to leave the home or the place where the child resides; or
 - (ii) has contact with the child in contravention of the written notice; or
 - (q) contravenes or fails to comply with an order of a High Court, Divorce Court in a divorce case and children's court issued in terms of this Act, including section 153(6), or contravenes or fails to comply with any condition contained in such order.
- (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; or
 - (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 period 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 22

ADMINISTRATION OF ACT Regulations

299. (1) The Minister may make regulations prescribing—
- (a) any matter referred to in sections 90, 103, 142, 160, 179, 190, 212, 227 and 253;
 - (b) any matter that may be prescribed by the Minister by regulation in terms of this Act, after consultation with the Minister for Justice and Constitutional Development where courts, court orders and the review of decisions by the courts are regulated;
 - (c) codes of ethical practice for persons operating, and assisting in the operation of, child and youth care centres, partial care facilities, shelters and drop-in centres;
 - (d) procedures for the interview of persons to be employed or engaged in child and youth care centres, partial care facilities, shelters and drop-in centres;
 - (e) 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, 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, 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

300. (1) The Minister may delegate any power or duty assigned to the Minister in terms of this Act to—
- (a) the Director-General or an officer in the employ of the Department;
 - (b) an MEC responsible for social development, by agreement with the MEC; or
 - (c) any organ of state, by agreement with that organ of state.
- (2) A delegation in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions which the Minister may impose;
 - (b) must be in writing;
 - (c) may include the power to sub-delegate; and
 - (d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.
- (4) The Minister may—

- (a) not delegate a power or duty—
 - (i) to make regulations; or
 - (ii) to publish notices in the *Government Gazette*;
- (b) at any time withdraw a delegation.

Assignment of powers and duties by Minister

301. (1) The Minister may assign any power or duty assigned to the Minister in terms of this Act to an MEC responsible for social development, by agreement with the MEC.

(2) An assignment in terms of subsection (1)—

- (a) is subject to any limitations, conditions and directions which the Minister may impose;
- (b) must be in writing;
- (c) may include the power to delegate; and
- (d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Minister may confirm, vary or revoke any decision taken in consequence of an assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The Minister may—

- (a) not assign a power or duty—
 - (i) to make regulations; or
 - (ii) to publish notices in the *Government Gazette*;
- (b) at any time withdraw an assignment.

Delegation of powers and duties by MECs for social development

302. (1) An MEC for social development may delegate any power or duty assigned to the MEC in terms of this Act to—

- (a) the provincial head of social development or an officer in the employ of the province concerned; or
- (b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1)—

- (a) is subject to any limitations, conditions and directions which the MEC may impose;
- (b) must be in writing;
- (c) may include the power to sub-delegate; and
- (d) does not divest the MEC of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The MEC may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

(4) The MEC may—

- (a) not delegate a power or duty to publish notices in the *Government Gazette*; and
- (b) at any time withdraw a delegation.

Delegation of powers and duties by Director-General

303. (1) The Director-General may delegate any power or duty assigned to him or her in terms of this Act to—

- (a) an officer in the employ of the Department;
- (b) any organ of state, by agreement with that organ of state.

(2) A delegation in terms of subsection (1)—

- (a) is subject to any limitations, conditions and directions which the Director-General may impose;
- (b) must be in writing;
- (c) may include the power to sub-delegate, in the case of a delegation in terms of subsection (1)(b); and
- (d) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Director-General may—

- (a) confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
- (b) at any time withdraw a delegation.

Delegation of powers and duties by provincial heads of social development

304. (1) The provincial head of social development may delegate any power or duty assigned to him or her in terms of this Act to—

- (a) an officer in the employ of the province concerned;
 - (b) any organ of state, by agreement with that organ of state.
- (2) A delegation in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions which the provincial head may impose;
 - (b) must be in writing;
 - (c) may include the power to sub-delegate, in the case of a delegation in terms of subsection (1)(b); and
 - (d) does not divest the provincial head of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The provincial head may—
- (a) confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
 - (b) at any time withdraw a delegation.

Outsourcing of services

305. (1) The Minister or an MEC for social development in a province may, subject to the departmental strategic plan, 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 300 or 302, 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).

CHAPTER 23

MISCELLANEOUS MATTERS

Repeal of laws

306. The laws referred to in the second column of Schedule 4 are hereby amended to the extent indicated in the third column of the Schedule.

Transitional matters

307. Anything done in terms of legislation repealed in terms of section 306 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.

Short title and commencement

308. This Act is called the Children's Act, 2003, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1**HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (29 May 93)****(Table of Contents)**PREAMBLECHAPTER I—SCOPE OF THE CONVENTIONCHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONSCHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIESCHAPTER IV—PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTIONCHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTIONCHAPTER VI—GENERAL PROVISIONSCHAPTER VII—FINAL CLAUSES

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that inter-country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that inter-country adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

CHAPTER I—SCOPE OF THE CONVENTION**Article 1**

The objects of the present Convention are—

- (a) to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**Article 4**

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an inter-country adoption is in the child's best interests;
- (c) have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State—

- (a) have determined that the prospective adoptive parents are eligible and suited to adopt;
 - (b) have ensured that the prospective adoptive parents have been counselled as maybe necessary; and
 - (c) have determined that the child is or will be authorized to enter and reside permanently in that State.
-

CHAPTER III—CENTRAL AUTHORITIES AND ACCREDITED BODIES**Article 6**

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to—

- (a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- (b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9 Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- (c) promote the development of adoption counselling and post-adoption services in their States;
- (d) provide each other with general evaluation reports about experience with inter-country adoption;
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall—

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of inter-country adoption; and
- (c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV—PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment reasons for adoption, ability to undertake an inter-country adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

- (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- (b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- (c) ensure that consents have been obtained in accordance with Article 4; and
- (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- (b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- (c) the Central Authorities of both States have agreed that the adoption may proceed; and
- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—

- (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
- (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
- (c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who—

- (a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
- (b) are qualified by their ethical standards and by training or experience to work in the field of inter-country adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V—RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- (1) The recognition of an adoption includes recognition of
 - (a) the legal parent-child relationship between the child and his or her adoptive parents;
 - (b) parental responsibility of the adoptive parents for the child;
 - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

- (1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect—
 - (a) if the law of the receiving State so permits; and
 - (b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
- (2) Article 23 applies to the decision converting the adoption.

CHAPTER VI—GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

(1) No one shall derive improper financial or other gain from an activity related to an inter-country adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- (c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- (d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII—FINAL CLAUSES

Article 43

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force—

- (a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
- (b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
- (b) the accessions and objections raised to accessions referred to in Article 44;
- (c) the date on which the Convention enters into force in accordance with Article 46;
- (d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
- (e) the agreements referred to in Article 39;
- (f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the ____ day of _____ 19____, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

SCHEDULE 2

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

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PREAMBLE

CHAPTER I: SCOPE OF THE CONVENTION

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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 organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

- a. to discover the whereabouts of a child who has been wrongfully removed or retained;
- b. to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c. to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d. to exchange, where desirable, information relating to the social background of the child;
- e. to provide information of a general character as to the law of their State in connection with the application of the Convention;
- f. to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- g. where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h. to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i. to keep 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 a 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 fulfilment of any conditions to which the exercise of such rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may

initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Chapter V—General Provisions

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

- a. any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b. any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting State, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provision of this Convention which may imply such a restriction.

CHAPTER VI—FINAL CLAUSES**Article 37**

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservations shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following—

1. the signatures and ratifications, acceptances and approvals referred to in Article 37;
2. the accession referred to in Article 38;
3. the date on which the Convention enters into force in accordance with Article 43;
4. the extensions referred to in Article 39;
5. the declarations referred to in Articles 38 and 40;
6. the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
7. the denunciation referred to in Article 44. In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

SCHEDULE 3

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 of 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 4**LEGISLATION REPEALED**

No. and year	Title	Extent of repeal
33 of 1960	Children's Act	The whole
93 of 1962	General Law Further Amendment Act	Section 1
57 of 1972	Age of Majority Act	The whole
74 of 1983	Child Care Act	The whole
82 of 1987	Children's Status Act	The whole
133 of 1993	Prevention of Family Violence Act	Section 4
192 of 1993	Guardianship Act	The whole
72 of 1996	Hague Convention on the Civil Aspects of International Child Abduction Act	The whole
86 of 1997	Natural Fathers of Children born out of Wedlock Act	The whole

MEMORANDUM ON THE OBJECTS OF THE CHILDREN'S BILL, 2003

BACKGROUND

The lives of children are affected by various pieces of legislation and international conventions. Apart from section 28 of the Constitution, which deals with the rights of children specifically, some of the statutes pertaining to children currently on the statute book are the following:

- The Age of Majority Act, 1972 (Act No. 57 of 1972)
- The Child Care Act 1960 (Act No. 74 of 1983)
- Children's Status Act, 1987 (Act No. 82 of 1987)
- Guardianship Act, 1993 (Act No. 192 of 1993)
- Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996)

Over the past few years, it has become clear that existing legislation is not in keeping with the realities of current social problems and no longer protects children adequately. In addition thereto, the Republic of South Africa has acceded to various international conventions, such as the UN Protocol on the Rights of the Child and the African Charter on Children's Rights, the principles of which have to be incorporated into local legislation.

During 1997 the Minister for Social Development requested the South African Law Reform Commission to investigate the Child Care Act, 1983 and to make recommendations to the Minister for the reform of this particular branch of the law. After an extensive process of research and consultation, the Law Reform Commission finalised its report and proposed a draft Children's Bill in January 2003.

The Department of Social Development then took the process further through close liaison with the national Departments of Justice and Constitutional Development, Education, Health, Labour, the South African Police Service, the provinces, national non-governmental organisations and service providers as well as the Office on the Rights of the Child in the Presidency. Consultative workshops were also held with the Portfolio Committee on Social Development.

OBJECTS

The main objects of the proposed Children's Bill are:

- (a) To make provision for the structure, the services and the 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 in need thereof;
- (e) to give effect to the Republic's obligations concerning the well-being of children in terms of the international instruments binding on the Republic; and
- (f) in general, to promote the protection, development and well-being of children.

Significant new proposals to address lacunas in the present situation include specific provision for the participation of children in matters affecting them, an extension of the rights of unmarried fathers, provision for a High Court procedure to allow persons other than parents to gain rights with regard to children, the need to formally recognise and provide for child-headed households and the protection of children from known transgressors through a national child protection register. The Bill proposes to lower the age of majority and provides for parental responsibilities and rights agreements. Provision is made for parenting plans in certain instances and the rendering of prevention and early intervention services. A chapter to formally regulate surrogate motherhood is also introduced to give effect to an earlier parliamentary investigation into this issue.

The Bill has 23 chapters, which can be summarised as follows:

- Chapter 1 deals with the interpretation, objects, application and implementation of the Bill, while the general principles underlying the Bill and the best interest of the child standard is set out in Chapter 2.

- Chapter 3 provides for children's rights and deals with issues such as the paramountcy of the best interest of the child, child participation, harmful social and cultural practices, access to children's courts and the age of majority.
- Chapter 4 deals with all matters pertaining to parental responsibilities and rights, parental responsibilities and rights agreements and the assignment of parental responsibilities and rights by order of court. This chapter also provides for the rights of fathers, presumption of paternity, parenting plans and the rights of children conceived by artificial fertilisation.
- The functioning, powers and jurisdiction of children's courts, the conduct of proceedings before the children's court and presiding officers and other court officials form the subject matter of Chapter 5 of the Bill.
- Chapter 6 regulates the provision of partial care and sets out the norms and standards applicable to partial care and partial care facilities.
- Chapter 7 links to chapter 6 as this chapter determines the norms and standards applicable to early childhood development services and states the obligation to present early childhood development programmes at partial care facilities and child and youth care centres.
- Chapter 8 is a crucial part of the Bill as it provides for measures for the protection of children. The chapter introduces a provision on the compulsory reporting by certain persons of children in need of care and protection, addresses the child protection system, the provision of child protection services, the National Child Protection Register and measures relating to the health of children.
- Chapter 9 makes provision for prevention and early intervention as a first layer of services provided to children and families in need of assistance.
- Chapter 10 deals with the child in need of care and protection, provides for the identification of such children and provides for actions to be taken with regard to children in need of care and protection.
- Chapter 12 provides for alternative care of children in general, forming a link to the specific forms of alternative care dealt with in subsequent chapters. The chapters dealing with the various forms of alternative care are chapter 13, which covers foster care and care by family members, chapter 14 that regulates child and youth care centres, chapter 15, which deals with shelters and drop-in centres, and chapters 16 and 17, which respectively provide for adoption and inter-country adoption.
- Chapter 18 gives effect to the Hague Convention on the Civil Aspects of International Child Abduction, while chapter 19 similarly gives effect to the Hague Convention on Protection of Children and Co-operation in Respect of Inter Country Adoption.
- Chapter 20 introduces new legislation into the South African legal system by formally providing for surrogate motherhood.
- Chapters 21 provides for the enforcement of the Bill through powers of inspection and the creation of offences.
- Chapters 22 and 23 of the Bill deal with general administrative issues and other miscellaneous matters such as regulations, delegations and assignments, outsourcing of services and transitional measures.

CONSULTATION

Apart from the broad consultation process followed by the South African Law Reform Commission during its review of the Child Care Act, 1983, the Department of Social Development also distributed the draft Children's Bill to the Provinces, national departments, non-governmental organisations and other service providers for comment. The Bill was also published for general comment in the *Gazette* on 13 August 2003.

FINANCIAL IMPLICATIONS FOR STATE

The Department of Social Development is in the process of considering the financial implications of the proposed Children's Bill. The department has done an initial scoping exercise of the proposed Bill and identified the costing elements which may have inter-governmental fiscal and budgetary implications, which may include, amongst others:

- Fiscal risks: provisions that create implicit or explicit obligations on government;
- administrative costs: additional processes, personnel, management practices and procedures, information and reporting etc;
- institutional arrangements: new committees, units, associations etc;
- transfer of functions currently performed by provinces to the national government; and
- delegation or assignment of functions to provinces and municipalities.

An indication of these implications by sector is:

Social development sector

- The subsidisation of additional early childhood development facilities and programmes provided for in chapter 7;
- The establishment and operation of the National Child Protection Register provided for in chapter 8;
- Appointment of additional social service professionals to render services at prevention and early intervention levels provided for in chapter 10;
- Establishment and funding of additional child and youth care centres such as children's homes and places of safety as provided for in chapter 14.

Education sector

- The provision and funding of early childhood development facilities and programmes in chapter 7; and
- The establishment and funding of child and youth care centres provided for in chapter 14.

Provinces

- The assessment of early childhood development programmes in chapter 7; and
- The registration, monitoring and inspection of partial care facilities in chapter 6; child and youth care centres in chapter 14 and shelters and drop-in centres in chapter 15.

PARLIAMENTARY PROCEDURE

The Department of Social Development is of the view that this Bill must be dealt with by Parliament in accordance with the procedure established by section 76 of the Constitution.

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