

REPUBLIC OF SOUTH AFRICA

CHILDREN'S AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The Eng-
lish text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B — 2018]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Children’s Act, 2005, to further promote and protect the child’s right to physical and psychological integrity; to further regulate the position of unmarried fathers; to extend the children’s court jurisdiction to hear applications for guardianship; to provide for matters relating to the provision and funding of early childhood development programmes; to strengthen provisions relating to the National Child Protection Register; to regulate the care of abandoned or orphaned children by family members; to further regulate the initiation of care and protection proceedings; to further regulate the medical testing of children for foster care and adoption purposes; to clarify procedures for children in alternative care; to further regulate matters relating to adoption and inter-country adoption; to expedite the hearing of child abduction matters and to provide for legal representation of children; to adjust the criteria relating to surrogate motherhood and to provide for related matters; to align the Act with the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, and the Jurisdiction of Regional Courts Amendment Act, 2008; to align the Act with court judgments; to supplement provisions relating to children with disabilities; to empower the Minister to make additional regulations; to remove certain inconsistencies; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 38 of 2005, as amended by section 3 of Act 41 of 2007

1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of 'abandoned' of the following definition:

“ **'abandoned'**, in relation to a child, means a child **[who]**-

(a) who has **[obviously]** been deserted by the parent, guardian or care-giver; **[or]**

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

(c) in respect of whom the whereabouts of the parents are unknown;”;

(b) by the substitution for the definition of "adoption service" of the following definition:

“ **'adoption service'** includes-

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

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

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

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

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

(f) after care services provided to the adoptive family;”;

(c) by the substitution for the definition of 'after-care' of the following definition:

“ **'after-care'** means the supportive service provided by a **[social worker or a]** social service **[professional]** practitioner or an adoption social worker in respect of adoption services to monitor progress with regard to the child's developmental adjustment as part of-

- (a) family preservation or reunification services;
- (b) adoption or placement in alternative care; or
- (c) discharge from alternative care;”;

(d) by the substitution in the definition of 'care' for:

(i) subparagraph (a)(i) of the following subparagraph:

“ (i) a **[suitable]** place to live;.....”; and

(ii) paragraph (i) of the following paragraph:

“(i) accommodating any disability or any special needs that the child may have;”.

(e) by the deletion of paragraph (e) in the definition of 'care-giver';

(f) by the insertion after the definition of child labour of the following definition:

“ **'child minder'** means a person who provides care and early learning for up to six children from birth to school going age;”;

(g) by the deletion of the definition for 'circumcision'.

(h) by the substitution for the definition of 'clerk of the court' of the following definition:

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

- (i) by the substitution for the definition of 'cluster foster care scheme' of the following definition:

“ **'cluster foster care scheme'** means a scheme providing for the reception of children in foster care, managed and operated by a designated child protection organisation or the provincial department of social development **[non-profit organisation]** and registered by the provincial head of social development for this purpose;”

- (j) by the deletion of the definition of 'divorce court';

- (k) by the insertion after the definition of drop-in centre of the following definition:

“ **'early childhood development centre'** means a partial care facility that provides an early childhood programme, for children from birth until the year before they enter Grade R or formal school;”;

- (l) by the substitution for the definition of early childhood development programme of the following definition:

“ **'early childhood development programme'** means a programme **[referred to in section 91(3)]** that provides one or more forms of daily care, development, early learning opportunities and support to children from birth until the year before they enter formal school as contemplated in section 91(4);”;

- (m) by the substitution for the definition of early childhood development services of the following definition:

“ **'early childhood development services'** means **[services referred to in section 91(2)]** a service or support provided to children from birth until the year before they enter formal school or to

the child's parent or caregiver with the intention to promote the child's emotional, cognitive, sensory, spiritual, moral, physical, social and communication development as contemplated in section 91(2)";

- (n) by the insertion after the definition of family advocate of the following definition:

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

- (o) by the substitution for the definition of 'genital mutilation' of the following definition:

" 'genital mutilation' in relation to a [female] child means [the partial or complete removal of any part of the genitals, and includes circumcision of female children] a procedure performed for non-medical reasons that has no health benefits and intentionally:

- (a) causes injury to genitals;
 (b) remove any part of the genital partially or completely including genital cutting; or.
 (c) alter genital organs;"

- (p) by the insertion after the definition of 'High Court' of the following definition:

" 'inter-country adoption' means the placement, for purposes of adoption, of a child habitually resident in one country in the permanent care of a person habitually resident in another country in accordance with the Hague Convention on Inter-country Adoption and the provisions of of this Act;"

- (q) by the substitution for the definition of 'midwife' of the following definition:

“ **'midwife'** means a person registered as a midwife under the Nursing Act, **[1978 (Act 50 of 1978)]** 2005 (Act No. 33 of 2005);”;

(r) by the substitution for the definition of 'nurse' of the following definition:

“ **'nurse'** means a person registered as a nurse under the Nursing Act, **[1978 (Act 50 of 1978)]** 2005 (Act No. 33 of 2005);”;

(s) by the substitution for the definition of 'orphan' of the following definition:

“ **'orphan'** means a child **[who has no surviving parent caring for him or her]**whose parents have died;”;

(t) by the substitution of paragraph (e) in the definition of 'party' of the following definition:

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

(e) the **[department]** Department, provincial department of social development or the designated child protection organisation managing the case of the child; or”;

(u) by the insertion after the definition of 'RACAP' of the following definition:

“ **'regional court'** means a court for any regional division as contemplated in the Magistrates Courts Act, 1944 (Act No. 32 of 1944);”;

(v) by the insertion after the definition of 'secure care' of the following definition:

“ **'separated migrant child'** means a child who is not a citizen of the Republic and who has been separated from both parents or from previous legal or customary care-giver/s, but not necessarily

from other adult family members, including a child accompanied by an adult family member;”

(w) by the substitution for the definition of ‘sexual abuse’ of the following definition:

“ **‘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] any act constituting an offence against a child under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);”;

(x) by the substitution for the definition of ‘social service practitioner’ of the following definition:

“ **‘social service [professional] practitioner’** includes a social worker, student social worker, social auxiliary worker, student social auxiliary worker, probation officer, assistant probation officer, community development [worker] practitioner, child and youth care worker, and youth worker, [and social security worker who are registered as such in terms of the Social Service Professions Act, 1978 (Act 110 of 1978)];”;

(y) by the substitution for the definition of ‘temporary safe care’ of the following definition:

“ **‘temporary safe care’**, in relation to a child, means care of a child in an approved and registered child and youth care centre[,

shelter or private home or any other place,] or an approved person, place or premises as contemplated in section 167 (3) 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;”;

(z) by the insertion after the definition of ‘trafficking’ of the following definition:

“ **‘unaccompanied migrant child’** means a child who is not a citizen of the Republic and who has been separated from both parents or other adult family members and is not being cared for by an adult who, by law or custom, is responsible for doing so; and;”;

(Aa) by the substitution for subsection (4) of the following subsection:

“(4) Any proceedings arising out of the application of **[the Administration Amendment Act, 1929 (Act 9 of 1929)]**, the Divorce Act, 1979 (Act 70 of 1979) the Maintenance Act, 1998 (Act 99 of 1998), the Domestic Violence Act, 1998 (Act 116 of 1998), and the Recognition of Customary Marriages Act, 1998 (Act 120 of 1998), in so far as these Acts relate to children, may not be dealt with in a children's court.”.

Insertion of section 5A to 5D in Act 38 of 2005

2. The following sections are hereby inserted in the principal Act after section 5—

‘Establishment of National Inter-Departmental Committee

5A (1) There is hereby established a Committee to be known as the National Inter-Departmental Committee for the Management of Child Care and Protection Matters.

(2) The Committee shall consist of-

- (a) the Director-General: Social Development who shall be the chairperson of the Committee;
- (b) the Director-General: Justice and Constitutional Development;
- (c) the National Commissioner of the South African Police Service;
- (d) the Director-General: Transport;
- (e) the Director-General: Health;
- (f) the Director-General: Basic Education;
- (g) the Director-General: Higher Education;
- (h) the Director-General: Finance;
- (i) the Director-General: Co-operative Governance and Traditional Affairs;
- (j) the Director-General: Home Affairs
- (k) the Director-General: Correctional Services; and
- (l) the National Director of Public Prosecutions.

(3) The members of the Committee may designate another official to attend a meeting of the Committee in their place.

(4) (a) The members of the Committee shall designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson shall act as chairperson.

(b) If neither the chairperson nor deputy chairperson is available, the members present at a meeting shall elect a person from their own ranks to preside at that meeting.

Meetings of Committee

5B (1) The Committee shall meet at least twice every year and meetings shall be held at a time and place determined by the chairperson.

(2) The procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Committee and the manner in which the Committee shall conduct its affairs shall be determined by the Committee.

(3) The Committee shall report in writing on every meeting to the Minister within one month of such meeting.

Responsibilities, functions and duties of Committee

5C (1) The Committee shall be responsible for -

(a) monitoring the implementation of the priorities and strategies contained in the national integrated early childhood development policy, the national child care and protection policy and this Act;

(b) measuring progress on the achievement of the goals and objectives of the national integrated early childhood development policy, the national child care and protection policy and this Act; and

(c) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national integrated early childhood development policy, the national child care and protection policy and this Act.

(2) The Committee may make recommendations to the Minister with regard to the amendment of the national integrated early childhood development policy, the national child care and protection policy and the Act and submit reports to the Minister on progress at the end of each calendar year for tabling at Parliament.

(3) The Minister must, after consultation with the cabinet members responsible for safety and security, transport, basic education, higher education,

justice and constitutional development, health, co-operative governance and traditional affairs, finance, home affairs, correctional services, the National Director of Public Prosecutions and the MECs for social development annually by the 31 March each year submit reports to Parliament, by each Department or institution contemplated in section 5C (2).

Inter-sectoral implementation of Act and accountability by the executive authorities, MEC for social development, provincial heads of social development

5D (1) The relevant executive authority, MEC for social development and provincial head of social development is accountable for the functions assigned to him or her in terms of this Act.

(2) The MEC for social development and the provincial head of social development is accountable to both the Provincial Legislature and Parliament for the exercise of their powers and performance of their functions in terms of this Act.

(3) The relevant executive authority, MEC for social development and the provincial head of social development must act in accordance with this Act and the Constitution of the Republic of South Africa, 1996 in ensuring that the best interest of the child is of paramount importance.

(4) The MEC for social development and the provincial head of social development must

- (a) provide the Provincial Legislature and Parliament with comprehensive annual reports as contemplated in subsection 5C (3) concerning matters under this Act; and
- (b) establish provincial inter-departmental and sectoral committees for the management of child care and protection matters.

(5) The Minister must establish the national child care and protection forum for the management of child care and protection matters.

Amendment of section 6 of Act 38 of 2005

3. Section 6 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

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

(b) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

"(f) recognise a child's disability and create an **[enabling]** accessible and inclusive environment to respond to the special needs that the child has."

Insertion of sections 6A to 6C in Act 38 of 2005

4. The following sections are hereby inserted in the principal Act after section 6:

"Children's privacy"

6A. (1) Except for the purpose contemplated in 6C(2), a person must not, in any manner publish any information, video, including any image or picture, which reveals or may reveal the name or identity of that child and cause harm to the child's psychological wellbeing, ,

(a)

(2) A person must not, in any manner publish any information, video, including any image or picture, which reveals or may reveal the name or identity of that child without the permission of:

(a) the child, if the child is of sufficient maturity and has the mental capacity to provide such permission; and

(b) the parent, caregiver or guardian of the child.

(3) Any person conducting research involving children must -

(a) obtain ethical clearance in writing from the

- relevant research ethics committee which must be produced before conducting research;
- (b) obtain written consent from the child if the child is of sufficient age, maturity and stage of development or the parent, caregiver or guardian, as the case may be; and
- (c) respect the privacy of the child and maintain confidentiality at all times.

Children and the media

6B. (1) The media may not publish child pornography; identify children who have been victims of violence, abuse, exploitation, or who have been charged with or convicted of a crime, without the consent of their parent(s), caregivers, or guardians and the child as contemplated in 6A.

(2) The media, parents, and caregivers or guardians must protect children from exposure to potentially disturbing or harmful materials and from premature exposure to adult experiences.

Children's privacy in court proceedings

6C. (1) No person may, without the permission of a court, in any manner publish any information, including any image, or picture which reveals or may reveal the name or identity of a child who is or was a party or a witness in the proceedings of any court or who is or was subject to an order of any court: Provided that a person may waive, in writing, the protection of his or her privacy as contemplated in this section upon reaching the age of 18 years."

(2) Notwithstanding subsection (1) a designated social worker conducting an investigation for the purposes of finding that a child may be in need of care and protection or that such child may be made available for adoption publish information for identification of the child including images or pictures of the child in the prescribed manner, for the purpose of tracing the child's parent(s) or family."

Amendment of section 7 of Act 38 of 2005

5. Section 7 of the principal Act is hereby amended by the insertion after subsection(1)(l)(ii) of the following paragraph—

“(IA) any special needs that a child may have;”.

Amendment of section 8 of Act 38 of 2005

6. Section 8 of the principal Act is hereby amended by the addition of the following subsection—

“(4) This Act applies to all children who are citizens of the Republic, including unaccompanied and separated migrant children.”.

Amendment of section 12 of Act 38 of 2005

7. Section 12 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection—

“(3) Genital mutilation [or the circumcision] of [female] children is prohibited.”.

Insertion of section 12A in Act 38 of 2005

8. The following section is hereby inserted in the principal Act after section 12—

“Discipline of children

12A. (1) Any person caring for a child, including a person who has parental responsibilities and rights in respect of a child, must not treat or punish the child in a cruel, inhuman or degrading way, when disciplining the child, to ensure the child’s right to physical and psychological integrity as conferred by section 12 (1)(c), (d) and (e) of the Con-

stitution.

(2) The common law defense of reasonable chastisement available in any court proceeding to a person contemplated in subsection (1) is hereby abolished.

(3) A parent, guardian, care-giver or any person holding parental responsibilities and rights in respect of a child who is reported for subjecting such child to any inappropriate form of punishment, including corporal punishment, must be referred to a prevention and early intervention programme as contemplated in section 144.

(4) The Department in partnership with relevant stakeholders, must take all reasonable steps to ensure that-

- (a) education and awareness-raising programmes concerning the effect of subsections (1) and (2) are implemented across the Republic; and
- (b) programmes promoting positive discipline at home and in alternative care are available across the Republic.”.

(5) When prevention and early intervention services have failed, or are deemed to be inappropriate, and the child’s safety and wellbeing is at risk, the designated social worker must assess the child in terms of section 110.

Amendment of section 13 of Act 38 of 2005

9. Section 13 of the principal Act, is hereby amended by the substitution of subsection (2) of the following subsection—

“ (2) Information provided to children in terms of this subsection must be relevant and must be in a format accessible to children, giving due consideration to the needs of **[disabled]** children with disabilities.”.

Amendment of section 16 of Act 38 of 2005

10. Section 16 of the principal Act, is hereby amended by the addition of the following subsection—

“ (2) Children’s responsibilities include:

- (a) attending school and respecting their teachers and peers;
- (b) treating their peers, teachers and parents with respect and not engaging in discriminatory, violent or abusive behaviour;
- (c) respecting the views, opinions and beliefs of others;
- (d) respecting the privacy of others;
- (e) respecting the culture, language, gender and religion of others;
- (f) not exploiting or negatively exposing others in the digital and social media space;
- (g) considering the support and guidance provided by their parents and caregivers; and
- (h) where possible, supporting vulnerable peers in knowing and accessing their rights.

Amendment of the heading of Part 1 of Act 38 of 2005

11. The heading of Part 1 of the principal Act is hereby amended by the substitution for the heading of Part 1 of the following heading—

“ ***[Acquisition and loss]*** *Automatic acquisition of parental responsibilities and rights*”.

Amendment of section 19 of Act 38 of 2005

12. Section 19 of the principal Act, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph—

"(b) the biological father of the child does not have guardianship in respect of the child in terms of section 20 or 21,".

Amendment of section 21 of Act 38 of 2005

13. Section 21 of the principal Act, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) if at the time of the child's conception, [birth] or any time between the child's conception and birth, he is living with the mother **[in a permanent life-partnership];** or";

(b) by the substitution in subsection (1) paragraph (b) for subparagraph (ii) of the following subparagraph:

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

(c) by the substitution in subsection (1) paragraph (b) for subparagraph (iii) of the following subparagraph:

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

(d) by the insertion after subsection (1) of the following subsection:

"(1A) The family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b) on application from-

(a) the mother and biological father applying together;

(b) the biological father, after the mother and biological father completed mediation referred to in subsection (3) and the outcome of the mediation was that the biological father automatically acquired full parental responsibilities and rights

in terms of subsection (1)(a) or (1)(b); or

(c) the biological father, who has approached the family advocate for mediation in terms of subsection (3) if-

(i) the mother, after receiving notice of mediation in terms of subsection (3) in the prescribed manner, has unreasonably refused to attend the mediation; and

(ii) the biological father has shown to the satisfaction of the family advocate that he has automatically acquired full parental responsibilities and rights in terms of subsection (1)(a) or (1)(b).";

(e) by the substitution of subsection (3) of the following subsection:

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

(f) by the deletion of subsection (3)(b):

“**[(b) Any party to the mediation may have the outcome of the mediation reviewed by a court.]**”.

Insertion of the heading Part 2 after section 21 in Act 38 of 2005,

14. The following heading is hereby inserted in the principal Act after section 21—

"Part 2

Acquisition and loss of parental responsibilities and rights.

(ss 22-29)”.

Amendment of section 22 of Act 38 of 2005

15. Section 22 of the principal Act is hereby amended—

(a) by the insertion after subsection (2) of the following subsection:

“(2A) The child who is the subject of a parental responsibilities and rights agreement, if of sufficient maturity and mental capacity, must be given the opportunity to express his or her views regarding the contents of such agreement which views must be recorded in the prescribed manner.”;

(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) registered with the family advocate on application in the prescribed manner; or”;

(c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) made an order of the High Court, a **[divorce court]** regional court in a divorce matter or the children's court on application by the parties to the agreement.”;

(d) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) A parental responsibilities and rights agreement registered by the family advocate may be amended or terminated by the family advocate on application in the prescribed manner-”; and

(e) by the deletion of section 7:

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

Amendment of section 23 of Act 38 of 2005

16. Section 23 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(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]** regional court in divorce matters or, in the prescribed manner, to the children's court for an order granting to the applicant~~[,]~~ on such conditions as the court may deem necessary-

- (a) contact with the child; or
- (b) care of the child.”; and

(b) by the substitution of subsection (3) of the following subsection:

“(3) **[If in the course of the court proceedings it is brought to the attention of the court that an application for the adoption of the child has been made by another applicant,]** When bringing an application contemplated in subsection (1), the parties must inform the court of any other proceedings that are pending in any other court in respect of the child and the court-

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

Repeal of section 24 of Act 38 of 2005

17. Section 24 of the principal Act is hereby amended —

(a) by the insertion after subsection (1) of the following subsection:

“(1A) Any family member caring for an orphaned or abandoned child may apply to the to the children’s court or High Court for an order granting guardianship of such child to the applicant.”; and

(b) by the substitution in subsection (2) for the words preceding paragraph

(a) of the following words:

“(2) When considering an application contemplated in subsection (1) and (1A), the court must take into account-”.

Amendment of section 25 of Act 38 of 2005

18. The following section is hereby substituted for section 25 of the principal Act—

“ **25. (1) [When]** Subject to section 45(4), when an application is made in terms of section 24 by a non-South African citizen for guardianship of a child, the application [must be regarded as], if heard in the High Court, must be referred to a children’s court having jurisdiction to be dealt with as an application for an inter-country adoption for the purposes of the Hague Convention on Inter-country Adoption and Chapter 16 of this Act.

(2) The Central Authority of the Republic contemplated in section 257 (1)(a) must be cited as a respondent in the event of an application referred to in subsection (1).”.

Amendment of section 28 of Act 38 of 2005

19. Section 28 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph

(a) of the following words:

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

Amendment of section 29 of Act 38 of 2005

20. Section 29 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

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

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Any party to an application in terms of section 22 (4) (b), 23, 26 (1) (b) or 28 may, in the prescribed manner, refer the matter to the family advocate for an investigation.”.

Amendment of the heading of Part 2 of Act 38 of 2005

21. The heading of Part 2 before section 30 of the principal Act, is hereby amended by the substitution for the heading of Part 2 of the following heading—

" Part [2] 3

Co-exercise of parental responsibilities and rights

(ss 30-[32] 35)“.

Insertion of section 30A in Act 38 of 2005

22. The following section is hereby inserted in the principle Act after section 30—

“Residence of child

30A. (1) The parents must agree on the residence of the child.

(2) The residence of the child must be determined in accordance with the best interests of the child and may include-

(a) residence with both parents where the parents are living together;

(b) residence with one parent;

(c) residence with both parents, where the parents are not living together, but not equal time with both parents; or

(d) residence with both parents, where the parents are not living together, with equal time with both parents.

(3) The residence of the child does not affect the joint exercise of parental responsibilities and rights by co-holders of parental responsibilities and rights.

(4) The term "parent" or "parents" as used in this section may include any co-holder of parental responsibilities and rights if appropriate in the context."

Deletion of the heading of Part 3 of Act 38 of 2005

23. The heading of Part 3 of the principal Act is hereby deleted.

Amendment of section 32 of Act 38 of 2005

24. Section 32 of the principal Act is hereby amended by—

(a) the substitution of subsection (3) of the following subsection:

" (3) A court may limit or restrict the parental responsibilities and rights which a person may exercise in terms of subsection (2) or upon application in the prescribed manner, may issue a declaratory order recognising the existing parental responsibilities and rights conferred by this section, or grant additional rights upon application in the prescribed manner in terms of section 23 of this Act." ; and

(b) the addition after subsection (4) of the following subsection:

"(5) Despite subsection (3), an administrative process allowing the provincial head of social development to recognise the exercising of parental responsibilities and rights by a person other than a parent caring for a child may be applied as prescribed."

Amendment of section 34 of Act 38 of 2005

25. Section 34 of the principal Act is hereby amended by the insertion after subsection 4 of the following subsection—

“(4A) An application by co-holders contemplated in subsection (4) for the amendment or termination of the parenting plan must-

- (a) be in the prescribed format and contain the prescribed particulars; and
- (b) in the case of amendment to the parenting plan, be accompanied by a copy of the proposed amended plan; or
- (c) in the case of termination of the parenting plan, be accompanied by reasons for the termination of the plan.”.

Amendment of section 35 of Act 38 of 2005

26. Section 35 is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

35. (1) Any person having care or custody of a child who, contrary to an order of any court, **[or to]** a parental responsibilities and rights agreement or parenting plan that has taken effect as contemplated in section 22 (4), and 23 refuses another person who has **[access to]** contact with that child or who holds parental responsibilities and rights in respect of that child in terms of that order or agreement to exercise such **[access]** contact or such responsibilities and rights or who prevents that person from exercising such access or such responsibilities and rights is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.”; and

(b) by the substitution of subsection (2) for paragraph (a) of the following paragraph:

“(2) (a) A person having care or custody of a child whereby another person has **[access to]** contact with that child or holds parental responsibilities and rights in respect of that child in terms of an order

of any court, **[or]** a parental responsibilities and rights agreement or a parenting plan as contemplated in subsection (1) must upon any change in his or her residential address forthwith in writing notify such other person of such change.”.

Amendment of section 40 of Act 38 of 2005

27. The following section is hereby substituted for section 40 of the principal Act

“ **[Rights of child conceived by artificial] Artificial fertilisation**

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

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

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

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

(a) that person is the **[woman who gave birth to that child]** birth mother; or

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

(4) In this section 'partner' must be read to include a spouse or a domestic partner."

Insertion of section 41A in Act 38 of 2005

28. The following section is hereby inserted in the principal Act after section 41—

"Regulations

41A. (1) The Minister, in consultation with the Minister for Justice and Constitutional Development, may make regulations concerning –

- (a) the format of and particulars to be contained in the certificate relating to biological fathers contemplated in section 21(1A);
- (b) the categories of persons who may be regarded as suitably qualified persons for purposes of sections 21 (3)(a) and 33 (5)(b);
- (c) the format of and particulars to be contained in a parental responsibilities and rights agreement contemplated in section 22 (3);
- (d) the format of and particulars to be contained in an application for registration of a parental responsibilities and rights agreement contemplated in section 22 (4);
- (e) the format of and particulars to be contained in an application for amendment or termination of a responsibilities and rights agreement contemplated in section 22 (6);
- (f) the format of and manner in which an application for granting parental responsibilities and rights should be

lodged in the children's court as contemplated in section 23 (1);

- (g) the manner in which an investigation may be referred to the family advocate as contemplated in section 29(1A);
- (h) the format of and particulars to be contained in a parenting plan contemplated in section 34 (1);
- (i) the format of and particulars to be contained in an application for registration of a parenting plan as contemplated in section 34 (3);
- (j) the format of and particulars to be contained in an application for amendment or termination of a parenting plan as contemplated in section 34 (4A); and
- (k) any other matter that may require regulation.

(2) The Minister may make regulations as contemplated in section 32(5) concerning an administrative process allowing the provincial head of social development to recognise the exercising of parental responsibilities and rights by a person other than a parent caring for a child."

Amendment of section 42 of Act 38 of 2005

29. Section 42 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection—

"(3) For the purposes of this Act, the Minister for Justice and Constitutional Development **[may]** must, as far as is practicable, after consultation with the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), appoint a magistrate or an additional magistrate as a dedicated presiding officer of the children's court, within existing resources."

Amendment of section 44 of Act 38 of 2005

30. Section 44 of the principal Act is hereby amended by the addition of

the following subsection—

" (3) A matter may be transferred from one children's court to another in accordance with the prescribed procedure if such transfer would be in the best interests of the child who is the subject of such matter."

Amendment of section 45 of Act 38 of 2005

31. Section 45 of the principal Act is hereby amended by—

(a) the insertion after subsection (1) for paragraph (b) of the following paragraph:

" (bA) guardianship of an orphaned or abandoned child as contemplated in section (24);"

(b) the substitution of subsection (1) for paragraph (j) of the following paragraph:

"(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]**";

(c) the insertion after subsection (1) for paragraph (j) of the following paragraph:

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

(d) the substitution of subsection (2) of the following subsection:

"(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 magistrate's courts when exercising criminal jurisdiction in terms of paragraph (a)] must refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction."; and

(e) substitution of subsection (3) off the following subsection:

"(3) Pending the establishment of family courts by an Act of Parliament:[]

(a) 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 guardianship in respect of a child;]

[[c] i) [artificial] Artificial fertilisation;

[[d] ii) the departure, removal or abduction of a child from the Republic;

[[e] iii) applications requiring the return of a child to the Republic from abroad;

[[f] iv) the age of majority or the contractual or legal capacity of a child;

[[g] v) the safeguarding of a child's interest in property; and

[[h] vi) surrogate motherhood agreements."; and

(b) the High Courts and the children's court **[and Divorce Courts]** have exclusive jurisdiction over the guardianship of a child as contemplated in section 24; and

(c) the High Court, the children's court and [Divorce Courts] the regional court have exclusive jurisdiction over the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.";.

Amendment of section 46 of Act 38 of 2005

32. Section 46 of the principal Act is hereby amended by the insertion after subsection (1) for paragraph (c) of the following paragraphs—

"(cA) an order relating to the assignment, exercise, extension, restriction, suspension or termination of parental responsibilities and rights in respect of a child;".

Amendment of section 49 of Act 38 of 2005

33. Section 49 of the principal Act is hereby amended by the substitution of subsection (1) for paragraph (a) of the following paragraph—

" (a) mediation by a family advocate, social worker [**, social service professional**] or such other suitably qualified person as may be prescribed;"

Amendment of section 52 of Act 38 of 2005

34. Section 52 of the principal Act is hereby amended by the substitution of subsection (2) for paragraph (b) following paragraph—

" (b) the use of suitably qualified or trained interpreters, including sign language, speech and tactile interpreters.

Amendment of section 57 of Act 38 of 2005

35. Section 57 of the principal Act is hereby amended—
(a) by the substitution of subsection (2) of the following subsection:

"(2) The person in whose [**physical control**] care 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."

Amendment of section 62 of Act 38 of 2005

36. Section 62 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) for paragraph (e) of the following paragraph:—

"(e) the person **[under]** in whose **[control]** care the child is; or";

(b) by the substitution of subsection (2) for paragraph (a) of the following paragraph:

"(a) obtain supplementary evidence or reports from other suitably qualified persons as may be prescribed;"

Amendment of section 63 of Act 38 of 2005

37. Section 63 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

"63. (1) A written report, **[purported to be]** compiled and signed by a medical practitioner, psychologist, family counsellor, family advocate, designated social worker or such other suitably qualified person as may be prescribed 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."

Amendment of section 66 of Act 38 of 2005

38. Section 66 of the principal Act is hereby amended by the substitution of subparagraph (d) of the following subparagraph—

"(d)for the purpose of *bona fide* research or the reporting of cases in law reports, provided the provisions of section **[74]** 6A and 6C are complied with."

Repeal of section 74 of Act 38 of 2005

39. Section 74 of the principal Act is hereby repealed—

“[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.]”.

Amendment of section 75 of Act 38 of 2005

40. Section 75 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) for paragraph (b) of the following paragraph:

“(bA) procedures for determining the age of a child;”;

(b) by the deletion of the word “and” at the end of paragraph (1)(j):

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

(c) by the insertion after section (1) paragraph (j) of the following paragraph:

“(jA) the responsibility for defraying costs relating to investigations and reports contemplated in section 62; and”

Amendment of section 76 of Act 38 of 2005

41. Section 76 of the principal Act is hereby amended—

(a) by the substitution in section 76 for the words preceding paragraph

(a) of the following words:

"76. (1) [Partial] Subject to subsection (2), partial care is provided when a person, whether for or without reward, takes care of [more than] six or more children on behalf of their parents, guardians or care-givers during specific hours of the day or night, or for a temporary period, by agreement between the parents, guardians or care-givers and the provider of the service, but excludes the care of a child-"; and

(b) by the addition of the following subsections:

"(2) Partial care facilities include-

- (a) early childhood development centre as contemplated in section 1;
- (b) an after school care service, other than a service provided by a school as defined in the South African School's Act 1996, (Act No. 84 of 1996), for a child attending a primary school or a secondary school; and
- (c) temporary respite care services for children including children with disabilities.

(3) A partial care facility operated or managed by the Department or provincial department or by a municipality may register in accordance with section 80 despite being unable to meet the requirement of taking care of six or more children as contemplated in subsection (1)."

Amendment of section 77 of Act 38 of 2005

42. Section 77 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection—

"(3) The MEC for social development must compile a provincial profile at

the prescribed intervals in order to make **[the necessary]** such information as may be prescribed available for the development and review of the strategies contemplated in subsections (1) and (2).”.

Amendment of section 78 of Act 38 of 2005

43. Section 78 of the principal Act is hereby amended—

(a) by the substitution of subsection (3) of the following subsection:

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

(b) by the insertion after subsection (3) of the following subsection:

“(3A) A conditionally registered partial care facility qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards.”;

(c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“(4) **[The funding of partial care facilities must be prioritised]** The MEC for social development may prioritise, and fund partial care facilities and services-”;

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) in poverty declared wards in the province, taking into consideration the national and provincial strategies contemplated in section 77 and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; [and]” ;

(e) by the addition after subsection (4) of the following subsection:

“(5) The funding of partial care facilities does not apply to infrastructure in private homes, business properties or properties not owned by a non-profit organisation.”.

Amendment of section 79 of Act 38 of 2005

44. Section 79 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) The Minister, after consultation with **[interested persons and]** the Ministers **[of]** responsible for Education, Finance, Health, Provincial and Local Government, **[and]** Transport and any other relevant Ministers, relevant stake-holders and relevant civil society organisations, must determine national norms and standards specific to **[for partial care by regulation]** early childhood development centres, after school care services, private hostels, and temporary respite care services by regulation.”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) **[The national norms and standards contemplated in subsection (1)]** An early childhood development centre, after school care service, and temporary respite care service must comply with the national norms and standards for the following:”;

(c) by the substitution in subsection (3) in paragraph (c) for subparagraph (iii) of the following subparagraph:

“(iii) **[basic]** therapeutic interventions.”; and

(d) by the substitution of subsection (4) of the following subsection:

“(4) A partial care facility may offer programmes appropriate to the developmental and functional needs of the children in that facility as

may be prescribed.”.

Amendment of section 81 of Act 38 of 2005

45. Section 81 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**81.** (1) An application for registration [**or conditional registration**] of a partial care facility or [**for the reinstatement or**] renewal of registration must-”; and

(b) by the substitution in subsection (1) paragraph (c) of subparagraph (i) of the following subparagraph:

“(i) a report by a social service [**professional**] practitioner on the viability of the application; and”.

Amendment of section 82 of Act 38 of 2005

46. Section 82 of the principal Act is hereby amended—

(a) by the substitution of subsection (4) of the following subsection:

“(4) The provincial head of social development must consider the report contemplated in section 81 (1) (c) (i) of a social service [**professional**] practitioner before deciding an application for registration[, **conditional registration**] or renewal of registration.”; and

(b) by the substitution of subsection (5) of the following subsection:

“(5) Notwithstanding section 78 (3) a provincial head of social development may assist the owner or manager of a partial care facility where conditional registration was granted, to comply with the prescribed national norms and standards contemplated in section 79 and such other requirements as may be prescribed.”.

Amendment of section 83 of Act 38 of 2005

47. Section 83 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

“[Conditional registration] Conditions relating to Registration”;

(b) by the substitution for the words preceding paragraph (a) of the following words:

“83. The registration, or renewal of registration of a partial care facility may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**-”;

(c) by the substitution in paragraph (a) of the following paragraph:

“(a) conditions specifying the type of partial care that may or must be provided in terms of the registration;”;

(d) by the substitution in paragraph (b) of the following paragraph:

(b) [stating] a specification of the period [for] within which the [conditional registration will remain valid] conditions must be complied with; and”; and

(e) by the substitution in paragraph (c) of the following paragraph:

(c) [providing for] any other matters that may be prescribed.”.

Amendment of section 85 of Act 38 of 2005

48. Section 85 of the principal Act is hereby amended by the addition of the following subsection—

“(5) The owner, manager or organisation operating a partial care facility who or which had been instructed or ordered to stop operating such facility, must ensure that suitable alternative arrangements are made for the children in such facility, where necessary.”.

Amendment of section 87 of Act 38 of 2005

49. Section 87 of the principal Act is hereby amended by the substitution in section (1) for paragraph (c) of the following paragraph—

“(c) monitor partial care facilities and conduct inspections, whether unannounced or at the prescribed intervals, of partial care facilities in the province to enforce the provisions of this Act.”

Amendment of section 88 of Act 38 of 2005

50. Section 88 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) The **[provincial head]** MEC of social development may by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 80, 81, 82, 83, 84, 85 and 87 to the municipal manager after consultation with the municipal council, if the **[provincial head]** MEC of social development is satisfied that the municipality complies with the prescribed requirements with regards to the capacity of that municipality to perform the functions concerned.”; and

(b) by the substitution of subsection (3) of the following subsection:

“(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service **[professional]** practitioner in the employ of the municipality.”.

Amendment of section 89 of Act 38 of 2005

51. Section 89 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

“(1) If a child is seriously injured or abused while in partial care or

following an occurrence at a partial care facility, the person operating the partial care facility or a person employed at the partial care facility must immediately report such injury or abuse to the provincial head of social development, who must **[cause an investigation to be conducted into the circumstances of the serious injury or abuse]** act in accordance with the provisions of section 110(5).”.

Amendment of section 90 of Act 38 of 2005

52. Section 90 of the principal Act is hereby amended—

(a) by the substitution of paragraph (a) of the following paragraph:

“ (a) the national norms and standards that partial care facilities must comply with as contemplated in section 79.”;and

(b) by the deletion of the word “and” at the end of paragraph (h), and the insertion after paragraph (h) of the following paragraphs:

“ (i) inspection and monitoring of partial care facilities and services;

(j) assignment of functions to municipalities; and”.

Amendment of section 91 of Act 38 of 2005

53. Section 91 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) Early childhood development for the purposes of this Act, means the process of emotional, cognitive, sensory, spiritual , moral, physical, social and communication development of children from birth to school going age or, in the case of a child with developmental difficulties and disabilities, until the year before the child turns seven (7).”; and

(b) by the substitution of subsection (3) of the following subsection:

“(3) An early childhood development programme means a programme structured within an early childhood development service to provide learning and support appropriate to the child’s age and stage and includes:

- (a) community-based early childhood development programme which provides one or more forms of daily care, early learning opportunities and support to children from birth until the year before they enter formal school. The programmes includes:
 - (i) community based play groups operating for specific hours;
 - (ii) outreach and support programmes for young children and their families and caregivers at home;
 - (iii) parenting support and enrichment programmes;
 - (iv) support for the psychosocial needs of young children and their families;
 - (v) early childhood development programmes provided at partial care facilities and at child and youth care facilities, as contemplated in section 93 (5) of this Act; and
 - (vi) programmes that focuses on the care, development and early learning of children from birth until the year before they enter formal school;
- (b) non-centre based early childhood development programme which is any early childhood development programme, service or intervention provided to children from birth until the year before they enter formal school, with the intention to promote the child’s early emotional, cognitive, sensory, spiritual, moral, physical, social and communication development and early learning. This may include:
 - (i) parent support groups which are a broad range of programmes and interventions to support one or more aspects of parenting to a parent or primary caregiver;
 - (ii) outreach programmes which are programmes that use early childhood development centres as support for pro-

- grammes where parents are equipped with skills to promote parental involvement in stimulation of their children at their homes;
- (iii) play groups which are a group of children from birth until the year before they enter formal school, usually accompanied by their parent or primary caregiver, and are organised for play or play activities for early learning and development of cognitive, language, motor, emotional, and social skills; and
- (iv) toy library provides developmentally appropriate educational play and learning materials to parents or children. It may offer play and learning sessions, toy-making demonstrations, individual lending;
- (c) home based early childhood development service is any early childhood development services, including home-visits to pregnant women, infants and young children, and their family by an appropriately qualified and sanctioned early childhood development practitioner to promote the children's early emotional, cognitive, sensory, spiritual, moral, physical, social and communication development."

Amendment of section 92 of Act 38 of 2005

54. Section 92 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) The Minister, after consultation with **[interested persons and]** the Ministers responsible for [of] Education, Finance, Health, Provincial and Local Government, **[and]** Transport and any other relevant Ministers, relevant stake-holders and relevant civil society organisations, must include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, coordinated, **[and]** managed, inclusive and accessible early childhood

development system, giving due consideration as provided in section 11, to children with disabilities or chronic illnesses.”;

(b) by the substitution in subsection (2) of paragraph (a) of the following paragraph:

“maintain a record of all the early childhood development programmes registered in the province with specific mention of inclusive programmes; and”; and

(c) by the substitution in subsection (2) of paragraph (b) of the following paragraph:

“(b) within the national strategy referred to in subsection (1), provide for a provincial strategy aimed at a properly resourced, co-ordinated, **[and]** managed and inclusive early childhood development system.”.

Amendment of section 93 of Act 38 of 2005

55. Section 93 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) The MEC for social development must appropriate money for early childhood development [by] from the relevant provincial legislature and may, from such money appropriated [by the relevant provincial legislature,] provide and fund early childhood development programmes for that province.”;

(b) by the insertion after subsection (3) of the following subsection:

“(3A) A conditionally registered early childhood development programme qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards.”;

(c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“ (4) **[The funding of early childhood development programmes must be prioritised]** The MEC for social development may prioritise and fund early childhood development programmes-”;

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) in poverty declared wards in the province, taking into consideration the national and provincial strategies contemplated in section 92 and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; [and]” ;

(e) by the insertion after subsection (4) in paragraph (a) of the following paragraph:

“(aA) in rural areas; and”;

(f) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“ An early childhood development programme **[must]** may be provided by-”;

(g) by the deletion of the word “and” at the end of subsection (5) for paragraph (a), the insertion of the word “or” at the end of paragraph (b) and the substitution in subsection (5) for paragraph (a) of the following paragraph:

“ (a) **[a partial care facility providing partial care services]** in non-center based setting for any children up to school going age”; and

(h) by the substitution of subsection (6) of the following subsection:

“ (6) Any other person, organisation, Department, provincial department of social development or municipality not disqualified

in terms of section 97(3) may provide early childhood development programmes, provided that those programmes comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed'."

Amendment of section 94 of Act 38 of 2005

56. Section 94 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

"94. (1) The Minister must determine national norms and standards for early childhood development programmes by regulation after consultation with **[interested persons and]** the Ministers responsible for**[of]** Education, Finance, Health, Provincial and Local Government, **[and]** Transport and any other relevant Ministers, relevant stake-holders and relevant civil society organisations."

(b) by the substitution of section (2) for subparagraph (c) of the following paragraph:

" caring for children in a constructive manner and providing protection, support and security;" and

(c) by the deletion of the word "and" at the end of subsection (2) for paragraph (e), the insertion of the word "and" at the end of paragraph (f) and the addition in subsection (2) of the following paragraph:

" (g) relevant qualification, skills and training required for early childhood development programmes."

Amendment of section 96 of Act 38 of 2005

57. Section 96 of the principal Act is hereby amended by the substitution in subsection (5) for the words preceding paragraph (a) of the following words—

96. (1) An application for registration **[or conditional registra-**

tion] of an early childhood development programme or for the renewal of registration must-”.

Amendment of section 97 of Act 38 of 2005

58. Section 97 of the principal Act is hereby amended by the substitution of subsection (5) of the following subsection—

“(5) Notwithstanding the provisions of section 93 (3), a provincial head of social development may assist a person providing an early childhood development programme were conditional registration was granted, to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed.”.

Amendment of section 98 of Act 38 of 2005

59. Section 98 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

“[Conditional registration] Conditions relating to registration”;

(a) by the substitution for the words preceding paragraph (a) of the following words:

“98. The registration or renewal of registration of an early childhood development programme may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**”;

(b) by the substitution in paragraph (a) of the following paragraph:

“(a) conditions specifying the type of early childhood development programme that may or must be provided in terms of the registration;”;

(d) by the substitution in paragraph (b) of the following paragraph:

"(b) **[stating]** a specification of the period [for] within which the [conditional registration] conditions must be complied with [will remain valid]; and"; and

(e) by the substitution in paragraph (c) of the following paragraph:

"(c) **[providing for]** any other matters that may be prescribed."

Amendment of section 100 of Act 38 of 2005

60. Section 100 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph

(a) of the following:

"(1) A provincial head of social development may by way of a written notice of enforcement instruct-"; and

(b) by the addition after subsection (1) of the following subsection:

"(2) A person providing an early childhood development programme who has been instructed to stop the provision of that programme, must ensure that suitable alternative arrangements are made for the children attending such programme, where necessary."

Amendment of section 102 of Act 38 of 2005

61. Section 102 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

" (1) The **[provincial head] MEC** of social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 95, 96, 97, 98, 99 and 100 to the municipal manager after consultation with the municipal council, if the **[provincial head] MEC** of social development is satisfied that the municipality complies with the prescribed requirements with regards to the capacity of that municipality to per-

form the functions concerned.”;

(b) by the substitution of subsection (3) of the following subsection:

“(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service **[professional]** practitioner in the employ of the municipality.”; and

(c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) The provincial head of social development must monitor and evaluate the performance of the functions assigned in terms of this section.”.

Amendment of section 103 of Act 38 of 2005

62. Section 103 of the principal Act is hereby amended—

(a) by the substitution of paragraph (c) of the following paragraph—

“(c) the procedure to be followed in connection with the lodging and consideration of applications for registration in terms of this Chapter and for the renewal of such registrations and for the suspension or cancellation of registration;”; and

(b) by the deletion of the word “and” at the end of paragraph (d), and insertion after paragraph (d) of the following paragraphs:

“(e) the different types of early childhood development programmes that may be provided and the period for which registration is valid;

(f) the manner in which early childhood development programmes must be managed;

(g) the procedure to be followed with regard to the children in early childhood development programmes when the programme is terminated;

- (h) the procedure to be followed when lodging an appeal in terms of this Chapter;
- (i) assessment and monitoring of early childhood development programmes;
- (j) assignment of functions to municipalities; and”.

Amendment of section 104 of Act 38 of 2005

63. Section 104 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

“(1) The Minister, after consultation with **[interested persons and]** the Ministers of Education, Labour, Home Affairs, Communications, Finance, Health, **[and]** Justice and Constitutional Development, **[and]** the South African Police Service and any other relevant Ministers, relevant stake-holders and relevant civil society organisations, must develop a comprehensive inter-sectoral strategy aimed at securing a properly resourced, co-ordinated and managed national child protection system.”.

Amendment of section 105 of Act 38 of 2005

64. Section 105 of the principal Act is hereby amended by the addition of the following subsections—

“(6) The Department must ensure that a quality assurance process is conducted, in the manner and at the intervals as prescribed, in respect of all child protection services contemplated in this section.

(7) The quality assurance process referred to in subsection (6) must be done in the following manner:

- (a) A team connected to the child protection organisation providing services must conduct an internal assessment of such services;
- (b) a team not connected to the child protection organisation

- must conduct an independent assessment of such services;
- (c) an organisational development plan for the provision of child protection services containing the prescribed particulars must be established between the teams by agreement; and
- (d) the team not connected to the child protection organisation may, in appropriate cases, appoint a mentor to oversee implementation of the plan."

Amendment of section 106 of Act 38 of 2005

65. Section 106 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (j) of the following paragraph:

"(j) education and information; **[and]**";

(b) by the substitution in subsection (2) for paragraph (k) of the following subsection:

"(k) child-headed households[.] and"; and

(c) by the addition of the following paragraphs in subsection (2) after paragraph (k):

"(l) rehabilitation services for children with disabilities; and

(m) quality assurance."

Amendment of section 107 of Act 38 of 2005

66. Section 107 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

"(1) The Director-General **[or provincial head of social development]**, on written application, may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services **[in the relevant province]** on national level."

(b) by the insertion after subsection (1) of the following subsection:

“(1A) The provincial head of social development, on written application, may designate any appropriate organisation that complies with the prescribed criteria as a child protection organisation to perform all or any specific designated child protection services in the relevant province.”;

(c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) A designation in terms of subsection (1) or (1A)-”;and

(d) by the substitution of subsection (4) of the following subsection:

“(4) Sections 310 and 311 read with such changes as the context may require, apply to any assignment in terms of subsection (1) or (1A).”.

Amendment of section 109 of Act 38 of 2005

67. Section 109 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Director-General or provincial head of social development, as the case may be, may withdraw the designation of a child protection organisation as contemplated in section 107 to perform any, or any specific, designated child protection service-”; and

(b) by the addition of the following subsections:

“(3) A child protection organisation aggrieved by a decision of the Director-General or a provincial head of social development to withdraw its designation may lodge an appeal against that decision in the prescribed form within 90 days with the Minister, in the case of a child protection organisation designated to perform child protection

services on national level, or the MEC for social development in the case of a child protection organisation designated to perform child protection services in the relevant province, who must decide the appeal within 90 days of receipt thereof.

(4) A child protection organisation not satisfied with the outcome of an appeal referred to in subsection (3) may apply to the competent division of the High Court to review that decision.”.

Amendment of section 110 of Act 38 of 2005

68. Section 110 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) Any judicial officer, correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service **[professional]** practitioner, **[social worker,]** speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.”; and

(b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) The provincial department of social development or designated child protection organisation to **[whom]** which a report has been made in terms of subsection (1), (2) or (4), or the provincial head of social development to whom a report has been made in terms of section 89 (1), 178 (1) or 226 (1), must-”.

Amendment of section 111 of Act 38 of 2005

69. Section 111 of the principal Act is hereby amended by the addition of the following subsections—

“(3) The Director-General must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, as the Registrar of the National Child Protection Register.

“(4) The Registrar of the National Child Protection Register must exercise and perform his or her powers, duties and functions subject to the provisions of this Part and the regulations made thereunder.”.

Amendment of section 114 of Act 38 of 2005

70. Section 114 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) in paragraph (a) for subparagraph (vii) of the following subparagraph:

“(vii) the name and physical address of the institution, child and youth care centre, partial care facility or **[shelter or]** drop-in centre, if the incident occurred at such a place;” and

(b) by the substitution in subsection (2) in paragraph (c) for subparagraph (viii) of the following subparagraph:

“(viii) a brief summary of the services rendered to the child found to be in need of care and protection; and”.

Amendment of section 115 of Act 38 of 2005

71. Section 115 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words—

“115. Only the Director-General, the Registrar of the National Child Protection Register and officials of the Department designated by the

Director-General have access to Part A of the Register, but the Director-General may, on such conditions as the Director-General may determine, allow access to- ”.

Amendment of section 117 of Act 38 of 2005

72. Section 117 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(2) Inquiries in terms of subsection (1) must be directed in the prescribed format to the **[Director-General]** Registrar of the National Child Protection Register on a confidential basis.”; and

(b) by the substitution of subsection (3) of the following subsection:

(3) The **[Director-General]** Registrar of the National Child Protection Register must respond to such inquiries in writing within 21 working days and indicate whether the relevant person's name is in Part A of the Register.”.

Insertion of section 117A in Act 38 of 2005

73. The following section is hereby inserted in the principal Act after section 117—

“Removal of name from Part A of Register

117A. (1) A child or person whose name appears in Part A of the Register may in terms of subsection (2) apply for the removal of his or her name and any information relating to him or her from the Register.

(2) An 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 Registrar of the National Child Protection Register, if the entry was made in error; or

- (c) to the High Court if the Registrar of the National Child Protection Register refuses an application in terms of paragraph (b)."

Amendment of section 119 of Act 38 of 2005

74. Section 119 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

"Contents of Part B of Register and reference to person";

(b) by the substitution for the words preceding paragraph (a) of the following:

"119. (1) Part B of the Register must be a record of persons found in terms of section 120 to be unsuitable to work with children, and must reflect-";

(c) by the substitution of paragraph (f) of the following paragraph:

"(f) such other **[prescribed]** information as may be prescribed."; and

(d) the addition of the following subsection:

"(2) For purposes of sections 120 to 128, a reference to "a person", unless the context indicates otherwise, means a person who is 18 years of age or older or, in the case of a person who is alleged to have committed an offence against a child, who was 18 years of age or older at the time of the alleged commission of such offence."

Substitution of section 122 of Act 38 of 2005

75. Section 122 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

"Findings to be reported to [Director-General] Registrar of the National Child Protection Register";

(b) by the substitution for the words preceding paragraph (a) of the fol-

lowing words:

“**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]** the Registrar of the National Child Protection Register in writing-”;

(c) by the insertion after subsection (1) of the following subsection:

“1A The National Commissioner of the South African Police Service must, in the prescribed manner, forward to the **[Director-General]** Registrar of the National Child Protection Register all the particulars of persons referred to in section 120(40 and (5) and of any criminal conviction contemplated in section 120(4A).”

(d) by the substitution of subsection (2) of the following subsection:

“(2) The **[Director-General]** Registrar of the National Child Protection Register must enter the name of a person found unsuitable to work with children as contemplated in section 120 in Part B of the Register regardless of whether appeal proceedings have been instituted or not.”; and

(e) by the substitution of subsection (3) of the following subsection:

“(3) If, after appeal or review proceedings have been concluded, a finding in terms of section 120 that a person is unsuitable to work with children is reversed, the **[Director-General]** Registrar of the National Child Protection Register must forthwith remove the name of the person from the Register.”.

Amendment of section 123 of Act 38 of 2005

76. Section 123 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“ (a)manage or operate, or participate or assist in managing or op-

erating, an institution providing **[welfare]** care and protection services to children, including a child and youth care centre, a partial care facility, a **[shelter or]** drop-in centre, a cluster foster care scheme, a school, club or association providing services to children;”;

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) work with or have access to children at an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a **[shelter or]** drop-in centre, a school, club or association providing services to children, or in implementing a cluster foster care scheme, either as an employee, volunteer or in any other capacity;”;

(c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) work in **[any unit of]** the South African Police Service **[tasked with child protection]** in a capacity that brings him or her into contact with children;”

(d) by the substitution of subsection (2) of the following subsection:

(2) No person managing or operating or who participates or assists in managing or operating an institution providing welfare services to children, including a child and youth care centre, a partial care facility, a **[shelter or]** drop-in centre or a school may allow a person whose name appears in Part B of the Register to work with or have access to children at the centre, facility[, **shelter]** or school, either as an employee, volunteer or in any other capacity.”; and

(e) by the substitution of subsection (4) of the following subsection:

“(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]** in a capacity that brings him or her into contact with children.".

Amendment of section 124 of Act 38 of 2005

77. Section 124 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) works with or has access to children at an institution providing **[welfare]** services to children, including a child and youth care centre, a partial care facility, a **[shelter or]** drop-in centre or a school either as an employee, volunteer or in any other capacity, that person must disclose that fact to the person who manages or operates the institution, centre, facility[, **shelter]** or school;"; and

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) works in **[a unit of]** the South African Police Service **[tasked with child protection]** in a capacity that brings him or her into contact with children, that person must disclose that fact to the South African Police Service;".

Amendment of section 125 of Act 38 of 2005

78. Section 125 of the principal Act is hereby amended by the insertion after subsection (1)(a) of the following paragraph—

"(aA) the Registrar of the National Child Protection Register;".

Amendment of section 126 of Act 38 of 2005

79. Section 126 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a)to work with or have access to children at an institution providing **[welfare]** services to children, including a child and youth care centre, a partial care facility, a **[shelter or]** drop-in centre or school, the person managing or operating the institution, centre, facility**[, shelter]** or school must establish whether or not that person's name appears in Part B of the Register;"

(b) by the substitution in subsection (1) for paragraph (c)of the following paragraph:

"(c)to work in **[a unit of]** the South African Police Service **[tasked with child protection]** in a capacity that brings him or her into contact with children, the Service must establish whether or not that person's name appears in Part B of the Register;"

(c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) the person managing or operating an institution, centre, facility**[, shelter]** or school contemplated in subsection (1) (a) must establish whether the name of any person who works with or has access to children at the institution, centre, facility**[, shelter]** or school appears in Part B of the Register;"

(d) by the substitution in subsection (2) for paragraph (c)of the following paragraph:

"(c)the South African Police Service must establish whether the name of any person who works in **[a unit of the South African Police]** the Service [tasked with child protection] in a capacity that brings him or her into contact with children, appears in Part B of the Register;"

(e) by the substitution of subsection (4) of the following subsection:

“(4) Inquiries in terms of subsection (1), (2) or (3) must be directed in writing to the **[Director-General]** Registrar of the National Child Protection Register on a confidential basis.”; and

(f) by the substitution of subsection (5) of the following subsection:

“(5) In the event of an inquiry made to the **[Director-General]** Registrar of the National Child Protection Register in terms of-

- (a) subsection (1), the **[Director-General]** Registrar of the National Child Protection Register must respond in writing within 21 working days by indicating whether the person's name appears in Part B of the Register or not;
- (b) subsection (2), the **[Director-General]** Registrar of the National Child Protection Register must respond in writing within six months by indicating whether the person's name appears in Part B of the Register or not; and
- (c) subsection (3), the **[Director-General]** Registrar of the National Child Protection Register must respond in writing within 21 working days by indicating whether the person's name appears in Part B of the Register, and if so, the reasons why his or her name was entered in the Register.”.

Amendment of section 127 of Act 38 of 2005

80. Section 127 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection—

“(3) The **[Director-General]** Registrar of the National Child Protection Register must inform a person found unsuitable to work with children when that person's name and particulars are entered in Part B of the Register within 21 working days of such entry.”.

Amendment of section 128 of Act 38 of 2005

81. Section 128 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(b) to the **[Director-General]** Registrar of the National Child Protection Register, if the entry was made in error; or”; and

(b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) to the High Court if the **[Director-General]** Registrar of the National Child Protection Register refuses an application in terms of paragraph (b).”.

Amendment of part preceding section 129 of Act 38 of 2005

82. Part preceding section 129 of the principal Act is hereby amended by the substitution of the part of the following—

“(ss 129-[142] 134)”.

Amendment of section 129 of Act 38 of 2005

83. Section 129 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection—

“(3) A child who is a parent may consent to the performance of a surgical operation on him or her or his or her child if-

- (a) the child or child-parent is over the age of 12 years; **[and]**
- (b) the child or child-parent is of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the surgical operation; and
- (c) the child or child-parent is duly assisted by his or her parent or guardian.”.

Amendment of section 131 of Act 38 of 2005

84. Section 131 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

“Medical testing including HIV-testing for foster care or adoption purposes”;

(b) by the substitution of section 131 of the following section:

“(1) If medical testing, including 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]**.”; and

(c) by the addition of the following subsection:

“(2) The referral of a child for testing as contemplated in subsection (1) must be done by completing the prescribed form.”.

Amendment of part preceding section 135 of Act 38 of 2005

85. Part preceding section 135 of the principal Act is hereby amended by the substitution of the following part—

“(ss 135-[142] 141)”.

Amendment of section 135 of Act 38 of 2005

86. Section 135 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

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

Amendment of section 137 of Act 38 of 2005

87. Section 137 subsection (2) of the principal Act is hereby amended by

the substitution of the words preceding paragraph (a) of the following words—

“(2) A child headed household must function under the general supervision of an adult or a child and youth care worker designated by-”.

Amendment of section 141 of Act 38 of 2005

88. Section 141 of the principal Act is hereby amended by the substitution of subsection (2) of the following subsection—

“(2) **[A social worker or social service professional]** Any person who becomes aware of-”.

Amendment of section 142 of Act 38 of 2005

89. Section 142 of the principal Act is hereby amended—

(a) by the substitution of paragraph (f) of the following paragraph:

“(f) prescribing the conditions for the examination or assessment of children who have been abused, abandoned or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child;”;

(b) by the deletion in paragraph (j) of the word “and” at the end of the paragraph and insertion after paragraph (j) of the following paragraph:

“(jA) prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register;” and

(c) by the insertion after paragraph (j) of the following paragraph:

“(k) prescribing the establishment of well-resourced designated child care and protection units with quality assurance units; and”.

Amendment of section 144 of Act 38 of 2005

90. Section 144 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph—

“(b)empowering families to obtain such necessities for themselves and their children;”.

Amendment of section 145 of Act 38 of 2005

91. Section 145 of the principal Act is hereby amended by the substitution of subsection (3) of the following subsection—

“(3) The MEC for social development must compile a provincial profile at the prescribed intervals in order to make **[the necessary]** such information as may be prescribed available for the development and review of the strategies referred to in subsections (1) and (2).”.

Amendment of section 146 of Act 38 of 2005

92. Section 146 of the principal Act is hereby amended—

(a) by the substitution of subsection (3) of the following subsection:

“(3) The provider of prevention and early intervention programmes **[only]** qualifies for funding contemplated in subsection (1) if the programmes substantially comply with the prescribed national norms and standards contemplated in section 147 and such other requirements as may be prescribed.”;

(b) by the deletion of the word “and” at the end of subsection (4) paragraph (a), the deletion of the full stop and insertion of “; and” at the end of subsection (4) paragraph (b) and the addition of the following paragraph:

“(c) for children below school-going age.”.

Amendment of section 147 of Act 38 of 2005

93. Section 147 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) The Minister must determine national norms and standards for prevention and early intervention programmes by regulation after consultation with **[interested persons and]** the Ministers of Education, Finance, Health, Provincial and Local Government, **[and]** Transport and any other relevant Ministers, relevant stake-holders and relevant civil society organisations.”;

(b) by the substitution in subsection (2) for paragraphs (a) to (h) of the following paragraphs:

“(a) Partnerships with civil society and appropriate funding frameworks for service delivery associated with such partnerships;

(b) minimum standards and guiding principles for service delivery;

(c) assessment, monitoring and evaluation of services;

(d) services reporting guidelines; and

(e) guidelines for specific services, including but not limited to-

(i) therapeutic programmes;

(ii) family preservation;

(iii) skills development programmes;

(iv) diversion programmes;

(v) temporary safe care;

(vi) rehabilitation and support for children with disabilities;

(vii) education and information;

(viii) community based prevention and early intervention programmes; and

(ix) assessment of programmes;” and

(c) the addition of the following subsection:

“(3) The norms and standards contemplated in subsection (1)

should promote understanding of prevention and early intervention approaches.”.

Insertion of section 149(A) in Act 38 of 2005

94. The following section is hereby inserted in the principle Act after section 149—

“Regulations

149A. The Minister may make regulations regarding any matter necessary to facilitate the implementation of this Chapter.”.

Amendment of section 150 of Act 38 of 2005

95. Section 150 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) has been abandoned or orphaned and does not have the ability to support himself or herself and such inability is readily apparent as prescribed. ;”;

(b) by the substitution in subsection (1) for paragraph (i) of the following paragraph:

“(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person **[under]** in whose **[control]** care the child is;”

(c) by the deletion in subsection (1) of the word “or” at the end of paragraph (h), the substitution of “.” with “;” at the end of paragraph (i) and the insertion after paragraph (i) of the following paragraphs:

“(j) is an unaccompanied migrant child from another country;

(k) is a victim of trafficking as defined in section 1; or
(l) has been sold by a parent caregiver or guardian.”;

(d) by the substitution in subsection (2) of the words preceding paragraph (a) of the following words:

“(2) A child found in the following circumstances may be **[a child in need of care and protection]** at risk and **[must]** may be referred for **[investigation]** initial screening by a **[designated social worker]** social service practitioner in the prescribed manner:”;

(e) by the deletion in subsection (2) of the word “and” at the end of paragraph (a), the substitution of “.” with a “;” at the end of paragraph (b) and the addition of the following paragraphs:

“(c) a child who has been abandoned or orphaned but is in the care of a family member as defined in paragraph (c) of the definition of family member in section 1.”; and

(f) by the substitution of subsection (3) of the following subsection:

“(3) If after **[investigation]** initial screening **[a]** the social **[worker]** service practitioner **[finds]** concludes that a child referred to in subsection (2) is not a child in need of care and protection as contemplated in subsection (1), **[the]** such social **[worker]** service practitioner must where necessary take measures to assist the child, including counselling, mediation, prevention and early intervention services which may include assistance to the family to apply for any appropriate social grants, family reconstruction and rehabilitation, behaviour modification, problem solving, formalising parental responsibilities and rights in terms of section 22, 23 or 27, and referral to another suitably qualified person or organisation.”; and

(g) by the addition of the following subsection:

“(4) If after initial screening the social service practitioner finds that a child referred to in subsection (2) is a child in need of care and

protection as contemplated in subsection (1), the social service practitioner must refer the child for an investigation by a designated social worker in terms of section 155 (2).".

Insertion of section 150(A) in Act 38 of 2005

96. The following section is hereby inserted in the principle Act after section 150—

"Reporting child who may be in need of care and protection to children's court

150A. (1) Any person who on reasonable grounds believes that a child is in need of care and protection may approach the relevant children's court to report that belief on oath or affirmation.

(2) After consideration of the report contemplated in subsection (1), the presiding officer may refer the matter to a designated social worker for an investigation contemplated in section 155 (2).

(3) A designated social worker to whom a matter has been referred in terms of subsection (2) or in terms of any other section, who on reasonable grounds believes that a child may be in need of care and protection, must open proceedings in the children's court in the prescribed manner and conduct an investigation contemplated in section 155 (2).

(4) During the investigation contemplated in section 155 (2) the child should as far as is practicable not be removed from the care of a parent or caregiver, in accordance with the stability principle contemplated in section 157."

Amendment of section 155 of Act 38 of 2005

97. Section 155 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) A children's court must decide the question of whether a child who was the subject of proceedings in terms of section 47, 150A, 151, 152, 152A or 154 is in need of care and protection.”;

(b) by the substitution of subsection (2) of the following subsection:

“(2) **[Before the child is brought before the children's court, a]** A designated social worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection.”;

(c) by the substitution of subsection (5) of the following subsection:

“(5) If, after an investigation contemplated in subsection (2), the designated social worker finds the child to be in need of care and protection, that child must be brought before the children's court**[.]** for a hearing upon which such court”;

(d) by the deletion in subsection (6) of the words preceding paragraph

(a):

“[(6) The children's court hearing the matter] may-

- (a) adjourn the matter for a period not exceeding **[14]** 30 days at a time; and
- (b) order that, pending decision of the matter, the child must-
 - (i) remain in temporary safe care at the place where the child is kept;
 - (ii) be transferred to another place in temporary safe care;
 - (iii) remain with the person **[under]** in whose **[control]** care the child is;
 - (iv) be **[put under]** placed in the **[control]** care of a family member or other relative of the child; or
 - (v) be placed in temporary safe care.”; and

(e) by the substitution of subsection (8) for paragraph (a) of the following paragraph:

" (a) must make an order that the child, if the child is in temporary safe care, be returned to the person in whose **[control]** care the child was before the child was put in temporary safe care;"

Amendment of section 156 of Act 38 of 2005

98. Section 156 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) for paragraph (b) of the following paragraph:

" (b) confirming that the person **[under]** in whose **[control]** care the child is may retain **[control]** care of the child, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;"

(b) by the substitution of subsection (1) for paragraph (c) of the following paragraph:

"(c) that the child be returned to the person **[under]** in whose care the child was before the child was placed in temporary safe care, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;"

(c) by the insertion after paragraph (c) of the following paragraph:

"(cA) that the child be placed in the care of a parent or other family member, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;"

(d) by the substitution of subsection (1) for paragraph (d) of the following paragraph:

"(d) that the person **[under]** in whose care the child was must make arrangements for the child to be taken care of in a partial care facility at the expense of such person, if the court finds that the child became in need of care and protection because the person **[under]**

in whose care the child was lacked the time to care for the child;";
and

(e) by the substitution of subsection (1) paragraph (e) for subparagraph(ii) of the following subparagraph:

"(ii) foster care with **[a group of persons or an organisation operating]** an identified foster parent who is part of a cluster foster care scheme;" .

Amendment of section 157 of Act 38 of 2005

99. Section 157 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) Before a children's court makes an order in terms of section 156 for the removal of the child from the care of the child's parent, guardian or care-giver, the court must-";

(b) by the substitution in subsection (1) paragraph (a) for sub-paragraph(i) of the following sub-paragraph:

"(i) leaving the child in the care of the parent, guardian or care-giver under the supervision of a designated social worker, provided that the child's safety and well-being must receive first priority;";

(c) by the substitution in subsection (1) paragraph (a) for sub-paragraph(ii) of the following sub-paragraph:

"(ii) placing the child in alternative care for a limited period to allow for the reunification of the child and the parent, guardian or care-giver with the assistance of a designated social worker;";

(d) by the substitution in subsection(1) paragraph (a) for sub-paragraph(iii) of the following sub-paragraph:";

“(iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent, guardian or care-giver;”;

(e) by the substitution of subsection (3) of the following subsection:

“(3) A [**very young**] child less than three years of age who has been orphaned or abandoned by its parents must be made available for adoption in the prescribed manner and within the prescribed period except when this is not in the best interests of the child.”; and

(f) by the substitution of subsection (4) of the following subsection:

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

Amendment of section 159 of Act 38 of 2005

100. Section 159 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph

(a) of the following words:

“(1) [**An**] Subject to section 186, an order made by a children's court in terms of section 156-”;

(b) by the addition of the following subsection:

“(3) A Presiding Officer may extend an alternative care order that is about to lapse or has lapsed in the last 6 months, on good cause shown provided that:

(a) a report as prescribed explaining the lapsing of the order is submitted by the designated social worker is placed before the Presiding Officer for consideration;

(b) a Presiding Officer considers the best interest of the child; and

- (c) a Presiding Officer stipulates conditions attached to the extended order including the supervision of the child's placement.

Amendment of section 167 of Act 38 of 2005

101. Section 167 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) for paragraph (b) of the following paragraph:

“(b) in the care of a child and youth care centre following an order of a children's court in terms of this Act **[section 29 or Chapter 10 of the Child Justice act, 2008];”;**

(b) by the substitution of subsection (2) of the following subsection:

“(2)(a) a child may not be in temporary safe care **[or be kept or retained at any place or facility, including a registered child and youth care centre,]** for longer than **[six months]** 72 hours without a court order placing the child in **[alternative care]** temporary safe care;

(b) a child may not be placed in temporary safe care for longer than six months unless the court grants permission for extension, but such stay should not exceed 12 months;
and

(c) a child may not be in foster care or a registered child and youth care centre without a court order placing the child in such care.”.

(c) by the substitution of subsection (3) for paragraph (a) of the following paragraph:

“(a) The provincial head of social development must approve a person **[, facility, place or premises]** for purposes of temporary safe care in the prescribed manner.”;

(d) by the substitution of subsection (3) for paragraph (b) of the following paragraph:

" (b) A person **[, facility, place or premises for temporary safe care]** contemplated in paragraph (a) must comply with the prescribed criteria."; and

(d) by the substitution of subsection (4) of the following subsection:

"(4) **[As from the date on which this section takes effect an existing place of safety approved in terms of the Child Care Act must be regarded as having been approved as temporary safe care in terms of this section.]** The approval of a person contemplated in subsection (3) is valid for a period not exceeding two years."

Amendment of section 170 of Act 38 of 2005

102. Section 170 of the principal Act is hereby amended—

(a) by the substitution of subsection (3) of the following subsection:

"(4) On apprehending a child in alternative care who has absconded or failed to return in terms of subsection (1), the-

(a) **[police official]** designated social worker must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk~~[,]~~; or

(b) police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk and notify the provincial department of social development or a designated child protection organisation of the fact that the child has been apprehended and of any steps that have been taken with regard to the child, which may include the return of the child to the centre or person in whose alternative care the child was before absconding until such time as the matter appears before a children's court as contemplated in subsection (5) or an assessment

of the child has taken place as contemplated in subsection (5A)."

(b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"(5) A child **[so]** apprehended after a period of 48 hours from absconding **[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]**—";

(c) by the insertion after subsection (5) of the following subsection:

"(5A) A child apprehended within a period of 48 hours from absconding 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, must be assessed by a designated social worker or the social worker within the child and youth care centre without delay to establish the reasons for absconding, which social worker may—

(a) make written recommendations to the provincial head of social development regarding transfer of the child to another form of alternative care or the discharge of the child from alternative care; or

(b) take no further action, if justified in the circumstances."
and

(d) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"(6) When the child is brought before a presiding officer of a children's court pursuant to subsection (5), the presiding officer must—".

Amendment of section 178 of Act 38 of 2005

103. Section 178 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

"**178.**(1) If a child in alternative care is seriously injured or abused, the management of the child and youth care centre, person or organisation in whose care or temporary safe care the child has been placed must immediately report the matter to the provincial head of social development, who must **[cause an investigation to be conducted into the circumstances of the serious injury or abuse]** act in accordance with the provisions of section 110(5)."

Amendment of section 179 of Act 38 of 2005

104. Section 179 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) for paragraph (a) of the following paragraph:

"(a) the manner in which a person **[, facility, place or premises for]** with whom a child is to be placed in temporary safe care must be approved;"

(b) by the substitution of subsection (1) for paragraph (b) of the following paragraph:

"(b) the criteria that a person **[, facility, place or premises for]** with whom a child is to be placed in temporary safe care must comply with;"

(c) by the substitution of subsection (1) for paragraph (d) of the following paragraph:

"(d) the manner in which children in alternative care must be granted leave of absence, transferred or provisionally transferred, their residential care programmes changed, be removed or permanently discharged from alternative care;"

(d) by the insertion of the following paragraph after subsection (1) for paragraph (e):

" (eA) fees payable to a person with whom a child is placed in temporary safe care;"; and

(e) by the deletion in subsection (1) of the word "and" at the end of paragraph (f) and the insertion of the following paragraphs:

" (fA) the manner in which the provincial head of social development may grant written approval for children in alternative care to leave the Republic;

(fB) the form in which an appeal against a decision taken in terms of this Chapter must be lodged with the MEC for social development; and".

Amendment of section 181 of Act 38 of 2005

105. Section 181 of the principal Act is hereby amended—

(a) by the substitution of paragraph (b) of the following paragraph:

" (b) promote the goals of permanency planning, first towards family reunification, or by connecting children to other safe and nurturing family relationships, **[intended to last a lifetime; and]**"; and

(b) by the substitution of paragraph (c) of the following paragraph

"(c) promote and respect the individual and family by demonstrating a respect for cultural, ethnic and community diversity."

Amendment of section 183 of Act 38 of 2005

106. Section 183 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of paragraph (a) of the following paragraph:

“(a) The organisation operating or managing the cluster foster care scheme must be a **[nonprofit organisation registered in terms of the Nonprofit Organisations Act, 1997 (Act 71 of 1997)]** designated child protection organisation;”; and

(b) by the insertion in subsection (1) before paragraph (a) of the following paragraph:

“(aA) the provincial department of social development or a designated child protection organisation must manage and operate a cluster foster care scheme in the prescribed manner;”.

Amendment of section 185 of Act 38 of 2005

107. Section 185 of the principal Act is hereby amended by the substitution of subsection (2) of the following subsection—

“(2) **[More]** Not more than six children may be placed in foster care with a single person or two persons sharing a common household in terms of a registered cluster foster care scheme.”.

Amendment of section 186 of Act 38 of 2005

108. Section 186 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) 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, place a child in foster care with a family member **[for more than two years, extend such an order for more than two years at a time or]** and order that the foster care placement subsists until the child turns 18 years, if-”

(b) by the substitution of subsection (3) of the following subsection:

“(3) Despite the provisions of subsections (1) and (2), a social service **[professional]** practitioner must visit a child in foster care at least **[once every two years]** annually to monitor and evaluate the placement and submit periodic reports as prescribed.” and

(c) by the addition of the following subsection:

“(4) The provisions of this section do not apply to a cluster foster care scheme contemplated in section 183.”.

Amendment of section 188 of Act 38 of 2005

109. Section 188 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph—

“(a) any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development and disability, if any; and”.

Amendment of section 191 of Act 38 of 2005

110. Section 191 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (e) of the following:

“(e) a **[prison]** correctional facility;”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) A child and youth care centre must offer a therapeutic and developmental programmes designed for the residential care of children outside the family environment, which may include a programme designed for-

(c) by the substitution in subsection (2) of paragraph (b) of the following

paragraph:

" (b)the reception, care and development of children on a shared basis with the parent or other person having parental responsibilities and rights;"

(d) by the deletion in subsection (2) of the word "or" at the end of paragraph (k), the substitution of "." for ";" at the end of paragraph (l) and the addition of the following paragraphs:

"(m) the reception, development and secure care of children with disruptive behaviour disorder; or

"(n) a developmental programme to assist a person prior to leaving a child and youth care centre and to provide after care services.";

(e) by the substitution in subsection (2) paragraph (j) for subparagraph (ii) of the following subparagraph:

"(ii) in terms of section 156 (1) **[(i)]** (h) placing the child in a child and youth care centre which provides a secure care programme;"

(f) by the substitution in subsection (2) of paragraph (k) of the following paragraph:

"(k)the reception, stabilisation and care of **[street]** children living, begging or working on the street; or"; and

(g) by the deletion in subsection (3) of paragraph (e):

"[(e)a programme to assist a person with the transition when leaving a child and youth care centre after reaching the age of 18]".

Amendment of section 192 of Act 38 of 2005

111. Section 192 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

“(1) The Minister, after consultation with **[interested persons and]** the Ministers of Education, Health, Home Affairs, **[and]** Justice and Constitutional Development, Public Works, Cooperative Governance and Traditional Affairs and any other relevant Ministers, relevant stake-holders and relevant civil society organisations, must include in the departmental strategy a comprehensive national strategy aimed at ensuring an appropriate spread of child and youth care centres throughout the Republic providing the required range of residential care programmes in the various regions, giving due consideration as provided in section 11, to children with disability or chronic illness.”.

Amendment of section 193 of Act 38 of 2005

112. Section 193 of the principal Act is hereby amended—

(a) by the substitution of subsection (3) of the following subsection:

“(3). **[An accredited organisation operating a]** A registered child and youth care centre only qualifies for funding from money appropriated by a provincial legislature if it complies with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.”; and

(b) by the addition of the following subsection after subsection (3):

“(3A) A conditionally registered child and youth care centre qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards.”.

Amendment of section 194 of Act 38 of 2005

113. Section 194 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) The Minister, after consultation with the Ministers of Education, Health, Home Affairs, Justice and Constitutional Development, Public Works, Cooperative Governance and Traditional Affairs and any

other relevant Ministers, relevant stake-holders and relevant civil society organisations, must determine national norms and standards for child and youth care centres by regulation. [after consultation with interested persons and the Ministers of Education, Health, Home Affairs, and Justice and Constitutional Development.]”;

- (b) by the insertion after subsection (2) paragraph (l) of the following paragraph:

“(IA) access to rehabilitation services for children with disabilities;”.

Amendment of section 197 of Act 38 of 2005

114. Section 197 of the principal Act is hereby amended by the substitution in section 197 for the words preceding paragraph (a) of the following words—

“Any national or provincial state department responsible for social development, municipality and **[accredited]** a designated child protection organisation may establish and operate a child and youth care centre provided that the centre-”.

Amendment of section 199 of Act 38 of 2005

115. Section 199 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“ (1) An application for registration **[or conditional registration]** of a child and youth care centre established as referred to in section 197 or for the renewal of such a registration must-”; and

- (b) by the substitution of subsection (4) of the following subsection:

“(4) The provincial head of social development must renew the reg-

istration of a **[partial care facility]** child and youth care centre before the expiration thereof if the application for renewal was lodged at least 90 days before the registration was due to expire as contemplated in subsection (3).”.

Amendment of section 200 of Act 38 of 2005

116. Section 200 of the principal Act is hereby amended—

(a) by the substitution of subsection(4) of the following subsection:

“(4) The provincial head of social development must consider a report of a **[designated social worker]** social service practitioner before deciding an application for registration or renewal of registration.”; and

(b) by the substitution of subsection (5) of the following subsection:

“(5) Notwithstanding the provisions of section 193 (3) a provincial head of social development may assist the person or organisation operating a child and youth care centre, where conditional registration was granted, to comply with the prescribed national norms and standards contemplated in section 194 and such other requirements as may be prescribed.”.

Amendment of section 201 of Act 38 of 2005

117. Section 201 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

“**[Conditional registration] Conditions relating to registration**”;

(b) by the substitution in subsection (1) for the words preceding paragraph

(a) of the following words:

“**201.** The registration or renewal of registration of a child and youth care centre may be granted on such conditions as the provincial head of social development may determine, including **[conditions]**”-“;

(c) by the substitution of paragraph (a) of the following paragraph:

"(a) conditions specifying the type of residential care programme that may or must be provided in terms of the registration;"

(d) by the substitution of paragraph (b) of the following paragraph:

"(b) **[stating]** a specification of the period **[for]** within which the **[conditional registration will remain valid]** conditions must be complied with, which may not be longer than **[one year]** two years;" and

(e) by the substitution of paragraph (c) of the following paragraph:

"(c) **[providing for]** any other matters that may be prescribed."

Amendment of section 205 of Act 38 of 2005

118. Section 205 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

"The **[holder of a registration of]** department, municipality or organisation operating a child and youth care centre **[who]** that voluntarily closes **[a child and youth care]** such centre must, within 90 days prior to such closure—"

(b) by the deletion of the word "and" at the end of paragraph (a); and the substitution of paragraph (b) of the following paragraph:

"(b) surrender the certificate of registration to the provincial head of social development for cancellation**[.]**; and;" and

(c) by the addition of the following paragraph:

"(c) submit a report to the provincial head of social development

that details the arrangements made for children who had been resident at the child and youth care centre.”.

Amendment of section 208 of Act 38 of 2005

119. Section 208 of the principal Act is hereby amended—

(a) by the substitution of subsection(2) for paragraph (a) of the following paragraph:

“ (a) the **[MEC for]** provincial head of social development in the relevant province or a municipal manager in accordance with a prescribed procedure, in the case of a child and youth care centre which is operated by the province or municipality respectively;” and

(b) by the substitution of subsection(2) for paragraph (b) of the following paragraph:

“ (b) the **[registration holder]** organisation operating a child and youth care centre, in accordance with a prescribed procedure, in the case of a privately operated child and youth care centre.”.

Amendment of section 209 of Act 38 of 2005

120. Section 209 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words—

“(1) The **[person or]** organisation operating a child and youth care centre or the management board must appoint or designate-”

Amendment of section 211 of Act 38 of 2005

121. Section 211 of the principal Act is hereby amended by the substitution in subsection (2) of paragraph (d) of the following paragraph—

“ (d)the team not connected to the centre **[must]** may, in appro-

priate cases, appoint a mentor to oversee implementation of the plan by the management of the centre.”.

Amendment of section 212 of Act 38 of 2005

122. Section 212 of the principal Act is hereby amended by the insertion after paragraph (a) subparagraph (i) of the following subparagraph–

“(iA) applications for conditional registration of child and youth care centres;”.

Amendment of section 213 of Act 38 of 2005

123. Section 213 of the principal Act is hereby amended–

(a) by the substitution of subsection (1) of the following subsection:

“(1) A drop-in centre is a non-residential facility providing basic services aimed at meeting the emotional, physical and social development needs of vulnerable children.”;

(b) by the insertion in subsection (2) after subparagraph (a) of the following subparagraph:

“(aA) psychosocial support;”;

(c) by the substitution in subsection (3) for subparagraph (a) of the following subparagraph:

“(a) Guidance **[,] and** counselling **[and psychosocial support];**”;

(d) by the insertion in subsection (3) after subparagraph (a) of the following subparagraph:

“(aA) cognitive and spiritual;”;

(e) by the substitution in subsection (3) for subparagraph (h) of the following subparagraph:

"(h) reporting and referral of children to social workers or social service **[professionals]** practitioners;".

Amendment of section 214 of Act 38 of 2005

124. Section 214 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

"(1) The Minister, after consultation with **[interested persons and]** the Ministers **[of]** responsible for Finance, Health, Provincial and Local Government, **[and]** Transport and any other relevant Ministers, relevant stake-holders and relevant civil society organisations, must include in the departmental strategy a strategy aimed at ensuring an appropriate spread of drop-in centres throughout the Republic, giving due consideration as provided in section 11, to children with disability or chronic illnesses.'.

Amendment of section 215 of Act 38 of 2005

125. Section 215 of the principal Act is hereby amended by—

(a) the insertion after subsection (3) of the following subsection:

" (3A) A conditionally registered drop-in centre qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards." ;

(b) the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

— " (4) **[The funding of drop-in centres must be prioritised]** The MEC for social development may prioritise [The] the funding of drop in centres-; and

(c) the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) in poverty declared wards in the province, taking into consid-

eration the national and provincial strategies contemplated in section 77 and in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children; **[and]**” .

Amendment of section 216 of Act 38 of 2005

126. Section 216 of the principal Act is hereby amended by the by the substitution of subsection (1) for the following subsection-

“(1) The Minister “ after consultation with the Ministers responsible for Health, Public Works, Cooperative Governance, Transport and Traditional Affairs and any other relevant Ministers, relevant stake-holders and relevant civil society organisations, must determine national norms and standards for drop-in centres by regulation. **[after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government, and Transport]**”.

Amendment of section 218 of Act 38 of 2005

127. Section 218 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) An application for the registration, **[or conditional registration]** of a drop-in centre or for the renewal of a registration must-”;

(b) by the substitutions in subsection (1) for paragraph (a) of the following paragraph:

“(a) be lodged, in accordance with **[a]** the prescribed **[procedure]** procedures, with the provincial head of social development in which the drop-in centre is or will be situated;” and

(c) by the substitutions in subsection (1) for paragraph (c) of the following

paragraph:

"(c) be accompanied by any documents as may be prescribed or, in the case of conditional registration, such prescribed documents." .

Amendment of section 219 of Act 38 of 2005

128. Section 219 of the principal Act is hereby amended—

(a) by the substitution of subsection (4) of the following subsection:

"(4) The provincial head of social development must consider a report of a social service **[professional]** practitioner before deciding an application for registration, conditional registration or renewal of registration."; and

(b) by the substitution of subsection (5) of the following subsection:

"(5) Notwithstanding the provisions of section 215 (3) a provincial head of social development may assist the person or organisation operating a drop-in centre where conditional registration was granted, to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.".

Amendment of section 220 of Act 38 of 2005

129. Section 220 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

"[Conditional registration] Conditions relating to registration";

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"220. [(1)] The registration or renewal of the registration of drop-in centres may be granted on such conditions as the pro-

vincial head of social development may determine, including **[conditions]**‑”;

(c) by the substitution of paragraph (a) of the following paragraph:

“(a) conditions specifying the type of services that may or must be provided in terms of the registration;”;

(d) by the substitution of paragraph (b) of the following paragraph:

“(b) **[stating]** a specification of the period **[for]** within which the **[conditional registration will remain valid]** conditions must be complied with; and”;

(e) by the substitution of paragraph (c) of the following paragraph:

“(c) **[providing for]** any other matters that may be prescribed.”;

and

(f) by the deletion of subsection (2):

“**[(2) A provincial head of social development may assist a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.]**”.

Amendment of section 224 of Act 38 of 2005

130. Section 224 of the principal Act is hereby amended by the substitution in subsection (1) of paragraph (b) of the following paragraph—

“(b) monitor drop-in centres and conduct regular inspections of **[drop-in]** such centres in the province in collaboration with the municipality where the drop-in centres are situated to enforce the provisions of this Act.”.

Amendment of section 225 of Act 38 of 2005

131. Section 225 of the principal Act is hereby amended by—

(a) the substitution of subsection (1) of the following subsection:

“(1) The **[provincial head]** MEC of social development may by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 217, 218, 219, 220, 221, 222 and 224 to the municipal manager after consultation with the municipal council, if the [provincial head] MEC of social development is satisfied that the municipality complies with the prescribed requirements with regards to the capacity of that municipality to perform the functions concerned.”; and

(b) the substitution of subsection (3) of the following subsection:

“(3) The municipal manager referred to in subsection (1) may delegate any power or duty assigned to him or her in terms of this section to a social service **[professional]** practitioner in the employ of the municipality.”.

Amendment of section 226 of Act 38 of 2005

132. Section 226 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection—

“**226.**(1) If a child is seriously injured or abused while in a drop-in centre or following an occurrence at a drop-in centre, the person operating the drop-in centre or a person employed at the drop-in centre must immediately report such injury or abuse to the provincial head of social development, who must **[cause an investigation into the circumstances of the serious injury or abuse to be conducted]** act in accordance with the provisions of section 110(5).”.

Amendment of section 232 of Act 38 of 2005

133. Section 232 of the principal Act is hereby amended –

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph

(a), the substitution of "." With ";" and the insertion of the word "and" the end of paragraph (b) and the addition of the following paragraph:

" (c) matching adoptable children with prospective adoptive parents.";

(b) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

"(b) the person is a citizen residing in or a permanent resident residing [of] in the Republic.";

(c) by the substitution in subsection (4) paragraph (b) for sub-paragraph (iv) of the following sub-paragraph:

"(iv) if the registered person is no longer a citizen residing in the Republic or permanent resident of the Republic;"

(c) by the deletion in subsection (5) of the word "and" at the end of paragraph (a), the deletion of "." and the insertion of the word "or" the end of paragraph (b) and the addition of the following subparagraph:

"(vii) if an adoption arising from the registration has been concluded.";
and

(e) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) a child protection organisation, a social worker in private practice or a social worker in the employ of the Department accredited in terms of section 251 to provide adoption services; or".

Amendment of section 233 of Act 38 of 2005

134. Section 233 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

" (a) each parent of the child, regardless of whether the parents are married or not: Provided that, if the parent is a child, that child-parent is assisted by his or her guardian to make such decision, if available, unless such assistance is dispensed with by the children's court with due regard to the best interests of the adoptable child and the child-parent;";

(b) by the substitution in subsection (6) paragraph (b) for subparagraph (i) of the following subparagraph:

"(i) signed by the person consenting, in the prescribed form, in the presence of a presiding officer of the children's court;" ; and

(c) by the substitution of subsection (8) of the following subsection:

"(8) A person referred to in subsection (1) who has consented to the adoption of the child may withdraw the consent within 60 days after having signed the consent, after which the consent is final, irrespective of the period of any delay in finalising the adoption."

Amendment of section 234 of Act 38 of 2005

135. Section 234 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) The parent, **[or]** guardian or a family member as contemplated in paragraphs (a), (b) and (c) of the definition of family member of a child may, before or during an application for the adoption of a child is made in terms of section 239, enter into a post-adoption agreement with a prospective adoptive parent of that child to provide for—" ; and

(b) by the insertion after subsection (4) of the following subsection:

"(4A) If a court in the course of an application in terms of section 239 concludes that a post adoption agreement would be in the best

interests of the child concerned, it may direct the parties to consider such agreement, including through mediation if necessary. ”.

Amendment of section 236 of Act 38 of 2005

136. Section 236 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) is incompetent to give consent due to mental illness or a mental health disability as supported by a report from a suitably qualified person in accordance with the Mental Health Care Act, 2002 (Act No. 17 of 2002);”; and

(b) by the deletion in subsection (3) of the word “or” at the end of paragraph (b); the substitution of “.” with “;” and insertion of the word “or” at the end of paragraph (c) and the addition of the following paragraph:

“(d) the court, following an allegation by the mother of the child, finds on a balance of probabilities that the child was conceived as a result of the mother being a victim of human trafficking: Provided that such a finding shall not constitute a conviction for the crime of human trafficking.”.

Amendment of section 239 of Act 38 of 2005

137. Section 239 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) be accompanied by a letter by the provincial head of social development **[recommending]** indicating compliance with the requirements in terms of this Act regarding the adoption of the child: Provided that when the provincial head does not issue the letter within 30 days of it being received, reports the rea-

son for such failure to Court within 14 days thereafter; and “;
and

(b) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“ (e) contain such **[prescribed]** particulars as may be prescribed.”.

Amendment of section 243 of Act 38 of 2005

138. Section 243 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph

(a) of the following words:

“ (1) A High Court or children's court may rescind an adoption order on application in the prescribed form by-“; and

(b) by the deletion in subsection (4) of the word “and” at the end of paragraph (c) and the insertion after subparagraph (c) of the following subparagraphs:

“(cA) the adoption registrar contemplated in section 247;

“(cB) the relevant provincial head of social development; and”.

Amendment of section 248 of Act 38 of 2005

139. Section 248 of the principal Act is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (e), the substitution of “.” with “;” and the deletion of the word “or” at the end of paragraph (f) and the addition of the following paragraph—

“(g) to such person or persons whom the adoption registrar contemplated in section 247 deems fit.”.

Amendment of section 249 of Act 38 of 2005

140. Section 249 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) a lawyer, psychologist or other professional person receiving standard fees and expenses for services provided in connection with an adoption;” and

(b) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) a child protection organisation or a social worker in private practice accredited in terms of section 251 to provide adoption services, receiving the prescribed fees;”.

Amendment of section 250 of Act 38 of 2005

141. Section 250 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (c), the substitution of “.” with “;” and the insertion of the word “and” the end of paragraph (d) and the addition of the following paragraph:

“(e) a social worker within the employ of the Department or a provincial department of social development who provides adoption services.”; and

(b) by the deletion of subsection (2) and (3):

“ **[(2) Subsection (1) does not prohibit the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of any other profession.**

(3) A welfare organisation referred to in section 107 which was lawfully engaged in providing adoption services when this section took effect may, despite the provisions of subsection (1), continue with such services for a period of two years without being accredited in terms of section 251 to provide

adoption services, but must within that period apply for such accreditation in terms of section 251.]”

Amendment of section 251 of Act 38 of 2005

142. Section 251 of the principal Act is hereby amended by the insertion after subsection(1) of the following subsection—

“(1A) The Director-General may in terms of a prescribed process withdraw an accreditation to provide adoption services.”.

Amendment of section 252 of Act 38 of 2005

143. Section 252 of the principal Act is hereby amended by the substitution in subsection (2) paragraph (b) of the following paragraph—

“(b) an advertisement by [a child protection organisation] **an adoption social worker [accredited to provide adoption services]** for purposes of recruitment, according to prescribed guidelines;”.

Amendment of section 253 of Act 38 of 2005

144. Section 253 of the principal Act is hereby amended—

(a) by the substitution of paragraph (e) of the following paragraph:

“(e)prescribing the requirements that a child [welfare] protection organisation has to comply with for accreditation as contemplated in section 251 to provide adoption services;”; and

(b) by the substitution of paragraph (f) of the following paragraph:

“(f) prescribing the requirements that a child [welfare] protection organisation has to comply with for accreditation as contemplated in section 259 to provide inter-country adoption services;”.

Amendment of section 258 of Act 38 of 2005

145. Section 258 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words—

“(2) Any powers or duties of the Central Authority in terms of Articles 15 to 21 of the Convention and sections 261 (2), (3) and (4), 262 (2), (3) and (4), 264 (2) and (3), and 265 (2) and (3) may, to the extent determined by the Central Authority, be performed by-”.

Amendment of section 259 of Act 38 of 2005

146. Section 259 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Central Authority of the Republic may, on application by a child protection organisation-”;

(b) by the insertion after subsection (3) of the following subsection:

“(3A) The Central Authority may in terms of a prescribed process withdraw an accreditation to provide inter-country adoption services.”;
and

(c) by the deletion of subsection (4):

“[(4) Subsection (1) does not prohibit the rendering of professional services in connection with the adoption of a child by a lawyer, psychologist or a member of another profession.]”.

Amendment of section 260 of Act 38 of 2005

147. Section 260 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) A child protection organisation accredited in terms of section 259 to provide inter-country adoption services may enter into an adoption working agreement with an equivalent organisation or accredited adoption agency in another country.”;

(b) by the substitution in subsection (2) paragraph (a) of the following paragraph:

“(a) must provide the Central Authority of the Republic with certified copies of all adoption working agreements entered into by that child protection organisation for approval thereof; and”;
and

(c) by the addition of the following subsection:

“(3) The Central Authority of the Republic may enter into an adoption working agreement with the central authority of another convention country.”.

Amendment of section 261 of Act 38 of 2005

148. Section 261 of the principal Act is hereby amended—

(a) by the substitution of subsection (2) of the following subsection:

“(2) If the central authority of the convention country concerned is satisfied that the applicant is fit and proper to adopt, it **[shall] must** prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and transmit the report to the Central Authority of the Republic.”;

(b) by the substitution of subsection (3) of the following subsection:

“(3) If an adoptable child is available for inter-country adoption, the Central Authority of the Republic **[will] must** prepare a report on the child in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and

forward it to the central authority of the convention country concerned.”;

(c) by the substitution of subsection (4) of the following subsection:

“(4) If the Central Authority of the Republic and the central authority of the convention country concerned both agree on the adoption, the Central Authority of the Republic **[will]** must refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 240.”;

(d) by the substitution in subsection (5) of paragraph (e) of the following paragraph:

“(e) the central authority of the convention country has agreed to the adoption of the child and has not withdrawn consent;”;

(e) by the substitution in subsection (5) paragraph (f) of the following paragraph:

“(f) the Central Authority of the Republic has agreed to the adoption of the child and has not withdrawn consent; and”;

(f) by the substitution of subsection (6) for paragraph (a) of the following paragraph:

“(6) **[(a)]** The Central Authority of the Republic may withdraw its consent to the adoption of the child **[within a period of 140 days from the date on which it has consented to the adoption]** at any time before the order for adoption is granted by the court, if it is in the best interests of the child to do so.”;

(g) by the deletion in section (6) of paragraph (b):

“[(b) In the event of the Central Authority of the Republic withdrawing its consent, the child must be returned to the Republic forthwith in the prescribed manner.]”;

(h) by the deletion of the following subsection:

“[(7) An order of court contemplated in subsection (5) takes effect only after the period referred to in subsection (6) has lapsed and the Central Authority has not withdrawn its consent within the stated period.]”; and

(i) by the substitution of subsection (8) of the following subsection:

“(8) [This section does not apply to] The adoption of a child habitually resident in the Republic by a family member of that child resident in a convention country or **and who is to be placed for adoption outside the Republic with a family member of that child] or [with] by a person who will become an adoptive parent jointly with the child's biological parent may be dealt with in the prescribed manner as an inter-country adoption: Provided that the Central Authority of the Republic may dispense with one or more of the formal requirements of inter-country adoption if it is in the best interest of the child concerned in the context of a specific case.”; and**

(i) by the deletion of the following subsection:

“[(9) The provisions of Chapter 15 apply to the adoption of a child referred to in subsection (8).]”.

Amendment of section 262 of Act 38 of 2005

149. Section 262 of the principal Act is hereby amended—

(a) by the substitution of subsection (2) of the following subsection:

“(2) If the competent authority of the non-convention country concerned is satisfied that the applicant is fit and proper to adopt, it [shall] must prepare a report on that person in accordance with the prescribed requirements and transmit the report to the Central Authority in the Republic.”;

(b) by the substitution of subsection (3) of the following subsection:

“(3) If an adoptable child is available for inter-country adoption, the Central Authority of the Republic **[will]** must 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.”;

(c) by the substitution of subsection (4) of the following subsection:

“(4) If the Central Authority of the Republic and the competent authority in the non-convention country concerned both agree to the adoption, the Central Authority of the Republic **[will]** must refer the application for adoption together with all relevant documents and the reports contemplated in subsections (2) and (3) to the children's court for consideration in terms of section 240.”;

(d) by the substitution in subsection (5) paragraph (e) of the following paragraph:

“(e) the competent authority of the non-convention country concerned has agreed to the adoption of the child and has not withdrawn consent;”;

(e) by the substitution in subsection (5) paragraph (f) of the following paragraph:

“(f) the Central Authority of the Republic has agreed to the adoption of the child and has not withdrawn consent; and”;

(f) by the substitution of subsection (6) of the following subsection:

“(6) **[(a)]** The Central Authority of the Republic may withdraw its consent to the adoption of the child **[within a period of 140 days from the date on which it has consented to the adoption]** at any time before the order for adoption is granted by the court, if it is in the best interests of the child to do so.”;

(g) by the deletion in subsection (6) for paragraph (b):

“[(b) In the event of the Central Authority of the Republic withdrawing its consent, the child must be returned to the Republic forthwith in the prescribed manner.]”;

(h) by the deletion of the following subsection:

“[(7) An order of court contemplated in subsection (5) takes effect only after the period referred to in subsection (6) has lapsed and the Central Authority has not withdrawn its consent within the stated period.]”;

(i) by the substitution of subsection (8) of the following subsection:

“(8) [This section does not apply to a child habitually resident in the Republic and who is to be placed for adoption outside the Republic with a family member of that child or with a person who will become an adoptive parent jointly with the child's biological parent.] The adoption of a child habitually resident in the Republic by a family member of that child resident in a non-convention country or by a person who will become an adoptive parent jointly with the child's biological parent may be dealt with in the prescribed manner as an inter-country adoption: Provided that the Central Authority of the Republic may dispense with one or more of the formal requirements of inter-country adoption if it is in the best interest of the child concerned in the context of a specific case.”; and

(i) by the deletion of the following subsection:

“[(9) The provisions of Chapter 15 apply to the adoption of a child referred to in subsection (8).]”.

Amendment of section 263 of Act 38 of 2005

150. Section 263 of the principal Act is hereby amended by the substitution of section 263 of the following section—

“If the children's court has approved the adoption of a child in

terms of section 261 or 262, the Central Authority of the Republic **[may]** must issue an adoption compliance certificate.”.

Amendment of section 264 of Act 38 of 2005

151. Section 264 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(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 of the Republic.”;

(b) by the substitution of subsection (2) of the following subsection:

“(2) If the Central Authority is satisfied that the applicant is fit and proper to adopt, it **[shall]** must prepare a report on that person in accordance with the requirements of the Hague Convention on Inter-country Adoption and any prescribed requirements and transmit the report to the central authority of the convention country concerned.”;

(c) by the substitution of subsection (3) of the following subsection:

“(3) If an adoptable child is available for adoption, the central authority of the convention country concerned **[shall]** must 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 of the Republic.”; and

(d) by the substitution of subsection (4) of the following subsection:

“(4) If the Central Authority of the Republic and the central authority of the convention country concerned both agree to the adoption, the central authority in that country **[will]** must refer the application for adoption for the necessary consent in that country.”.

Amendment of section 265 of Act 38 of 2005

152. Section 265 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(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 of the Republic.”;

(b) by the substitution of subsection (2) of the following subsection:

“(2) If the Central Authority is satisfied that the applicant is fit and proper to adopt, it **[shall]** must 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.”;

(c) by the substitution of subsection (3) of the following subsection:

“(3) If an adoptable child is available for adoption, the competent authority of the non-convention country concerned **[shall]** must prepare a report on the child in accordance with the prescribed requirements and transmit it to the Central Authority of the Republic.”; and

(d) by the substitution of subsection (1) of the following subsection:

“(4) If the Central Authority of the Republic and the competent authority of the non-convention country concerned both agree to the adoption, the competent authority of that country **[will]** must refer the application for adoption for the necessary consent in that country.”.

Amendment of section 266 of Act 38 of 2005

153. Section 266 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(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]** must be recognised in the Republic if an adoption compliance certificate issued in that country is in force for the adoption.”;

(b) by the substitution of subsection (2) of the following subsection:

“(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]** must 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.”;

(c) by the substitution of subsection (3) of the following subsection:

“(3) If an adoption compliance certificate was not issued in the relevant convention country, the Central Authority of the Republic may issue a declaration recognising the adoption in the prescribed form.”;

(d) by the substitution of subsection (5) of the following subsection:

“(5) The adoption of a child referred to in subsections (1) and (2) **[shall]** may not be recognised if a declaration is made in terms of section 270 that an adoption or a decision in terms of article 27 of the Hague Convention on Inter-country Adoption has no effect in the Republic.”; and

(e) by the addition of the following subsection:

“(6) The adoption order made in another country may be recognised in the Republic irrespective of whether the adopted child is an adult at the time of application for recognition: Provided that the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made.”.

Amendment of section 268 of Act 38 of 2005

154. Section 268 of the principal Act is hereby amended —

(a) by the substitution for the words preceding paragraph (a) of the following words:

“(1) The Central Authority of the Republic may issue a declaration

recognising the adoption of a child in a non-convention country in the prescribed form if-”;

(b) by the addition of the following subsection”

“ (1A) The adoption in a non-convention country of a child habitually resident in that country by a person habitually resident in another non-convention country must be recognised in the Republic if an adoption compliance certificate issued in the non-convention country where the adoption was granted is in force for the adoption.”.

Amendment of section 271 of Act 38 of 2005

155. Section 271 of the principal Act is hereby amended by the addition of the following subsection—

“ (3) Where guardianship of a child has been given by a convention or non-convention country, and such guardianship is not equivalent and recognised as an adoption by the central authority of the Republic, such child must be returned in the prescribed manner to the country of origin for formal inter-country adoption application.”.

Insertion of section 278A in Act 38 of 2005

156. The following section is hereby inserted in the principal Act after section 278—

“Expeditious proceedings

278A. (1) Expeditiousness is essential at all stages of proceedings under this Chapter and delay must be avoided in the finalisation of any such proceedings.

(2) An application under this Chapter for the return of a child, must be brought on an urgent basis in the relevant division of the high court or a court specially allocated on an urgent basis by the judge president of the relevant division of the high court and must as far as possible be concluded within six weeks from the day of institu-

tion of the application.

(3) In the event of an appeal against the decision of a high court in an application for return of a child, such appeal must as far as is practicable be concluded within six weeks from the day of institution of the appeal.

(4) An application under this Chapter for the return of a child that has been set down for hearing may only be postponed if exceptional reasons are present justifying a delay in the proceedings.”.

Amendment of section 279 of Act 38 of 2005

157. Section 279 of the principal Act is hereby amended—

(a) by the substitution of the following subsection:

“(1) A legal representative must represent the child [**, subject to section 55,**] in all applications in terms of the Hague Convention on International Child Abduction.”; and

(b) by the addition of the following subsection:

“(2) On the day of an application for the return of a child in terms of this Chapter, the Central Authority of the Republic must bring the application to the attention of the judge president of the relevant division of the high court for the appointment of a legal representative for the child.”.

Repeal of Chapter 18 of Act 38 of 2005

158. Chapter 18 of the principal Act is hereby repealed.

“[TRAFFICKING IN CHILDREN

(ss 281-291)

Purposes of Chapter

281. The purposes of this Chapter are-

- (a) to give effect to the UN Protocol to Prevent Trafficking in Persons; and**
- (b) generally to combat trafficking in children.**

UN Protocol to Prevent Trafficking in Persons to have force of law

282. 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.

International co-operation

283. (1) The President may on such conditions as he or she deems fit-

- (a) enter into an agreement with a foreign State that is not a State Party to the UN Protocol to Prevent Trafficking in Persons in respect of any matter pertaining to trafficking in children; and**
- (b) enter into an agreement with a foreign State that is a State Party to the UN Protocol to Prevent Trafficking in Persons in respect of any matter pertaining to trafficking in children for the purpose of supplementing the provisions of the Protocol or to facilitate the application of the principles contained therein.**

(2) An agreement contemplated in subsection (1) may not be in conflict with the provisions of the UN Protocol to Prevent Trafficking in Persons.

(3) The President may agree to any amendment or revocation of an agreement contemplated in subsection (1).

(4) An agreement contemplated in subsection (1) or any amendment to or revocation thereof, shall not be of any force or effect until such agreement, amendment or revocation has been approved by Parliament.

Trafficking in children prohibited

284. (1) No person, natural or juristic, or a partnership may traffic a child or allow a child to be trafficked.

(2) It is no defence to a charge of contravening subsection (1) that-

(a) a child who is a victim of trafficking or a person having control over that child has consented to-

(i) the intended exploitation; or

(ii) the adoption of the child facilitated or secured through illegal means; or

(b) the intended exploitation or adoption of a child referred to in paragraph (a) did not occur.

(3) In order to establish the liability, in terms of subsection (1), of an employer or principal, the conduct of an employee or agent of or any other person acting on behalf of the employer or principal may be attributed to the employer or principal if that person is acting-

(a) within the scope of his or her employment;

(b) within the scope of his or her actual or apparent authority; or

(c) with the express or implied consent of a director, member or partner of the employer or principal.

(4) A finding by a court that an employer or principal has contravened subsection (1) serves as a ground for revoking the licence or registration of the employer or principal to operate.

Behaviour facilitating trafficking in children prohibited

285. (1) No person, natural or juristic, or a partnership, may-

(a) knowingly lease or sublease or allow any room, house, building or establishment to be used for the purpose of harbouring a child who is a victim of trafficking; and

(b) advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcast or distribution of information that suggests or alludes to trafficking by any means,

including the use of the Internet or other information technology.

(2) Every Internet service provider operating in the Republic must report to the South African Police Service any site on its server that contains information in contravention of subsection (1).

Assistance to child who is victim of trafficking

286. (1) With due regard to the safety of a child and without delay-

(a) the Director-General: Foreign Affairs must facilitate the return to the Republic of a child who is a citizen or permanent resident of the Republic and who is a victim of trafficking; and

(b) the Director-General: Home Affairs must-

(i) facilitate and accept the return of a child contemplated in paragraph (a);

(ii) issue such travel documents or other authorisations as may be necessary to enable such a child to travel to and enter the Republic;

(iii) at the request of another state that is a party to the UN Protocol to Prevent Trafficking in Persons or to an agreement relating to trafficking in children, verify that the child who is a victim of trafficking is a citizen or permanent resident of the Republic; and

(iv) upon the child's entry into the Republic refer the child to a designated social worker for investigation in terms of section 155 (2).

(2) (a) If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.

(b) The Director-General may not act in terms of paragraph (a) unless he or she is satisfied that the parent, guardian, care-giver or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place

where the child is in order to escort the child back.

Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child

287. If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may-

- (a) suspend all parental responsibilities and rights of that parent, guardian, or other person; and**
- (b) place that child in temporary safe care, pending an inquiry by a children's court.**

Reporting of child who is victim of trafficking

288. An immigration official, police official, social worker, social service professional, medical practitioner or registered nurse who comes into contact with a child who is a victim of trafficking in the Republic must refer that child to a designated social worker for investigation in terms of section 289 (1).

Child who is victim of trafficking found in Republic

289. (1) A child who is a victim of trafficking-

- (a) must be referred to a designated social worker for investigation in terms of section 155 (2); and**
- (b) may, pending such investigation, be placed in temporary safe care.**

(2) If, after an investigation contemplated in subsection (1), an illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act, 1998 (Act 130 of 1998).

(3) A finding in terms of section 156 that an illegal foreign child who is a victim of trafficking is a child in need of care and protection serves as authorisation for allowing the child to remain in the Republic for the duration of the children's court order.

Repatriation of child who is victim of trafficking

290. (1) The Director-General may not return a child contemplated in section 289 (2) to his or her country of origin or the country from where the child has been trafficked without giving due consideration to-

- (a) the availability of care arrangements in the country to which the child is to be returned;**
- (b) the safety of the child in the country to which the child is to be returned; and**
- (c) the possibility that the child might be trafficked again, harmed or killed.**

(2) (a) If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.

(b) The Director-General may not act in terms of paragraph (a) unless he or she is satisfied that the parent, guardian, care-giver or other person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back.

Extra-territorial jurisdiction

291. A citizen or permanent resident of the Republic, a juristic person or a partnership registered in terms of any law in the Republic that commits an act outside the Republic which would have constituted an offence in terms of this Chapter had it been committed inside the Re-

public, is guilty of that offence as if the offence had been committed in the Republic and is liable on conviction to the penalty prescribed for that offence.]”.

Amendment of part preceding section 292 of Act 38 of 2005

159. The heading of Chapter 19 preceding section 292 of the principal Act, is hereby amended by the substitution for the heading of the following heading—

“CHAPTER [19]18

SURROGATE MOTHERHOOD

(ss [292-303] 281-292)”

Amendment of section 292 of Act 38 of 2005

160. Section 292 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) paragraph (c) of the following paragraph:

“(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]** habitually resident in the Republic;”;

(b) by the substitution in subsection (1) paragraph (d) of the following paragraph:

“(d)the surrogate mother and her husband or partner, if any, are at the time of entering into the agreement **[domiciled]** habitually resident in the Republic; and”;

(c) by the substitution in subsection (1) paragraph (e) of the following paragraph:

“(e) the agreement is confirmed by the High Court within whose

area of jurisdiction the commissioning parent or parents are **[domiciled or]** habitually resident.”.

Amendment of section 294 of Act 38 of 2005

161. Section 294 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

“(1) **[No]** Subject to subsection (2), 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.”; and

(b) by the addition of the following subsection:

“(2) The High Court may, upon application and on good cause shown, deviate from the provisions of subsection (1).”.

Amendment of section 295 of Act 38 of 2005

162. Section 295 of the principal Act is hereby amended—

(a) by the substitution in paragraph (b) for subparagraph (ii) of the following subparagraph:

“(ii) are in all respects, including health and age, a suitable persons to accept the parenthood of the child that is to be conceived; and”;

(b) by the substitution in paragraph (c) for subparagraph (ii) of the following subparagraph:

“(ii) is in all respects, including health and age, a suitable person to act as surrogate mother;”;

(c) by the deletion of the following subparagraphs:

“ [(vi) has a documented history of at least one pregnancy and viable delivery; and (vii) has a living child of her own;]”;

(d) by the insertion after paragraph (d) of the following paragraph:

“(dA)the agreement is accompanied by-

- (i) a report from a psychologist containing a psychosocial assessment of all parties to the agreement;
- (ii) in the case of involvement of an agency, an affidavit by such agency describing-
 - (aa) the business of the agency;
 - (bb) whether any form of payment was or is to be paid to or by the agency in regard to any aspect of the surrogacy;
 - (cc) the agency’s involvement regarding the introduction of the surrogate mother and the manner in which information regarding the surrogate mother was obtained by the agency; and
 - (dd) whether the surrogate mother received any compensation from the agency or the commissioning parents;
- (iii) an indication as to whether confirmation of any surrogate motherhood agreement was previously sought, and if so, the court division in which the confirmation was sought, whether the confirmation was granted or refused and, in the case of a refusal, the reasons for such refusal;
- (iv) a medical report regarding the surrogate mother which must include details as to whether the proposed surrogacy poses any medical risk for her or the child;
- (v) an indication of the circumstances under which the commissioning parents and the surrogate mother met and the reasons for the surrogate mother’s willingness to act as surrogate;
- (vi) an indication of the circumstances of the surrogate mother including her financial position;

- (vii) details and proof of payment of any compensation for services rendered, either to the surrogate mother herself or to the donor, the relevant clinic or any third party involved in the process;
- (viii) copies of all agreements between the surrogate mother and any intermediary or any other person who is involved in the process; and
- (ix) an exposition of estimated costs pertaining to health insurance and life insurance relating to the surrogate mother.”; and

(e) by the deletion of the following paragraph:

“[(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.]”.

Amendment of section 297 of Act 38 of 2005

163. Section 297 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph—

“ (e) subject to sections **[292]** 298 and **[293]** 299, the surrogate motherhood agreement may not be terminated after the artificial fertilisation of the surrogate mother has taken place; and”.

Insertion of section 303A in Act 38 of 2005

164. The following section is hereby inserted in the principal Act after section 303—

“Regulations

303A. The Minister, in consultation with the Minister of

Health, may make regulations regarding any matter necessary to facilitate the implementation of this Chapter, including the requirements to be complied with by any agency involved in surrogacy.”.

Amendment of part preceding section 304 of Act 38 of 2005

165. The heading of Chapter 20 preceding section 304 of the principal Act, is hereby amended by the substitution for the heading of the following heading—

“CHAPTER [20]19

ENFORCEMENT OF ACT

(ss [304-305] 293-294)”.

Amendment of section 304 of Act 38 of 2005

166. Section 304 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

“Inspection of child and youth care centre, partial care facility[, shelter] and drop-in centre”;

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“ (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-”;

(c) by the substitution in subsection (1) paragraph (a) of the following

paragraph:

"(a) to inspect that centre, facility [**, shelter**] or place and its management; or";

(d) by the substitution in subsection (2) paragraph (b) of the following paragraph:

"(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."; and

(e) by the substitution in subsection (3) for paragraph(a) for the words preceding subparagraph (i) of the following words:

" (a)determine whether the centre, facility [**, shelter**] or place complies with-".

Amendment of section 305 of Act 38 of 2005

167. Section 305 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

"Offences and penalties";

(b) by the substitution in subsection (1) of paragraph (b) of the following paragraph:

"(b) contravenes a provision of section 6A; 32 (4), [**74,**] 116 (1), 123 (1), (2) or (3), 127, 133 (1), 249, 250 (1), 252, 273, 301, 302 or 303;";

(c) by the substitution in subsection (1) of paragraph (f) of the following paragraph:

"(f) fails to comply with section 80 (1), 95 (1), 197 [**(1)**] or 217 (1) after that person has been instructed by way of a notice of enforcement in terms of section 85, 100, 204 or 222 to comply with the relevant section;";

(d) by the substitution in subsection (1) of paragraph (q) of the following paragraph:

"(q) contravenes or fails to comply with an order of a High Court, **[Divorce Court]** regional 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;" and

(e) by the substitution in subsection (2) of paragraph (a) of the following paragraph:

"(a) operates or assists in any way in operating a partial care facility, child and youth care centre **[, shelter]** or drop-in centre;"

Amendment of part preceding section 306 of Act 38 of 2005

168. The heading of Chapter 21 preceding section 306 of the principal Act, is hereby amended by the substitution for the heading of the following heading—

"CHAPTER [21]20

ADMINISTRATION OF ACT

(ss **[306-312]** 295-300)".

Amendment of section 306 of Act 38 of 2005

169. Section 306 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) any matter referred to in sections 41A, 90, 103, 142, 149A,

160, 179, 190, 212, 227, 253, **[and]** 280 and 303A;"

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(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;"

(c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(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;"

(d) by the substitution in subsection (2) in paragraph (a) for subparagraph (iii) of the following subparagraph:

"(iii) generally to all child and youth care centres, partial care facilities **[, shelters]** or drop-in centres or to a category of such centres, facilities **[, shelters]** or drop-in centres; or"; and

(e) by the substitution in subsection (2) paragraph (b) for subparagraph (iii) of the following subparagraph:

"(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."

Amendment of section 312 of Act 38 of 2005

170. Section 312 of the principal Act is hereby amended—

(a) by the substitution of subsection (1) of the following subsection:

"**312.**(1) The Minister may, subject to the departmental strategic plan, enter into an agreement with a designated child protection or-

organisation or other appropriate person, for the provision of any service that may or must be provided in terms of this Act, by such organisation or person on an agency basis on national level.";

(b) by the insertion after subsection (1) of the following subsection:

"(1A) An MEC for social development may, subject to any provincial strategic plan, enter into an agreement with a designated child protection organisation or other appropriate person, for the provision of any service that may or must be provided in terms of this Act, by such organisation or person on an agency basis in the relevant province."; and

(c) by the substitution of subsection (2) of the following subsection:

"(2) The Minister or relevant MEC, as the case may be, 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."

Short title and commencement

171. This Act is called the Children's Third Amendment Act, 2018.