

**REPUBLIC OF SOUTH AFRICA**

**DEPARTMENT OF SOCIAL DEVELOPMENT**

**CHILDREN'S AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory  
summary of Bill published in Government Gazette No. of ) (The English text is the  
official text of the Bill)*  
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**(MINISTER OF SOCIAL DEVELOPMENT)**

**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.

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**BILL**

To amend the Children's Act, 2005, so as to amend and insert certain definitions; to provide for reference to applicable legislation regulating children's privacy;; to further regulate the rights of unmarried fathers; to extend the children's court jurisdiction; to further provide for funding of early childhood development programmes; to provide for the designation and functions of a National Child Protection Registrar; to further regulate the care of abandoned or orphaned children; to further regulate the initiation of care and protection proceedings; to further regulate the medical testing of children; to further provide for matters relating to children in alternative care; to further regulate matters relating to adoption and inter-country adoption; to further provide for the hearing of child abduction matters; to further provide for matters relating to surrogate motherhood ; to align the Act with the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, Jurisdiction of Regional Courts Amendment Act, 2008; to provide for additional matters that may be regulated; and to provide for matters connected therewith.

**BE IT 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 child'** [ ,in relation to a child,] means a child **who**—

- (a) **[who]** has **[obviously]** been deserted by **[the]** a parent, guardian or care-giver; or
- (b) [has] for no apparent reason, had no contact with the parent, guardian or care-giver for a period of at least three months; or
- (c) has no knowledge as to the whereabouts of the parent, guardian or caregiver and such information cannot be ascertained by the relevant authorities.;

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

" **'adoption service'** includes—

- (a) counselling of **[the]** a 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 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]** auxiliary worker or a social  
service practitioner responsible for 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 of paragraph (a) in the definition of "care" for the following paragraph:

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

(i) a [suitable] place to live;

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

(iii) the necessary financial support;

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

(f) by the deletion of the definition of "circumcision".

(g) 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]** clerk of the children's court appointed or designated as such either in terms of section 67 of this Act ; or section 13 of the Magistrate's Act, 1944 (Act No. 32 of 1944);";

- (h) 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 **[by a non-profit organisation]** and operated by a designated child protection organisation or the provincial department of social development and registered by the provincial head of social development for this purpose;";

- (i) by the deletion of the definition of "divorce court";
- (j) 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 development programme, for children from birth to school going age;";

- (k) 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 to school going age or a service or support provided to a 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);"

- (l) 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, 1987 (Act No. 24 of 1987);"

- (m) 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) removes any part of the genital; or  
(c) alter genital organs;"

- (n) 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 Protection of Children and Cooperation in respect of Inter-country Adoption and the provisions of this Act;"

- (o) 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);";

- (p) 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);";

- (q) 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 parent or both parents are deceased;";

- (r) by the substitution for paragraph (e) in the definition of "party" of the following definition:

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

- (s) 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);";

- (t) 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-givers, but not necessarily from other adult family members, including a child accompanied by an adult family member;";

- (u) by the substitution for the definition of "sexual abuse" of the following definition:

" **'sexual abuse'** 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 sexual offence against a child punishable under the common law or in terms of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007 and includes any act of a sexual nature that constitutes an offence against a child;";
- (v) by the deletion of the definition of "social service professional" and the insertion of the following definition:

**" 'social service practitioner'** means any person registered in a social service profession or occupation with the South African Council of Social Service Professions as contemplated in the Social Service Professions Act, 1978 (Act No. 110 of 1998) to practise and render a service within the social service sector

- (w) 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 in the care of an approved



person, including the place 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;";

- (x) by the insertion after the definition of "traditional authority" of the following definition:

" 'unaccompanied migrant child' means a child who is not a citizen of the Republic of South Africa 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;"

- (y) 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), Civil Union Act, 2006 (Act 17 of 2006) 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."

## **Amendment of section 6 of Act 38 of 2005**

**2.** 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 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 in Act 38 of 2005**

3. The following section is hereby inserted in the principal Act after section 6—

#### **"Children's right to privacy and privacy of personal information**

**6A.** (1) A child's right to privacy and the protection of a child's personal information is subject to any provisions in the Film and Publication Act, 1996 (Act No. 65 of 1996); Protection of Personal Information Act, 2013 (Act No 4 of 2013); the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010); the Criminal Procedure Act, 1977 (Act No. 51 of 1977) or any other law protecting the privacy and protection of personal information of the child."

### **Amendment of section 7 of Act 38 of 2005**

4. Section 7 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word "and" at the end of paragraph

(m);

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

“which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child [.] and” and

- (c) by the insertion in subsection (1) after paragraph (n) of the following paragraph—

"(o) any special needs that a child may have."

#### **Amendment of section 8 of Act 38 of 2005**

5. Section 8 of the principal Act is hereby amended by the insertion after subsection 3 of the following subsection—

"(4) This Act applies to every child in the Republic of South Africa."

#### **Amendment of section 12 of Act 38 of 2005**

6. Section 12 of the principal Act is hereby amended-

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

(a) “[**A child-**

**below the minimum age set by law for a valid marriage may not be given out in marriage or engagement;]** Any marriage between a child and another child or between a child and an adult person is prohibited; and

- (b) by the substitution for paragraph (b) of subsection (2) of the

following paragraph:

“(b) **[above that minimum age may not given out in marriage or engagement without his or her consent.]** No consent by a parent or parents or guardian or anyone whomsoever shall validate any marriage between a child and another child or between a child and an adult person.

(c) by the substitution for subsection (3) of the following subsection—

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

#### **Amendment of section 13 of Act 38 of 2005**

7. Section 13 of the principal Act, is hereby amended by the substitution for 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 the heading of Part 1 of Chapter 3 of Act 38 of 2005**

8. The following heading is hereby substituted for Part 1 of Chapter 3 of the principal Act—

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

#### **Amendment of section 19 of Act 38 of 2005**

9. 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

**10.** 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 **[birth]** conception, or any time between the child's conception and birth, [he] the biological father is living with the biological mother **[in a permanent life-partnership]**; or";

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

"(b) if he, regardless of whether he has lived or is living with the biological mother—";

(c) by the substitution in subsection (1) of 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]**";;

(d) by the substitution in subsection (1) of 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]**.";

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

"(1A) A 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 jointly;
- (b) the biological father, after reaching an agreement during the mediation process referred to in subsection (3); or
- (c) the biological father, if –
  - (i) he has, in terms of subsection (3), referred the matter for mediation ;and
  - (ii) the mother after receiving such notice of mediation unreasonably refuses to attend the mediation, and 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).";
- (f) by the substitution for 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 as may be prescribed".
- (g) by the deletion of subsection (3)(b).

### **Insertion of heading Part 1A after section 21 in Act 38 of 2005**

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

**"Part 1A**

**Acquisition and loss of parental responsibilities and rights.**

(ss 22-29)".

**Amendment of section 22 of Act 38 of 2005**

**12.** Section 22 of the principal Act is hereby amended—

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

"(2A) A child who is the subject of a parental responsibilities and rights agreement, if he or she is of sufficient maturity and mental capacity, must be given the opportunity to express his or her views regarding the content of such agreement.";

(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] 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.

**Amendment of section 23 of Act 38 of 2005**

**13.** 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]** regional court in divorce matters or the children's court, in the prescribed manner, 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 for 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 may—

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

(b) **[may]** suspend **[the first-mentioned]** such application on any

conditions it may determine."

#### **Amendment of section 25 of Act 38 of 2005**

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

"25. **[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, may be referred to a children's court having jurisdiction to be dealt with as if it was an application for an inter-country adoption or in exceptional circumstances, as if it was an application for guardianship for the purposes of the Hague Convention on Inter-country Adoption and Chapter 16 of this Act."

#### **Amendment of section 28 of Act 38 of 2005**

15. 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]** regional court in a divorce matter or a children's court for an order—

#### **Amendment of section 29 of Act 38 of 2005**

**16.** Section 29 of the principal Act is hereby amended—

(a) by the substitution for 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]** 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."

(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 or social worker for an investigation."

### **Amendment of heading of Part 2 of Chapter 3 of Act 38 of 2005**

**17.** The following heading is hereby substituted for the heading of Part 2 of Chapter 3 of the principal Act—

#### ***"Part 2***

#### ***Co-exercise of parental responsibilities and rights***

*(ss 30-~~[32]~~ 35)".*

## Insertion of section 30A in Act 38 of 2005

18. 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.

(3) The residence of the child will 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. ..

(5) If the parents cannot agree on the residence of the child, before seeking the intervention of a court, they must first seek mediation through a family advocate, social worker or such other suitably qualified person as may be prescribed."

## Deletion of heading of Part 3 of Chapter 3 of Act 38 of 2005

19. The heading for Part 3 of Chapter 3 of the principal Act is hereby

deleted.

### **Amendment of section 34 of Act 38 of 2005**

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

- "(4A) An application contemplated in subsection (4) must be submitted in the prescribed form and manner, and an application for—
- (a) amendment of the parenting plan must be accompanied by a copy of the proposed amended parenting plan; or
  - (c) termination of a parenting plan must include written reasons for the termination of the parenting plan."

### **Amendment of section 35 of Act 38 of 2005**

**21.** Section 35 is hereby amended—

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

"(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 in 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**

**22.** 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 as a result of such artificial fertilisation must for all purposes be regarded to be the child of that woman.

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

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

**23.** 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 the—
- (a) particulars to be contained in the certificate relating to biological fathers contemplated in section 21(1A);
  - (b) categories of persons who may be regarded as suitably qualified persons for purposes of sections 21 (3)(a) and 33 (5)(b);
  - (c) particulars to be contained in a parental responsibilities and rights agreement contemplated in section 22 (3);
  - (d) particulars to be contained in an application for registration of a parental responsibilities and rights agreement contemplated in section 22 (4);
  - (e) 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) 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) manner in which an investigation may be referred to the family advocate as contemplated in section 29(1A);
  - (h) particulars to be contained in a parenting plan contemplated in section 34 (1);
  - (i) particulars to be contained in an application for registration of a parenting plan as contemplated in section 34 (3);



(i) 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 be prescribed in terms of this Act.

(2) The Minister may make regulations as contemplated in this Chapter."

#### **Amendment of section 44 of Act 38 of 2005**

**24.** Section 44 of the principal Act is hereby amended by the insertion after subsection (2) 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."

#### **Amendment of section 45 of Act 38 of 2005**

**25.** Section 45 of the principal Act is hereby amended—

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

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

(b) by the substitution in 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) by the insertion after subsection (1) of 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) by the substitution for 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.**

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

"(3) Pending the establishment of family courts by an Act of Parliament, the High Court's **[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) **[artificial]** Artificial fertilisation;
  - (d) the departure, removal or abduction of a child from the Republic;
  - (e) applications requiring the return of a child to the Republic from abroad;
  - (f) the age of majority or the contractual or legal capacity of a child;
  - (g) the safeguarding of a child's interest in property; and
  - (h) surrogate motherhood agreement"; and
- (f) by the insertion after subsection (3) of the following subsections:

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

(3B) The High Court, children's court and the regional court have concurrent 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**

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

"(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**

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

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

### **Amendment of section 52 of Act 38 of 2005**

**28.** Section 52 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the 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**

**29.** Section 57 of the principal Act is hereby amended—

(a) by the substitution for 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**

**30.** Section 62 of the principal Act is hereby amended—

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

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

- (b) by the substitution in 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**

**31.** Section 63 of the principal Act is hereby amended by the substitution for 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**

**32.** Section 66 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph—

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

#### **Deletion of section 74 of Act 38 of 2005**

**33.** Section 74 of the principal Act is hereby deleted.

#### **Amendment of section 75 of Act 38 of 2005**

**34.** Section 75 of the principal Act is hereby amended—

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

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

(b) by the deletion in subsection (1) of paragraph (j) of the word "and" at the end of paragraph (j) ; and

(c) by the insertion after section (1) of 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**

**35.** 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 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 full time care of a child—"; and

(b) by the insertion after section (76) of the following subsection:

"(2) A partial care facility operated or managed by the Department , provincial department or by a municipality may register in accordance with section 80 if there are less than 6 children being cared for.".

### **Amendment of section 77 of Act 38 of 2005**

**36.** Section 77 of the principal Act is hereby amended—

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

"(1) The Minister[, **after consultation with interested persons and the Ministers of Education, Finance, Health, Provincial and Local Government and Transport**] must **[include in the departmental strategy a comprehensive]** develop a national strategy aimed at ensuring an appropriate spread of partial care facilities throughout the Republic that is adequately resourced, co-

ordinated, and managed giving due consideration **[as provided in section 11]**, to children with disabilities or chronic illnesses."

#### **Amendment of section 78 of Act 38 of 2005**

**37.** Section 78 of the principal Act is hereby amended—

(a) by the substitution for 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 partial care facility registered with conditions qualify 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" ; and

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

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

#### **Amendment of section 79 of Act 38 of 2005**

**38.** Section 79 of the principal Act is hereby amended—

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

"(1) The Minister, after consultation with **[interested persons and]** the Ministers **of** Basic Education, Finance, Health, Higher Education and Training, **[Provincial and Local Government and]** Transport, [and] Corporative Governance and Traditional Affairs [and the], MECs' for social development and any other Minister, stakeholder and civil society organisation, 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."

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

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

- (c) by the substitution for 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**

**39.** 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) of paragraph (c) for 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**

**40.** Section 82 of the principal Act is hereby amended—

- (a) by the substitution for 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 for 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 registration with conditions 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**

**41.** Section 83 of the principal Act is hereby amended:

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

**"[Conditional registration] Conditions relating to Registration".; and**

**(b) by the substitution for section 83 of the following section:**

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

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

**(b) [stating] the period for compliance [which] with the [conditional registration will remain valid] conditions referred to in subparagraph**

**(a); and**

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

### **Amendment of section 85 of Act 38 of 2005**

**42.** Section 85 of the principal Act is hereby amended by the insertion after subsection (4) 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 immediately after receiving such instruction or order notify the parent of the affected child."

### **Amendment of section 87 of Act 38 of 2005**

**43.** Section 87 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) monitor partial care facilities and conduct routine inspections at the prescribed intervals<sub>1</sub> of partial care facilities in the province to enforce the provisions of this Act."

### **Amendment of section 88 of Act 38 of 2005**

**44.** Section 88 of the principal Act is hereby amended—  
(a) by the substitution for 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 for 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**

**45.** Section 89 of the principal Act is hereby amended by the substitution for 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**

**46.** Section 90 of the principal Act is hereby amended—

(a) by the substitution for 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 of the word "and" at the end of paragraph (i); and

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

"(j) inspection and monitoring of partial care facilities and services;  
and  
 (k) assignment of functions to municipalities.".

#### **Amendment of section 91 of Act 38 of 2005**

**47.** Section 91 of the principal Act is hereby amended—

(a) by the substitution for 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 enters school.";

(b) by the deletion of subsection (2); and

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

"(3) An early childhood development programme as prescribed is a program that provides one or more forms of daily care, development, early learning opportunities and support to children from

birth until school going age. **[means a programme structured within an early childhood development service to provide learning and support appropriate to the child's age and stage]"**.

#### **Amendment of section 92 of Act 38 of 2005**

**48.** Section 92 of the principal Act is hereby amended—

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

"(1) The Minister **[, after consultation with interested persons and the Ministers of Education, Finance, Health, and Transport]** must **[include in the departmental strategy a comprehensive]** develop a national strategy aimed at securing **[a properly resourced, co-ordinated, and managed,]** an early childhood development system that is adequately resourced, co-ordinated, and managed giving due consideration **[as provided in section 11]**, to children with disabilities or chronic illnesses.";

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

"(1A) The Minister must consult with the Minister of Basic Education, Finance, Health, Higher Education and Training, Transport, and Corporative Governance and Traditional Affairs and any other Minister, MEC for social development, stakeholder or organisation that may have an interest in the matter before developing the national strategic plan contemplated in subsection(1).

(1B) The national strategy contemplated in subsection(1) must be incorporated in the departmental strategy."

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

"(a) maintain a record of all the early childhood development programmes registered in the province with specific mention of inclusive programmes; and"; and

- (d) by the substitution in subsection (2) for 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 inclusive early childhood development system."

#### **Amendment of section 93 of Act 38 of 2005**

**49.** Section 93 of the principal Act is hereby amended—

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

"(3A) A conditionally registered early childhood development programme may qualify 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) of 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:

"(a) An early childhood development programme **[must]** may be provided by—"; and

(g) 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 for 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

**50.** Section 94 of the principal Act is hereby amended—

(a) by the substitution for 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 Minister **[of]** of Basic Education, Finance, Health, Higher Education and Training [Provincial and Local Government], Corporative Governance and Traditional Affairs,**[and]** Transport and any other Minister, MEC for social development and stake-holder having an interest in the matter.";

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

"(c) 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) of paragraph (e), and the insertion of the word "and" at the end of paragraph (f); and

(d) the insertion after paragraph (f) of section (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

**51.** Section 96 of the principal Act is hereby amended—

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

the following words—

"96. (1) An application for registration **[or conditional registration]** of an early childhood development programme or for the renewal of registration must-"; and

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

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

52. Section 98 of the principal Act is hereby amended—".

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

" **[Conditional Registration] Conditions for Registration of Early Childhood Development Centres**";

(b) by the substitution for section 98 of the following section:

"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]**—

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

(b) **[stating]** the period for compliance [within] which the **[conditional registration]** with the conditions **[must be complied with will remain valid]** referred to in subparagraph (a); and

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

### **Amendment of section 100 of Act 38 of 2005**

**53.** Section 100 of the principal Act is hereby amended by the insertion 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 immediately after receiving such instruction or order, notify the parent of the affected child. "

### **Amendment of section 102 of Act 38 of 2005**

**54.** Section 102 of the principal Act is hereby amended—

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

"(1) The **[provincial head] MEC [of] for** 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] for** 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."

(b) by the substitution for 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."

- (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**

**55.** Section 103 of the principal Act is hereby amended—

- (a) by the substitution for 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 suspension, cancellation or renewal of such registrations;" and

- (b) by the deletion of the word "and" at the end of paragraph (d);

- (c) by the insertion after paragraph (d) of the following paragraphs:

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

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

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

(dD) the procedure to be followed when lodging an appeal in terms of

this Chapter;

(dE) assessment and monitoring of early childhood development

programmes;

(dF) assignment of functions to municipalities; and

(Dh) funding criteria for early childhood development programmes; ".

### **Amendment of section 104 of Act 38 of 2005**

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

"(1) The Minister must, after consultation with **[interested persons and]** the Ministers of Basic Education, Finance, Health, Higher Education and Training, Labour, Home Affairs, Communications, [and] Justice and Constitutional Development, [and] the South African Police Service Cooperative Governance and Traditional Affairs, MEC for social development, any other Minister , MEC , stake-holder and civil society organisation that has an interest in the matter, [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**

**57.** Section 105 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

"(6) The Department must develop and conduct a quality

assurance process for the evaluation of child protection services in the prescribed manner."

#### **Amendment of section 106 of Act 38 of 2005**

**58.** 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 paragraph:

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

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

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

(m) quality assurance."

#### **Amendment of section 107 of Act 38 of 2005**

**59.** Section 107 of the principal Act is hereby amended—

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

"(1) The Director-General **[or provincial head of social development]**, on receipt of a 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]."**

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

"(1A) The provincial head of social development may, on receipt of a written application designate any 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 for 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**

**60.** 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, in the prescribed manner, 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 insertion after subsection (2) of the following subsections:

"(3) A child protection organisation aggrieved by a decision made under subsection (1) may lodge an appeal against that decision in the prescribed form within 90 days—

(a) to the Minister, if the designation was made in terms of section 107(1); or

(b) the MEC for social development if the designation was made in terms of section 107 (1A); and

(c) an appeal must be finalised within 90 days of receipt thereof."

#### **Amendment of section 110 of Act 38 of 2005**

**61.** Section 110 of the principal Act is hereby amended—

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

"(1) Any officer of the court, correctional official, dentist, homeopath, immigration official or other official from the Department of home affairs, 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 or any person working with children, ward councillors who on reasonable grounds, **[concludes]** suspects that a child has

been abused must report that **[conclusion]** suspicion 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**

**62.** Section 111 of the principal Act is hereby amended by the insertion of the following subsection—

"(3) The Director-General must delegate from within the Department an official as the Registrar of the National Child Protection Register."

#### **Amendment of section 114 of Act 38 of 2005**

**63.** 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 including the

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 117 of Act 38 of 2005**

**64.** Section 117 of the principal Act is hereby amended—

- (a) by the substitution of subsection (2) 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**

**65.** 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 in the prescribed form and manner—

- (a)** to the Registrar of the National Child Protection Register, if the Registrar is satisfied that the entry was made in error; or
- (b)** to, any court, including a children's court if the Registrar of the National Child Protection Register refuses an application in terms of paragraph (a)."

**Amendment of the Heading of Act 38 of 2005**

**66.** The heading after section 117 of the principal Act, is hereby substituted for the following heading—

**"Part B of Register: Persons unsuitable to work with children".**

**Amendment of section 119 of Act 38 of 2005**

**67.** Section 119 of the principal Act is hereby amended—

- (a)** 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—";

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

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

(c) the insertion 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."

#### **Amendment of section 122 of Act 38 of 2005**

**68.** Section 122 of the principal Act is hereby amended—

(a) by the substitution for 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 following 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] Registrar of the National Child Protection Register** in writing—";

(c) by the substitution for 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

(d) by the substitution for 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**

**69.** 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 operating, 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]** care and protection 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 for 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]** care and protection 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

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

"(4) The South African Police Service **[may]** must 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 unless evidence to the contrary is provided."

#### **Amendment of section 124 of Act 38 of 2005**

**70.** 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]** 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 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**

**71.** Section 125 of the principal Act is hereby amended by the insertion



after subsection (1) of paragraph (a) of the following paragraph—

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

## **Amendment of section 126 of Act 38 of 2005**

**72.** Section 126 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 employer or the affected person must establish every two years whether the name of the person is in Part B of the Register **[Before]** before a person is allowed—";

- (b) 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]** care and protection 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;"

- (c) 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;"

- (d) 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;"

- (e) 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;"

- (f) by the substitution for 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

- (g) by the substitution for 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**

**73.** Section 127 of the principal Act is hereby amended by the substitution for 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, 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**

**74.** Section 128 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) 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**

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

#### ***"Part 3***

#### **Protective measures relating to the health of children**

(ss 129-[142] 134)".

### **Amendment of section 131 of Act 38 of 2005**

**76.** Section 131 of the principal Act is hereby amended –

(a) by the substitution for the heading of section 131 of the following heading:

**"Medical testing including HIV-testing for [foster care] children in need of care and protection or adoption purposes"; and**

(b) by the amendment of section 131 for the following section:

If necessary medical testing, including HIV-testing of a child is done for **[foster]** children in need of care and protection or adoption purposes, the

state must pay the cost of such tests where circumstances permit".

#### **Amendment of heading of Part 4 of Chapter 7 of Act 38 of 2005**

**77.** Part 4 of Chapter 7 of the principal Act is hereby amended by the following heading—

#### ***"Part 4***

***“ Other protective measures (ss 135 – [142] (141)***

#### **Amendment of section 135 of Act 38 of 2005**

**78.** Section 135 of the principal Act is hereby amended by the substitution for 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]** regional court in divorce matters or a children's court for an order—";

#### **Amendment of section 137 of Act 38 of 2005**

**79.** Section 137 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 child headed household must function under the general supervision of an adult or a child and youth care worker

designated by-"; and

- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words—

" The supervising adult or a child and youth care worker must —".

#### **Amendment of section 141 of Act 38 of 2005**

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

"(2) **[A social worker or social service professional]** Any person including those as contemplated in section 110(1) who becomes aware of—".

#### **Amendment of section 142 of Act 38 of 2005**

**81.** 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 of the word "and" at the end of paragraph (j) 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;

(jB) 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**

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

#### **Amendment of section 145 of Act 38 of 2005**

**83.** Section 145 of the principal Act is hereby amended —

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

"(1A) The Minister must consult with the Ministers of Basic Education, Finance, Health, Higher Education and Training, Transport, Corporative Governance and Traditional Affairs and any other Minister, MEC for social development, stakeholder or organisation that may have an interest in the matter before developing the national strategy contemplated in subsection(1).

(1B) The MEC for social development must ensure that the national strategy contemplated in subsection(1) is incorporated in the departmental strategy."

(b) by the substitution for 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**

**84.** Section 146 of the principal Act is hereby amended—

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

"(3) The provider of prevention and early intervention programmes **[only qualifies]** may qualify 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."; and

(b) by the deletion of the word "and" at the end of subsection (4) of paragraph (a) and the insertion of the word "and at the end of subsection (4) of paragraph (b), and

(c) by the insertion of the following paragraph after subsection (4) of paragraph (b):

"(c) for children below school-going age.".

#### **Amendment of section 147 of Act 38 of 2005**

**85.** Section 147 of the principal Act is hereby amended—

(a) by the substitution for 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 Basic Education, Finance, Health, **[Provincial and Local Government, and], Higher Education and Training, Corporative Governance and Traditional Affairs, Transport and any other Minister, MEC for social development stake-holder and civil society organisations that has an interest in the matter";**

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

"(3) The norms and standards contemplated in subsection (1) should promote an understanding of prevention and early intervention approaches.".

### **Insertion of section 149A in Act 38 of 2005**

**86.** 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**

**87.** Section 150 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word "or" at the end of paragraph (h),
- (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;" and

(c) 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."

### **Amendment of section 155 of Act 38 of 2005**

**88.** Section 155 of the principal Act is hereby amended—

(a) by the substitution for 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, or 154 is in need of care and protection.";

(b) by the substitution for 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 for 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 must make a determination."

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

- "(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 in 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**

- 89.** Section 156 of the principal Act is hereby amended—
- (a) by the substitution in 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 in 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 subsection (1) of paragraph (c) of the following paragraph:

"(cA) that the child be placed in the care of a parent or 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 in 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 in subsection (1) of 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**

**90.** 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) of paragraph (b) for subparagraph(i) of the following subparagraph:

"(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) of paragraph (b) for subparagraph(ii) of the following subparagraph:

"(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) of paragraph (b) for subparagraph(iii) of the following subparagraph:"

"(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 for subsection (3) of the following subsection:

"(3) A **[very young]** child who is 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 for 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**

**91.** Section 159 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

"2A. A court may extend an alternative care order that has lapsed or make an interim order for a period not exceeding 6 months on good cause shown: Provided that the designated social worker provides the court with a report, as prescribed, explaining the lapsing of the order .

#### **Amendment of section 167 of Act 38 of 2005**

**92.** Section 167 of the principal Act is hereby amended—

- (a) by the substitution in 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 court in terms of this Act [**section 29 or Chapter 10 of the Child Justice Act, 2008**];";

- (b) by the substitution for 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 court may not grant an order referred to under subsection (2)(a) for a period longer than six months at a time; ;

(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 in subsection (3) for paragraph (a) of the following paragraph:

"(a) The provincial head of social development must approve a person, facility, place **[or premises]** or a registered child and youth care centre for purposes of temporary safe care in the prescribed manner.";

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

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



(e) by the substitution for 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 and for a registered child and youth care centre is valid for a period not exceeding five years."

#### **Amendment of section 170 of Act 38 of 2005**

**93.** Section 170 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) 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) 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) the police official must ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk and notify the provincial department of social development or a designated child protection organisation of the fact that the child has been apprehended and of any steps that have been taken with regard to the child, 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]**—"; and

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

"(5A) A child—  
(a) who is apprehended within a period of 48 hours from  
absconding; or  
(b) a child who returns, on his or her own accord, to the centre; or  
(c) a 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.

(5B) The designated 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."

#### **Amendment of section 178 of Act 38 of 2005**

**94.** Section 178 of the principal Act is hereby amended by the substitution for 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**

**95.** Section 179 of the principal Act is hereby amended—

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

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

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

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

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

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

(e) by the deletion of the word "and" at the end of paragraph (f) and the insertion after paragraph (f) 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**

**96.** Section 181 of the principal Act is hereby amended—

(a) by the substitution for 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**"; and

(b) by the substitution for 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**

**97.** Section 183 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for 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)]** register as a designated child protection organisation within two years of this provision coming into operation;";

(b) by the insertion in subsection (1) after 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**

**98.** Section 185 of the principal Act is hereby amended by the substitution for 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**

**99.** Section 186 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following section—

"(1A) Despite the provision of subsection (1) a children's court may deem it necessary to order further supervision services as contemplated in section 65(2)(a)(ii)."

(b) 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—";

(c) by the substitution for 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

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

"(4) This section does not apply to a cluster foster care scheme contemplated in section 183.".

#### **Amendment of section 188 of Act 38 of 2005**

**100.** 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".

#### **Amendment of section 191 of Act 38 of 2005**

**101.** Section 191 of the principal Act is hereby amended—

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

"A registered child and youth care centre is a facility for the provision of residential care to more than six children outside the child's family environment in accordance with a residential care programme suited for the children in the facility, but excludes—";

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

"(e) a **[prison]** correctional centre as contemplated in the Correctional Services Act, 1998 (Act No. 111 of 1998)";

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

"(2) A registered child and youth care centre must offer

**[a]** therapeutic **[programme]** and developmental programmes

designed for the residential care of children outside the family environment, which may include a programme designed for—";

(d) by the substitution in subsection (2) for 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";

(e) by the deletion in subsection (2) of the word "or" at the end of paragraph (k),

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

" the reception and care of children for any other purpose that may be prescribed by regulation[.] ;"

(g) by the insertion of the following paragraphs after paragraph (l):

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

(n) the assistance of a person prior to leaving a child and youth care centre and to provide after care services for a period not exceeding 12 months.";

(f) by the substitution in subsection (2) of 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; or"

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



paragraph:

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

(h) by the deletion in subsection (3) of paragraph (e).

### **Amendment of section 192 of Act 38 of 2005**

**102.** Section 192 of the principal Act is hereby amended by the substitution for 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, must include in the departmental strategy]** must develop 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."; and

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

"(1A) The Minister must consult with the Ministers of Basic Education, Health, Higher Education and Training Home Affairs, Justice and Constitutional Development, Public Works, Cooperative Governance and Traditional Affairs and any other Minister, stakeholder and civil society organisation that has an interest in the matter before developing the national strategy contemplated in subsection(1).

(1B) The MEC for social development must ensure that the national strategy contemplated in subsection (1) is incorporated in the departmental strategy."

### **Amendment of section 193 of Act 38 of 2005**

**103.** Section 193 of the principal Act is hereby amended—

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

"(1) The MEC for social development must, from money appropriated by the relevant provincial legislature, provide and fund registered child and youth care centres for that province.";

(b) by the substitution for 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

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

"(3A) The MEC for social development may determine whether a registered child and youth care centre qualifies for funding notwithstanding only conditional compliance with the prescribed national norms and standards."

### **Amendment of section 194 of Act 38 of 2005**

**104.** Section 194 of the principal Act is hereby amended—

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

"(1) The Minister, must determine national norms and standards for child and youth care centres by regulation after consultation with **[interested persons and ]**the Ministers of Basic Education, Health, Higher Education and Training, Home Affairs, **[and]** Justice and Constitutional Development, Public Works, Cooperative Governance and Traditional Affairs and any other Minister, MEC for social development, stakeholder and civil society organisation that has an interest in the matter,"; and

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

"(l) access to rehabilitation services for children with disabilities;".

#### **Amendment of section 197 of Act 38 of 2005**

**105.** 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]** 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**

**106.** 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 for subsection (4) of the following subsection:

"(4) The provincial head of social development must renew the registration 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**

**107.** Section 200 of the principal Act is hereby amended by the substitution for 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**] designated child protection organisation operating a child and youth care centre, where registration was granted with conditions, 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**

**108.** Section 201 of the principal Act is hereby amended by-

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

**"[Conditional registration] Conditions relating to registration";** and

(b) by the substitution for section 201 of the following section:

**"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]**—

- (a) conditions specifying the type of residential care programme that may or must be provided in terms of the registration;
- (b) **[stating]** the period **for** compliance [which] with the **[conditional registration will remain valid]** conditions referred to in subparagraph (a), which may not be longer than [one year] two years; and
- (c) **[providing for]** any other matters that may be prescribed."

### Amendment of section 205 of Act 38 of 2005

**109.** Section 205 of the principal Act is hereby amended by the substitution for section 205 of the following section—

"**205.** The **[holder of a registration of]** department, municipality or designated child protection 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—

- (a) give written notice to the provincial head of social development in the province; **[and]**
- (b) surrender the certificate of registration to the provincial head of social development for cancellation~~[.]~~; and
- (c) submit a report as prescribed to the provincial head of social development that details the arrangement made for children who had been resident at the child and youth care center."

### Amendment of section 208 of Act 38 of 2005

**110.** Section 208 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

- (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; and

- (b) the **[registration holder]** designated child protection organisation operating a child and youth care centre, in accordance with a prescribed procedure in the case of a privately owned child and youth care centre."

#### **Amendment of section 209 of Act 38 of 2005**

**111.** 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]** designated child protection 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**

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

"(d) the team not connected to the centre **[must]** may, in appropriate cases, appoint a mentor to oversee implementation of the plan by the management of the centre."

#### **Amendment of section 213 of Act 38 of 2005**

**113.** Section 213 of the principal Act is hereby amended—

- (a) by the substitution of subsection (1) for 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 paragraph (a) of the following paragraph:
- "(aA) psychosocial support;";
- (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- "(a) Guidance [,] and counselling [**and psychosocial support**];"
- (d) by the insertion in subsection (3) after paragraph (a) of the following paragraph:
- "(aA) cognitive and spiritual;" and
- (e) by the substitution in subsection (3) for paragraph (h) of the following paragraph:
- "(h) reporting and referral of children to social workers or social service [**professionals**] practitioners;"

#### **Amendment of section 214 of Act 38 of 2005**

- 114.** Section 214 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- "(1) The Minister[**, after consultation with interested persons and the Ministers of Finance, Health, Provincial and Local Government and Transport**] must [**include in the departmental**



**strategy a]** develop a national 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 disabilities or chronic illnesses."; and

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

"(1A) The Minister must consult with the Ministers of Finance, Health, Corporative Governance and Traditional Affairs, Transport and any other Minister, MEC for social development, stakeholder or organisation that may have an interest in the matter before finalising the national strategy contemplated in subsection(1).

(1B) The national strategy contemplated in subsection(1) must be incorporated in the departmental strategy."

#### **Amendment of section 215 of Act 38 of 2005**

**115.** 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 may qualify 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] MEC for social development may prioritise 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 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"

#### **Amendment of section 218 of Act 38 of 2005**

**116.** Section 218 of the principal Act is hereby amended 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—".

#### **Amendment of section 219 of Act 38 of 2005**

**117.** Section 219 of the principal Act is hereby amended—

(a) by the substitution for 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 for 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 registration was granted with conditions, 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

**118.** Section 220 of the principal Act is hereby amended—

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

**"[Conditional registration] Conditions relating to registration";**

**(b) by the substitution for subsection (1) of the following subsection"**

**"220. (1)** The registration or renewal of the registration of drop-in centres may be granted on such conditions as the provincial head of social development may determine, including **[conditions]-**

(a) conditions specifying the type of services that may or must be provided in terms of the registration;

(b) **[stating]** the period for compliance with the **[conditional registration will remain valid]** conditions that may be set;

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

(b) by the deletion of subsection (2).

### Amendment of section 224 of Act 38 of 2005

**119.** Section 224 of the principal Act is hereby amended by the substitution in subsection (1) for 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**

**120.** Section 225 of the principal Act is hereby amended by—

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

"(1) The **[provincial head of] MEC** for 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 of] MEC** for social development is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned."; and

(b) the substitution for 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**

**121.** Section 226 of the principal Act is hereby amended by the substitution for 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**

**122.** 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);
- (b) *by the substitution in subsection (1) for paragraph (b) of the following paragraph:*

“ (b) keeping a record of fit and proper adoptive parents [.] ;and “

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

"(c) matching adoptable children with prospective adoptive parents.";

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

"(3) The name and other identifying information—

(a) of a child must be removed as prescribed from RACAP if the child has been **[adopted]** matched; or

(b) of a prospective adoptive parent must be removed as prescribed from RACAP if the prospective adoptive parent has been matched."

- (d) 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.";

- (e) by the substitution in subsection (5) of paragraph (c) for subparagraph (iv) of the following subparagraph:

"(iv) if the registered person is no longer a citizen residing in the Republic or permanent resident of the Republic;"

- (h) by the substitution in subsection (5) of paragraph (c) for subparagraph (v) of the following subparagraph:

"(v) if the child contemplated in section 150 is removed from the care of that registered person; [or]" ;

- (h) by the substitution in subsection (5) of paragraph (c) for subparagraph (vi) of the following subparagraph:

" (vi) if the registered person is convicted of an offence involving violence[.]  
:or";

- (g) by the insertion in subsection (5) of paragraph (c) after subparagraph (vi) of the following subparagraph

"(vii) if an adoption arising from the registration has been concluded."; and

- (h) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) a child protection organisation or a social worker in private practice accredited in terms of section 251 to provide adoption services; or".

### **Amendment of section 233 of Act 38 of 2005**

**123.** 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 parent or guardian to make such decision, 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) of paragraph (b) for subparagraph (i) of the following subparagraph:

"(i) signed by the person consenting in the presence of **[the prescribed person]** a presiding officer of the children's court;" ;  
and

- (c) by the substitution for 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**

**124.** 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 section (1) under paragraphs (a), (b) and (c) 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**

**125.** 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);"

(b) by the deletion in subsection (3) of the word "or" at the end of paragraph (b);

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

" (c)the court, following an allegation by the mother of a child, finds on a balance of probabilities that the child was conceived as a result of the rape of the mother: Provided that such a finding shall not constitute a conviction for the crime of rape[.] or"; and

- (c) by the insertion in subsection (3) after paragraph (c) 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 human trafficking.".

#### **Amendment of section 239 of Act 38 of 2005**

**126.** Section 239 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- "(b) be accompanied by a report, in the prescribed format, by **[an adoption social worker]** a social worker responsible for adoption containing—"
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
- "(d) be accompanied by a letter **[by]** from the provincial head of social development **[recommending]** confirming compliance with the requirements for the adoption of the child in terms of this Act .; 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**

**127.** 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 made in the prescribed form by—";

- (b) by the deletion in subsection (4) of the word "and" at the end of paragraph (c); and
- (c) the insertion in subsection (4) after paragraph (c) of the following paragraphs:

"(cA) the adoption registrar contemplated in section 247;

(cB) the relevant provincial head of social development; ".

#### **Amendment of section 249 of Act 38 of 2005**

**128.** Section 249 of the principal Act is hereby amended by the deletion in subsection (2) for paragraphs (b), (c), (d), (e); (f) and (g).

#### **Amendment of section 250 of Act 38 of 2005**

**129.** 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),
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d)a child protection organisation accredited in terms of section 259 to provide inter-country adoption service[.] and”; and

- (b) by the insertion in subsection (1) after paragraph (d) 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

(c) by the deletion of subsections (2) and (3)

### **Amendment of section 251 of Act 38 of 2005**

**130.** 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**

**131.** Section 252 of the principal Act is hereby amended—

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

"(b) **[an advertisement]** a notice by **[a child protection organisation accredited to provide adoption services]** a social worker responsible for adoption for purposes of recruitment of prospective adoptive parents, according to prescribed guidelines"; and

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

"(c) other forms of **[advertisements]** notices specified by regulation".

### **Amendment of section 253 of Act 38 of 2005**

**132.** Section 253 of the principal Act is hereby amended—

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

"(e) prescribing the requirements that a child **[welfare]** protection organisation **[has] [to] must** comply with in order to obtain **[for]** accreditation as contemplated in section 251 to provide adoption services;"

(b) by the substitution for 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;" and

(c) by the substitution for paragraph (g) of the following paragraph:

"(g) prescribing **[advertising]** guidelines for **[recruitment purposes]**. the notice to recruit prospective adoptive parents; and".

### **Amendment of section 258 of Act 38 of 2005**

**133.** 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**

**134.** 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 deletion of subsection (3);

- (c) by the insertion after subsection (3) of the following subsection:

"(3A) The Central Authority may, in in a prescribed manner withdraw an accreditation to provide inter-country adoption services."; and

- (d) by the deletion of subsection (4).

#### **Amendment of section 260 of Act 38 of 2005**

**135.** Section 260 of the principal Act is hereby amended—

- (a) by the substitution for 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 a recognised organisation or accredited adoption agency in another country.";

- (b) by the substitution in subsection (2) for 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 insertion 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**

**136.** Section 261 of the principal Act is hereby amended—

(a) by the substitution for 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 for 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 for 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) for 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) for 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 in 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 subsection (6) for paragraph (b).

- (h) by the deletion of subsection (7);



- (i) by the substitution for subsection (8) of the following subsection:

"(8) **[This section does not apply to]** The adoption of a child—

(a) habitually resident in the Republic by a family member of that child resident in a convention country may be dealt with as an inter-country adoption in the prescribed manner; or [and who is to be placed for adoption outside the Republic with a family member of that child] or [with].

(b) 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

- (j) by the deletion of subsection 9.

### **Amendment of section 262 of Act 38 of 2005**

**137.** Section 262 of the principal Act is hereby amended—

- (a) by the substitution for 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 for 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 for 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) for 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) for 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 for 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 of paragraph (b) of subsection (6);
- (h) by the deletion of subsection (7);
- (i) by the substitution for 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 ordinarily resident in the Republic by a family member of that child resident in a non-convention country or by a person who may 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

- (j) by the deletion of subsection (9).

#### **Amendment of section 263 of Act 38 of 2005**

**138.** The following section is hereby substituted for section 263 of the principal Act:

"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**

**139.** Section 264 of the principal Act is hereby amended—

(a) by the substitution for 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 for 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 for 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 for 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**

**140.** Section 265 of the principal Act is hereby amended—

(a) by the substitution for 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 for 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 for 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 for subsection (4) 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**

**141.** Section 266 of the principal Act is hereby amended—

(a) by the substitution for 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 for 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 for 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 for 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 insertion after subsection (5) 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**

**142.** Section 268 of the principal Act is hereby amended by the following section:

"(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—

(a) the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made; and

(b) the adoption in that country has the same effect it

would have had if the order had been  
made in the Republic.

(2) 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 a confirmation letter was issued in the non-convention country where the adoption order was granted and the same was received by the Republic and registered."

#### **Amendment of section 271 of Act 38 of 2005**

**143.** Section 271 of the principal Act is hereby amended—

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

"(1A) Where an adoption application contemplated in subsection (1) is refused by a children's court, such child must be returned, in the prescribed manner, to the country of origin."

(b) by the insertion after subsection (2) of the following subsection after subsection (2), the existing section becoming subsection (2):

"(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 a case must be referred to a competent court for determination."

#### **Insertion of section 278A in Act 38 of 2005**



**144.** The following section is hereby inserted in the principal Act after section 278—

**"Finalising of proceedings**

**278A. (1)** An application under this Chapter, for the return of a child, must be brought by an urgent application lodged in the relevant division of the high court or a court having jurisdiction and must as far as practicable be concluded within six weeks from the day of institution of the application.

**(2)** In the event of an appeal against the decision of a high court in an application for the return of a child, such appeal must as far as practicable be concluded within six weeks from the day of institution of the appeal.

**(3)** A court may only consider the postponement of an application for the return of a child under exceptional circumstances and the party requesting the postponement must show that such exceptional circumstances exist and is justifiable for the period requested.

**Amendment of section 279 of Act 38 of 2005**

**145.** Section 279 of the principal Act is hereby amended by the substitution for the following section:

**"(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.

**"(2)** On the first day of the hearing for 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 that child."

#### **Amendment of section 292 of Act 38 of 2005**

**146.** Section 292 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for 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]** ordinarily resident in the Republic;"

- (b) by the substitution in subsection (1) for 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]** ordinarily resident in the Republic; and"; and

- (c) by the substitution in subsection (1) for 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]** ordinarily resident."

#### **Amendment of section 294 of Act 38 of 2005**

**147.** Section 294 of the principal Act is hereby amended

(a) by the substitution 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.

(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**

**148.** 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 subparagraphs (vi) and (vii) of paragraph (c);

(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 details which include—
  - (aa) the business of the agency; and
  - (bb) 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;
- (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 as contemplated in section 301(2) and (3) of this Act;
- (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;".

#### **Amendment of section 297 of Act 38 of 2005**

**149.** 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**

**150.** The following section is hereby inserted in the principal Act after section 303—

#### **"Regulations**

**303A.** The Minister may, in consultation with the Minister of Health, make regulations regarding any matter necessary to facilitate the implementation of this Chapter, including the requirements to be complied with by anyone involved in surrogacy."

#### **Amendment of section 304 of Act 38 of 2005**

**151.** Section 304 of the principal Act is hereby amended—

(a) by the substitution for 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) for 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) for 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) of the following paragraph:
- "(a) determine whether the centre, facility [, **shelter**] or place complies with—".

### **Amendment of section 305 of Act 38 of 2005**

- 152.** Section 305 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
- "Offences and penalties";**
- (b) by the substitution in subsection (1) for 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) for 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) 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) for 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 section 306 of Act 38 of 2005**

**153.** 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) of 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) of 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**

**154.** Section 312 of the principal Act is hereby amended—

(a) 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

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

"(2) The Minister or MEC for social development 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**

**156.** This Act is called the Children's Amendment Act, 2019.