REPUBLIC OF SOUTH AFRICA

CHILDREN'S AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43656 of 26 August 2020)
(The English text is the official text of the Bill)

(MINISTER OF SOCIAL DEVELOPMENT)

[B 18—2020]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Children's Act, 2005, so as to amend and insert certain definitions; to provide for children's right to privacy and protection of information; to further provide for 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 for a Registrar of the National Child Protection Register; to further provide for the care of abandoned or orphaned children and additional matters that may be regulated; to further provide for rules relating to care and protection proceedings; to further provide for medical testing of children in need of care and protection or adoption; to provide for additional matters relating to children in alternative care; to further provide for 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; 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, section 48 of Act 7 of 2013, section 1 of Act 17 of 2016 and section 1 of Act 18 of 2016

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) 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 care-giver 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 for paragraph *(a)* in the definition of ''care'' of 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; and
(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 children's court appointed or designated as such either in terms of section 67 of this Act or section 13 of the Magistrates' Courts 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 centre that provides an early childhood development programme as contemplated in section 91(3) for more than six 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 service'** means a service or support provided to children from birth to school-going age or a service or support provided to a child's parent, guardian or care-giver with the intention to promote the child's emotional, cognitive, sensory, spiritual, moral, physical, social and communication development;'';

(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'** means a procedure performed for non-medical reasons that has no health benefit and intentionally—
(a) causes injury to genitals;
(b) removes any part of the genitals; or
(c) alters genital organs;'';

(n) by the insertion after the definition of ''higher education'' 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 whose parent or both parents are deceased;'';

(r) by the substitution for paragraph *(e)* in the definition of ''party'' of the following paragraph:

''*(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'**, in relation to a child, means any sexual offence against a child;'';

(v) by the insertion after the definition of ''sexual offence'' 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 1978), to practise and render a service within the social service sector;'';

(w) by the deletion of the definition of ''social service professional'';

(x) 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 a 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;'';

(y) 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

(z) 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, the Maintenance Act, the Domestic Violence Act, 1998 (Act No. 116 of 1998), the Civil Union Act, 2006 (Act No. 17 of 2006), and the Recognition of Customary Marriages Act, 1998 (Act No. 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 the 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 section 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 protection of personal information**

6A. (1) A child's right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the 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 of the word ''and'' at the end of subsection (1)*(m)*;

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

''*(n)* 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 in subsection (2) for paragraph *(a)* of the following paragraph:

''*(a)* below the minimum age set by law for a valid marriage **[may]** must not be given out in marriage or engagement; and''; and

(b) 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 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 he]** conception, or any time between the child's conception and birth, 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)(*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]**; and'';

(d) by the substitution in subsection (1)(*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) in terms of subsection (3), he referred the matter for mediation and the mother, after receiving such notice of mediation, unreasonably refused to attend the mediation, and

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

(f) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(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.''; and

(g) by the deletion of subsection (3)*(b)*.

Insertion of heading of 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''.

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, must be given the opportunity to express his or her views regarding the content of such agreement: Provided he or she is of sufficient maturity and mental capacity to do so.'';

(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 subsection (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:

''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 for an order granting to the applicant**,** on such conditions as the court may deem necessary—''; and

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

''(3) 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) 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) suspend 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 for the purposes of the Hague Convention on Inter-Country Adoption and Chapter 16 of this Act or, in exceptional circumstances, as if it was an application for guardianship.''.

Amendment of section 28 of Act 38 of 2005

15. Section 28 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

''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.''; and

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

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

Insertion of section 30A in Act 38 of 2005

17. The following section is hereby inserted in the principal Act after section 30:

''**Residence of child**

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

(2) The residence of a 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 a 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 there is a dispute between the parents of a child as to his or her residence, the matter must be referred for mediation to a family advocate, social worker or such other suitably qualified person as may be prescribed before approaching the relevant court.''.

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

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

Amendment of section 34 of Act 38 of 2005

19. 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

(b) 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

20. Section 35 of the principal Act 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]** sections 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 or parenting plan to exercise such **[access]** contact or such responsibilities and rights or who prevents that person from exercising such **[access]** contact 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:

"*(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

21. 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

22. The following section is hereby inserted in the principal Act after section 41:

"**Regulations**

41A. (1) The Minister of Justice and Constitutional Development, after consultation with the Minister, 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) particulars to be contained in an application for amendment or termination of a responsibilities and rights agreement contemplated in section 22(6);

(f) form and manner in which an application for granting parental responsibilities and rights should be lodged in the children's court as contemplated in section 23(1);

(g) form and 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);

(j) 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 any other regulations as contemplated in this Chapter.".

Amendment of section 44 of Act 38 of 2005

23. 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 a children's court to another court having jurisdiction if it would be in the best interest of the child.".

Amendment of section 45 of Act 38 of 2005

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

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

"*(b*A*)* 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 in subsection (1) after paragraph (*j*) of the following paragraph:

"*(j*A*)* 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 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 in subsection (3) for the words preceding paragraph (*a*) of the following words:

"Pending the establishment of family courts by an Act of Parliament, the High Courts **[and Divorce Courts]** have exclusive jurisdiction over the following matters contemplated in this Act:";

(f) by the deletion in subsection (3) of paragraphs (*a*) and (*b*);

(g) by the substitution in subsection (3) for paragraph (*h*) of the following paragraph:

"*(h)* surrogate motherhood agreement.; and

(h) by the insertion after subsection (3) of the following subsections:

"(3A) The High Court and 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 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

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

"*(c*A*)* an order for 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

26. 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 other suitably qualified person as may be prescribed;".

Amendment of section 52 of Act 38 of 2005

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

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

"(1) The Board, established under section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must make rules for the children's court.";

(b) 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."; and

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

"(3) Except as is otherwise provided in this Act, rules made in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), apply, with the necessary changes required by the context, to the children's court in so far as the rules made under subsection (1) do not provide for any aspect or process.".

Amendment of section 57 of Act 38 of 2005

28. Section 57 of the principal Act is hereby amended—

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

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

(b) 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

29. 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

30. Section 63 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A written report, **[purported to be]** compiled and signed by a medical practitioner, psychologist, family counsellor, family advocate, designated social worker or 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

31. 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

32. Section 74 of the principal Act is hereby deleted.

Amendment of section 75 of Act 38 of 2005

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

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

"*(b*A*)* procedures for determining the age of a child;";

(b) by the deletion of the word "and" at the end of paragraph *(j)*; and

(c) by the insertion in subsection (1) after paragraph *(j)* of the following paragraph:

"*(j*A*)* the responsibility for defraying costs relating to investigations and reports contemplated in section 62; and".

Amendment of section 76 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

34. The following section is hereby substituted for section 76 of the principal Act:

"**Partial care**

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—

(a) by a school as part of tuition, training and other activities provided by the school;

(b) as a boarder in a school hostel or other residential facility managed as part of a school; or

(c) by a hospital or other medical facility as part of medical treatment provided to the child.

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

Amendment of section 78 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

35. 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 qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards.'';

(c) by the substitution for subsection (4) of the following subsection

''(4) **[The funding of partial care facilities must be prioritised]** The MEC for social development may prioritise and fund partial care facilities and services—

(a) in poverty declared wards in a 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

(b) to make facilities accessible to children with disabilities.''; 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, as inserted by section 4 of Act 41 of 2007

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

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

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

(b) 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, as inserted by section 4 of Act 41 of 2007

37. 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:

''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)(*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, as inserted by section 4 of Act 41 of 2007

38. 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 is 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, as inserted by section 4 of Act 41 of 2007

39. The following section is hereby substituted for section 83 of the principal Act:

"**Conditions relating to Registration**

83. The registration or renewal of registration of a partial care facility may begranted on such conditions as the provincial head of social development may determine, including—

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

(b) the period for compliance with the conditions referred to in paragraph *(a)*; and

(c) any other matter that may be prescribed.".

Amendment of section 85 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

40. 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 which has 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, as inserted by section 4 of Act 41 of 2007

41. 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 of partial care facilities in the province to enforce the provisions of this Act.".

Amendment of section 88 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

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

(a) by the substitution for subsection (1) of 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 80, 81, 82, 83, 84, 85 and 87 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 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, as inserted by section 4 of Act 41 of 2007

43. 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, as inserted by section 4 of Act 41 of 2007

44. 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;";

(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, as amended by section 4 of Act 41 of 2007

45. 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.".

Amendment of section 92 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

46. Section 92 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, Science and Technology, Transport, Cooperative 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 national strategy contemplated in subsection (1) must be incorporated in the departmental strategy.";

(b) 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

(c) 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, as inserted by section 4 of Act 41 of 2007

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

(a) 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.";

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

"The MEC for social development may prioritise and fund early childhood development programmes—";

(c) 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]**";

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

"*(a*A*)* in rural areas; and";

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

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

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

"(6) Any other person, [or] 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, as inserted by section 4 of Act 41 of 2007

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

(a) 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;";

(b) by the deletion of the word "and" at the end of subsection (2)*(e)*;

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

"*(f)* meeting the emotional, cognitive, sensory, spiritual, moral, physical, social and communication development needs of children**[**.**]**; and"; and

(d) by the insertion in subsection (2) after paragraph *(f)* 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, as inserted by section 4 of Act 41 of 2007

49. 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:

"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.".

Amendment of section 98 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

50. The following section is hereby substituted for section 98 of the principal Act:

"**[Conditional Registration]** **Conditions for registration of early childhood development programme**

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 which the conditional registration will remain valid]** the period for compliance; and

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

Amendment of section 100 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

51. Section 100 of the principal Act is hereby amended by the substitution in paragraph *(c)* for subparagraph (i) of the following subparagraph:

"(i) to stop the provision of that programme and immediately notify the parent of an affected child; or".

Amendment of section 102 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

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

(a) by the substitution for subsection (1) of 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 95, 96, 97, 98, 99 and 100 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 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."; and

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

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

Amendment of section 103 of Act 38 of 2005, as inserted by section 4 of Act 41 of 2007

53. 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;";

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

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

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

(*d*B) the manner in which early childhood development programmes must be managed;

(*d*C) procedure to be followed with regard to children in early childhood development programmes when such programme is terminated;

(*d*D) the procedure to be followed when lodging an appeal in terms of this Chapter;

(*d*E) assessment and monitoring of early childhood development programmes;

(*d*F) assignment of functions to municipalities;

(*d*G) funding criteria for early childhood development programmes; and".

Insertion of heading after section 103 of Act 38 of 2005

54. The following heading is hereby inserted in the principal Act after section 103:

"***Part II***

Early Childhood Development Centre".

Insertion of sections 103A, 103B, 103C, 103D, 103E, 103F, 103G, 103H, 103I, 103J, 103K, 103L, and 103M in Act 38 of 2005

55. The following sections are hereby inserted in the principal Act after section 103:

"**Provision of early childhood development centre**

103A. (1) The MEC for social development may, from money appropriated by the relevant provincial legislature, provide and fund early childhood development centres for the province, taking into consideration the national norms and standards contemplated in section 103B.

(2) An early childhood development centre referred to in subsection (1)—

(a) must be managed and maintained in accordance with this Act; and

(b) must comply with—

(i) the prescribed national norms and standards contemplated in section 103B and such other requirements as may be prescribed; and

(ii) the structural safety, health and other requirements of the municipality of the area where the early childhood development centre is situated.

(3) The owner or manager of an early childhood development centre only qualifies for funding contemplated in subsection (1) if such owner or manager complies with the prescribed national norms and standards contemplated in section 103B and such other requirements as may be prescribed.

(4) The funding of an early childhood development centre must be prioritised—

(a) in communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children;

(b) to make centres accessible to children with disabilities; and
(c) in rural areas.

National norms and standards for early childhood development centre

103B. (1) The Minister, after consultation with interested persons and the relevant Ministers must determine national norms and standards for early childhood development centres by regulation.

(2) The national norms and standards contemplated in subsection (1) must relate to the following:

(a) A safe environment for children;
(b) proper care for sick children or children that become ill;
(c) adequate space and ventilation;
(d) safe drinking water;
(e) hygienic and adequate toilet facilities;
(f) safe storage of anything that may be harmful to children;
(g) access to refuse disposal services or other adequate means of disposal of refuse generated at the centre;
(h) a hygienic area for the preparation of food for children;
(i) measures for the separation of children of different age groups;
(j) the drawing up of action plans for emergencies; and
(k) the drawing up of policies and procedures regarding health care at the centre.

(3) An early childhood development centre for children with disabilities or chronic illnesses, must, in addition to the national norms and standards contemplated in subsection (1)—

(a) be accessible to such children;
(b) provide facilities that meet the needs of such children; and
(c) employ persons that are trained in and provide training to persons employed at the facility on—
  (i) the needs, health and safety of such children;
  (ii) appropriate learning activities and communication strategies for such children; and
  (iii) basic therapeutic interventions.

(4) An early childhood development centre must offer early childhood development programmes as contemplated in section 91(3) that are appropriate to the developmental needs of the children in that centre as may be prescribed.

Early childhood development centre to be registered

103C. (1) Any person, Department, municipality, provincial head of social development or organisation may establish or operate an early childhood development centre provided that the early childhood development centre—

(a) is registered with the provincial government of the province where the centre is situated;
(b) is managed and maintained in accordance with any conditions subject to which the centre is registered; and
(c) complies with the prescribed national norms and standards contemplated in section 103B and such other requirements as may be prescribed.

(2) The Minister may exempt any person or organisation or any category of person or organisation from the requirement to register on such conditions as may be prescribed.

(3) Early childhood development centres operated or managed by a national or provincial department or by a municipality must comply with subsection (1).

(4) As from the date on which this section takes effect, any partial care facility registered or deemed to be registered in terms of this Act and which provides an early childhood development programme, must be

regarded as having been registered in terms of this section as an early childhood development centre.

(5) A partial care facility referred to in subsection (4) is regarded as a registered early childhood development centre for a period of five years from the date on which that subsection takes effect, unless its registration is cancelled in terms of section 103G before the expiry of that period.

Application for registration and renewal of registration of early childhood development centre

103D. (1) An application for registration or conditional registration of an early childhood development centre or for the reinstatement or renewal of registration must—

(a) be lodged with the provincial head of social development for the province where the centre is situated in accordance with a prescribed procedure;

(b) contain the prescribed particulars; and

(c) be accompanied by—

(i) a report by a social service practitioner on the viability of the application; and

(ii) any documents that may be prescribed.

(2) An applicant must provide such additional information relevant to the application as the provincial head of social development may determine.

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

(4) The provincial head of social development must renew the registration of an early childhood development 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).

Consideration of application

103E. (1) The provincial head of social development must—

(a) within six months of receiving the application, consider an application for registration or conditional registration or for the renewal of registration and either reject the application or, having regard to subsection (2), grant the registration or renewal with or without conditions;

(b) issue to the applicant a certificate of registration or conditional registration or renewal of registration in the prescribed form if the application is granted; and

(c) state in the certificate of registration the period for which the registration will remain valid.

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

(a) the centre complies with the prescribed national norms and standards contemplated in section 103B and such other requirements as may be prescribed;

(b) the applicant is a fit and proper person to operate an early childhood development centre;

(c) the applicant has the necessary funds and resources available to provide the early childhood development service of the type applied for;

(d) each person employed at or engaged in the early childhood development centre is a fit and proper person to assist in operating the early childhood development centre; and

(e) each person employed at or engaged in the early childhood development centre has the prescribed skills and training to assist in operating that early childhood development centre.

(3) A person unsuitable to work with children is not a fit and proper person to operate or assist in operating an early childhood development centre.

(4) The provincial head of social development must consider the report contemplated in section 103C(1)*(c)*(i) of a social service practitioner before deciding an application for registration, conditional registration or renewal of registration.

(5) Notwithstanding section 103A(3) a provincial head of social development may assist the owner or manager of an early childhood development centre to comply with the prescribed national norms and standards contemplated in section 103C and such other requirements as may be prescribed.

Conditions for registration of early childhood development centre

103F. (1) The registration or renewal of registration of an early childhood development centre may be granted on such conditions as the provincial head of social development may determine, including—

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

(d) the period for compliance; and

(e) any other matters that may be prescribed.

Cancellation of registration

103G. (1) The provincial head of social development may cancel the registration or conditional registration of an early childhood development centre by written notice to the registration holder if—

(a) the centre is not maintained in accordance with the prescribed national norms and standards contemplated in section 103B and such other requirements as may be prescribed;

(b) any condition subject to which the registration or renewal of registration was issued, is breached or not complied with;

(c) the registration holder or the management of the centre contravenes or fails to comply with a provision of this Act;

(d) the registration holder becomes a person who is not a fit and proper person to operate an early childhood development centre; or

(e) a person who is not a fit and proper person to assist in operating the early childhood development centre, is employed at or engaged in operating the centre.

(2) The provincial head of social development may in the case of the cancellation of a registration in terms of subsection (1)*(a)*, *(b)*, *(c)* or *(e)*—

(a) suspend the cancellation for a period to allow the registration holder to correct the cause of the cancellation; and

(b) reinstate the registration if the registration holder corrects the cause of the cancellation within that period.

(3) The provincial head of social development may assist a registration holder to comply with the prescribed national norms and standards contemplated in section 103B, any requirements as may be prescribed or any provision of this Act where the cancellation was due to non-compliance with those national norms and standards, conditions, requirements or provision.

Notice of enforcement

103H. (1) A provincial head of social development may by way of a written notice of enforcement instruct—

(a) a person, Department, municipality, provincial department of social development or organisation operating an unregistered early childhood development centre—

(i) to stop operating that facility; or

(ii) to apply for registration in terms of section 103C within a period specified in the notice; or

(b) a person or organisation operating a registered early childhood development centre other than in accordance with the provisions of this Act or any conditions subject to which the registration was issued, to comply with those provisions or conditions.

(2) A person, Department, municipality, provincial department of social development or organisation operating an unregistered early childhood development centre and who is instructed in terms of subsection (1)*(a)*(ii) to apply for registration within a specified period, may, despite the provisions of section 103G, continue operating the centre during that period and, if that person or organisation applies for registration, until that application has been processed.

(3) The Director-General or the provincial head of social development may apply to the High Court for an order to instruct an early childhood development centre, whether registered or not, to stop operating that centre.

(4) The High Court may grant an order for costs against the owner or manager of the early childhood development centre referred to in subsection (3) if so requested by the Director-General or provincial head of social development.

Appeal and review of certain decisions

103I. (1) An applicant or a registration holder aggrieved by a decision of a provincial head of social development in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the MEC for social development, who must decide the appeal within 90 days of receipt thereof.

(2) An applicant or a registration holder that is not satisfied with the outcome of an appeal referred to in subsection (1), may apply to the competent division of the High Court to review that decision.

Record, inspection and provision for early childhood development centre

103J. (1) A provincial head of social development must—

(a) maintain a record of all early childhood development centres in the province;

(b) compile a profile of the children in that province in the prescribed manner; and

(c) conduct inspections at the prescribed intervals of early childhood development centres in the province to enforce the provisions of this Act.

(2) A provincial strategy contemplated in section 103A must include a strategy for the provision of early childhood development centres in the province, which must include measures—

(a) facilitating the establishment and operation of sufficient early childhood development centres in that province;

(b) prioritising those types of early childhood development centres most urgently required; and

(c) liaising with municipalities on facilitating the identification and provision of suitable premises.

Assignment of functions to municipality

103K. (1) The MEC for social development may, by written agreement with a municipality, assign the performance of some or all of the functions contemplated in sections 103D, 103E, 103F, 103G, 103H

and 103J to the municipal manager, after consultation with the municipal council, if the MEC is satisfied that the municipality complies with the prescribed requirements with regard to the capacity of that municipality to perform the functions concerned.

(2) The agreement must be in the prescribed form and contain the prescribed particulars.

(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 practitioner in the employ of the municipality.

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

(a) is subject to any limitations, conditions and directions which the municipal manager may impose;

(b) must be in writing; and

(c) does not divest the municipal manager of the responsibility concerning the exercise of the power or the performance of the duty.

(5) The municipal manager may—

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

(b) at any time withdraw a delegation.

(6) An applicant or a registration holder aggrieved by a decision of an official in the employ of a municipality in terms of this chapter may lodge an appeal against that decision in the prescribed form within 90 days with the municipal council, who must decide the appeal within 90 days of receipt thereof.

(7) An applicant or a registration holder that is not satisfied with the outcome of an appeal contemplated in subsection (6), may apply to the competent division of the High Court to review that decision.

(8) *(a)* The provincial head of social development must monitor the performance of the functions assigned in terms of this section.

(b) The provincial head of social development may by notice in writing require the municipal manager or any other person in possession of information required by the provincial head of social development for purposes of monitoring the performance of the functions assigned by this section, to provide such information to the provincial head of social development within the period specified in the notice.

(c) If, after the functions contemplated in subsection (1) have been assigned to a municipality, it appears that a particular municipality no longer has the capacity to perform some or all of the functions assigned to it, the provincial head of social development may—

(i) amend the written agreement contemplated in subsection (1); or

(ii) withdraw the assignment of the functions.

Serious injury, abuse or death of child in early childhood development centre

103L. (1) If a child is seriously injured or abused while in an early childhood development centre or following an occurrence at an early childhood development centre, the person operating the early childhood development centre or a person employed at the early childhood development centre must immediately report such injury or abuse to the provincial head of social development, who must act in accordance with the provisions of section 110(5).

(2) If a child dies while in an early childhood development centre or following an occurrence at an early childhood development centre, the person operating the early childhood development centre or a person employed at the early childhood development centre must immediately after the child's death report such death to—

(a) the parent, guardian or care-giver of the child;

(b) a police official; and

(c) the provincial head of social development.

(3) The police official must cause an investigation into the circumstances surrounding the death of the child to be conducted by the South African Police Service, unless the police official is satisfied that the child died of natural causes.

Regulations

103M. (1) The Minister may make regulations in terms of section 306 concerning the —

(a) national norms and standards that early childhood development centres must comply with;

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

(c) early childhood development services that may be provided in terms of such registration;

(d) period for which registration is valid;

(e) requirements that an early childhood development centre must comply with;

(f) management of an early childhood development centre;

(g) procedure to be followed with regard to the children in an early childhood development centre if the centre is closed down;

(h) procedure to be followed and the fees to be paid in connection with the lodging and consideration of appeals in terms of this Chapter; and

(i) any other matter that it may be necessary to facilitate the implementation of this Chapter.''.

Amendment of section 105 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007

56. 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 as prescribed.''.

Amendment of section 106 of Act 38 of 2005, as inserted by section 5 of Act No 41 of 2007

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

(a) by the deletion of the word ''and'' at the end of subsection (2)*(j)*;

(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, as inserted by section 5 of Act 41 of 2007

58. 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:

"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, as inserted by section 5 of Act 41 of 2007

59. 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:

"The Director-General or **[provincial head of]** MEC for social development, as the case may be, may withdraw, in the prescribed manner, 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, in the prescribed form and manner, within 90 days of receipt of such decision—

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

(b) to the MEC for social development, if the designation was made in terms of section 107(1A).

(4) The Minister or MEC for social development, as the case may be, must finalise an appeal within 90 days from receipt thereof.".

Amendment of section 110 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007

60. 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 an official in the employ of 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, any person working with children, or a ward councillor 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:

"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

61. Section 111 of the principal Act is hereby amended by the insertion of the following subsection:

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

Amendment of section 114 of Act 38 of 2005

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

(a) by the substitution in subsection (2)*(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)*(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

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

(a) by the substitution for 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 for 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

64. 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 heading after section 117 of Act 38 of 2005

65. 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

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

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

"(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) by 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

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

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

"**122. 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:

"(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

68. 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

(e) 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 South African Police 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

69. 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

70. Section 125 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph *(a)* of the following paragraph:

"*(a*A*)* the Registrar of the National Child Protection Register;".

Amendment of section 126 of Act 38 of 2005

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

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

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

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

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

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

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

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

"*(c)* the South African Police Service must establish whether the name of any person who works in **[a unit of]** the South African Police **[tasked with child protection]** appears in Part B of the Register;";

(e) 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

(f) 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

72. 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, within 21 working days of such entry **[when]** that **[**person's**]** his or her name and particulars are entered in Part B of the Register.".

Amendment of section 128 of Act 38 of 2005, as amended by section 4 of Act 17 of 2016

73. 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 section 131 of Act 38 of 2005

74. The following section is hereby substituted for section 131 of the principal Act:

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

131. 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 section 135 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007

75. Section 135 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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—

(a) suspending for a period, terminating or transferring any or all of the parental responsibilities and rights which a specific person has in respect of a child; or

(b) restricting or circumscribing the exercise by that person of any or all of the parental responsibilities and rights that person has in respect of a child.".

Amendment of section 141 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007 and section 34 of Act 8 of 2017

76. Section 141 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

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

Amendment of section 142 of Act 38 of 2005, as amended by section 6 of Act 41 of 2007

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

(a) by the substitution for 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;"; and

(b) by the deletion of the word "and" at the end of paragraph *(j)* and the insertion after paragraph *(j)* of the following paragraphs:

"*(j*A*)* prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register;

*(j*B*)* prescribing the criteria for the establishment and resourcing of designated child care and protection units; and".

Amendment of section 145 of Act 38 of 2005, as inserted by section 7 of Act 41 of 2007

78. Section 145 of the principal Act is hereby amended 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, as inserted by section 7 of Act 41 of 2007

79. 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.";

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

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

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

Amendment of section 147 of Act 38 of 2005, as inserted by section 7 of Act 41 of 2007

80. 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, Science and Technology, Cooperative Governance and Traditional Affairs, Transport and any other Minister, MEC for social development, stake-holder and civil society organisations that have an interest in the matter.";

(b) by the substitution in subsection (2) for paragraphs *(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)* and *(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) by 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

81. 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, as amended by section 5 of Act 17 of 2016

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

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

"*(a)* has been abandoned or orphaned and **[does not have the ability to support himself or herself and such inability is readily apparent]** has no parent, guardian, family member or care-giver who is able and suitable to care for that child;";

(b) by the deletion of the word "or" at the end of subsection (1)*(h)*;

(c) 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

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

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

(k) is a victim of trafficking; or

(l) has been sold by a parent, care-giver or guardian.".

Amendment of section 155 of Act 38 of 2005, as amended by section 7 of Act 17 of 2016

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

(a) 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.";

(b) 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]** placed in temporary safe care;".

Amendment of section 156 of Act 38 of 2005, as amended by section 9 of Act 41 of 2007

84. 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 in subsection (1) after paragraph *(c)* of the following paragraph:

''*(c*A*)* that the child be placed in the care of a parent or family member, if the court finds that such 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)*(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

85. 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:

''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)*(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)*(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)*(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, as amended by section 8 of Act 17 of 2016

86. 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 six months on good cause shown.".

Amendment of section 167 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

87. 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]**.

(b) A court may not grant an order contemplated in paragraph *(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]** a registered child and youth care centre contemplated in paragraph *(a)* for temporary safe care must comply with the prescribed criteria.";

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

"*(c)* The approval period for a person contemplated in paragraph *(a)* 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."; and

(f) by the deletion of subsection (4).

Amendment of section 170 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

88. 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) police official must—

(i) ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;

(ii) notify the provincial department of social development or a designated child protection organisation 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:

''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) who returns, on his or her own accord, to the centre; or

(c) in alternative care 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, as inserted by section 10 of Act 41 of 2007

89. Section 178 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(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, as inserted by section 10 of Act 41 of 2007

90. 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 for 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 or place for 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:

''*(e*A*)* 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:

''*(f*A*)* the manner in which the provincial head of social development may grant written approval for children in alternative care to leave the Republic;

*(f*B*)* 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, as inserted by section 10 of Act 41 of 2007

91. 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

(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, as inserted by section 10 of Act 41 of 2007

92. 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 non-profit organisation registered in terms of the Non-profit Organisations Act, 1997 (Act 71 of 1997)]** register as a designated child protection organisation within two years of this provision coming into operation;''; and

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

''*(a*A) 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, as inserted by section 10 of Act 41 of 2007

93. 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, as inserted by section 10 of Act 41 of 2007

94. 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:

''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, as inserted by section 10 of Act 41 of 2007

95. 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, as inserted by 10 of Act 41 of 2007 and amended by section 99 of Act 75 of 2008

96. 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 paragraph:

"*(e)* a **[prison]** correctional centre as contemplated in the Correctional Services Act, 1998 (Act No. 111 of 1998), or treatment centre as contemplated in the Prevention of and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008); or";

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

"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 **[environ-ment]** 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 of the word "or" at the end of subsection (2)*(k)*;

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

"*(l)* 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.";

(h) by the substitution in subsection (2)*(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";

(i) 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

(j) by the deletion of subsection (3)*(e)*.

Amendment of section 193 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

97. 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, as inserted by section 10 of Act 41 of 2007

98. 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, Science and Technology, Home Affairs, **[and]** Justice and Constitutional Development, Public Works and Infrastructure, 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 in subsection (2) after paragraph *(l)* of the following paragraph:

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

Amendment of section 197 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

99. 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, as inserted by section 10 of Act 41 of 2007

100. 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:

"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, as inserted by section 10 of Act 41 of 2007

101. 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, as inserted by section 10 of Act 41 of 2007

102. Section 201 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 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, as inserted by section 10 of Act 41 of 2007

103. The following section is hereby substituted for section 205 of the principal Act:

''**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 relevant 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 centre.''.

Amendment of section 208 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

104. 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, as inserted by section 10 of Act 41 of 2007

105. 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:

"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, as inserted by section 10 of Act 41 of 2007

106. 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, as inserted by section 10 of Act 41 of 2007

107. Section 213 of the principal Act is hereby amended—

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

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

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

"*(a*A*)* 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:

"*(a*A*)* 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, as inserted by section 10 of Act 41 of 2007

108. 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, Cooperative 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, as inserted by section 10 of Act 41 of 2007

109. Section 215 of the principal Act is hereby amended—

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

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

(c) 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".

Amendment of section 218 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

110. 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, as inserted by section 10 of Act 41 of 2007

111. 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, as inserted by section 10 of Act 41 of 2007

112. The following section is hereby substituted for section 220 of the principal Act:

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

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 **[for which the conditional registration will remain valid, and]** conditions that may be set; and

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

[(2) A provincial head of social development may assist a drop-in centre to comply with the prescribed national norms and standards contemplated in section 216 and such other requirements as may be prescribed.]''.

Amendment of section 224 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

113. 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, as inserted by section 10 of Act 41 of 2007

114. Section 225 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of 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) 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 226 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

115. Section 226 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 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

116. 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'';

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

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

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

''(3) The name and other identifying information of—

(a) a child must be removed as prescribed from RACAP if the child has been matched; or

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

(e) 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.";

(f) by the substitution in subsection (5)*(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;";

(g) by the substitution in subsection (5)*(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)*(c)* for subparagraph (vi) of the following subparagraph:

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

(i) by the insertion in subsection (5)*(c)* after subparagraph (vi) of the following subparagraph:

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

and

(j) 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

117. 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;"; and

(b) 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

118. 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:

"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 substitution for subsection (4) of the following subsection:

"(4) A court may, when granting an application in terms of section 239 for the adoption of a child—

(a) confirm a post-adoption agreement if it is in the best interest of a child; or

(b) may direct that the parties consider a post-adoption agreement, including through mediation if necessary.".

Amendment of section 236 of Act 38 of 2005

119. 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

(d) 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

120. 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] 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"; and

(c) 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

121. 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) by the insertion in subsection (4) after paragraph *(c)* of the following paragraphs:

"*(c*A*)* the adoption registrar contemplated in section 247;

*(c*B*)* the relevant provincial head of social development;".

Deletion of section 249 of Act 38 of 2005

122. Section 249 of the principal Act is hereby deleted.

Amendment of section 250 of Act 38 of 2005, as inserted by section 11 of Act 41 of 2007

123. 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'';

(c) by the insertion in subsection (1) after paragraph *(d)* of the following paragraph:

''*(e)* a social worker employed by the Department or a provincial department of social development who provides adoption services.''; and

(d) by the deletion of subsections (2) and (3).

Amendment of section 251 of Act 38 of 2005

124. 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 the form and manner prescribed, withdraw an accreditation to provide adoption services.''.

Amendment of section 252 of Act 38 of 2005

125. 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]** 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

126. 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

127. 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:

''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

128. 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:

"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 of the Republic may, in the form and manner as prescribed, 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

129. 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 an 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 after subsection (2) 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

130. 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) of paragraph *(b)*;

(h) by the deletion of subsections (7), (8) and (9); and

(i) by the insertion of the following subsection:

"(10) The adoption of a child—

(a) habitually resident in the Republic by a family member resident in a convention country may be dealt with as an inter-country adoption in the prescribed form and manner; or

(b) by a person who will become an adoptive parent jointly with the child's biological parent may be dealt with in the prescribed form and 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.".

Amendment of section 262 of Act 38 of 2005

131. 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 in subsection (6) of paragraph *(b)*;

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

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

"(8) 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 form and 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

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

''**263.** 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

133. 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 of the Republic 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

134. 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 of the Republic 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

135. 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, in the prescribed form and manner, recognising the adoption.";

(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

136. The following section is hereby substituted for section 268 of the principal Act:

"**268.** (1) The Central Authority of the Republic may issue a declaration, in the prescribed form and manner, recognising the adoption of a child in a non-convention country if—

(a) the adoption is in accordance with and has not been rescinded under the law of the country in which the adoption order was made; 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 confirmation letter was received and registered by the Central Authority of the Republic.".

Amendment of section 271 of Act 38 of 2005

137. Section 271 of the principal Act is hereby amended—

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

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

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

"(3) Where guardianship of a child has been granted by a convention country or non-convention country, and such guardianship is not 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

138. 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 filing 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 filing 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

139. The following section is hereby substituted for section 279 of the principal Act:

"**279.** (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 a hearing 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

140. 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 295 of Act 38 of 2005

141. 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, 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 in paragraph *(c)* of subparagraphs (vi) and (vii);

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

(e) by the insertion after paragraph *(d)* of the following paragraph:

"*(d*A*)* 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 an agency, an affidavit by such agency describing details which include the—

(aa) business of the agency;

(bb) agency's involvement relating to the surrogate mother; and

(cc) manner in which information was obtained by the agency relating to the surrogate mother;

(iii) information of any previous confirmed surrogate motherhood agreements or pending matters in court and the status of such matters;

(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; and".

Amendment of section 297 of Act 38 of 2005

142. 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

143. 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 any person involved in surrogacy.".

Amendment of section 304 of Act 38 of 2005, as amended by section 12 of Act No 41 of 2007

144. 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:

"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—

(i) the prescribed national norms and standards referred to in section 79, 194 or 216 applicable to it;

(ii) other national norms and standards as may be prescribed by regulation;

(iii) any structural, safety, health and other requirements as may be required by any law; and

(iv) the provisions of this Act;''.

Amendment of section 305 of Act 38 of 2005, as amended by section 13 of Act 41 of 2007 and section 48 of Act 7 of 2013

145. 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), 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) for 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 as amended by section 14 of Act 41 of 2007

146. 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)*(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)*(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

147. Section 312 of the principal Act is hereby amended—

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

"(1A) The 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

148. This Act is called the Children's Amendment Act, 2020, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CHILDREN'S AMENDMENT BILL, 2020

1. PURPOSE OF THE AMENDMENT BILL

The Children's Amendment Bill seeks to—

(a) amend the Children's Act to strengthen protective measure for children;

(b) address critical gaps and challenges in the underlying child care and protection system and identify strategies to address these challenges efficiently and effectively;

(c) contribute towards the comprehensive legal solution as ordered by the Gauteng Division of the High Court in Pretoria, in the matter of *Centre for Child Law v Minister of Social Development* (Case No: 72513/2017) to deal with challenges relating to the provision and administration of foster care.

The High Court, on 28 November 2017, directed the Minister amongst others, to prepare and introduce before Parliament, the necessary amendments to the Children's Act 38 of 2005 (''the Children's Act''), and the Social Assistance Act 13 of 2004, and to do so within a period of 15 months from the date of the Court Order in order to produce a comprehensive legal solution regarding the foster care system. The 15-month period referred to in the court order lapsed on the 28th of February 2019.

Further the court ordered that any foster care order which, as at the date of the order, is in existence or has lapsed due to non-extension shall be deemed to be validly in place for 24 months from the date of the order or until the child, subject to the order turns 18, whichever comes first. On 26 November 2019, the High Court extended the initial 2017 order for a period of 12 months and directed the Minister to request Parliament to expedite the process for the consideration and tabling of the amendments to the Children's Act.

2. OBJECTS OF BILL

The Bill introduces the amendments as follows:

2.1 **Clause 1** seeks to amend section 1 of the principal Act by substituting and inserting new definitions i.e. ''early childhood development centre''; ''family counsellor'', ''inter-country adoption'', ''regional court'', ''separated migrant child'' and ''unaccompanied minor child''. This will align the principal Act with current family and child law practice.

2.2 **Clause 2** seeks to amend section 6 and introduces the concept of *accessible and inclusive environment* to promote and protect the interests of children with disabilities.

2.3. **Clause 3** seeks to insert a new section 6A that provides for protection of a child's right to privacy and information.

2.4 **Clause 4** seeks to amend section 7 by making reference to ''*any special needs that a child may have*''. The intention is to create an additional set criterion, whenever any provision in the Act requires the best interests of the child test to be applied—the child's special needs must be taken into consideration.

2.5 **Clause 5** seeks to amend section 8 by explicitly stating that the Act applies to every child in the Republic of South Africa so that there are no interpretation difficulties and that users of the Act will know that children include non-citizens.

2.6 **Clause 6** seeks to amend section 12 which is intended to align the prohibition of genital mutilation with the new definition. The clause further prohibits any marriage of a child.

2.7 **Clause 7** seeks to amend section 13 and is intended to align the Children's Act with the globally accepted terminology including the terminology in the United Nations Convention on the Rights of the Child and the White Paper on the Rights of Persons with disabilities.

2.8 **Clause 8** seeks to provide for the substitution of the heading of Part 1 of chapter 3 for "*automatic acquisition of parental responsibilities*". This amendment is intended to align the terminology with the findings of the Constitutional Court in the matter of *Fraser vs Naude and Another* (CCT14/98)1998 ZACC 13, 1991(1) SA which confirmed the rights of unmarried biological parents, in respect of the adoption of their children.

2.9 **Clause 9** seeks to amend section 19 in order to provide clarity regarding the guardianship and parental responsibilities and rights relating to the biological father of a child.

2.10 **Clause 10** seeks to—

(a) amend section 21 by providing clarification regarding a father who is not married to the mother and who was living with her at any time between the child's conception or birth. He will automatically acquire parental responsibilities and rights in respect of that child;

(b) further clarify the circumstances under which the father may acquire full parental responsibilities and rights in respect of a child;

(c) further amend section 21 by the insertion of subsection 1A, in order to clarify that the family advocate may, in the prescribed manner, issue a certificate confirming that the biological father has automatically acquired full parental responsibilities and rights in respect of the child;

(d) align the current terminology or definitions i.e. social service practitioner;

(e) further delete subsection (3)*(b)* which provides that any party to the mediation may have the outcome of the mediation reviewed by a court.

2.11 **Clause 11** seeks to insert a new Part 1A. This amendment is intended to group the sections addressing acquisition and loss of parental responsibilities and rights together.

2.12 **Clause 12** seeks to amend section 22—

(a) by inserting a new subsection (2A). This amendment is intended to give the child who is the subject of a parental responsibilities and rights agreement, if of sufficient age, maturity and development, an opportunity to express his or her views regarding the contents of such agreement;

(b) by substituting paragraphs (4)*(a)* and *(b)*. This amendment is intended to cater for an application in the prescribed manner, i.e. for a parental responsibilities and rights agreement to be registered with the family advocate and to substitute a reference to the divorce court with regional court;

(c) by amending subsection (6). This amendment intends to clarify that a parental responsibilities and rights agreement, registered by the family advocate, may be amended or terminated in the prescribed manner;

(d) by the deletion of subsection (7).

2.13 **Clause 13** seeks to amend section 23—

(a) by substituting the reference to divorce court with regional court;

(b) to include that the parties must inform the court of any other proceedings that are pending in any other court.

2.14 **Clause 14** seeks to amend section 25 and intends to ensure that where a non-South African citizen applies for guardianship of a child, the application, if heard in the High Court, must be referred to a children's court having jurisdiction to be dealt with as an application for an inter-country adoption.

2.15 **Clause 15** seeks to amend section 28 by substituting a reference to the divorce court with the regional court.

2.16 **Clause 16** seeks to amend section 29 by—

(a) substituting a reference to the divorce court with the regional court; and

(b) amending section 29 by the insertion of a new subsection (1A). This amendment intends to prescribe that any party to an application for a parental rights and responsibility agreement, may in the prescribed manner, refer the matter to the family advocate for an investigation.

2.17 **Clause 17** seeks to insert a new section 30A which intends to address the issue of the residence of the child.

2.18 **Clause 18** seeks to delete the heading ''Parenting Plans''. This amendment seeks to synchronise the amendments made to Part 1A.

2.19 **Clause 19** seeks to amend section 34 by inserting a new subsection (4A) so that an application made by co-holders of parental rights and responsibilities for the amendment or termination of the parenting plan may be done in the form and manner as prescribed.

2.20 **Clause 20** seeks to amend section 35 by—

(a) amending outdated terminology;

(b) providing that a parent who is aggrieved by another parent who refuses to allow that parent contact with a child, contrary to a court order, parental responsibilities and rights agreement or parenting plan, may seek recourse;

(c) making provision for the inclusion of a parenting plan.

2.21 **Clause 21** seeks to amend the heading of section 40 and correct the terminology so that it is aligned with current family and child law practice.

2.22 **Clause 22** seeks to insert a new section 41A, conferring on the Minister of Justice and Correctional Services, the power to make regulations regarding matters listed under the relevant chapter, after consultation with the Minister.

2.23 **Clause 23** seeks to amend section 44 to provide for the jurisdiction of a court, where a matter is transferred from one children's court to another, in accordance with the prescribed procedure and if it is in the best interest of the child.

2.24 **Clause 24** seeks to amend section 45—

(a) by extending the jurisdiction of the children's court to include ''guardianship of an orphaned or abandoned child'';

(b) by excluding matters arising in a shelter from the jurisdiction of the children's court;

(c) by including an unaccompanied or separated migrant child, or the child of an asylum seeker or refugee, as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998), under the children's court's jurisdiction;

(d) by adding to the powers of the children's court to 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 removing all references to the divorce courts and to clarify that the children's court and the High Court have jurisdiction over guardianship of a child. The High Court, children's court and regional court have jurisdiction over assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.

2.25 **Clause 25** seeks to amend section 46 by adding to the list of specific orders that a children's court may make.

2.26 **Clause 26** seeks to amend section 49 by substituting the term ''social service professional'' with the term ''social service practitioner''.

2.27 **Clause 27** seeks to amend section 52 by explicitly stating that the Rules Board for Courts of Law must make rules relating to the children's court and to include sign language, speech and tactile interpreters to be used to ensure that the interest of persons with disabilities are protected.

2.28 **Clause 28** seeks to amend section 57 by inserting consequential amendments to ensure consistent use of terminology.

2.29 **Clause 29** seeks to amend section 62 by inserting consequential amendments for the consistent use of terminology.

2.30 **Clause 30** seeks to amend section 63 by including family counsellor to the list of persons from whom a written report is deemed as admissible evidence. This amendment intends to explain that a family counsellor may provide an opinion on the circumstances of a child and produce a report which may be admissible in court as evidence.

2.31 **Clause 31** seeks to amend section 66 and is a consequential amendment to cross-reference the new section 6A.

2.32 **Clause 32** seeks to delete section 74 as it is superfluous because of the insertion of the new section 6A.

2.33 **Clause 33** seeks to amend section 75—

(a) by adding paragraph (1)(*b*A). The amendment intends to give the Minister of Justice and Correctional Services the power to make regulations regarding the procedures for determining the age of a child;

(b) by deleting the word ''and'' at the end of paragraph (1)(*j*) and inserting a new paragraph (1)(*j*A). The amendment intends to give the Minister the power to make regulations regarding the responsibility for defraying costs relating to investigations and reports contemplated in section 62.

2.34 **Clause 34** seeks to amend section 76 by including a reference to guardians and providing for the registration of a partial care facility under section 80 if there are less than six children.

2.35 **Clause 35** seeks to amend section 78—

(a) by deleting superfluous wording and by the insertion of a new subsection (3A) which allows funding for a conditionally registered partial care facility notwithstanding only partial compliance with the prescribed national norms and standards to qualify for funding. This amendment is necessary to allow the provincial head of social development to provide support for a conditionally registered partial care facility to enable it to comply with national norms and standards so as to acquire full registration status;

(b) by amending subsection (4) to enable an MEC to prioritise the funding of partial care facilities as prescribed;

(c) by amending subsection (4)*(a)* to clarify that the MEC may prioritise and fund partial care facilities in poverty-declared wards.

2.36 **Clause 36** seeks to amend section 79—

(a) by the deletion of the word ''basic'' before therapeutic interventions so as to remove any misconceptions about what basic therapeutic interventions mean;

(b) by the insertion in subsection (4) of the words ''and functional needs''. This thereby clarifies that a partial care facility may offer programmes appropriate to the developmental and functional needs of the children in that facility, including children with disabilities and chronic illnesses.

2.37 **Clause 37** seeks to amend section 81 by deleting a reference to an application for conditional registration and for the reinstatement of registration. This amendment intends to delete all inferences to an application for conditional registration.

2.38 **Clause 38** seeks to amend section 82—

(a) by the substitution of subsection (4) in order to remove a reference to a social service professional and conditional registration. The reason for this amendment is to ensure the consistent use of the term social service practitioner and to delete all references to an application for a conditional registration;

(b) by the substitution of subsection (5) to make provision for the MEC for social development to assist a person operating a partial care facility, who has conditional registration, to comply with the prescribed national norms and standards contemplated in section 94 and such other requirements as may be prescribed. The amendment is necessary to assist conditionally registered partial care facilities to comply with the national norms and standards so as to acquire full registration status.

2.39 **Clause 39** seeks to amend section 83 to specify the conditions relating to partial care facilities and services that must be complied with when applying for registration.

2.40 **Clause 40** seeks to amend section 85 by the addition of a new subsection (5) to provide for alternative arrangements to be made for children in a partial care facility that has been ordered to stop operating.

2.41 **Clause 41** seeks to amend section 87 to provide for the monitoring of partial care facilities.

2.42 **Clause 42** seeks to amend section 88 by effecting consequential amendments relating to defined terminology or phrases.

2.43 **Clause 43** seeks to amend section 89 by making a reference to section 110(5) when reporting the incident. This amendment is necessary to allow for the protection of the child by ensuring the safety and wellbeing of the child, assessment and investigation of the report and initiation of proceedings for the protection of the child.

2.44 **Clause 44** seeks to amend section 90 to allow the Minister to make regulations regarding inspections and monitoring of partial care facilities and services and the assignment of functions to municipalities.

2.45 **Clause 45** seeks to amend section 91 by substituting the definition of early childhood development to include provision for children with disabilities and to amend subsection (3) to provide for the prescribing of different early childhood development programmes.

2.46 **Clause 46** seeks to amend section 92—

(a) by inserting a new subsection that the Minister must, after consultation with any other relevant Ministers, relevant stakeholders and relevant civil society organisations, develop a comprehensive national strategy aimed at securing a properly resourced, coordinated, managed and inclusive early childhood development system. Furthermore, MECs must ensure that their provincial strategies are inclusive and provide for children with disabilities and special needs;

(b) by amending subsection (2)(*a*) to require the MEC for social development to maintain a record of registered early childhood development programmes in the province with specific mention of inclusive programmes.

2.47 **Clause 47** seeks to amend section 93—

(a) by inserting subsection (3A) which provides that a conditionally registered early childhood development programme qualifies for funding notwithstanding only partial compliance with the prescribed national norms and standards. The amendment is necessary to assist conditionally registered early childhood development programmes to comply with the national norms and standards so as to acquire full registration status;

(b) by amending the words in subsection (4) preceding paragraph *(a)* to provide that the MEC may prioritise and fund early childhood development programme in poverty declared wards. This amendment intends to assist in correct targeting of under-serviced and poor areas for the provisioning and funding of early childhood development programmes;

(c) by inserting paragraph (aA) after subsection (4) *(a)* to provide that the funding of early childhood development programmes may be prioritised in rural areas;

(d) by including that the Department, provincial department of social development or municipality may provide early childhood development programmes.

2.48 **Clause 48** seeks to amend section 94 to include that the norms and standards must include the word 'protection' when caring for children and that the norms and standards must provide for relevant qualification, skills and training required for early childhood development.

2.49 **Clause 49 seeks** to amend section 96 by effecting consequential amendments to align the definitions accordingly.

2.50 **Clause 50** seeks to amend section 98 and are consequential amendments.

2.51 **Clause 51** seeks to amend section 100 by providing that a person providing an early childhood development programme who has been instructed to stop the provision of that programme, must ensure that he or she notifies the parents of the affected child to make alternative arrangements.

2.52 Clause 52 seeks to amend section 102 by providing for the conditions under which the MEC for social development may assign the performance of some or all of the functions to the municipal manager and to effect minor consequential amendments.

2.53 **Clause 53** seeks to amend section 103 to provide for the suspension or cancellation of registrations, powers to regulate early childhood development programmes, lodging an appeal, assessment and monitoring of the programmes and assignment of functions to municipalities.

2.54 **Clause 54** seeks to insert a new heading Part II which is early childhood development centres.

2.55 **Clause 55** seeks to insert a procedure for registration of early childhood development centres and matters related thereto: 103A-103M. It provides for the early childhood development centres to be registered; provision of early childhood development centres; national norms and standards for early childhood development centres; application for registration and renewal of registration of early childhood development centres; consideration of application; conditions for registration of early childhood development centres; cancellation of registration; notice of enforcement; appeal and review of certain decisions; record, inspection and provision for early childhood development centre; assignment of functions to a municipality; serious injury, abuse or death of child in early childhood development centres and regulations for early childhood development matters.

2.56 **Clause 56** seeks to amend section 105 by providing that the Department must ensure that a quality assurance process is conducted, in the manner and at the intervals as prescribed, in respect of all child protection services contemplated in this section.

2.57 **Clause 57** seeks to amend section 106 by providing for minor technical amendments and adding the phrases ''rehabilitation services for children with disabilities'' and ''quality assurance''.

2.58 **Clause 58** seeks to amend section 107 by providing that the Director-General 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.

2.59 **Clause 59** seeks to amend section section 109 by providing for matters that may be prescribed.

2.60 **Clause 60** seeks to amend section 110 by inserting ''officer of the court'', ''an official in the employ of the Department of Home Affairs'', ''a ward councillor'' and ''any person working with children'' to the list of persons that must report an abused or neglected child or a child in need of care and protection.

2.61 **Clause 61** seeks to amend section 111 by inserting a new subsection (3) which requires the Director-General to designate an official from within the Department to be the Registrar of the National Child Protection Register.

2.62 **Clause 62** seeks to amend section 114 by making minor consequential amendments so that terminology is aligned.

2.63 **Clause 63** seeks to amend section 117 by making consequential amendments as a result of the amendment under section 111.

2.64 **Clause 64** seeks to insert section 117A to provide the procedure for removal of a name from Part A of the Register.

2.65 **Clause 65** seeks to amend the heading after section 117. The heading has been amended to clarify that Part B of the National Child Protection Register deals with persons unsuitable to work with children.

2.66 **Clause 66** seeks to amend section 119 by inserting a new subsection (2) which excludes persons, who were children during the commission of an offence against another child, from the operational provisions of sections 120 to 128 of the Act.

2.67 **Clause 67** seeks to amend section 122 by effecting consequential amendments.

2.68 **Clause 68** seeks to amend section 123 by making minor consequential and technical amendments to align terminology with the definitions.

2.69 **Clause 69** seeks to amend section 124 by effecting minor consequential amendments.

2.70 **Clause 70** seeks to amend section 125 by including the Registrar of the National Child Protection Register as a person that can access Part B of the Register.

2.71 **Clause 71** seeks to amend section 126 by effecting minor technical and consequential amendments to align the terminology with the definitions.

2.72 **Clause 72** seeks to amend section 127 by effecting minor technical and consequential amendments and providing that the Registrar must inform a

person found unsuitable to work with children that that person's name and particulars are entered in Part B of the Register within 21 working days of such entry.

2.73 **Clause 73** seeks to amend section 128 in order to effect minor consequential amendments.

2.74 **Clause 74** seeks to amend section 131 by including necessary medical testing for children in need of care and protection or adoption.

2.75 **Clause 75** seeks to amend section 135 in order to effect minor technical amendments.

2.76 **Clause 76** seeks to amend section 141 by providing that any person must report instances of child labour and exploitation.

2.77 **Clause 77** seeks to amend section 142 by empowering the Minister to make regulations prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register; and the establishment of well-resourced designated child care and protection units with quality assurance units.

2.78 **Clause 78** seeks to amend section 145 to give the MEC powers to make regulations for information regarding the review of strategies.

2.79 Clause **79** seeks to amend section 146 by effecting minor consequential amendments.

2.80 **Clause 80** seeks to amend section 147 relating to the determination of norms and standards for prevention and early intervention programmes and by inserting a new subsection (3) which provides that the norms and standards as contemplated in subsection (1) should promote understanding of prevention and early intervention approaches. This amendment intends to enhance the provision of prevention and early intervention programmes for the purpose of standardisation.

2.81 **Clause 81** seeks to insert a new section 149A that provides for the Minister to make regulations regarding any matter necessary to facilitate the implementation of this Chapter.

2.82 **Clause 82** seeks to amend section 150 to clarify that a child who is abandoned or orphaned and has no parent, guardian, family member or caregiver who is able and suitable to care for that child, is a child in need of care and protection. A child in need of care and protection will include ''an unaccompanied migrant child from another country'', ''a victim of trafficking'' or a child who ''has been sold by a parent caregiver or guardian''.

2.83 **Clause 83** seeks to amend section 155 by effecting minor consequential amendments.

2.84 **Clause 84** seeks to amend section 156 by effecting minor consequential amendments.

2.85 **Clause 85** seeks to amend section 157 by including a reference to ''guardian''.

2.86 **Clause 86** seeks to amend section 159 by providing that a court may extend an alternative care order that has lapsed or make an interim order. Furthermore, it will be regulated to ensure the accountability of the respective officials regarding the lapsing of these orders. It forms part of the comprehensive long-term solution to foster care as a mechanism for managing foster care orders.

2.87 **Clause 87** seeks to amend section 167—

(a) by providing that a child may not be placed in temporary safe care for more than 72 hours without a court order;

(b) by providing that a child may not be placed in temporary safe care for a period longer than six months at a time;

(c) by the insertion of subsection (3) *(c)* to provide approval periods for persons and registered child and youth care centres.

2.88 **Clause 88** seeks to amend section 170 by providing that a child who absconds from alternative care and is apprehended or returns within a timeframe of 48 hours should not appear before the children's court. However, the designated social worker should assess the child to establish the reasons for the child to abscond and make recommendations to the provincial head of social development.

2.89 **Clause 89** seeks to amend section 178 by effecting minor consequential amendments.

2.90 **Clause 90** seeks to amend section 179 by making minor consequential amendments and by inserting new regulation-making powers which include fees payable to a person with whom a child is placed in temporary safe care, the manner in which the MEC for social development may grant written approval for children in alternative care to leave the Republic, and the form in which an appeal against a decision taken in terms of this Chapter must be lodged with the MEC for social development.

2.91 **Clause 91** seeks to amend section 181 by effecting minor consequential amendments to clarify the principles relating to foster care.

2.92 **Clause 92** seeks to amend section 183 by effecting consequential amendments.

2.93 **Clause 93** seeks to amend section 185 by providing that 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. The amendment is intended to ensure that children placed in cluster foster care are cared for appropriately and the caregiver is not overburdened.

2.94 **Clause 94** seeks to amend section 186—

(a) by providing that a children's court may deem it necessary to order further supervision services and 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, the court may place a child in foster care with a family member and order that the foster care placement subsists until the child turns 18 years;

(b) by effecting consequential amendments to align the Bill with the current terminology;

(c) by providing that this section does not apply to a cluster foster care scheme.

2.95 **Clause 95** seeks to amend section 188 by including a reference to disability.

2.96 **Clause 96** seeks to amend section 191**—**

(a) by providing that a child and youth care centre must be registered;

(b) by correcting the reference to prison;

(c) by including the exclusion of treatment centres from the requirement for registration as child and youth care centres in order to avoid dual registration;

(d) by providing that a registered child and youth care centre in addition to offering a therapeutic programme must offer a developmental programme designed for the residential care of children outside the family environment;

(e) by clarifying that a parent or other person having responsibilities also has rights with regard to the reception, care and development of children;

(f) by adding to the list of programmes that a child and youth care centre must provide.

2.97 **Clause 97** seeks to amend section 193 by effecting minor consequential amendments and by the addition of a new subsection (3A) which provides that the MEC for provincial social development may provide funding to a registered child and youth care centre that has only conditionally complied with the national norms and standards.

2.98 **Clause 98** seeks to amend section 194—

(a) to include any other relevant Ministers, relevant stakeholders and relevant civil society organisations as part of the stakeholders that the Minister must consult with when determining norms and standards;

(b) to amend section 194 to insert an additional requirement for the national norms and standards which relate to access to rehabilitation services for children with disabilities.

2.99 **Clause 99** seeks to amend section 197 by effecting minor consequential amendments.

2.100 **Clause 100** seeks to amend section 199 by deleting a reference to conditional registration and to substitute the reference to a partial care facility with a child and youth care centre.

2.101 **Clause 101** seeks to amend section 200 by effecting minor consequential amendments and providing that the MEC for social development may assist a designated child protection organisation, where registration was granted with conditions, to comply with the norms and standards.

2.102 **Clause 102** seeks to amend section 201 by substituting the heading of ''conditional registration'' for ''conditions relating to registration'' and effecting minor consequential amendments.

2.103 **Clause 103** seeks to amend section 205 by effecting minor consequential amendments and adding the submission of 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 centre.

2.104 **Clause 104** seeks to amend section 208 by effecting minor consequential amendments.

2.105 **Clause 105** seeks to amend section 209 by effecting minor consequential amendments and adding reference to the management board.

2.106 **Clause 106** seeks to amend section 211 by providing a discretionary provision to indicate that, where appropriate, the team not connected to the centre may appoint a mentor to oversee implementation of the plan by the management of the centre.

2.107 **Clause 107** seeks to amend section 213—

(a) by substituting subsection (1) to specify that drop in centres are a non-residential facility. The amendments intend to distinguish between child and youth care centres and drop-in centres, that drop-in centres are not residential care facilities like child and youth care centres and by adding psychosocial service under subsection (2);

(b) by inserting under subsection (3) subparagraph (*a*A) 'cognitive and spiritual' programme. The amendment intends to extend the list of programmes that a drop-in centre may provide;

(c) by effecting consequential amendments.

2.108 **Clause 108** seeks to amend section 214 by including any other relevant Ministers, relevant stakeholders and relevant civil society organisations as

part of the stakeholders that the Minister must consult, regarding the development of the national strategy concerning drop-in centres.

2.109 **Clause 109** seeks to amend section 215 which regulates the provision of drop-in centres—

(a) by the insertion of a new subsection (3A) to allow a conditionally registered drop-in centre to qualify for funding notwithstanding only partial compliance with the prescribed national norms and standards;

(b) by the amendment of subsection (4) to provide that the MEC may prioritise the funding for drop-in centres;

(c) by the amendment of subsection (4) *(a)* to provide that the MEC must prioritise and fund drop-in centres in poverty-declared wards and communities where families lack the means of providing proper shelter, food and other basic necessities of life to their children.

2.110 **Clause 110** seeks to amend section 218 by deleting a reference to conditional registration.

2.111 **Clause 111** seeks to amend section 219 by effecting consequential amendments.

2.112 **Clause 112** seeks to amend section 220 by correcting the reference to ''conditions relating to registration'' and effecting minor consequential amendments.

2.113 **Clause 113** seeks to amend section 224 by providing for the monitoring of drop-in centres.

2.114 **Clause 114** seeks to amend section 225 by effecting minor consequential amendments.

2.115 **Clause 115** seeks to amend section 226 which provides that when a child is seriously injured or abused while in 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 act in accordance with the provisions of section 110(5).

2.116 **Clause 116** seeks to amend section 232 by clarifying that the purpose of the register is to match adoptable children with prospective adoptive parents and to effect other consequential amendments.

2.117 **Clause 117** seeks to amend section 233 that regulates consent to adoption by providing that a court may dispense with the assistance of the guardian of a parent who is a child with due regard to the best interests of the adoptable child and parent. The amendment seeks to promote the best interests of a child in the event that the guardian of the parent of the child is not available to give consent for the adoption of the child.

2.118 **Clause 118** seeks to amend section 234 which regulates post-adoption agreements by the substitution of subsection (1) to include 'or a family member' to the current list which includes parent or guardian, to enter into post-adoption agreements before or during an application and to provide further that where 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. This amendment intends to allow a family member to enter into a post-adoption agreement, when that family member has been formally recognised as a care-giver to the child to be adopted.

2.119 **Clause 119** seeks—

(a) to amend section 236 which regulates the circumstances when consent is not required by the substitution in subsection (1) for paragraph *(a)* to

include a person who is incompetent to give consent due to mental illness as well as a mental health disability as supported by a report from a suitably qualified person. The amendment intends to confine the conclusion that a person has a mental disability and cannot give consent, to a suitably qualified person who can make that conclusion;

(b) to amend section 236 by the addition of paragraph (*c*) in subsection (3) dispensing with consent from the biological father following an allegation by the mother of the child, finding on a balance of probabilities that the child was conceived as a result of the mother being a victim of human trafficking: Provided that such a finding shall not constitute a conviction for the crime of human trafficking. This amendment is necessary to clarify that the consent of a father is not required for a child born as result of the mother being a victim of trafficking, which in one way or another involves the father.

2.120 **Clause 120** seeks to amend section 239—

(a) by the substitution of the term ''adoption social worker'' with that of ''a social worker responsible for adoption'';

(b) by the amendment of subsection (1)*(e)* by the deletion of the word ''prescribed'' and the insertion of the words ''as may be prescribed'' at the end. This is a technical amendment necessary for ease of reading.

2.121 **Clause 121** seeks to amend section 243 by providing for the prescribed form for the application. This amendment is intended to allow the Minister to prescribe a form to be used when an application for rescission of an adoption order is made.

2.122 **Clause 122** seeks to delete section 249. This amendment is intended to delete reference to all fees that may be charged for adoption.

2.123 **Clause 123** seeks to amend section 250—

(a) by the addition of subsection (1)*(e)* that now makes provision for ''a social worker in the employ of the Department or provincial department of social development who provides adoption services''. This insertion is intended to add to the list of persons who may provide adoption services;

(b) by deleting subsections (2) and (3) which provided exceptions to professional persons and organisations not listed in subsection (1) but can still provide adoption services. The deletion of these subsections is necessary to remove the repetition, because its context is contained in section 249(2)*(b)*, which has been deleted.

2.124 **Clause 124** seeks to amend section 251 by inserting section 1A in order to provide for the prescribed manner in terms of which the Director-General may withdraw an accreditation to provide adoption services. The amendment is necessary to allow the Director-General discretion to withdraw the accreditation of an adoption service provider, if the service provider does not comply with the legal and accreditation requirements.

2.125 **Clause 125** seeks to amend section 252 by the substitution of subsection (1)*(b)* to replace the words ''a child protection organisation accredited to provide adoption services'' with the words ''an adoption social worker''. It also deletes all references to an advertisement and replaces it with a notice. The amendment intends to clarify that an adoption social worker, not an organisation, may issue a notice for the purposes of recruitment. The reason for the deletion of the term ''advertisement'' is due to the fact that advertisement is for marketing purposes and is expensive. A notice is considered a general communication that is usually cheaper to publish. An advertisement seeks to entice a consumer to a purchase action while a notice limits itself to pure factual information.

2.126 **Clause 126** seeks to amend section 253 by the substitution of paragraphs *(e)* and *(f)* to replace the word ''welfare'' with the word

''protection''. This section authorises the Minister, after consultation with the Minister of Justice and Correctional Services in respect of regulations dealing with court orders, to make regulations. This amendment is intended to be consistent with the contemporary terminology.

2.127 **Clause 127** seeks to amend section 258 by correcting the cross-references to other sections in the Act.

2.128 **Clause 128** seeks to amend section 259 by effecting minor consequential amendments and by deleting subsection (4).

2.129 **Clause 129** seeks to amend section 260—

(a) by the insertion of the words ''recognised organisation or'' before the words ''accredited adoption agency''. The proposed amendment seeks to provide an alternative to such accredited adoption agency of another country by providing an alternative of ''equivalent organisation'' of a child protection organisation accredited in terms of section 260;

(b) by providing for the Central Authority of the Republic to enter into an adoption working agreement with the central authority of another convention country. This amendment intends to allow the South African Central Authority to enter into an adoption working agreement with the central authority in another convention country. Currently, the Children's Act only makes provision for child protection organisations to enter into working agreements, not the Central Authority.

2.130 **Clause 130** seeks to amend section 261**—**

(a) by the substitution of subsection (2) to replace the word ''shall'' with the word ''must'';

(b) by the amendment of subsection (3) by the insertion of the word ''inter-country'' before the word ''adoption'' and the words ''of the Republic'' after Central Authority. This amendment intends to distinguish between the SA Central Authority and one of a foreign country;

(c) by the amendment of subsection (4) by the substitution of the word ''will'' with the word ''must'' and the words ''of the Republic'' after Central Authority. The amendment intends to maintain consistency in terminology;

(d) by the amendment of subsection (5)*(e)* by the insertion of the words ''and has not withdrawn consent'' at the end of the subsection to clarify the status of the signed consent. This amendment intends to clarify the status of the signed consent;

(e) by the amendment of subsection (5)*(f)* by the insertion of the words ''and has not withdrawn consent'' at the end of the subsection but before the word ''and''. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and it is satisfied that the central authority of the convention country has agreed to the adoption of the child and has not withdrawn consent;

(f) by the amendment of subsection (6)*(a)* by the substitution for the words ''within a period of 140 days from the date on which it has consented to the adoption'' with ''at any time before the order of adoption is granted by the court''. The amendment intends to remove a reference to 140 days as it is arbitrary and not linked to any provision in the Convention. This period is replaced by a provision allowing the Central Authority to withdraw its consent at any time before the court order in respect of an inter-country adoption is granted. This would imply that consent cannot be withdrawn after the court order, thereby rendering the current provisions of subsections (6)*(b)* and (7) obsolete, which provisions should be omitted;

(g) by deleting subsections (6)*(b)*, (7) and (9). This amendment is necessary to align with the amendment in section 261(6)*(a)*; and

(h) substituting subsection (8), which provides for the adoption of a child habitually resident in the Republic by a family member of that child

resident in a convention country or by a person who will become an adoptive parent jointly with the child's biological parent to 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. The amendment intends to allow the Minister to make regulations regarding the adoption of a child by a family member or a person adopting the child together with the child's parent, who resides in a convention country.

2.131 **Clause 131** seeks to amend section 262—

(a) in subsection (2) by the substitution of the word ''shall'' with ''must''**.** The amendment intends to maintain consistency in terminology;

(b) in subsection (3) by the insertion of the word ''inter-country'' before the term adoption, by the insertion of the words ''of the Republic'' after the words ''Central Authority'' and by the substitution of the term ''will'' with ''must'' immediately after the inserted words of ''of the Republic'' in subsections (3) and (4) making it obligatory. The amendment intends to maintain consistency in terminology;

(c) in subsection (5)*(e)* by the insertion of the words ''and has not withdrawn consent'' at the end of the subsection. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and it is satisfied that the competent authority of the non-convention country has agreed to the adoption of the child and has not withdrawn consent;

(d) in subsection (5)*(f)* by the insertion of the words ''and has not withdrawn consent'' at the end of the subsection. The amendment intends to clarify that the court may issue an adoption order if the requirements are met and it is satisfied that the Central Authority of the Republic has agreed to the adoption of the child and has not withdrawn consent;

(e) in subsection (6) by the substitution for the words ''within a period of 140 days from the date on which it has consented to the adoption'' of the ''at any time before the order of adoption is granted by the court''. The amendment intends to remove a reference to 140 days. This period is replaced by a provision allowing the Central Authority of the Republic to withdraw its consent at any time before the court order in respect of an inter-country adoption is granted. This would imply that consent cannot be withdrawn after the court order, thereby rendering the current provisions of subsections (6)*(b)* and (7) obsolete, which provisions should be omitted;

(f) by deleting subsections (6)*(b)*, (7) and (9). This amendment is necessary to align with the amendment in section 262(6)*(a)*;

(g) by substituting subsection (8), which provides for the adoption of a child habitually resident in the Republic by a family member of that child resident in a convention country or by a person who will become an adoptive parent jointly with the child's biological parent to 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. The amendment intends to allow the Minister to make regulations regarding the adoption of a child by a family member or a person adopting the child together with the child's parent, who resides in a non-convention country.

2.132 **Clause 132** seeks to amend section 263 to remove the discretionary power of the Central Authority when issuing the compliance certificate, by replacing the term ''may'' with ''must'' and inserting the words ''of the Republic must'' immediately after the words Central Authority. The amendment intends to remove the discretion of the Central Authority and

obligates him or her to issue an adoption compliance certificate if the children's court has approved the adoption of a child.

2.133 **Clause 133** seeks to amend section 264—

(a) by the amendment of subsection (1) by the insertion of the words ''of the Republic'' after the words Central Authority. The amendment intends to clarify that a person who is resident in the Republic and 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 in subsections (2) and (3) for the word ''shall'' of the word ''must'', and the insertion of the words ''of the Republic'' immediately after the words Central Authority. The amendment intends to maintain consistency in terminology;

(c) in subsection (4) by inserting the words ''of the Republic'' immediately after the words Central Authority and the substitution of the word ''will'' with ''must''. The amendment intends to maintain consistency in terminology.

2.134 **Clause 134** seeks to amend section 265 by the substitution of subsections (1), (3) and (4) by the insertion of the words ''of the Republic'' after the words Central Authority and by the substitution in subsections (2), (3) and (4) for the word ''shall'' of the word ''must''. The amendment intends to maintain consistency in terminology.

2.135 **Clause 135** seeks to amend section 266—

(a) by the substitution in subsections (1), (2) and (5) for the word ''shall'' of the word ''must''. The amendment intends to maintain consistency in terminology;

(b) by inserting the words ''of the Republic'' immediately after the words Central Authority in subsection (3) and ''in the prescribed form and manner''. This amendment is intended to prescribe the form and manner in which the Central Authority of the Republic may issue a declaration recognising the adoption, if an adoption compliance certificate was not issued by the relevant convention country, hence the insertion of the words ''in the prescribed form and manner'';

(c) by the addition of subsection (6) which provides that 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 the 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. The amendment intends to allow the Central Authority of the Republic to recognise an adoption order made in another country irrespective of whether the adopted child is an adult at the time of application for recognition.

2.136 **Clause 136** seeks to amend section 268**—**

(a) by inserting correct numbering and by the insertion of the words ''of the Republic'' immediately after the words Central Authority and prescribing the manner in which the Central Authority of the Republic may issue a declaration recognising the adoption of a child in a non-convention country. The amendment intends to clarify that it is the Central Authority of the Republic that must issue a declaration in the prescribed form, if the adoption is in compliance with the law and has not been rescinded;

(b) by inserting subsection (2), which provides that the adoption in a non-convention country by a person habitually resident in another non-convention country must be recognised in the Republic if an adoption compliance certificate issued in the non-convention country where the adoption was granted is in force for the adoption. This insertion intends to allow the Central Authority of the Republic to recognise the adoption of a child habitually resident in a non-convention country by a person habitually resident in another non-convention country and finalised in the country where the child

resides, if a compliance certificate or an equivalent thereof has been issued by that country.

2.137 **Clause 137** seeks to amend section 271 by the insertion of subsection (1A) that regulates that when an adoption application is refused by a children's court the child must be returned to the country of origin. It also proposes that the process to do that be prescribed. The clause also adds subsection (3) which provides that where guardianship is not equivalent to adoption as recognised by the Central Authority in the Republic, the matter must be referred to a competent court for determination. The addition is intended to protect a child whose guardianship is not recognised as an adoption in the Republic.

2.138 **Clause 138** seeks to insert a new section 278A to expedite proceedings concerning the return of a child who has been abducted. This amendment is necessary to avoid delays in the judicial process. Once there are prolonged delays, a child who has been abducted adapts and adjusts to the new environment and it might not be in their best interest to be returned.

2.139 **Clause 139** seeks to amend section 279—

(a) by the deletion of the words ''subject to section 55,'' with regard to a legal representative of the child, in all applications in terms of The Hague Convention on International Child Abduction. The new procedure will now be provided by the subsequent amendment to subsection (2);

(b) to add subsection (2), which provides that on the day of the application in terms of this Chapter for the return of a child, the central Authority of the Republic must bring the application to the attention of the judge president of the relevant division of the High Court for the appointment of a legal representative for the child.

2.140 **Clause 140** seeks to amend section 292 by the substitution in subsection (1)*(c)*, *(d)* and *(e)* for the word ''domiciled'' of the words ''ordinarily resident'' and by the deletion of the words ''domiciled or'' in paragraph *(e)*.

2.141 **Clause 141** seeks to amend section 295—

(a) by the amendment of subparagraph (ii) in both paragraphs *(b)* and *(c)* to insert the words ''including health and age''. This amendment is intended to include the consideration of health and age prior to the court confirming surrogate motherhood;

(b) by the deletion of subparagraphs (vi) and (vii) in paragraph *(c)*.

(c) by the insertion of paragraph (*d*A), which provides for the agreement that is accompanied by a report from a psychologist containing an assessment of all parties, in the case involving an agency, to file an affidavit by such an agency.

2.142 **Clause 142** seeks to amend section 297 by the substitution of sections in subsection (1)*(e)* to provide for new cross-referencing.

2.143 **Clause 143** seeks to insert a new section 303A dealing with regulations. This amendment is intended to authorise the Minister, after consultation with the Minister of Health, to make regulations regarding any matter necessary to facilitate the implementation of Chapter 19.

2.144 **Clause 144** seeks to amend section 304 by amending the heading of section 304 by deleting the word ''shelter'' and effecting consequential amendments. This amendment is intended remove a reference to the now obsolete term ''shelter''.

2.145 **Clause 145** seeks to amend section 305 by effecting consequential amendments.

2.146 **Clause 146** seeks to amend section 306 by correcting cross-references and effecting minor consequential amendments.

2.147 **Clause 147** seeks to amend section 312 by providing that the MEC for social development, subject to any provincial strategic plan, may enter into an agreement with a designated child protection organisation or a person on an agency basis in the relevant province.

3. PERSONS OR BODIES CONSULTED

3.1 The Bill was published for public comments from 29 October to 29 November 2018. The Bill was further consulted with provincial heads of departments of social development and National Child Care and Protection Forum stakeholders which includes representatives from 26 National Departments, provincial departments of social development and Civil Society organisations.

3.2 The following stakeholders submitted written comments and a matrix report of the comments and the responses from the Department in respect of each comment is available.

National Departments

Department of Cooperative Governance and Traditional Affairs
Department of Home Affairs
Department of Justice and Constitutional Development

Civil Society organisations

National Adoption Coalition of South Africa
Wandisa
Cause for Justice
Centre for Child Law
Child Welfare South Africa
CINDI
Eastern Cape Adoption Coalition
ENGO Free State province
Language Environment and Educational Trust
Equal Education Law Centre
Family Literacy Project
Freedom for Religion South Africa
Global Initiative to end Corporal punishment
National Association for Child and Youth Care Workers
Ilifa la Bantwana
Life Choices pregnancy crises centre
Mamelani projects
Nelson Mandela Children's Fund
Refugee Legal and Advocacy Centre
South African Council for Social Service Professions
South African Catholics Bishops Conference
South African Federation of Waldorf Schools
The Peace Centre
UNHCR

Individuals

561 submissions were received from individuals and church organisations.

Furthermore, four submissions were received from individuals in relation to adoption matters.

4. FINANCIAL IMPLICATIONS FOR THE STATE

Most of the amendments proposed by this Bill relate to normal operations related to specific matters regulated under the Act. For this reason, the financial implications thereof have already been taken into account when compiling the

budget for these specific matters since the Act came into operation. The Department of Social Development costed the Bill and its cost drivers and the results revealed that the overall cost of the Bill is expected to be R32 427 billion in 2020/21 increasing to R 58.353 billion in 2028/29. The amendments to provide for early childhood development centres will have a significant financial implication for the provinces.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Social Development are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by the provisions of section 76 of the Constitution.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18 (1) *(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

5.3 Furthermore, the relevant Socio-economic Impact Assessment (SEIAS) has been approved.