

CHILD CARE ACT 74 OF 1983

(English text signed by the State President)

[Assented To: 15 June 1983]

[Commencement Date: 1 February 1987]

as amended by:

Special Courts for Blacks Abolition Act 34 of 1986

Child Care Amendment Act 86 of 1991

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

Child Care Amendment Act 96 of 1996

Welfare Laws Amendment Act 106 of 1997

Adoption Matters Amendment Act 56 of 1998

Child Care Amendment Act 13 of 1999

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

[with effect from 16 December 2007]

ACT

To provide for the establishment of children's courts and the appointment of commissioners of child welfare; for the protection and welfare of certain children; for the adoption of children; for the establishment of certain institutions for the reception of children and for the treatment of children after such reception; and for contribution by certain persons towards the maintenance of certain children; and to provide for incidental matters.

[Long title substituted by s. 24 of Act 86/91]

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1. Definitions

In this Act, unless the context otherwise indicates -

“accredited social worker” means a registered social worker in private practice who has registered a speciality in adoption services and who complies with the conditions for the practicing of such a speciality under the Social Work Act, 1978 (Act No. 110 of 1978): Provided that the mere passing of an examination contemplated in section 17C(2A) of that Act shall not, for the purposes of this Act, be regarded as sufficient for the registration of such a speciality;

[Definition of “accredited social worker” inserted by s. 1 of Act 96/96 and substituted by s. 1 of Act 56/98]

“adopted child” means a child adopted under the provisions of Chapter 4 of this Act or of the Children’s Act, 1960 (Act No. 33 of 1960), or of the Children’s Act, 1937 (Act No. 31 of 1937), or of the Adoption of Children Act, 1923 (Act No. 25 of 1923);

“adoptive parent” means a person who adopts or has adopted a child under the provisions of Chapter 4 of this Act or of the Children’s Act, 1960 (Act No. 33 of 1960), or of the Children’s Act, 1937 (Act No. 31 of 1937), or of the Adoption of Children Act, 1923 (Act No. 25 of 1923);

“authorized officer”, in relation to any act, means any person authorized in writing by a commissioner of child welfare, social worker or policeman to perform that act;

“Black”

[Definition of “Black” deleted by s. 1 of Act 96/96]

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

“child born out of wedlock” means a child whose parents were not married to each other at the time of his or her conception or birth, or at any other time thereafter;

[Definition of “child born out of wedlock” inserted by s. 1 of Act 96/96 and substituted by s. 1 of Act 56/98]

“child in need of care” means a child referred to in section 14 (4);

[Definition of “child in need of care” inserted by s. 1 of Act 96/96]

“children in especially difficult circumstances” means children in circumstances which deny them their basic human needs, such as children living on the streets and children exposed to armed conflict or violence;

[Definition of “children in especially difficult circumstances” inserted by s. 1 of Act 96/96]

“children’s court” means a children’s court mentioned in section 5;

[Definition of “children’s court” substituted by s. 2 of Act 34/86]

“children’s home” means any residence or home maintained for the reception, protection, care and bringing-up of more than six children apart from their parents, but does not include any school of industries or reform school;

“commercial sexual exploitation” means engaging the services of a child to perform a sexual act or to produce child pornography as contemplated in section 17 or 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, for a financial or other reward payable to the child, the parents or guardian of the child or any other person;

[Definition of “commercial sexual exploitation” inserted by s. 1 of Act 13/99 and substituted by s. 68 of Act 32/2007]

“commissioner of child welfare” or **“commissioner”** means a commissioner of child welfare mentioned in section 6 and includes an assistant commissioner of child welfare;

“Commissioner’s court”

[Definition of “Commissioner’s court” deleted by s. 2 of Act 34/86]

“contribution order” means an order for the payment or recurrent payment of a sum of money as a contribution towards the maintenance of a child in a place of safety or in any custody in which he was placed under this Act or the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or towards the maintenance of a pupil;

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

“Director-General”, in relation to any provision of this Act, means the head of the department of State administered by the Minister to whom the administration of that provision has been assigned by proclamation issued under section 61;

“district” means the area subject to the jurisdiction of any magistrate’s court;

[Definition of “district” substituted by s. 2 of Act 34/86]

“foster child” means any child who has been placed in the custody of any foster parent in terms of Chapter 3 or 6 of this Act or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“foster parent” means any person, except a parent or guardian, in whose custody a child has been placed in terms of Chapter 3 or 6 of this Act or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“institution” means a reform school, school of industries or a children’s home established under section 29 or a children’s home registered under section 30;

“local authority” means an institution, council or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), and includes -

- (a) a board of management as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);
- (b) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act No. 102 of 1982);
- (c) a regional services council established under the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- (d) a local government body established or deemed to be established under section 30 of the Black Administration Act, 1927 (Act No. 38 of 1927);
[Definition of “local authority” substituted by s. 1 of Act 86/91]

“magistrate” includes an additional magistrate and an assistant magistrate;
[Definition of “magistrate” substituted by s. 2 of Act 34/86]

“magistrate’s court”
[Definition of “magistrate’s court” deleted by s. 2 of Act 34/86]

“management”, in relation to an institution, means the board of management of that institution;

“marriage” means any marriage which is recognised in terms of South African law or customary law, or which was concluded in accordance with a system of religious law subject to specified procedures, and any reference to a husband, wife, widower, widow, divorced person, married person or spouse shall be construed accordingly;
[Definition of “marriage” inserted by s. 1 of Act 96/96]

“medical officer” means a medical practitioner in the service of the State, including a provincial administration, or of a local authority;

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

“mental illness” means mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), and “mentally ill” has a corresponding meaning;

“Minister”, in relation to any provision of this Act of which the administration has by proclamation under section 61 been assigned to a Minister or to Ministers acting in consultation with one another, means that Minister or those Ministers;

“natural father” means a male person whose gamete has contributed to the conception of a child as a result of a sexual relationship with the mother of such child;

[Definition of “natural father” inserted by s. 1 of Act 56/98]

“nurse” means any person registered as a nurse under the Nursing Act, 1978 (Act No. 50 of 1978);

“parent” includes, except in Chapter 4, an adoptive parent;

“place of care” means any building or premises maintained or used, whether for profit or otherwise, for the reception, protection and temporary or partial care of more than six children apart from their parents, but does not include any boarding school, school hostel or any establishment which is maintained or used mainly for the tuition or training of children and which is controlled by or which has been registered or approved by the State, including a provincial administration;

“place of safety” means any place established under section 28 and includes any place suitable for the reception of a child, into which the owner, occupier or person in charge thereof is willing to receive a child;

“policeman” means any member of a police force established by law;

“prescribed” means prescribed by regulation under section 60;

“psychologist” means a psychologist registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Definition of “psychologist” inserted by s. 1 of Act 96/96]

“pupil” means any child who has been sent to or transferred to an institution in terms of Chapter 3 or 6 of this Act or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and includes a pupil referred to in section 16 (3);

“reform school” means a school maintained for the reception, care and training of children sent thereto in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or transferred thereto under this Act;

“respondent” means any person legally liable to maintain or to contribute towards the maintenance of a child or of a pupil for whose maintenance a contribution order is sought or was made;

“school of industries” means a school maintained for the reception, care, education and training of children sent or transferred thereto under this Act;

“secure care” means the physical, behavioural and emotional containment of children offering an environment and programme conducive to their care, safety and healthy development;

[Definition of “secure care” inserted by s. 1 of Act 13/99]

“secure care facility” means a facility established under section 28A;

[Definition of “secure care facility” inserted by s. 1 of Act 13/99]

“shelter” means any building or premises maintained or used for the reception, protection and temporary care of more than six children in especially difficult circumstances;

[Definition of “shelter” inserted by s. 1 of Act 96/96]

“social worker” means any person registered as a social worker under the Social Work Act, 1978 (Act No. 110 of 1978), or deemed to be so registered, and who, save for the purposes of section 42, is in the service of a state department or a provincial administration or a prescribed welfare organization;

[Definition of “social worker” substituted by s. 1 of Act 86/91 and s. 1 of Act 96/96]

“this Act” includes any regulation made under section 60;

“welfare organization” means a welfare organization registered in terms of section 13 of the National Welfare Act, 1978 (Act No. 100 of 1978), or approved by the Premier of a province.

[Definition of “welfare organization” substituted by s. 1 of Act 96/96]

CHAPTER 1

2.

[S. 2 repealed by s. 2 of Act 86/91]

3.

[S. 3 repealed by s. 2 of Act 86/91]

4.

[S. 4 repealed by s. 2 of Act 86/91]

CHAPTER 2

CHILDREN’S COURTS AND COMMISSIONERS OF CHILD WELFARE

5. Children’s courts

(1) Every magistrate’s court shall be a children’s court for the area of its jurisdiction.

(2)

[Sub-s. (2) deleted by s. 2 of Act 34/86]

(3)
[Sub-s. (3) deleted by s. 2 of Act 34/86]

(4)
[Sub-s. (4) deleted by s. 2 of Act 34/86]

6. Commissioners of child welfare

- (1) Every magistrate shall be a commissioner of child welfare and every additional magistrate and assistant magistrate shall be an assistant commissioner of child welfare for the district of which he is magistrate, additional magistrate or assistant magistrate.
- (2) A commissioner of child welfare shall perform such functions as may be assigned to him by this Act or by any other law.
- (3) An assistant commissioner of child welfare shall perform such of the functions of a commissioner as he is not generally or in any particular case prohibited from performing either by the Minister or by the magistrate of the district of which he is additional or assistant magistrate.
- (4) Every additional magistrate and every assistant magistrate holding office as a commissioner or assistant commissioner of child welfare, shall in his capacity as commissioner or assistant commissioner be subject to the administrative control of the magistrate of the district of which he is an additional or assistant magistrate.
- (5)
[Sub-s. (5) deleted by s. 2 of Act 34/86]
- (6)
[Sub-s. (6) deleted by s. 2 of Act 34/86]

7. Officers of children's court

- (1) A commissioner or assistant commissioner of child welfare shall preside over a children's court, and such a court shall have such jurisdiction and powers as may be conferred upon it by this Act or any other law.
- (2) The Minister may for every children's court appoint any officer in the Public Service, or two or more such officers, as a children's court assistant or children's court assistants, who shall at any proceedings of the children's court to which he is or they are attached, perform the functions assigned to the children's court assistant by or under this Act, and who shall generally assist the said court in performing its functions.

- (3) If a children's court assistant is for any reason unable to act as such or if no children's court assistant has been appointed for any children's court under subsection (2), the commissioner concerned may designate any competent officer in the Public Service to act as children's court assistant as long as the said children's court assistant is unable so to act or until a children's court assistant is appointed under subsection (2), as the case may be.

8. Procedure in children's courts

- (1) A children's court shall sit in a room other than that in which any other court ordinarily sits, unless no such other room is available and suitable.
- (2) At any sitting of a children's court no person shall be present unless his presence is necessary in connection with the proceedings of that court, or he is the legal representative of any person whose presence is necessary as aforesaid, or unless the commissioner presiding at that sitting has granted him permission to be present.
- (3) No person shall publish in any manner whatever any information relating to proceedings in a children's court which reveals or may reveal the identity of any child who is or was concerned in those proceedings: Provided that the Minister or the commissioner who presides or presided at those proceedings may authorize the publication of so much of the said information as he may deem fit if the publication thereof would in his opinion be just and equitable and in the interest of any particular person.
- (4) On the application of a children's court assistant mentioned in section 7 the clerk of the children's court to which that assistant is attached shall subpoena any witness to give evidence or to produce a book or document at any proceedings of that court.
- (5) On the application of any person who is likely to be affected by any order which may be made by a children's court as a result of any proceedings therein (or on the application of the representative of such a person) the clerk of that children's court shall subpoena any witness to give evidence or to produce a book or document at those proceedings.
- (6) Any subpoena mentioned in subsection (4) or (5) shall be served upon the witness concerned *mutatis mutandis* as if it were a subpoena to give evidence or to produce a book or document at a criminal trial in a magistrate's court.
- (7) The provisions of sections 188 and 189 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall *mutatis mutandis* apply in connection with a person subpoenaed under subsection (4) or (5) of this section or required by a

commissioner of child welfare to give evidence at any proceedings in a children's court.

- (8) A parent or the guardian or custodian of a child concerned in any proceedings in a children's court who has attended those proceedings and any person who has attended any such proceedings to give evidence or to produce a book or document shall be entitled to such an allowance as would be due to him if he had attended to give evidence or to produce a book or document at a criminal trial in a magistrate's court: Provided that all allowances payable to witnesses who were subpoenaed to attend or who were called at proceedings in connection with an application for an order for the adoption of a child and all expenses incurred in securing the attendance of those witnesses shall be paid by the applicant for that order: Provided further that such a parent or guardian or custodian, or a witness who was subpoenaed to attend on the application of any person other than the children's court assistant (or on the application of the representative of such a person) or who was called as a witness by such a person or his representative, shall not be entitled to any such allowances from public funds unless the commissioner who presided at those proceedings has directed that he be paid such an allowance or any part of such an allowance as the commissioner may have determined.
- (9) Any person who publishes any information in contravention of subsection (3) or contrary to any authorization under subsection (3), shall be guilty of an offence.

9. Application of certain provisions of Act 32 of 1944

- (1) Save as is otherwise provided in this Act or in any other law, the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and of the rules made thereunder shall apply *mutatis mutandis* to children's courts, in so far as those provisions relate to -
 - (i) the appointment and functions of officers;
 - (ii) the issue and service of process;
 - (iii) the appearance in court of advocates and attorneys;
 - (iv) the conduct of proceedings;
 - (v) the execution of judgments; and
 - (vi) the imposition of penalties for non-compliance with orders of court, for obstruction of execution of judgments and for contempt of court, and in so far as no other provision has been made under section 60 (1) (g) of

this Act for any matter mentioned in this subsection other than in paragraph (iii).

- (2) Such records of the proceedings of a children's court shall be kept and shall be accessible to such persons upon such conditions as to payment of fees and otherwise as may be prescribed.
- (3) The contents of a statement or a report of a social worker which has been lodged with a children's court, shall not be disclosed for the purposes of any civil action except by order of any court to a court where such disclosure would be in the interest of any child mentioned in the report.

[S. 9 substituted by s. 2 of Act 34/86]

CHAPTER 3

PROTECTION OF CHILDREN

10. Maintenance of certain children apart from parents

- (1) No person other than the managers of a maternity home, a hospital, a place of safety or a children's home shall receive -
 - (a) any child under the age of seven years; or
[Para. (a) substituted by s. 3 of Act 96/96 and s. 1 of Act 106/97]
 - (b) any child for the purpose of adopting him or her or causing him or her to be adopted, and care for that child apart from his or her parents or custodian for a longer period than 14 days, unless such person -
 - (i) has applied in terms of section 18 for the adoption of the child; or
 - (ii) has obtained the consent in writing of the commissioner of the district in which the child was residing immediately before he or she was received; or
 - (iii) in the case of a child referred to in paragraph (a), is over the age of 18 years and is -
 - (aa) the grandfather, grandmother, brother, half-brother, sister, half-sister, uncle or aunt of the child; or
 - (bb) a designated relative referred to in subsection (4).
[Sub-s. (1) substituted by s. 1 of Act 106/97]
- (2) The commissioner shall, in considering any application for the said consent, have regard to the matters mentioned in section 40.

- (3) Any consent mentioned in subsection (1) (ii) shall be subject to the prescribed conditions and to such other conditions as may be determined by the commissioner in any specific case.
- (4) The Minister may determine that a person who is -
 - (a) a spouse of a relative of a child referred to in subsection (1) (iii) (aa); or
 - (b) related to a child in the third degree of affinity or consanguinity, is a “designated relative” for the purposes of subsection (1) (iii) (bb).

[Sub-s. (4) inserted by s. 1 of Act 106/97]

11. Removal of child to place of safety on order of court or on sworn information

- (1) If it appears to any court in the course of any proceedings before that court that any child has no parent or guardian or that it is in the interest of the safety and welfare of any child that he be taken to a place of safety, that court may order that the child be taken to a place of safety and be brought as soon as may be thereafter before a children’s court.
- (2) If it appears to any commissioner of child welfare on information on oath given by any person that there are reasonable grounds for believing that any child who is within the area of his jurisdiction has no parent or guardian or that it is in the interest of the safety and welfare of any child who is within the area of his jurisdiction that he be taken to a place of safety, that commissioner may issue a warrant authorizing any policeman or social worker or any other person to search for the child and to take him to a place of safety, to be there kept until he can be brought before a children’s court.
- (3) Any policeman or social worker or other person authorized by the said warrant to search for and remove a child may enter (by force if necessary) any house or other premises mentioned in the warrant and may remove the child therefrom.
- (4) It shall not be necessary in any warrant issued under subsection (2) to state the name of the child whose removal is thereby ordered.
- (5) The provisions of section 12 (2) and (3) shall *mutatis mutandis* apply in respect of a child removed to a place of safety in terms of this section.

12. Removal of child to place of safety pending inquiry

- (1) Any policeman, social worker or authorized officer may remove a child from any place to a place of safety without a warrant if that policeman, social worker or authorized officer has reason to believe that the child is a child

referred to in section 14 (4) and that the delay in obtaining a warrant will be prejudicial to the safety and welfare of that child.

- (2) The policeman, social worker or authorized officer who has so removed a child shall as soon thereafter as may be -
 - (a) inform the parent or guardian of the said child or person in whose lawful custody the child is of his removal if such parent, guardian or person is known to be in the district from where the child was removed and can be traced without undue delay;
 - (b) inform a children's court assistant concerned of the reasons for the child's removal; and
 - (c) bring the child or cause him to be brought before the children's court of the district in which is situate the place from where the child was removed.
- (3) Any person who hinders or obstructs any policeman, social worker or authorized officer in the exercise of his powers under subsection (1) shall be guilty of an offence.

13. Bringing children before children's court

- (1) Any child referred to in section 11 (1) or (2) or 12 (1) shall be brought before the children's court of the district in which the child resides or happens to be by any policeman, social worker or authorized officer.
- (2) Any child in regard to whom a children's court assistant is of opinion that he or she is a child in need of care may be brought before the children's court of the district in which the child resides or happens to be, by any policeman, social worker or authorized officer, or by a parent, guardian or other person having the custody of the child.
[Sub-s. (2) substituted by s. 4 of Act 86/91 and s. 4 of Act 96/96]
- (3) The children's court before which a child is brought in terms of subsection (1) or (2) shall hold an inquiry in the prescribed manner and determine whether the child is a child in need of care: Provided that if the child ordinarily resides in the district of another children's court the first-mentioned children's court may refer the inquiry to the children's court of that other district.
[Sub-s. (3) substituted by s. 4 of Act 86/91 and s. 4 of Act 96/96]
- (4) If it appears to a children's court that a child referred to in subsection (1) or (2) who is subject to the court's jurisdiction, should by reason of his infancy, ill-health or other sufficient cause not be brought before the court, the court may hold the inquiry in the absence of the child.

- (5) (a) Notice of the holding of an inquiry in terms of subsection (3) in respect of any child and that the attendance thereat is required of the person to whom the notice is given shall, unless the commissioner of child welfare otherwise directs, be given in the prescribed manner to the parents or guardian or person having the custody of that child.
- (b) Any parent or guardian or any person having the custody of a child who, having received such notice, without the permission of the commissioner or other reasonable excuse (the proof of which shall rest upon him) fails to attend and to remain in attendance during the inquiry, may be dealt with *mutatis mutandis* as provided in section 74 (6) and (7) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

14. Holding of inquiries

- (1) Any children's court holding an inquiry in terms of section 13 (3) may at any time during the inquiry order any medical officer or psychologist to examine the child concerned and to report to the court thereanent.
[Sub-s. (1) substituted by s. 5 of Act 96/96]
- (2) The commissioner presiding over a children's court holding such inquiry shall during that inquiry request any social worker to furnish a report on the circumstances of the child concerned and his or her parents or guardian or the person having the custody of that child.
[Sub-s. (2) substituted by s. 5 of Act 96/96]
- (3) The court holding such inquiry may, if it deems it expedient, from time to time postpone or adjourn the inquiry for periods not exceeding 14 days at a time, and may order that in the interim the child remain in a place of safety or be kept in a place of safety for observation for the information of the court.
- (4) At such inquiry the children's court shall determine whether the child before the court is a child in need of care in that -
- (a) the child has no parent or guardian; or
- (aA) the child has a parent or guardian who cannot be traced; or
[Para. (aA) inserted by s. 5 of Act 86/91]
- (aB) the child -
- (i) has been abandoned or is without visible means of support;
- (ii) displays behaviour which cannot be controlled by his or her parents or the person in whose custody he or she is;

- (iii) lives in circumstances likely to cause or conduce to his or her seduction, abduction or sexual exploitation;
- (iv) lives in or is exposed to circumstances which may seriously harm the physical, mental or social well-being of the child;
- (v) is in a state of physical or mental neglect;
- (vi) has been physically, emotionally or sexually abused or ill-treated by his or her parents or guardian or the person in whose custody he or she is; or
- (vii) is being maintained in contravention of section 10.
[Para. (aB) inserted by s. 5 of Act 96/96]
- (b)
[Para. (b) deleted by s. 5 of Act 96/96]
[Sub-s. (4) amended by s. 5 of Act 96/96]

15. Powers of children's courts after inquiry

- (1) A children's court which, after holding an inquiry in terms of section 13, is satisfied that the child concerned is a child in need of care may -
 - (a) order that the child be returned to or remain in the custody of his parents or, if the parents live apart or are divorced, the parent designated by the court or of his guardian or of the person in whose custody he was immediately before the commencement of the proceedings, under the supervision of a social worker, on condition that the child or his parent or guardian or such person complies or the parents of the child comply with such of the prescribed requirements as the court may determine; or
 - (b) order that the child be placed in the custody of a suitable foster parent designated by the court under the supervision of a social worker; or
 - (c) order that the child be sent to a children's home designated by the Director-General; or
 - (d) order that the child be sent to a school of industries designated by the Director-General.
[Sub-s. (1) substituted by s. 6 of Act 86/91 and amended by s. 6 of Act 96/96]
- (2) If any requirement mentioned in subsection (1) (a) of this section is in the opinion of the social worker concerned not being complied with, the child

concerned may be brought by that social worker before the children's court of the district in which the child resides, whether or not it is the children's court which made the order under subsection (1) (a) of this section, and which shall hold an inquiry in terms of section 13 (3), after which the court may vary the said order or make a new order under subsection (1) of this section.

- (3) A children's court which has made an order under subsection (1) (b), (c) or (d) may also order that the child be kept in a place of safety until such time as effect can be given to the order which the court has made.
 - (4) A children's court may make an order under this section in respect of any person who at the commencement of the inquiry in the course of which the order is made, was under the age of 18 years, notwithstanding that before the date of the order that person has attained the age of 18 years.
 - (5) (a) If the Director-General cannot designate a children's home in terms of subsection (1) (c) or a school of industries in terms of subsection (1) (d), he shall without delay furnish the Minister with a report in connection with the child concerned.
 - (b) The Minister may, after consideration of the Director-General's report referred to in paragraph (a), deal with the child concerned in terms of section 34 or 37 as if the child has been admitted to a children's home or a school of industries, as the case may be.
- [Sub-s. (5) inserted by s. 6 of Act 86/91]

16. Duration of orders under section 15

- (1) Subject to the provisions of this section and of section 34, any order made under section 15 shall lapse after the expiration of a period of two years after the date on which the order was made or after the expiration of such shorter period as the children's court may have determined at the time of making that order.
- (2) Subject to the provisions of subsection (3), the Minister may extend the validity of an order referred to in subsection (1) for a further period not exceeding two years at a time: Provided that an order may not be so extended to a date after the date on which the child attains the age of 18 years.
- (3) The Minister may, if he deems it necessary, order that any former pupil of or pupil in a school of industries whose period of retention has expired or is about to expire, return to or remain in that school of industries for any further period which he may fix, and may from time to time extend that period: Provided that no such order or extension shall extend the period of retention of any pupil beyond the end of the year in which that pupil attains the age of 21 years.

16A. Appeals

An appeal shall lie against any order made or any refusal to make an order in terms of section 11, 15 or 38(2)(a), or against the variation, suspension or rescission of such order, to the competent division of the High Court of South Africa, and if brought, shall be noted and prosecuted as if it were an appeal against a civil judgement of a magistrate's court.

[S. 16A inserted by s. 2 of Act 13/99]

CHAPTER 4

ADOPTIONS

17. Qualifications for adoption of children

A child may be adopted -

- (a) by a husband and his wife jointly;
- (b) by a widower or widow or unmarried or divorced person;
- (c) by a married person whose spouse is the parent of the child.
- (d) by the natural father of a child born out of wedlock.

[Para. (d) added by s. 3 of Act 56/98]

[S. 17 substituted by s. 7 of Act 86/91]

18. Adoption of children

- (1) (a) The adoption of a child shall be effected by an order of the children's court of the district in which the child concerned resides.
 - (b) The children's court shall not make any order referred to in paragraph (a) before the consideration of a prescribed report from a social worker or an accredited social worker.

[Sub-s. (1) substituted by s. 7 of Act 96/96]
- (2) An application for an order of adoption shall be made by the proposed adoptive parent or parents in the prescribed manner.
- (3) In considering any such application the children's court shall have regard to the matters mentioned in section 40.
- (4) A children's court to which application for an order of adoption is made in terms of subsection (2), shall not grant the application unless it is satisfied -

- (a) that the applicant is or that both applicants are qualified to adopt the child in terms of section 17 and possessed of adequate means to maintain and educate the child; and
 - (b) that the applicant is or that both applicants are of good repute and a person or persons fit and proper to be entrusted with the custody of the child; and
 - (c) that the proposed adoption will serve the interests and conduce to the welfare of the child; and
 - (d) that consent to the adoption has been given by both parents of the child, or, if the child is born out of wedlock, by both the mother and the natural father of the child, whether or not such mother or natural father is a minor or a married person and whether or not he or she is assisted by his or her parent, guardian or in the case of a married person, spouse, as the case may be: Provided that such natural father has acknowledged himself in writing to be the father of the child and has made his identity and whereabouts known as contemplated in section 19A; and
[Para. (d) substituted by s. 7 of Act 96/96 and s. 4 of Act 56/98]
 - (e) that the child, if over the age of ten years, consents to the adoption and understands the nature and import of such consent; and
 - (f) in the case of a child born of any person who is a South African citizen, that the applicant, except an applicant referred to in section 17 (c), or one of the applicants is a South African citizen resident in the Republic, or the applicant has or the applicants have otherwise the necessary residential qualifications for the grant to him or them under the South African Citizenship Act, 1949 (Act No. 44 of 1949), of a certificate or certificates of naturalization as a South African citizen or South African citizens and has or have made application for such a certificate or certificates; and
 - (g) in the case of an application for the adoption of a foster child by a person other than his or her foster parent, that the foster parent has stated in writing that he or she does not wish to adopt the child: Provided that such statement shall not be necessary if the foster parent refuses or fails, within one month after being called upon in writing by an assistant of the children's court to do so, to indicate to him or her in writing that he or she does not wish to adopt the child.
[Para. (g) substituted by s. 7 of Act 96/96]
- (5) Any consent mentioned in subsection (4) (d) or (e) shall be in writing and shall, if given within the Republic, be signed by the person or persons giving the consent in the presence of a commissioner of child welfare, who shall

attest the consent, or, if given outside the Republic, shall be signed and attested in the manner prescribed.

- (6) The said consent shall set out the names of the proposed adoptive parents, but the children's court may admit, as satisfying the requirements of subsection (4) (d), a consent by the child's parents or guardian which does not set out the names or any other particulars of the proposed adoptive parents, if it is satisfied that the interest of the child will be served thereby.
- (7) The children's court shall admit, as satisfying the requirements of subsection (4) (d) or (e), any such consent given outside the Republic which has not been signed or attested in the manner prescribed or which does not set out the names or any other particulars of the proposed adoptive parents, if that consent has been approved by the Minister.
- (8) Notwithstanding the provisions of any other law the parent of a child who has given consent to the adoption of his or her child shall have the right to withdraw such consent up to 60 days after such consent has been given.
[Sub-s. (8) added by s. 7 of Act 96/96]
- (9) A children's court shall not make any order of adoption before the expiration of the period of 60 days referred to in subsection (8).
[Sub-s. (9) added by s. 7 of Act 96/96]

19. Circumstances in which consent to adoption may be dispensed with

No consent in terms of section 18 (4) (d) shall be required -

- (a) in the case of any child whose parents are dead and for whom no guardian has been appointed;
- (b) from any parent -
 - (i) who is as a result of mental illness incompetent to give any consent; or
 - (ii) who deserted the child or whose whereabouts are unknown; or
[Sub-para. (ii) substituted by s. 5 of Act 56/98]
 - (iii) who has physically, emotionally or sexually assaulted, ill-treated or abused the child or allowed him or her to be so assaulted, ill-treated or abused; or
[Sub-para. (iii) substituted by s. 8 of Act 96/96]
 - (iv) who has caused or conduced to the seduction, abduction or sexual exploitation of the child or the commission by the child of immoral acts; or

[Sub-para. (iv) substituted by s. 8 of Act 96/96]

(v)

[Sub-para. (v) deleted by s. 8 of Act 96/96]

(vi) who is withholding his consent unreasonably.

(vii) who, in the case of a child born out of wedlock, has failed to acknowledge himself as the father of the child or has, without good cause, failed to discharge his or her parental duties with regard to the child; or

[Sub-para. (vii) added by s. 5 of Act 56/98]

(viii) whose child, in the case of a child born out of wedlock, was conceived as a result of an incestuous relationship between himself and the mother of the child; or

[Sub-para. (viii) added by s. 5 of Act 56/98]

(ix) who, in the case of a child born out of wedlock-

(aa) was convicted of the crime of rape or assault of the mother of the child; or

(bb) was, after an enquiry by the children's court following an allegation by the mother of the child, found, on a balance of probabilities, to have raped or assaulted the mother of the child: Provided that such a finding shall not constitute a conviction for the crime of rape or assault, as the case may be; or

[Sub-para. (ix) added by s. 5 of Act 56/98]

(x) who, in the case of a child born out of wedlock, has failed to respond, within 14 days, to a notice served upon him as contemplated in section 19A.

[Sub-para. (x) added by s. 5 of Act 56/98]

19A. Notice of consent to adoption

(1) If only one parent has given consent in terms of section 18(5), where the other parent is not available to give consent or where such parent's consent is not required in terms of section 19, the commissioner concerned shall, after attesting such consent and in the prescribed manner, cause a notice to be served on the other parent within a period of 14 days, informing him or her of the consent that has been given and affording him or her the opportunity to-

(a) also give or withhold his or her consent, or

- (b) advance reasons why his or her consent should not in terms of section 19 be dispensed with; or
 - (c) in the case of a natural father of a child born out of wedlock, apply in terms of section 18 for the adoption of the child.
- (2) A notice contemplated in subsection (1) shall, in the case of a natural father of a child born out of wedlock, not be required unless-
 - (a) he has acknowledged himself in writing to be the father of the child and has entered the particulars regarding himself in the registration of birth of the child in terms of section 10(1)(b) or section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), and ensures that the particulars so entered are correct at all times; or
 - (b) the mother of the child, at the time of giving her consent-
 - (i) confirms in writing that he has acknowledged himself to be the father of the child; and
 - (ii) furnishes particulars regarding his identity and his whereabouts: or
 - (c) a social worker, within the period of 60 days after the mother has given her consent or at any stage before the order of adoption is granted by the children's court, submits a report to the commissioner who has attested the mother's consent or to the children's court to which the application for the adoption has been made, as the case may be, confirming the identity and whereabouts of the father.
- (3) A social worker referred to in subsection (2)(c) shall, in the event where he or she has obtained information of the identity and whereabouts of the natural father of the child concerned, submit a report to the children's court of such information.
- (4) For the purposes of this section, the commissioner for child welfare who is responsible for giving notice to the natural father of a child born out of wedlock may require that the Director-General: Home Affairs furnish him or her with any information contained in the registration of birth of the child, including information regarding the identity and other particulars of a person who has acknowledged himself as the father of the child born out of wedlock in terms of section 10 or 11 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992).
- (5) The notice referred to in subsection (1) shall not be required if the whereabouts of the parent to whom the notice is to be served, are unknown.

- (6) A parent who has given consent in terms of section 18(5) and who wishes to have the other parent's consent dispensed with in terms of section 19, shall inform the commissioner upon attestation of his or her consent, accordingly.
- (7) The commissioner referred to in subsection (6) shall forthwith issue the father of the child concerned with the notice contemplated in subsection (1), and such father may, if he wishes, acknowledge himself as the father of the child in terms of section 10 or 11 of the Births and Deaths Registration Act 1992 (Act No. 51 of 1992).
- (8) A father of a child born out of wedlock contemplated in subsection (2)(b) or (c) shall, within a period of 14 days of notification contemplated in subsection (1), cause an amendment to be effected to the registration of birth of his child in terms of section 11(4) of the Births and Deaths Registration Act 1992 (Act No. 51 of 1992), if the mother of the child has consented to such amendment.
- (9) Where, in the case of a pending adoption, the mother of the child has withheld her consent to an amendment to be effected to the registration of birth of her child in terms of section 11 (4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), the person who wishes to acknowledge himself as the father of such child shall apply to the children's court concerned for a declaratory order which confirms his paternity of the child and dispenses with the requirement of consent of the mother.

[S. 19A inserted by s. 6 of Act 56/98]

20. Effect of adoption

- (1) An order of adoption shall terminate all the rights and obligations existing between the child and any person who was his parent (other than a spouse contemplated in section 17 (c)) immediately prior to such adoption, and that parent's relatives.
- (2) An adopted child shall for all purposes whatever be deemed in law to be the legitimate child of the adoptive parent, as if he was born of that parent during the existence of a lawful marriage.
- (3) An order of adoption shall, unless otherwise thereby provided, confer the surname of the adoptive parent on the adopted child.
- (4) An order of adoption shall not have the effect of permitting or prohibiting any marriage or carnal intercourse (other than a marriage or carnal intercourse between the adoptive parent and the adopted child) which, but for the adoption, would have been prohibited or permitted.

- (5) When an order is made for the adoption of any child, any order made in respect of that child under section 15 of this Act or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall lapse.

21. Rescission of order of adoption

- (1) A parent of a child for whose adoption an order has been made under section 18, or the person who was at the time of the making of the order the guardian of the child or the adoptive parent or parents of the child, or, with the consent of the Minister, the children's court assistant of the court by which the order was made, may apply to the children's court by which the order was made for the rescission thereof on one or more of the following grounds, namely -
- (a) if the applicant is the parent of the child, that he did not consent to the adoption and that the order of adoption should not have been made without his consent; or
 - (b) if the applicant is an adoptive parent, that his adoption of the child was induced by fraud, misrepresentation or justus error, or that the child is mentally ill, and that the mental illness existed at the time of the making of the order of adoption, or that the child suffered from a congenital disorder or injury of a serious nature at the time of the making of the order of adoption; or
 - (c) that for reasons set out in the application the adoption is to the detriment of the child; or
 - (d) that at the time of the making of the order of adoption the adoptive parent or parents did not qualify in terms of section 17 for obtaining the order of adoption.
- (2) If the application is made -
- (a) on the grounds mentioned in subsection (1) (a), it shall be made within a period of six months as from the date upon which the applicant became aware of the fact that an order for the adoption of his child had been made, but not later than two years as from the date upon which that order was made;
 - (b) on any ground mentioned in subsection (1) (b), it shall be made within six months as from the date upon which the applicant became aware of that ground; or
 - (c) on the ground mentioned in subsection (1) (c) or (d), it shall be made within a period of two years as from the date upon which the order of adoption was made.

(3) (a) An application on the ground that the child is mentally ill may only be made if the

applicant was, or if husband and wife jointly adopted the child concerned, they both were, at the time of the making of the order of adoption, ignorant of the mental illness of the child and this ignorance was not due to failure of the adoptive parent or parents to exercise reasonable care in examining the child or causing it to be examined.

(b) An application on the ground that the child suffered from a congenital disorder or injury of a serious nature may only be made if the applicant was or, if husband and wife jointly adopted the child concerned, they both were, at the time of the making of the order of adoption, ignorant of that genetic disorder or injury, and this ignorance was not due to failure of the adoptive parent or parents to exercise reasonable care in examining the child or causing it to be examined.

(4) If the application is made by a parent of the child, he shall give due notice of the application to the adoptive parent or parents.

(5) If the application is made by an adoptive parent, he shall give due notice to the children's court assistant concerned and to the parent or parents or the person who was prior to the adoption the guardian of the adopted child, if he or they can be found.

(6) If the application is made by the children's court assistant, he shall give due notice to the parent or parents, to the adoptive parent or parents and to the said guardian, if he or they can be found.

(7) The court to which the application is made shall, after having satisfied itself that the applicant has complied with subsection (4), (5) or (6), and after having afforded any person interested in the application an opportunity to be heard and after having considered any relevant evidence, whether oral or in the form of an affidavit, which was tendered in support of or in opposition to the application, rescind or confirm the order of adoption: Provided that it shall not rescind an order of adoption on the application of a parent of the adopted child if the court is satisfied that the applicant is unfit to have the custody of the child and that it is in the interest of the child that the order of adoption be confirmed.

(8) On the rescission of an order of adoption in terms of subsection (7), the child concerned shall for all purposes be restored to the position in which it would have been if no order of adoption had been made: Provided that the rescission of the order shall not effect anything lawfully done while the order of adoption was in force.

22. Appeal from order of adoption or from rescission of adoption or from refusal to rescind

- (1) An order of adoption and a rescission of an order of adoption and the refusal of an application for the rescission of an order of adoption shall be subject to an appeal to the competent Division of the Supreme Court of South Africa as if the order, rescission or refusal were a judgment of a magistrate's court.
- (2) An appeal against an order of adoption may be brought by the parent or guardian of the adopted child.
- (3) An appeal against the rescission of an order of adoption may be brought by a parent, guardian or adoptive parent of the child concerned, who did not apply for the rescission.
- (4) An appeal against a refusal of an application for the rescission of an order of adoption may be brought by the applicant concerned.
- (5)
 - (a) In such an appeal brought by a parent or guardian, the adoptive parent of the child concerned shall be cited as respondent, and in such an appeal brought by an adoptive parent, the parent or guardian (if any) of the child concerned shall be cited as respondent, unless, in either case, the appeal is brought against a rescission granted upon the application of a children's court assistant, in which event that assistant shall be cited as respondent.
 - (b) In an appeal brought by a children's court assistant against the refusal of an application made by him for the rescission of an order of adoption, the persons mentioned in section 21 (6) shall be cited as respondents.
- (6) In this section "guardian" means the person who was at the time of the making of the order of adoption the guardian of the child concerned.

23. Adoption of adopted child

- (1) An adopted child shall be capable of adoption, and upon the making of an order for the adoption of a previously adopted child all the legal consequences of the earlier adoption shall terminate, save in so far as the adopted child has acquired any property by virtue of the earlier adoption.
- (2) For the purposes of any proceedings for the adoption of a child who has been previously adopted the parents who previously adopted the child shall have the rights and be subject to the obligations conferred and imposed upon

parents by any provision of this Chapter, and the expressions “parent” and “parents” shall in any such provision be construed accordingly.

24. Prohibition of consideration in respect of adoptions

- (1) No person shall, save as prescribed under the Social Work Act, 1978 (Act No. 110 of 1978), give, undertake to give, receive or contract to receive any consideration, in cash or kind, in respect of the adoption of a child.

[Sub-s. (1) substituted by s. 9 of Act 96/96]

- (2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Sub-s. (2) substituted by s. 8 of Act 86/91]

25. Alteration of births register as a result of adoption

- (1) When an order has been made for the adoption of a child whose birth has been registered in the Republic, the appropriate Director-General within the meaning of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963), shall on the application of the adoptive parent and on production of the order of adoption or of a certified copy thereof and on payment of the prescribed fee, if any, cause the fact of adoption and a statement whether the surname of the adoptive parent was or was not conferred upon the child by virtue of the adoption, to be recorded on the birth register, as defined in the Births, Marriages and Deaths Registration Act, 1963, filed in his office in respect of the birth of the child.
- (2) If the surname of an adoptive parent has been conferred upon an adopted child and that fact has been recorded on the original birth information form, a birth certificate in the surname of the adoptive parent may be issued in respect of the child.

26. Registration of birth of adopted child born outside Republic

When an order has been made for the adoption of a child born outside the Republic the appropriate Director-General within the meaning of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963), shall on the application of the adoptive parent and on production of -

- (a) the order of adoption or a certified copy thereof; and
- (b) the birth certificate of the child or a certified copy thereof or, if that certificate is not available, such documentary evidence relating to the date of birth of the child as such Director-General may deem sufficient or, if the age of the child has been estimated in terms of section 54, a certificate signed by a

commissioner of child welfare specifying the age of the child as so estimated;
and

- (c) the form prescribed under the Births, Marriages and Deaths Registration Act, 1963, for use in connection with the registration of a birth, completed as far as may be possible and signed by the adoptive parent, and on payment of the prescribed fee (if any), cause the birth of that child to be recorded in his registers and shall cause the fact of adoption and a statement whether the surname of the adoptive parent was or was not conferred upon the child by virtue of the adoption, to be recorded on the birth register of the child, as defined in the said Act, filed in his office.

27.

[S. 27 repealed by s. 10 of Act 96/96]

CHAPTER 5

PLACES OF SAFETY, CHILDREN'S HOMES AND PLACES OF CARE

28. Places of safety

- (1) The Minister may, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose establish and maintain places of safety for the reception, custody, observation, examination and treatment of children under this Act, and the detention of children awaiting trial or sentence.

[Sub-s. (1) substituted by s. 9 of Act 86/91]

- (2) Any place of safety or place of detention established under section 38 of the Children's Act, 1960 (Act No. 33 of 1960), and which is in existence at the commencement of this section, shall as from that commencement be deemed to be a place of safety established under this section of this Act.

28A. Secure care facilities

The Minister may, with the concurrence of the Minister of Finance, out of monies appropriated by Parliament for that purpose, establish and maintain secure care facilities for the reception and secure care of children awaiting trial or sentence.

[S. 28A inserted by s. 3 of Act 13/99]

29. Government children's homes

- (1) The Minister may, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose establish and maintain children's homes for the reception, care and bringing-up of children in terms of this Act.

- (2) (a) The Minister shall appoint for every children's home established under subsection
- (1) a board of management which shall consist of not fewer than three and not more than nine members, who shall hold office during a prescribed period.
- (b) The Minister may at any time withdraw the appointment of any such member and appoint a member in the place of any member who has died or has resigned or whose appointment has been so withdrawn.
- (3) A board mentioned in subsection (2) (a) may exercise the powers and shall perform the duties conferred or imposed upon it by this Act.
- (4) Any children's home established under section 39 (3) (a) of the Children's Act, 1960 (Act No. 33 of 1960), and which is in existence at the commencement of this section, shall, as from that commencement, be deemed to be a children's home established under this section of this Act.

30. Registration and classification of children's homes and places of care

- (1) No child may be received in any children's home (other than a children's home maintained and controlled by the State) unless that children's home is managed by an association of persons consisting of not fewer than seven members and has been registered under this section, or otherwise than in accordance with the conditions on which that children's home has been so registered.
- (2) No child may be received in any place of care (other than a place of care maintained and controlled by the State) unless that place of care has been registered under this section, or otherwise than in accordance with the conditions on which that place of care has been so registered.
- (2A) No child may, save as prescribed, be received in any shelter unless that shelter has been registered under this section, or otherwise than in accordance with the conditions on which that shelter has been so registered.
[Sub-s. (2A) inserted by s. 11 of Act 96/96]
- (3) Application for the registration of a children's home, a place of care or a shelter shall be made to the Director-General in the prescribed manner, and the Director-General may -
- (a) before considering any such application, require that he or she be furnished with any information in connection with the application concerned or the proposed children's home, place of care or shelter which he or she may desire to obtain;

- (b) reject any such application or, if he or she is satisfied that the children's home, place of care or shelter complies with the prescribed requirements and that it will be so managed and conducted that it will be suitable for the reception, care and bringing-up or for the reception, care and custody of children, grant the application either unconditionally or on such prescribed and other conditions as he or she may deem fit, and issue to the applicant a certificate of registration in the prescribed form.

[Sub-s. (3) substituted by s. 11 of Act 96/96]

- (4) The Director-General may, at the time of registration of any children's home, place of care or shelter or at any time thereafter, classify any such children's home, place of care or shelter or may after due notice to the person in whose name the relevant certificate of registration was issued, amend any earlier classification, and any such classification may differ according to the sex or age or to the physical, mental or spiritual needs of the children in respect of whom the children's home, place of care or shelter is being maintained and according to whether it is children who were dealt with under this Act or under the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

[Sub-s. (4) substituted by s. 11 of Act 96/96]

- (5) Any children's home or place of care which immediately before the commencement of this section was registered and classified under section 42 of the Children's Act, 1960 (Act No. 33 of 1960), shall as from that commencement be deemed to be registered under this section of this Act as a children's home or place of care, as the case may be, and to be so classified under this section of this Act.
- (6) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence.

31. Inspection of children's homes and places of care

- (1) A social worker, a nurse or any other person, authorized thereto by the Director-General, or any commissioner, may enter any children's home, place of care, shelter or place of safety in order to -
 - (a) inspect that children's home, place of care, shelter or place of safety and the books and documents appertaining thereto;
 - (b) observe and interview any child therein, or cause such child to be examined by a medical officer, psychologist or psychiatrist.

[Sub-s. (1) substituted by s. 12 of Act 96/96]

- (2) Any social worker, nurse or other person so authorized shall be furnished with a certificate to that effect, signed by the Director-General, which he or she, when acting in terms of subsection (1), shall produce at the request of

any manager or staff member of the children's home, place of care, shelter or place of safety concerned.

[Sub-s. (2) substituted by s. 12 of Act 96/96]

(3) Any person who obstructs or hinders any social worker, nurse or other person so authorized or any commissioner in the performance of any function mentioned in subsection (1), or who fails to produce any child, book or document whose production a social worker, nurse or other person so authorized or any commissioner has demanded, shall be guilty of an offence.

(4) The social worker, nurse or other person so authorized, or the commissioner, shall submit a report to the Director-General after the performance of a function referred to in subsection (1).

[Sub-s. (4) added by s. 12 of Act 96/96]

(5) The powers of the Director-General on receipt of a report referred to in subsection (4) shall be as prescribed.

[Sub-s. (5) inserted by s. 12 of Act 96/96]

32. Cancellation or surrender of certificate of registration

(1) (a) A certificate of registration issued under section 30 (3) may at any time be cancelled by the Minister or may
at any time be surrendered to the Minister, but no such certificate shall be so cancelled except after not less
than one month's written notice of the intention to cancel that certificate has been given to the person in
whose name it was issued, and after consideration by the Minister of any representations which may be submitted in pursuance of such notice.

(b) Written notice shall be given of any cancellation or surrender of a certificate of registration.

(2) (a) The cancellation or surrender of a certificate of registration shall take effect on the
date specified in the document whereby notice is given of the cancellation or surrender.

(b) Unless the Minister and the person in whose name the certificate of registration was issued agree on the date, the date mentioned in paragraph (a) shall not be earlier than a date three months after the date upon which notice of the cancellation or surrender was given.

(3) The managers of a children's home or shelter shall within three months after written notice has been given of the cancellation or surrender of the certificate of registration of that children's home or shelter in terms of subsection (1),

transfer to his or her parents or guardian or to any children's home or other suitable place approved by the Minister, every child in such first-mentioned children's home or shelter other than a child placed in the custody of that children's home under this Act.

[Sub-s. (3) substituted by s. 13 of Act 96/96]

- (4) After the cancellation or surrender of the certificate of registration of any children's home in terms of this section, the Minister shall act under section 34, or under section 37, in respect of every child who was placed in the custody of that children's home under this Act and who was in that children's home at the time of the cancellation or surrender of the certificate.

CHAPTER 6

SPECIAL PROVISIONS REGARDING PUPILS, FOSTER CHILDREN AND OTHER CHILDREN

33. Custody of foster children, pupils and former foster children and pupils

- (1) Subject to the provisions of this Act or any other law, no foster child or pupil shall be transferred from any custody in which he has lawfully been placed, to any institution, custody or supervision mentioned in section 15 of this Act or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (2) The provisions of subsection (1) shall not prevent a foster child or pupil from attending or lodging in an educational institution or from receiving treatment in a hospital while he is subject to an order regarding custody which was issued under this Act or any other law.
- (3) On the application of or with the consent of a foster child or a pupil or a former foster child or pupil and, if they can be traced, the parents of such a foster child or pupil, the Minister may approve that that foster child or pupil remain in the custody of the foster parent or institution mentioned in paragraph (c) after -
 - (a) he has attained the age of 18 years;
 - (b) he was discharged under section 37; or
 - (c) an order under section 15 in terms of which he was placed in the custody of the foster parent or institution concerned, has lapsed without its validity being extended by the Minister, in order to enable him to complete his education or training.

34. Transfer of children and pupils from one custody or institution to another

- (1) The Minister may, by order in writing transfer any pupil or child from any institution to which he or she has lawfully been sent or from any custody (except the custody of his or her parent or guardian or of the person mentioned in section 15 (1) (a)) in which or supervision under which he or she has lawfully been placed, to any institution, custody or supervision mentioned in section 15 of this Act.

[Sub-s. (1) substituted by s. 4 of Act 13/99]

(1A) (a) When the Minister transfers a child under subsection (1) to the custody of his parent or guardian or of the

person mentioned in section 15 (1) (a), under the supervision of a social worker, the Minister shall

determine in the order the requirements with which the child or his parent or guardian or the person

mentioned in section 15 (1) (a) shall comply.

- (b) If any requirement referred to in paragraph (a) is in the opinion of the social worker concerned not being complied with, the child concerned may be brought by that social worker before the children's court of the district in which the child resides, which shall hold an inquiry in terms of section 13 (3), after which the court may vary the order issued by the Minister or make a new order under section 15 (1).

[Sub-s. (1A) inserted by s. 10 of Act 86/91]

- (2) When the Minister has under subsection (1) dealt with a pupil or child to whom an order made by any court applies, that order shall be deemed to have been varied by the Minister's order.

- (3)

[Sub-s. (3) deleted by s. 4 of Act 13/99]

- (4) If the Minister is of opinion that it is desirable in the interests of a pupil in a reform school to transfer him to a school of industries or to a children's home, the Minister may, after consultation with the management of any school of industries or of any children's home and after having satisfied himself that the intended transfer will not be prejudicial to the pupils in that school of industries or children's home, by order in writing transfer the pupil to that school of industries or children's home, and as from the date of the order the pupil shall be deemed to have been sent to that school of industries or children's home under section 15.

35. Leave of absence from an institution or custody

- (1) Leave of absence may be granted -

- (a) by the management of an institution to any pupil in that institution;

- (b) with the approval of the social worker concerned, by any foster parent to the child placed in his custody under this Act or the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (c) by the Director-General to any child in a place of safety, for such period and on such conditions as may be prescribed.
- (2) (a) The management concerned or, with the approval of the social worker concerned,
the foster parent concerned may at any time cancel such leave, and that management or foster parent shall cancel such leave if directed thereto by the Minister.
- (b) On any such cancellation the said management or foster parent shall direct the pupil or foster child to return to the institution or custody from which he was granted leave.
- (3) Any person who directly or indirectly counsels, induces or aids any child or pupil to whom leave of absence has been granted under subsection (1) not to return to the custody of the foster parent or the institution, or who prevents him from returning to such custody or institution after the expiration of the period of leave or after the cancellation of such leave, shall be guilty of an offence.

[Sub-s. (3) inserted by s. 11 of Act 86/91]

36. Removal of pupil or foster child from institution or custody

- (1) The Minister may, if he considers it desirable in the interest of any pupil or foster child who is in an institution to which he has been sent under this Act or any other law or in the custody of a foster parent in which he has been placed under this Act or any other law, by order in writing direct that that pupil or foster child be taken to a place of safety and be kept therein for observation or to be examined and treated.
- [Sub-s. (1) substituted by s. 12 of Act 86/91]
- (2) (a) The commissioner of any district may, if he is of opinion that it is desirable that
any pupil or foster child mentioned in subsection (1) should without delay be removed from the institution or custody mentioned therein, by order in writing direct that the pupil or foster child be taken to a place of safety and be kept therein pending any action by the Minister under subsection (3).
- (b) When a commissioner has made an order under paragraph (a) he shall forthwith furnish the Minister with a full report in connection with the pupil or foster child concerned.

(3) The Minister shall within six months from the date on which a pupil or foster child has been taken to a place of safety in terms of an order made under subsection (1) or (2) -

- (a) by order in writing direct that the pupil or foster child concerned be returned to the institution or custody in which he was when the order was made under subsection (1) or (2), as the case may be; or
- (b) deal with the pupil or foster child in terms of section 34 or 37 as if he has not been taken from the institution or custody mentioned in paragraph (a).

37. Discharge from institution or custody

The Minister may, if he considers it desirable in the interest of any pupil or foster child, at any time by order in writing discharge that pupil or foster child from the effect of any order made by any court under section 15 of this Act or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in which event the parent or guardian of that pupil or foster child and the institution or foster parent concerned shall also be discharged from the effect of such order.

38. Children who abscond from institutions or custody.

(1) Any -

- (a) pupil who has absconded from any institution or any child who has absconded from any place of safety or from the custody of any person in which he was placed under this Act or the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (b) pupil or child who has been granted leave of absence from any institution or place of safety or from any custody in which he was so placed and who on the cancellation or expiration of his leave of absence fails to return to the institution, place of safety or custody from which he was granted leave of absence, may be apprehended without warrant by any policeman, social worker or authorized officer and shall if so apprehended be brought as soon as may be before a commissioner of child welfare of the district in which he was apprehended and may, until he can be brought before a commissioner, be kept in any place of safety.

(2) (a) When any pupil or child is brought before a commissioner of child welfare under the provisions of subsection (1) the commissioner may, after having interrogated the pupil or child as to the reasons why he absconded -

- (i) order that the pupil or child be returned to the institution or the custody or the place of safety from which he absconded or to which he failed to return; or
 - (ii) if the commissioner is of opinion that there are good reasons why the pupil or child should not be returned to the institution or to the custody or to the place of safety from which he absconded, order that he be removed to a place of safety and be kept therein pending any action by the Minister under subsection (3).
- (b) The commissioner shall in each case report to the Minister the result of his interrogation of the pupil or child and notify the Minister of any order made under paragraph (a) (ii).
- (3) Where an order has been made under subsection (2) (a) (ii) the Minister may, after consideration of the commissioner's report and such inquiry as he may consider necessary -
 - (a) deal with the pupil or child concerned under section 34 (1) or 37 as if he were still in the institution or the custody or the place of safety from which he absconded or to which he failed to return;
 - (b) deal with the pupil or child concerned under section 36 (1) as if he were a pupil or child referred to therein; or
 - (c) order that the pupil or child concerned be returned to the institution or the custody or the place of safety from which he absconded or to which he failed to return.
- (4) Any commissioner may order that any pupil or child be kept in a place of safety until effect can be given to any order made in respect of such pupil or child under subsection (2) (a) (i) or subsection (3) (c) or in pursuance of the provisions of subsection (3) (a).

39. Medical treatment of children

- (1) If any medical practitioner is of opinion that it is necessary to perform an operation upon a child or to submit him to any treatment which may not be applied without the consent of the parent or guardian of the child, and the parent or guardian refuses his consent to the operation or treatment, or cannot be found, or is by reason of mental illness unable to give that consent, or is deceased, that practitioner shall report the matter to the Minister, who may, if satisfied that the operation or treatment is necessary, consent thereto in lieu of the parent or guardian of the child.

- (2) If the medical superintendent of a hospital or the medical practitioner acting on his or her behalf is of opinion that an operation or medical treatment is necessary to preserve the life of a child or to save him or her from serious and lasting physical injury or disability and that the need for the operation or medical treatment is so urgent that it ought not to be deferred for the purpose of consulting the person who is legally competent to consent to the operation or medical treatment, that superintendent or the medical practitioner acting on his or her behalf may give the necessary consent.

[Sub-s. (2) substituted by s. 14 of Act 96/96]

- (3) The person whose duty it is to maintain the child concerned shall be liable for the cost of any treatment of, or operation upon, the child in terms of subsection (1) or (2) as if the treatment had been given or the operation had been performed on his instructions.

- (4) Notwithstanding any rule of law to the contrary -

- (a) any person over the age of 18 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any operation upon himself; and
- (b) any person over the age of 14 years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any medical treatment of himself or his child.

[Sub-s. (4) substituted by s. 13 of Act 86/91]

40. Determination of custody of children

In the application of the provisions of section 15 (1) (b) or 34 regard shall be had to the religious and cultural background of the child concerned and of his parents as against that of the person in or to whose custody he is to be placed or transferred.

[S. 40 substituted by s. 14 of Act 86/91]

41. Liability for maintenance of children received under this Act

- (1) No person or children's home shall be obliged to receive or resume the custody of any child, but any person or the management of any children's home that has received or admitted any child placed in the custody of that person or sent to that children's home under this Act shall be deemed to have the custody of that child and shall, subject to the provisions of subsection (2), maintain and care for that child.
- (2) The liability of any person or management in terms of subsection (1) in respect of the maintenance and custody of any child shall cease -
- (a) on the death of the child;

- (b) if the child is transferred in terms of section 34;
 - (c) if the child is removed in terms of section 36;
 - (d) if any grant or contribution payable by the Minister towards the maintenance of the child is discontinued.
- (3) The provisions of subsection (1) shall not affect any obligation imposed by any other law on any person to care for or maintain any child.

42. Notification of injured children and children who suffer from nutritional deficiency disease

- (1) Notwithstanding the provisions of any other law every dentist, medical practitioner, nurse, social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who examines, attends or deals with any child in circumstances giving rise to the suspicion that that child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from a nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him or her for the purposes of this section, of those circumstances.
- [Sub-s. (1) substituted by s. 15 of Act 96/96]
- (2) On receipt of a notification in terms of subsection (1) the Director-General or the said officer may issue a warrant in the prescribed form and manner for the removal of the child concerned to a place of safety or a hospital.
- (3) The Director-General or the said officer shall thereupon arrange that the child and his parents receive such treatment as the Director-General or the said officer may determine.
- (4) This section shall not exclude any other action against or treatment of the parent and his child in terms of this Act.
- (5) Any dentist, medical practitioner, nurse, social worker or teacher, or any person employed by or managing a children's home, place of care or shelter, who contravenes any provision of this section shall be guilty of an offence.
- [Sub-s. (5) substituted by s. 15 of Act 96/96]
- (6) No legal proceedings shall lie against any dentist, medical practitioner, nurse, social worker or teacher, or any person employed by or managing of a children's home, place of care or shelter, in respect of any notification given in good faith in accordance with this section.
- [Sub-s. (6) substituted by s. 96 of Act 88/96 and s. 15 of Act 96/96]
[S. 42 substituted by s. 15 of Act 86/91]

CHAPTER 7

CONTRIBUTION ORDERS

43. Children's court or magistrate's court may make contribution orders or provisional contribution orders

- (1) A contribution order may be made -
 - (a) by a children's court against a respondent residing, carrying on business or employed within the jurisdiction of that court, for the maintenance of a child brought before that court for the purpose of an inquiry in terms of section 13;
 - (b) by a magistrate's court against a respondent residing, carrying on business or employed within the jurisdiction of that court, for the maintenance of any child or any pupil, and any such order shall have effect from the date on which it is made unless the court orders that it shall have effect from an earlier or later date.
- (2) A provisional contribution order may be made against a respondent resident in any country which is a "proclaimed country" within the meaning of section 1 of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963), by a children's court for the maintenance of any child brought before that court for the purpose of an inquiry in terms of section 13 of this Act.
- (3) Any children's court or magistrate's court in whose jurisdiction the respondent resides, carries on business or is employed may, after completion of the prescribed inquiry or on application of the respondent, vary, suspend or rescind a contribution order or revive the order after it has been rescinded.
- (4) If any court other than the court which issued the contribution order concerned varies, suspends, rescinds or revives the contribution order in terms of subsection (3), the clerk of the first-mentioned court shall inform the clerk of the last-mentioned court immediately of such variation, suspension, rescission or revival.

44. Effect of contribution orders

- (1) A contribution order and a provisional contribution order made under this Chapter shall have the effect, respectively, of a maintenance order and of a provisional maintenance order in terms of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act No. 80 of 1963).

- (2) The provisions of section 11 of the Maintenance Act, 1963 (Act No. 23 of 1963), shall apply *mutatis mutandis* to any person who refuses or fails to make any particular payment in terms of such a contribution order.

45. Provisions of contribution order

A contribution order shall direct the respondent to pay the sum stated therein to an officer of the court making or confirming the order, or to such other officer as that court may determine.

46. Court may order attachment of wages in payment of contribution order

- (1) (a) Any court which has made a contribution order under this Chapter may at any time by order in writing require any employer of the respondent to deduct from any wages which are payable or which may become payable to the respondent an amount sufficient to pay any amount payable in terms of the contribution order.
- (b) An employer shall forthwith pay any amount which he has so deducted to any officer indicated in the order.
- (2) The provisions of section 43 (3) shall apply *mutatis mutandis* to an order mentioned in subsection (1).

47. Change of place of residence or place of work by respondent

- (1) (a) If a respondent against whom a contribution order has been made, during the currency of the order changes his place of residence or place of work, he shall forthwith give notice in writing to the clerk of the court by which the order was made and shall in that notice state fully and clearly where the place of residence to which he has moved is situated or where his new place of work is.
- (b) Any person who fails to give notice as required by this subsection shall be guilty of an offence.
- (2) When a respondent against whom a contribution order is in force, removes to and becomes resident or takes up employment in a district other than that of the court which made the order, that court shall, without prior notice to the respondent, vary the order by designating as the officer to whom payment shall be made, an officer of the corresponding court of the district to which the respondent has removed or in which he has taken up employment, and when a court has so varied an order it shall transmit a certified copy of the order to the court to which the officer so designated is attached and inform

the respondent by notice in writing of the variation of the order, and thereupon the order shall have effect and be enforceable as if it were an order of such last-mentioned court.

48. Appeals

- (1) An appeal shall lie against any contribution order or against the variation, suspension, rescission or revival of a contribution order or against the refusal of an application for a contribution order or for the variation, suspension, rescission or revival of a contribution order, to the competent Division of the Supreme Court of South Africa and, if brought, shall be noted and prosecuted as if it were an appeal against a civil judgment of a magistrate's court.
- (2) If such an appeal is brought by a respondent, the Minister shall be cited as respondent in the appeal.

49. Service of process, execution of contribution orders and costs

- (1) Any summons, subpoena or notice in connection with any proceedings under this Chapter may be served without fee by any policeman in the manner prescribed by the rules framed under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), for the service of similar documents in civil proceedings in magistrates' courts, unless any other manner of service has been prescribed.
[Sub-s. (1) substituted by s. 16 of Act 86/91]
- (2) Any writ of attachment in execution of a contribution order shall be executed by the messenger of the magistrate's court of the district in which the property to be attached is situated, and the messenger's fees and charges for the execution shall be paid out of the proceeds of the sale of any such property attached in execution and shall be levied in addition and in preference to the sum payable under the contribution order.
- (3) Save as provided in subsection (2) no costs of any proceedings under this Chapter (including an appeal mentioned in section 48) shall be recoverable by any party thereto from any other party, and no court fee shall be payable in connection with the issue or lodgement of any document in any such proceeding.

CHAPTER 8

PREVENTION OF ILL-TREATMENT AND UNLAWFUL REMOVAL OF CHILDREN, AND PROHIBITION OF EMPLOYMENT OF CERTAIN CHILDREN

[Heading substituted by s. 17 of Act 86/91]

50. Ill-treatment or abandonment of children

(1) Any parent or guardian of a child or any person having the custody of a child who -

(a) ill-treats that child or allows it to be ill-treated; or

(b) abandons that child, or any other person who ill-treats a child, shall be guilty of an offence.

[Sub-s. (1) amended by s. 18 of Act 86/91]

(2) Any person legally liable to maintain a child who, while able to do so, fails to provide that child with adequate food, clothing, lodging and medical aid, shall be guilty of an offence.

(3) Any person convicted of any offence under this section shall be liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Sub-s. (3) substituted by s. 18 of Act 86/91]

50A. Commercial sexual exploitation of children

(1) Any person who participates or is involved in the commercial sexual exploitation of a child shall be guilty of an offence.

(2) Any person who is an owner, lessor, manager, tenant or occupier of property on which the commercial sexual exploitation of a child occurs and who, within a reasonable time of gaining information of such occurrence, fails to report such occurrence at a police station, shall be guilty of an offence.

(3) Any person who is convicted of an offence in terms of this section, shall be liable to a fine, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

[S. 50A inserted by s. 5 of Act 13/99]

51. Unlawful removal of children

Any person who abducts or removes any child or pupil, or directly or indirectly counsels, induces or aids any child or pupil to abscond from any institution, place of safety or custody in which the child or pupil was lawfully placed, or knowingly harbours or conceals a child or pupil who has been so abducted or removed or has so absconded, or prevents him from returning to the institution, place of safety or custody from which he was abducted or removed or has absconded, shall be guilty of an offence.

52. Unlawful removal of foster child or pupil from Republic

Any person who without the approval of the Minister removes a foster child or pupil from the Republic shall be guilty of an offence.

52A. Prohibition of employment of certain children

- (1) Subject to the provisions of this Act or any other law, no person may employ or provide work to any child under the age of 15 years.
- (2) The Minister may, on the conditions determined by him -
 - (a) by notice in the *Gazette* exclude any employment or work from the provisions of subsection (1); and
 - (b) grant any particular person, or persons generally, exemption from the provisions of subsection (1).
- (3) An exemption under subsection (2) (b) shall -
 - (a) in the case of the exemption of a particular person be granted by issuing to such person a certificate of exemption in which his name and the conditions of the exemption and the name of the child or a description of the category of children with respect to whom exemption is granted are specified;
 - (b) in the case of the exemption of persons generally, be granted by the publication in the *Gazette* of a notice in which such persons are described and the conditions of the exemption and a description of the category of children with respect to whom exemption is granted are specified.
- (4) A certificate of exemption contemplated in subsection (3) (a) and a notice contemplated in subsection (3) (b) may at any time be amended or withdrawn by the Minister.
- (5) Any person who contravenes any provision of this section shall be guilty of an offence.

[S. 52A inserted by s. 19 of Act 86/91]

CHAPTER 9

GENERAL PROVISIONS

53. Transfer of certain parental powers

- (1) (a) Subject to the provisions of subsection (3), a parent or guardian of any pupil or of any child who has under this Act or under section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), been placed in any custody other than the custody of the parent or guardian, shall be divested of his

right of control over and of his right to the custody of that pupil or child, and those rights, including the right to punish and to exercise discipline, shall be vested -

- (i) in the management of the institution to which the pupil was sent;
or
 - (ii) in the person in whose custody the child was placed.
 - (b) The management of any such institution may authorize the head of the institution to exercise on its behalf any powers in connection with punishment and discipline which are conferred upon it in terms of this subsection.
- (2) If a minor living with his parent or guardian has, by virtue of an order made under this Act or the Criminal Procedure Act, 1977, been placed under the supervision of a social worker, the parent or guardian shall exercise his right of control over the minor in accordance with any directions which he may have received from the said social worker.
 - (3) The rights transferred by subsection (1) from a parent or guardian to the management of any institution or to any other person shall not include the power to deal with any property of a pupil or child or the power to consent to the marriage of a pupil or child or to the performance upon or the provision to a pupil or child of an operation or medical treatment which is attended with serious danger to life.
 - (4) If the head of the institution concerned or the person in whose custody any such pupil or child is, has reasonable grounds for believing that the performance of any operation upon or the provision of medical treatment to the pupil or child is necessary to preserve his life or to save him from a serious and lasting physical injury or disability and that the need for the operation or medical treatment is so urgent that it ought not to be deferred for the purpose of consulting the parents or guardian of the pupil or child, or the Minister, the head or the person concerned may himself authorize its performance upon or provision to the pupil or child.
 - (5) Notwithstanding anything to the contrary in any law contained, a marriage of any pupil or child mentioned in subsection (1) (a), whether contracted with or without the consent of the parent or guardian of that pupil or child, may at any time within six months after the date of the marriage, on application by the Minister to a competent Division of the Supreme Court or, where both parties to the marriage are Blacks, to the Divorce Court (if any) having jurisdiction in the area in which the pupil or child resides, be annulled by such Court if in the opinion of the Court the annulment is in the interests of the pupil or child.

54. Estimating age of person

- (1) Whenever in any proceedings in terms of this Act the age of any person is a relevant fact of which no or insufficient evidence is available, the officer presiding at those proceedings may estimate the age of that person by his or her appearance and from any information which is available, and the age so estimated shall for the purposes of this Act be deemed to be the true age of that person.

[Sub-s. (1) substituted by s. 6 of Act 13/99]

- (2) (a) If, after the age of any person has been estimated under subsection (1), information is submitted to the Minister which satisfies him that the age so estimated is not the true age of that person, the Minister may determine that any age, other than the estimated age, was the true age of that person on the date when the estimate was made, and thereupon the person concerned shall be dealt with as if the age so determined were the true age.
- (b) Such determination of the age shall not affect the validity of anything done before determination and which could lawfully have been done if the estimated age had been the true age.
- (3) The age of a person estimated as provided in subsection (1) or (2) shall be deemed to have been attained on the day on which the estimate was made.

55. Admission of children from other countries in institutions

- (1) (a) The Minister may enter into an agreement with the government of any other country the territory of which formerly formed part of the Republic, for the admission to, reception into or custody or retention in an institution in the Republic of any child sent thereto or whose custody therein has been ordered by a competent court of the said country.
- (b) Notice of the conclusion of any such agreement, and a summary of the provisions of the agreement, shall be published by the Minister in the *Gazette*.
- (2) The Minister may direct the reception or detention in an institution, for such period and on such conditions as may be agreed upon between the Minister and the government of the country concerned, of any child mentioned in subsection (1) (a).
- (3) Subject to the provisions of subsection (2), the relevant provisions of this Act and of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply to

a child received into or detained in an institution under the provisions of subsection (2) of this section as if he had been sent thereto under this Act or the said Criminal Procedure Act, 1977.

56. Financial support for maintenance of pupils and certain children

- (1) The Minister may, with the concurrence of the Minister of Finance, out of moneys appropriated by Parliament for the purpose, and on such conditions as may be prescribed, contribute towards the maintenance -

(a)
[Para. (a) deleted by s. 2 of Act 106/97]

(b) in any institution of any pupil;

(c) in any institution of any child who is admitted with the approval of the Director-General,
[Para. (c) inserted by s. 20 of Act 86/91]

who satisfies such requirements or conditions as may be prescribed.

- (2) A local authority may out of its funds make grants to any association of persons working in its area for the protection, care or control of children.

57. Repayment of amounts irregularly received

- (1) If any person has received from public moneys by way of a grant, any amount to which he was not entitled, he or, in the case of his death, his estate shall be liable to repay such amount to the Minister, unless the Minister is satisfied that he received it without knowledge that he was not entitled thereto.
- (2) Without prejudice to any other remedy, any such amount may be recovered by means of deductions from any grant payable to the person who is liable to make the repayment.
- (3) The provisions of this section shall apply with the necessary modifications in the case of any person to whom such an amount was paid for or for the benefit of any other person.
- (4) The Treasury or any other person authorized thereto by the Treasury may in its or his discretion write off the whole or any portion of any amount repayable in terms of this section if it or he is satisfied that it would be uneconomical to recover such amount or that recovery thereof would cause undue hardship.

58. Penalties

Any person who is convicted of an offence under any provision of this Act for which no punishment is specially provided shall be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[S. 58 substituted by s. 21 of Act 86/91]

59. Delegation of powers

- (1) The Minister may -
 - (a) delegate to any officer of his or her department any power conferred upon the Minister by this Act, except the power under section 60 to make regulations;
 - (b) authorize any such officer to perform any duty imposed upon the Minister by this Act.
- (2) The Minister may, with the concurrence of the Premier of a province -
 - (a) delegate to the member of the Executive Council of that province responsible for welfare matters in the province any power conferred upon the Minister by this Act, except the power under section 60 to make regulations;
 - (b) authorize that member of the Executive Council to perform any duty imposed upon the Minister by this Act.
- (3) The member of the Executive Council of a province responsible for welfare matters in the province may -
 - (a) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2);
 - (b) authorize any such officer to perform any duty which that member is authorized to perform under subsection (2).
- (4) The Director-General may -
 - (a) delegate to any other officer of his or her department any power conferred upon the Director-General by this Act;
 - (b) authorize any such officer to perform any duty imposed upon the Director-General by this Act.

- (5) The Director-General may, with the concurrence of the Director-General of a provincial administration (in this section referred to as a “provincial Director-General”) -
 - (a) delegate to a provincial Director-General any power conferred upon the Director-General by this Act;
 - (b) authorize a provincial Director-General to perform any duty imposed upon the Director-General by this Act.
- (6) A provincial Director-General may -
 - (a) delegate to any other officer of the provincial administration in question any power delegated to him or her under subsection (5);
 - (b) authorize any such officer to perform any duty he or she is authorized to perform under subsection (5).
- (7) Any person to whom any power has been delegated or who has been authorized to perform a duty under this section, shall exercise that power or perform that duty subject to such conditions as the person who effected the delegation or granted the authorization, considers necessary.
- (8) Any delegation of a power or authorization to perform a duty under this section -
 - (a) shall be done in writing;
 - (b) shall not prevent the person who effected the delegation or granted the authorization from exercising that power or performing that duty himself or herself;
 - (c) may at any time be withdrawn in writing by that person.
[S. 59 substituted by s. 16 of Act 96/96]

60. Regulations

- (1) The Minister may make regulations -
 - (a) prescribing the form of any application, authority, certificate, consent, notice, order, process, register, summons or subpoena to be made, given, issued or kept in terms of this Act, and any other form required in carrying out the provisions of this Act;
 - (b) as to the organization and maintenance of children’s homes established under section 29 (1), the constitution of their boards of management, the appointment, resignation and discharge of members of such boards,

the powers and duties of such boards and the manner in which they shall function, and the care, control and bringing up of children in such homes;

- (c) as to the procedure relating to the registration of children's homes, places of care and shelters under section 30, the requirements with which they shall comply and the cancellation and surrender of certificates of registration issued under that section;
[Para. (c) substituted by s. 17 of Act 96/96]
- (d) as to the classification of children's homes, places of care and shelters registered under section 30, and the amendment of such classification;
[Para. (d) substituted by s. 17 of Act 96/96]
- (e) as to the care, control, bringing up and training of pupils in institutions, shelters and places of safety;
[Para. (e) substituted by s. 17 of Act 96/96]
- (eA) as to the search of children in places of safety;
[Para. (eA) inserted by s. 22 of Act 86/91]
- (f) prescribing the conditions on which leave of absence may be granted to foster children and pupils in institutions;
- (g) prescribing rules of procedure for any proceedings in children's courts and for any proceedings in magistrates' courts under Chapter 7;
- (h) as to the method of registration of orders of adoption, including the appointment of a registrar of adoptions and his powers and duties and the particulars regarding any adoption that may be disclosed and, with the concurrence of the Minister of Finance, the fees to be paid for an order of adoption or for a certified copy thereof;
- (i) prescribing, with the concurrence of the Minister of Finance, the circumstances in which and the conditions on which the grants or contributions mentioned in section 56 will be made, the amounts or rates of such grants or contributions and methods of accounting therefor;
- (j) as to the rendering of foster care services;
- (k) as to any matter which in terms of this Act is required or permitted to be prescribed by regulation, and generally as to any matter which he may deem it necessary or expedient to prescribe in order to achieve the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

- (2) Any regulations under paragraph (i) of subsection (1) may be made with retrospective effect from a date determined with the concurrence of the Minister of Finance.
- (3) Different regulations may be made under subsection (1) in respect of different areas or in respect of different categories or classes of persons, institutions and places of care.
- (4) Regulations made under subsection (1) may prescribe penalties for any contravention of or failure to comply with their provisions, not exceeding a fine of R200.

61. Administration of Act

- (1) The State President may by proclamation in the *Gazette* assign the administration of the provisions of this Act, either generally or in respect of persons belonging to any specific class or category as defined in the said proclamation, to any Minister or partly to one Minister and partly to another Minister or other Ministers, and may in such proclamation specify the powers and functions which shall be exercised and performed by the several Ministers, and may further specify that any power or duty conferred or imposed by this Act upon the Minister shall be exercised or performed by one Minister acting with the concurrence of another Minister.
- (2) The State President may by like proclamation vary or amend any such proclamation.

62. Amendment of section 25 of Act 25 of 1961

Section 25 of the Marriage Act, 1961, is hereby amended by the substitution for subsection (1) of the following subsection -

- “(1) If a commissioner of child welfare defined in section 1 of the **[Children’s Act, 1960 (Act No. 33 of 1960)]** Child Care Act, 1983, is after proper inquiry satisfied that a minor who is resident in the district or area in respect of which he holds office has no parent or guardian or is for any good reason unable to obtain the consent of his parents or guardian to enter into a marriage, such commissioner of child welfare may in his discretion grant written consent to such minor to marry a specified person, but such commissioner of child welfare shall not grant his consent **[if the minor is such a pupil or child as is mentioned in paragraph (a) of subsection (1) of section *fifty-nine* of the said Act or]** if one or other parent of the minor whose consent is required by law or his guardian refuses to grant consent to the marriage.”

63. Repeal of laws, and savings

- (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.
- (2) Any regulation, appointment, notice, order, leave of absence, agreement, payment or certificate made, issued, given, granted or entered into and any other action taken under any provision of a law repealed by subsection (1) and which could be made, issued, given, granted, entered into or taken under any provision of this Act, shall be deemed to have been made, issued, given, granted, entered into or taken under the corresponding provision of this Act, and if this Act does not contain any such corresponding provision, shall be proceeded with, disposed of and given effect to in so far as the Minister has not provided otherwise.
- (3) Any order made under section 31 (1) (a) of the Children's Act, 1960 (Act No. 33 of 1960), shall be deemed to have lapsed with effect from the date of commencement of this Act.
[Sub-s. (3) inserted by s. 23 of Act 86/91]
- (4) Any order made under paragraph (b), (d) or (e) of section 31 (1) of the Children's Act, 1960 (Act No. 33 of 1960), that was in force immediately prior to the commencement of the Child Care Amendment Act, 1991, shall remain in force and shall be deemed to have been made on the date of such commencement under paragraphs (b), (c) and (d) of section 15 (1) of this Act, respectively.
[Sub-s. (4) inserted by s. 23 of Act 86/91]

64. Short title and commencement

- (1) This Act shall be called the Child Care Act, 1983, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

Schedule

LAWS REPEALED

Number and year of law	Short title	Extent of repeal
Act No. 33 of 1960	Children's Act, 1960	The whole, except in so far as it relates to the appointment of probation officers and the establishment, maintenance

		and management of schools of industries and reform schools
Act No. 69 of 1962	Commonwealth Relations Act, 1962	Sections 69 and 70
Act No. 92 of 1962	Pension Laws Amendment Act, 1962	Section 34.
Act No. 50 of 1965	Children's Amendment Act, 1965	The whole.
Act No. 62 of 1966	General Law Amendment Act, 1966	Sections 15 and 16
Act No. 102 of 1967	General Law Amendment Act, 1967	Section 16.
Act No. 101 of 1969	General Law Amendment Act, 1969	Sections 18 and 19
Act No. 58 of 1970	Births, Marriages and Deaths Registration Amendment Act 1970	Sections 50 and 51
Act No. 92 of 1970	General Law Further Amendment Act, 1970	Section 11
Act No. 74 of 1973	Children's Amendment Act, 1973	The whole
Act No. 43 of 1976	Children's Amendment Act, 1976	The whole
Act No. 15 of 1977	Children's Amendment Act, 1977	The whole