

GOVERNMENT NOTICE

DEPARTMENT OF SOCIAL DEVELOPMENT

No. R. 261

1 April 2010

CHILDREN'S ACT, 2005

GENERAL REGULATIONS REGARDING CHILDREN

The Minister of Social Development has under section 306 of the Children's Act, 2005 (Act No.38 of 2005), after consultation with the Ministers for Justice and Constitutional Development, Safety and Security Health, Education, Finance, Transport, Home Affairs and Provincial and Local Government, made the regulations in the Schedule.

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CHAPTER 1 GENERAL PROVISIONS

Definitions

1.(1) In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates—

"disciplines" means different professionals working with a person to resolve a common problem or achieve a common goal through continuous intercommunication, re-examination and evaluation;

"Mayor" means the appointed head of a town, city or metropolitan council;

"positive discipline" includes discussing any negative effects of a child's behaviour with him or her;

"registration holder" means the holder of a registration of a partial care facility, an early childhood development programme, a child and youth care centre or a drop-in centre;

"the Act" means the Children's Act, 2005 (Act No. 38 of 2005);

"the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007" means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No.32 of 2007);

"the Criminal Procedure Act, 1977" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"the National Register for Sex Offenders" means the National Register for Sex Offenders established under section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

"the Social Service Professions Act, 1978" means the Social Service Professions Act, 1978 (Act No. 110 of 1978).

(2) A reference to a Form in these Regulations is a reference to the relevant Form contained in **Annexure A**.

Intervals of provincial profiles

2. The relevant MEC responsible for social development must compile a provincial profile in respect of the strategies concerning—

- (a) partial care, as contemplated in section 77 of the Act;
- (b) early childhood development, as contemplated in section 92 of the Act;
- (c) child protection, as contemplated in section 104 of the Act;
- (d) prevention and early intervention programmes, as contemplated in section 145 of the Act;
- (e) the provision of child and youth care centres, as contemplated in section 192 of the Act; and
- (f) drop-in centres, as contemplated in section 214 of the Act,

within one year of the incorporation of the relevant provincial strategy into the relevant national strategy and every year thereafter.

CHAPTER 2

SOCIAL, CULTURAL AND RELIGIOUS PRACTICES

(Section 12 of the Act)

PART I

VIRGINITY TESTING

Consent to undergo virginity test

3.(1) Consent to undergo a virginity test by a child who is older than 16 years of age must be in a form identical to **Form 1** and must be—

- (a) completed in writing and signed by the child;
- (b) signed by the person conducting the virginity test;
- (c) accompanied by proof of the age of the child as established in terms of regulation 4(3)(b); and
- (d) *commissioned by a Commissioner of Oaths.*

(2) Where a person whose signature is required in terms of paragraph (a) or (b) of sub-regulation (1) is incapable of furnishing a signature, a thumbprint of the person must be effected on **Form 1** and duly attested by a commissioner of oaths.

(3) A child who is older than 16 years of age and who has a disability related to brain damage which renders the said child incapable of making a decision regarding a virginity test or a child with multiple disabilities who is not able to make such a decision, cannot be subjected to a virginity test.

(4) A copy of the form contemplated in sub-regulation (1) must be retained by the person performing the virginity test for a period of three years after consent, as contemplated in this regulation, has been furnished.

Manner of conducting virginity test

4.(1) A person who conducts a virginity test must ensure that—

- (a) each child is tested individually and in private;
- (b) the test is conducted in a hygienic manner, which at all times includes—
 - (i) the use of a separate pair of sterile surgical gloves for each test in the case of a virginity test involving the inspection of any bodily orifice of the child being tested;
 - (ii) disposal of such surgical gloves after each virginity test in accordance with medical standards for the disposal of surgical gloves;
 - (iii) sterilisation of any instrument used in the performance of any virginity test in accordance with medical standards for the sterilisation of instruments; and
 - (iv) avoidance of direct blood contact or contact with any bodily fluid between the child undergoing the virginity test and the person performing the virginity test; and
- (c) the least invasive means of testing for virginity is used with due regard to the child's right to bodily integrity.

(2) A virginity test may be performed on a girl child only by a female person and on a boy child only by a male person.

(3) (a) No virginity test may be performed on a child unless—

- (i) the consent and the required proof of age contemplated in regulation 3 have been submitted to the person conducting the test; and
- (ii) the child has been given proper counselling by a parent, guardian or caregiver and a social service professional.

(b) The age of a child consenting to a virginity test must be established by having regard to an identity document or birth certificate of the child, an affidavit furnished by the child's parent or care-giver confirming the age of the child or an estimation of age contemplated in section 48(2) of the Act.

(4) Any person who contravenes any provision of this regulation is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

PART II MALE CIRCUMCISION

Circumcision for social or cultural purposes

5.(1) Circumcision of a male child older than 16 may only be performed—

- (a) after the child has given consent in a form identical to **Form 2**;
- (b) after proper counselling of the child by a parent, guardian, caregiver or social service professional;
- (c) in accordance with the cultural or social practices of the child concerned; and
- (d) by a medical practitioner or by a person with knowledge of the social or cultural practices of the child concerned and who has been properly trained to perform circumcisions.

(2) The medical practitioner or person contemplated in sub-regulation (1)(d) must at all times ensure that—

- (a) sterile surgical gloves are worn during the circumcision and that they are disposed of after each circumcision;

- (b) any instrument used during a circumcision is disposed of after each circumcision unless sterilised in accordance with medical standards for the sterilisation of surgical instruments;
- (c) there is no direct blood contact, contact with any body fluid or contact with any foreign substance between the child undergoing the circumcision and the person performing the circumcision or any other person or child; and
- (d) the disposal of any instruments used for circumcision including any human tissue takes place in accordance with medical standards for the disposal of surgical instruments and human tissue.

Circumcision for religious purposes

6.(1) Circumcision performed for religious purposes on male children must be performed in accordance with the practices of the religion concerned and must be performed by a medical practitioner or by a person from the religion concerned who has been properly trained to perform circumcisions.

(2) The medical practitioner or person contemplated in sub-regulation (1) must ensure that—

- (a) sterile surgical gloves are worn during the circumcision and that they are disposed of after each circumcision;
- (b) any instrument used during a circumcision is disposed of after each circumcision unless sterilised in accordance with medical standards for the sterilisation of surgical instruments;
- (c) there is no direct blood contact, contact with any body fluid or contact with any foreign substance between the child undergoing the circumcision and the person performing the circumcision or any other person or child; and
- (d) the disposal of any instruments used for circumcision including any human tissue takes place in accordance with medical standards for the disposal of surgical instruments and human tissue.

- (3) Consent to the religious circumcision of a male child —
 - (a) under the age of 16 years must be given by both parents of the male child and where more than one person has guardianship of the child or where a parental responsibilities and rights agreement exists, both of those persons, and must be in a form identical to **Form 3**; or
 - (b) older than 16 years must be given by the child concerned and in a form identical to **Form 3**.

CHAPTER 3

PARENTAL RESPONSIBILITIES AND RIGHTS

(Sections 18 – 35 of the Act)

PART I

PARENTAL RESPONSIBILITIES AND RIGHTS AGREEMENTS

General requirements pertaining to parental responsibilities and rights agreements

- 7.(1) A parental responsibilities and rights agreement must
 - (a) be in writing;
 - (b) be in a form identical to **Form 4**;
 - (c) contain particulars of those aspects pertaining to the care of, contact with, financial responsibility for the child; and
 - (d) contain incidental matters related to the upbringing of the child or children that are being conferred by the mother or other person having parental responsibilities and rights upon the biological father or any other person having an interest in the care, well-being and development of the child.
- (2) **Form 4** must be attached to the application for registration of the parental responsibilities and rights agreement as contemplated in sub-regulation (1).

(3) Where parental responsibilities and rights agreement is to be made an order of the High Court, that agreement may contain particulars relating to the guardianship of the child.

(4) Where parental responsibilities and rights are to be exercised in substantially the same manner by the biological father or any other person or persons having an interest in the care, well-being and development of the child with respect to more than one child in the same family, such parental responsibilities and rights agreement must be completed for each child.

(5) The applicant or applicants for the registration of a parental responsibilities and rights agreement must file copies of such agreement with the family advocate, children's court or High Court, as the case may be, to enable each co-holder of parental responsibilities and rights to retain a copy of the registered agreement.

(6) Where a family advocate is required to satisfy himself or herself as contemplated in section 22(5) of the Act that a parental responsibilities and rights agreement is in the best interests of the child, this must be done in a form identical to **Form 5**.

Mediation and participation of child concerning parental responsibilities and rights

8.(1) A family advocate, social worker, social service professional or other suitably qualified person who conducts mediation in the case of a dispute between the biological father of the child and the biological mother of the child with regard to the fulfilment by that father of the conditions set out in section 21(1) of the Act, may certify the outcome of that mediation in a form identical to **Form 6**.

(2) A certificate of non-attendance of the mediation required by section 21(3) of the Act may be completed in a form identical to **Form 7** by a family advocate, social worker, social services professional or other suitably qualified person who has notified a respondent to attend such mediation and where such respondent has failed to attend.

(3) (a) Due consideration must be given to the views and wishes of the child or children in the development of any parental responsibilities and rights agreement, bearing in mind the child's or children's age, maturity and stage of development.

(b) Bearing in mind the child's or children's age, maturity and stage of development, such child or children must be informed of the contents of the parental responsibilities and rights agreement by the family advocate, the children's court, the High Court, a social worker, social service professional, psychologist or the child's or children's legal representative.

(4) Where a child or children referred to in sub-regulation (3) in respect of whom a parental responsibilities and rights agreement is concluded is or are not in agreement with the contents of the agreement, this should be recorded on the agreement, and the matter referred for mediation by a family advocate, social worker, social service professional or other suitably qualified person.

PART II PARENTING PLANS

General provisions concerning application for registration of parenting plans

9.(1) An application for the registration of a parenting plan at the office of the family advocate or for it to be made an order of court must be completed in writing in a form identical to **Form 8** and must—

- (a) be signed by the parties to the parenting plan or, if a person whose signature is required is incapable of furnishing a signature, a thumbprint of that person must be effected and duly attested by a commissioner of oaths;
- (b) contain the titles, full names, dates of birth, identity numbers or passport numbers (as the case may be), residential, work addresses, and contact details of all co-holders of parental responsibilities and rights named in the parenting plan; and
- (c) contain the full names, dates of birth, identity numbers or passport numbers (as the case may be), residential addresses and contact details of any child or children named in the parenting plan.

(2) Where parental responsibilities and rights are to be exercised in the same manner by the holders of those responsibilities and rights with respect to more than one child in the same family, the application for registration of the parenting plan must be completed for each child.

(3) The applicant or applicants for the registration of a parenting plan must file copies of such plan with the family advocate, children's court or High Court, as the case may be, to enable each co-holder to retain a copy of the registered parenting plan.

Preparation of parenting plans

10.(1) The co-holders of parental responsibilities and rights as contemplated in section 30 and who are experiencing difficulty in exercising their responsibilities and rights as envisaged in section 33(2) of the Act must seek to agree on a parenting plan on matters referred to in section 33(3) of the Act.

(2) The parenting plan contemplated in sub-regulation (1) must be prepared:

- (a) with the assistance of a family advocate, social worker or psychologist as contemplated in section 33(5)(a) of the Act, and must be completed in writing in a form identical to **Form 9**; or
- (b) after mediation by a social worker or other suitably qualified person as contemplated in section 33(5)(b) of the Act, and must be completed in writing in a form identical to **Form 10**.

Participation of child in preparation of parenting plans

11.(1) Bearing in mind the child's age, maturity and stage of development, such child must be consulted during the development of a parenting plan, and granted an opportunity to express his or her views, which must be accorded due consideration.

(2) When a parenting plan has been agreed the child must, bearing in mind the child's age, maturity and stage of development, be informed of the contents of the parenting plan by the family advocate, a social worker, social service professional, psychologist, suitably qualified person or the child's legal representative.

CHAPTER 4
PARTIAL CARE
(Sections 76 – 90 of the Act)

Types of partial care

12.(1) For the purposes of registration of partial care the following different types of partial care may be provided:

- (a) early childhood development services as contemplated in section 91(2) of the Act for children up to school going age;
- (b) an after school service, other than a service provided by a school as defined in the South African School's Act 1996, (Act No. 84 of 1996), for a child attending a primary school or a secondary school;
- (c) a private hostel; and
- (d) temporary respite care services for children including children with disabilities.

(2) For purposes of this Chapter "after school service" means the provision of meals, homework support, sporting activity support, life skills education and guidance and counselling support.

(3) For purposes of this Chapter "private hostel" means a place which is operating during school terms and where children sleep over, are provided with meals, healthcare, life skills education, where their laundry is done and where the children receive guidance and counselling support, school attendance support, sporting activity support and cultural activity support.

(4) For purposes of this Chapter “temporary respite care services” means a temporary service offered to children and to children with disabilities which is aimed at the provision of temporary care and relief and includes day care or sleepover, the provision of meals, school attendance support, sporting activity support, health care and laundry facilities and assistance with personal hygiene.

National norms and standards for partial care

13. The national norms and standards for partial care contemplated in section 79 of the Act are contained in **Part I of Annexure B**.

Application for registration of partial care facility

14.(1) Subject to the provisions of sub-regulation (2), an application for the registration, conditional registration, the reinstatement or renewal of registration of a partial care facility must be lodged with the provincial head of social development of the province where the facility is situated in a form identical to **Form 11**.

(2) If the performance of the functions contemplated in sections 80 and 81 of the Act has been assigned in terms of section 88 of the Act to the municipal manager of a municipality, an application contemplated in sub-regulation (1) must be lodged with that municipal manager.

(3) An application contemplated in sub-regulation (1) must contain the following:

- (a) The particulars of the applicant;
- (b) the physical and postal address of the partial care facility;
- (c) the type or types of partial care in respect of which the application is made;
- (d) the number of children that will be accommodated in each of the types of partial care in respect of which the application is made;
- (e) the qualifications, skills and experience of the applicant in partial care in type or types of partial care in respect of which the application is made; and

- (f) a description of the contents of the programmes and services to be offered, including the aims and objectives.

(4) An application contemplated in sub-regulation (1) must be accompanied by the following additional documents:

- (a) A business plan containing –
 - (i) the business hours of the partial care facility;
 - (ii) the fee structure;
 - (iii) the day care plan;
 - (iv) the staff composition; and
 - (v) the disciplinary policy;
- (b) the constitution of the partial care facility which must contain the following information:
 - (i) The name of the partial care facility;
 - (ii) the type or types of services to be provided;
 - (iii) the composition, powers and duties of the management;
 - (iv) the powers, obligations and undertaking of management to delegate all authority with regard to care, behaviour management and development of children to the head of the partial care facility, where applicable;
 - (v) the procedure for amending the constitution; and
 - (vi) a commitment from the management to ensure compliance with the national norms and standards for partial care facilities reflected in Annexure B;
- (c) an original copy of the approved building plans or a copy of the building plans that has been submitted for approval if the application for the approval of the building plans is still under consideration;
- (d) an emergency plan;
- (e) clearance certificates to the effect that the name of the applicant and the name of any employee do not appear in Part B of the National Child Protection Register, or the National Register for

Sex Offenders issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively; and

- (f) a health certificate issued by the local municipality in whose area the facility is to operate confirming compliance with the structural health requirements of that municipality.

Consideration of application for registration of partial care facility

15.(1) The provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 88 of the Act, the municipal manager or the social service professional, where the municipal manager has delegated the function to consider applications for the registration of a partial care facility to such social service professional concerned in terms of section 88 (3) of the Act, may, subject to section 83 of the Act, grant an application contemplated in regulation 14(1) for a period not exceeding five years.

(2) On granting an application contemplated in regulation 14(1), the provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 88 of the Act, the municipal manager or social service professional concerned, must issue to the applicant a certificate of registration or conditional registration or for the reinstatement or renewal of registration in a form identical to **Form 12**.

(3) In rejecting an application for registration of a partial care facility, the provincial head of social development or the municipal manager, where the function has been assigned to him or her in terms of section 88 of the Act or the social service professional concerned, where the municipal manager has delegated such function to him or her in terms of section 88 (3) of the Act, must duly inform the applicant of the refusal in a form identical to **Form 13** by registered post and must furnish reasons for such rejection to the applicant.

Appeal against certain decisions

16.(1) An appeal contemplated in section 86(1) of the Act must be in a form identical to **Form 14**.

(2) The MEC may, upon receipt of the applicant's or registration holder's written appeal and the provincial head of social development's reasons for the decision confirm, vary or set aside that decision.

(3) An appeal contemplated in section 88(6) of the Act must be in a form identical to **Form 15**.

(4) The municipal council may, upon receipt of the applicant's or registration holder's written appeal and the official in the employ of the municipality's reasons for the decision confirm, vary or set aside that decision.

Exemption from registration as partial care facility

17. Partial care provided during excursions, training programmes, social activities, cultural activities, sporting activities, camps or other activities, including overnight partial care, organised and provided by a religious denomination, a social organisation, a cultural organisation or a sports club is exempted from registration in terms of section 80 of the Act.

Management of partial care facility

18.(1) A register or registers must be kept by a partial care facility or provider of a partial care service in which the following particulars must be entered:

- (a) The full name, sex, date of birth and identity number of each child;
- (b) the names, addresses and contact particulars of the child's parent, primary care-giver or family members;
- (c) the date of the child's admission to the partial care facility and the date of discharge from partial care;

- (d) any disability, chronic medical condition or dietary requirement and any other critical information for the care and development of the child; and
- (e) any period of absence of the child from the partial care facility.

(2) A partial care facility or the provider of a partial care service must keep a separate file in respect of each child in which the following information must be filed:

- (a) All documents relating to the child received at the time of admission;
- (b) any document or correspondence relating to the child;
- (c) reports and notes by the provider of a programme within a partial care facility on any developmental delay or disability of the child with particular reference to any possible deviation from the normal development of the child having regard to his or her age;
- (d) reports and notes by the provider of a programme within a partial care facility on any irregular behavioural pattern of the child; and
- (e) reports and notes on any injury or bruise observed during the daily care of the child, including any observations which may relate to the possible abuse of the child.

(3) A file must be kept of each staff member employed at a partial care facility including any period of absence from the partial care facility.

(4) A disciplinary register must be kept in which the name of the child, the nature of the behaviour in respect of which discipline was imposed and the nature of the disciplinary measure must be recorded.

(5) Any register or file kept in terms of this regulation must be kept for a period of at least three years after the date of termination of the partial care service in respect of a child at a partial care facility.

(6) Any irregular or dysfunctional behaviour of a child in a partial care facility must be brought to the attention of the parent or the caregiver of the child.

(7) Quarterly progress reports must be furnished to the parent or the caregiver of each child in a partial care facility.

Employment of staff at partial care facility

19.(1) Any person employed at a partial care facility in a managerial or supervisory capacity or who is directly involved in the partial care of a child must possess the following skills:

- (a) The ability to implement a programme for early childhood development, where applicable, at the level in respect of which that partial care facility has been registered;
- (b) the ability to write reports and notes;
- (c) the ability to identify irregular and dysfunctional behaviour in a child;
- (d) basic numeracy skills;
- (e) a basic knowledge about child development; and
- (f) the ability to assess age related developmental milestones.

(2) Any person employed at a partial care facility after registration of the facility in terms of these Regulations must provide his or her employer with—

- (a) a certified copy of his or her identity document or work permit;
- (b) proof of his or her skills; and
- (c) clearance certificates to the effect that his or her name does not appear in Part B of the National Child Protection Register, or the National Register for Sex Offenders issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively.

(3) An employee at a partial care facility who works with a child in such facility must be able to communicate with the child in a language, including sign language, which such child understands.

Closure of partial care facility

20.(1) When—

- (a) the registration or conditional registration of a partial care facility has been cancelled as contemplated in section 84 of the Act; or
- (b) a written notice of enforcement instructing a person or organisation operating an unregistered partial care facility to terminate its operation has been issued under of section 85 of the Act,

that person or organisation must be allowed a period of not more than 90 days in order to wind up the affairs of that facility and to allow the parents or care-givers of children in that facility to make alternative arrangements for partial care.

(2) When a person or organisation providing partial care intends to terminate its operation, such person or organisation must give the parents or care-givers of children admitted at such a facility a period 90 days written notice of such intention.

Inspection of partial care facility

21.(1) All partial care facilities must be subjected to inspection and monitoring to determine compliance with these Regulations and Part I of Annexure B.

(2) The inspection and monitoring contemplated in sub-regulation (1) must be executed by a person designated by the provincial head of social development.

(3) All inspections and monitoring visits must be followed by a report that must be submitted to the provincial head of social development and the management of the partial care facility.

(4) Inspection of a partial care facility must take place every five years or may take place at shorter intervals if inspection is a condition for registration or where inspection of the facility becomes necessary for the cancellation of a registration referred to in section 84(2) (a) of the Act.

(5) Inspection as a result of a written complaint may at any time be ordered by the provincial head of social development.

Assignment of functions to municipalities

22.(1) Before a provincial head of social development may assign functions to a municipal manager as contemplated in section 88 of the Act, he or she must conduct a needs assessment on the assignment of the functions referred to in that section in consultation with the municipality concerned.

(2) Before assigning all or part of the functions contemplated in section 88 of the Act, a provincial head of social development must be satisfied that the municipality concerned has—

- (a) adequate staff, including social service professionals, who are suitably qualified and skilled;
- (b) the ability to render assistance to build capacity to ensure compliance with the relevant norms and standards; and
- (c) the capacity to manage the functions to be assigned.

(3) An agreement between the provincial head of social development and a municipality contemplated in section 88(2) of the Act must be in writing and signed by both parties in the presence of two witnesses.

(4) An agreement between a provincial head of social development and a municipality contemplated in section 88(2) of the Act must contain the following particulars:

- (a) A strategic plan containing a business plan for a period of three years, an operational plan for a period of one year and a budget for a period of three years;
- (b) a service level agreement;
- (c) an organogram for the establishment responsible for the administration of the assigned functions; and
- (d) a provision to the effect that the items contemplated in paragraphs (a), (b) and (c) must be reviewed and updated annually.

CHAPTER 5
EARLY CHILDHOOD DEVELOPMENT
(Sections 91 – 103 of the Act)

National norms and standards for early childhood development

23. The national norms and standards for early childhood development programmes contemplated in section 94 of the Act are contained in **Part II of Annexure B**.

Application for registration of early childhood development programme

24.(1) Subject to the provisions of sub-regulation (2), an application for the registration or conditional registration of an early childhood development programme or the renewal of such programme must be lodged with the provincial head of social development of the province where the early childhood development programme is to be provided and must be in a form identical to **Form 16**.

(2) If the performance of the functions contemplated in sections 96 and 97 of the Act has been assigned to the municipal manager as contemplated in section 102 of the Act, an application referred to in sub-regulation (1) must be lodged with the municipal manager or a social service professional in the employ of the municipality and to whom the municipal manager has delegated such function.

(3) An application contemplated in sub-regulation (1) must contain the following:

- (a) The name and identity number of the applicant;
- (b) the physical and postal address of the applicant;
- (c) the contact particulars of the applicant;
- (d) the particulars of the early childhood development programme in respect of which the application is made;
- (e) an implementation plan for the early childhood development programme in respect of which the application is made;
- (f) the staff composition of people who will be responsible to provide the early childhood development programme;

- (g) the financial statements of the partial care facility or child and youth care centre; and
- (h) a clearance certificate issued by the Director-General and the Director-General of Justice and Constitutional Development, respectively to the effect that the name of the applicant and staff members do not appear in Part B of the National Child Protection Register or the National Register for Sex Offenders.

Consideration of application for registration of early childhood development programme

25.(1) The provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 102 of the Act, the municipal manager or social service professional concerned, may grant an application contemplated in regulation 24(1) for a period not exceeding five years.

(2) On granting an application contemplated in regulation 24(1), the provincial head of social development or, where the function has been assigned to a municipal manager in terms of section 102 of the Act, the municipal manager or social service professional concerned, must issue to the applicant a certificate of registration or conditional registration or renewal of registration in a form identical to **Form 17**.

(3) In rejecting an application for registration of an early childhood development programme, the provincial head of social development or, where the function has been assigned to a municipality in terms of section 102 of the Act, the municipal manager or social service professional concerned, must duly inform the applicant of the refusal in a form identical to **Form 18** by registered post and must furnish reasons for such rejection to the applicant.

Appeal against certain decisions

26.(1) An appeal contemplated in section 101(1) of the Act must be in a form identical to **Form 19**.

(2) The MEC may, upon receipt of the applicant's or registration holder's written appeal and the provincial head of social development's reasons for the decision confirm, vary or set aside that decision.

(3) An appeal contemplated in section 102(6) of the Act must be in a form identical to **Form 20**.

(4) The municipal council may, upon receipt of the applicant's or registration holder's written appeal and the official in the employ of the municipality's reasons for the decision confirm, vary or set aside that decision.

Qualification, skills and training required for early childhood development programmes

27. An applicant for registration of an early childhood development programme must possess the following qualifications, skills and training:

- (a) (i) The National Certificate in Early Childhood Development at National Qualification Framework (NQF) Level 1 to 6 of the South African Qualifications Authority;
- (ii) an appropriate early childhood development qualification;
- or
- (iii) a minimum of three years experience of working in the early childhood development field;
- (b) appropriate knowledge about early childhood development;
- (c) the ability to identify, record and report on the progress and developmental needs of the child to inform early childhood development opportunities and interventions;
- (d) the ability to design and produce stimulating indoor and outdoor activities and routines according to the developmental needs of the children;
- (e) the ability to stimulate, extend and promote all-round development through appropriate adult-child, adult-adult and child-child interactions to enhance emotional, cognitive, spiritual, physical and social development;

- (f) the ability to create awareness of, promote and ensure the all-round safety, protection, security, rights and development of the child according to his or her needs in conjunction with community resources;
- (g) the ability to provide early childhood development programmes that are appropriate to the needs of the children to whom the services are provided, including children with disabilities, chronic illnesses or other special needs; and
- (h) the ability to implement systems, policies and procedures and to manage physical, financial and human resources.

Assessment and compulsory monitoring of early childhood development programmes

28.(1) All early childhood development programmes must be subjected to assessment and monitoring to determine compliance with the national norms and standards for early childhood development contained in Part II of Annexure B and the assessment must be in a form identical to **Form 21**.

(2) The assessment and monitoring contemplated in sub-regulation (1) must, subject to sub-regulation (3), be executed by a person designated by the provincial head of social development.

(3) The assessment and monitoring contemplated in sub-regulation (1) must, where the power or function has been delegated to the municipal manager, be executed by such municipal manager or by a social service professional where the municipal manager has delegated his or her power or function to such social service professional.

(4) All assessment and monitoring visits must be followed by a full report and development plan that must be submitted to the provincial head of social development and the management of the early childhood development programme.

(5) Assessment and monitoring of early childhood development programmes must take place every two years.

Assignment of functions to municipalities

29.(1) Before a provincial head of social development may assign functions to a municipal manager as contemplated in section 102 of the Act, he or she must conduct a needs assessment on the assignment of the functions referred to in that section in consultation with the municipality concerned.

(2) Before assigning all or part of the functions contemplated in section 102 of the Act, a provincial head of social development must be satisfied that the municipality concerned has—

- (a) adequate staff, including social service professionals, who are suitably qualified and skilled;
- (b) the ability to render assistance to build capacity to ensure compliance with the relevant norms and standards; and
- (c) the capacity to manage the functions to be assigned.

(3) An agreement between a provincial head of social development and a municipality contemplated in section 102(1) of the Act must be in writing and signed by both parties in the presence of two witnesses.

(4) An agreement between a provincial head of social development and a municipality contemplated in section 102(1) of the Act must contain the following particulars:

- (a) A strategic plan containing a business plan for a period of three years, an operational plan for a period of one year and a budget for a period of three years;
- (b) a service level agreement;
- (c) an organogram for the establishment responsible for the administration of the assigned functions: and
- (d) a provision to the effect that the particulars contemplated in paragraphs (a), (b) and (c) must be reviewed and updated annually.

CHAPTER 6

CHILD PROTECTION SYSTEM

(Sections 104 – 110 and 142(a) – (f) of the Act)

National norms and standards for child protection services

30. The national norms and standards for child protection services contemplated in section 106 of the Act are contained in **Part III of Annexure B**.

Criteria for designation as child protection organisation

31.(1) An organisation complies with the criteria for a child protection organisation contemplated in section 107(1) of the Act if such organisation, upon application to be designated as a child protection organisation, has shown that it—

- (a) is a legal person and is registered with the appropriate authority or in terms of service-specific related legislation which requires registration;
- (b) is registered as a nonprofit organisation in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), is affiliated to a nonprofit organisation that is so registered or can provide proof that the organisation is in the process of registering under the said Act;
- (c) has the necessary capacity and expertise to deliver statutory services in terms of the Act, and that its operation conforms with the MEC for social development's plan for the delivery of child protection services in the relevant province;
- (d) has a constitution that embraces the provision of child protection services;
- (e) has the ability to provide effective and efficient services which also accommodate the needs of children with disabilities;
- (f) promotes an equitable distribution of services, taking into account historical imbalances, including race, gender, disability and the urban and rural areas;
- (g) promotes inclusiveness and representation in the management and organisation of services;

- (h) is able to account for the utilisation of financial awards made by the Department or the Provincial Department of Social Development in an acceptable manner and in terms of the prescripts of the Public Finance Management Act, 1999 (Act No.1 of 1999), with particular emphasis on the efficiency, economy and effectiveness of programmes and best practice financial management; and
- (i) supports and commits itself to partnerships and collaboration with emerging organisations.

(2) An application to be designated as a child protection organisation must include a business plan which contains the following:

- (a) Biographic information of the organisation;
- (b) information on the management board, staff, volunteers and current beneficiaries of the organisation;
- (c) objectives, outputs and outcomes; and
- (d) activity-based budgets reflecting the amount of funds required and the purposes for which such funds will be utilised.

(3) An application to be designated as a child protection organisation must be accompanied by the following documents or certified copies thereof:

- (a) The organisation's most recent audited financial statements or, if audited statements cannot be furnished, such financial statements as are available accompanied by a sworn statement as to why audited statements cannot be furnished;
- (b) proof of such registration as may be required;
- (c) social workers' certificates of registration issued under section 17 of the Social Service Professions Act, 1978;
- (d) the organisation's constitution and, if available, its code of conduct;
- (e) confirmation of the organisation's banking details; and
- (f) the organisation's audited financial statements.

(4) The Director-General or the provincial head of social development may designate an appropriate organisation that complies with the requirements specified in sub-regulations (1), (2) and (3) as a child protection organisation for a period not exceeding five years.

(5) An organisation which has been designated as a child protection organisation in terms of section 107 of the Act or deemed to be designated in terms of section 108 of the Act must submit to the Director-General or to the provincial head of social development a new application for designation in accordance with this regulation at least 90 days before the expiry of the period of designation referred to in sub-regulation (4) or section 108(2) of the Act, as the case may be.

Quality assurance to evaluate child protection organisation prior to withdrawal of designation

32.(1) A quality assurance referred to in section 109(2) of the Act must be conducted to evaluate a child protection organisation prior to the withdrawal of the designation as a child protection organisation.

(2) The quality assurance contemplated in subregulation (1) must be conducted by the Director-General or by the provincial head of social development and must consist of the assessment of the following:

- (a) the business plan and financial statements of the organisation;
- (b) adherence to the criteria for designation as a child protection organisation and to the national norms and standards for child protection;
- (c) implementation of the designated child protection services;
- (d) whether individuals, families, communities and other organisations are receiving an effective and efficient service and whether they are satisfied with the quality of service so received;
- (e) monitoring and evaluation framework and the impact of the services received;
- (f) compliance and implementation of the appropriate legislation; and
- (g) any service delivery challenges.

Reporting of abuse or deliberate neglect of child

33.(1) A report by a person contemplated in section 110(1) of the Act, who on reasonable grounds concludes as provided for in that section that a child has been abused in a manner causing physical injury, sexually abused, emotionally abused or deliberately neglected, must be made to the relevant authority in a form identical to **Form 22** by completing that form to the best of that person's ability and by including in the form such particulars as are available to him or her.

(2) The provincial department of social development, designated child protection organisation or police official to whom a report contemplated in sub-regulation (1) has been made, must submit the particulars of the abuse in a form identical to **Form 23** to the Director-General for inclusion in Part A of the National Child Protection Register.

Request for removal of alleged offender

34. A request by a provincial department of social development or a designated child protection organisation for the removal of an alleged offender from his or her home or from the place where he or she resides as contemplated in section 110(7)(b) of the Act, must—

- (a) contain particulars regarding the alleged offender; and
- (b) in writing in a form identical to **Form 24**.

Broad risk assessment framework to guide decision-making in provision of designated child protection services

35.(1) The aim of the broad risk assessment framework contemplated in section 142(c) of the Act is to provide guidelines for—

- (a) identification of children who are being abused or deliberately neglected;
- (b) assessment of risk factors to support a conclusion of abuse and neglect on reasonable grounds as contemplated in section 110 of the Act;

- (c) investigation by a provincial department of social development or a designated child protection organisation upon receipt of a report of the abuse or neglect of a child; and
 - (d) appropriate protective measures to be taken in respect of a child.
- (2) The broad risk assessment framework includes the following guidelines:
 - (a) The presence of indicators of physical abuse, including bruises in any part of the body; grasp marks on the arms, chest or face; variations in bruising colour; black eyes; belt marks; tears around or behind the ears; cigarette or other burn marks; cuts; welts; fractures; head injuries; convulsions that are not due to epilepsy or high temperature; drowsiness; irregular breathing; vomiting; pain; fever or restlessness;
 - (b) the presence of emotional and behavioural indicators of physical, psychological or sexual abuse, including aggression; physical withdrawal when approached by adults; anxiety; irritability; persistent fear of familiar people or situations; sadness; suicidal actions or behaviour; self-mutilation; obsessive behaviour; neglect of personal hygiene; age of child demonstrating socially inappropriate sexual behaviour or knowledge; active or passive bullying; unwillingness or fearfulness to undress or wearing layers of clothing;
 - (c) the presence of developmental indicators of physical, psychological or sexual abuse, including failure to thrive; failure to meet physical and psychological developmental norms; withdrawal; stuttering; unwillingness to partake in group activities; clumsiness; lack of coordination or orientation or observable thriving of children away from their home environment;
 - (d) the presence of indicators of deliberate neglect, including underweight; reddish scanty hair; sores around the mouth; slight water retention on the palm or in the legs; extended or slightly

hardened abdomen; thin and dry skin; dark pigmentation of skin, especially on extremities; abnormally thin muscles; developmental delay; lack of fatty tissue; disorientation; intellectual disability; irritability; lethargy, withdrawal, bedsores and contractures;

- (e) a disclosure of abuse or deliberate neglect by the child; or
- (f) a statement relating to a pattern or history of abuse or deliberate neglect from a witness relating to the abuse of the child.

(3) A person who, due to the presence of indicators referred to in sub-regulation (2), suspects that a child has been sexually abused, or abused in a manner causing physical injury or deliberately neglected, must assess the total context of the child's situation in accordance with the following guidelines:

- (a) Many indicators may be non-specific to abuse or neglect;
- (b) a cluster or pattern of indicators as opposed to a single isolated indicator will provide support for a conclusion of abuse or neglect;
- (c) information about specific times of any incidents, places where incidents have taken place and the context within which incidents have taken place, which must be noted in writing, may provide support for a conclusion of abuse or neglect;
- (d) abuse may be unintentional, but failure on the part of the parent or care-giver to prevent abuse of the child may amount to neglect;
- (e) abuse may be physical, psychological or sexual without any visible indicators and is likely to exist if the child continuously reports threats of harm or punishment;
- (f) a series of minor incidents, any of which may, when considered in isolation, not amount to abuse or neglect, may constitute abuse or neglect when considered together;
- (g) the child's age, personality and temperament should be taken into account;
- (h) discrepancies in the rendition of incidents by the child and his or her parent or care-giver may either provide or diminish support for a conclusion of abuse or neglect; and

- (i) any unexplained delay in seeking medical treatment for a child who is seriously injured, should be considered as a possible indicator of abuse or neglect.

(4) The provincial department of social development or the designated child protection organisation to whom a report has been made in terms of section 110(1), (2) or (4) of the Act must—

- (a) make an assessment of the indicators referred to in sub-regulation (2) by taking the guidelines in sub-regulation (3) into account; and
- (b) if a further investigation is required –
 - (i) establish the facts surrounding the circumstances giving rise to the concern;
 - (ii) evaluate the child's parental circumstances, including parental characteristics, mental stability, maturity; physical or emotional impairment, substance abuse, capabilities, temperament, employment status, level of support given to the parent or care-giver by friends; the capacity and disposition of the parent or care-giver to give the child guidance and to give adequate and appropriate support to a child with disabilities; emotional bonding between the parent or care-giver and the child; and a history of parental abuse or neglect of the child;
 - (iii) evaluate the child's family circumstances, including family violence; inappropriate discipline; dependency; marital stress; and family or parental composition;
 - (iv) evaluate the child's environmental circumstances, including poverty; overcrowding; homelessness; isolation; high mobility of the parents; the presence of social, environmental or financial stress; and the type of neighbourhood and community;
 - (v) identify sources who may verify the alleged abuse;
 - (vi) identify the level of risk that the child's safety or well-being is exposed to, including factors indicating that the child has suffered, or is likely in the near future to suffer, a non-

accidental physical injury due to conditions which his or her parent or care-giver has failed to correct, or due to their having failed, to provide adequate protection; that the child is displaying symptoms of emotional damage and the unwillingness of the parent to address the problem or to seek assistance; that the child has been sexually abused by a member of the household; and that the child is in need of medical treatment, without which he or she will suffer severe ill-effects;

- (vii) identify actual and potential protective and supportive factors in the home and broader environment to minimise risk to the child; and
- (viii) decide on the appropriate protective measures or intervention as provided for in the Act.

(5) In deciding upon the appropriate protective measures or intervention as provided for in the Act, the provincial department of social development or a designated child protection organisation must take account of the following:

- (a) The total context of the child's situation, given his or her age, and the level of risk that the child is exposed to, bearing in mind that certain injuries may be more prevalent in younger than older children;
- (b) the feasibility of prevention and early intervention measures to protect the child, as well as other measures that would minimise the level of risk yet allowing the child to remain in his or her home environment, including the removal of the alleged abuser;
- (c) the emotional risk to the child involved in a sudden, unprepared removal; and
- (d) the placement of the child in alternative care be considered only in cases where a serious and immediate danger to the child outweighs the trauma involved in such a removal.

Criteria for determining suitable persons to investigate child abuse or neglect

36. A person is suitable to conduct investigations into cases of alleged child abuse or neglect as contemplated in section 142(d) of the Act if such person—

- (a) is a registered social worker in terms of the Social Service Professions Act, 1978, and is employed—
 - (i) by the Department or a provincial department of social development; or
 - (ii) by a designated child protection organisation;
- (b) has sufficient experience in the field of child protection or is working under the supervision of a person who has at least five years experience in child protection;
- (c) has not been found unsuitable to work with children and has no previous convictions relating to child abuse;
- (d) upholds the rights of the child and children's best interests; and
- (e) is able to work in a multi-disciplinary team with the objective of securing the best protection plan based on a child's developmental needs.

Powers and responsibilities of persons suitable to investigate child abuse or neglect

37. A person who is suitable in terms of regulation 36 to conduct investigations into cases of alleged child abuse or neglect, and who has received a report alleging the abuse or neglect of a child, must—

- (a) investigate that report in accordance with regulation 35 within a reasonable time that may be required by the severity of the case;
- (b) in cases of sexual abuse cases refer the child, within 72 hours, to a medical health professional for medical treatment;
- (c) if necessary, accompany the child or cause the child to be accompanied to a police station for purposes of laying a complaint;

- (d) if necessary, accompany the child or cause the child to be accompanied to a medical facility for purposes of medical treatment;
- (d) facilitate counselling and support to reduce trauma to the child and his or her family members, and if necessary, refer the child to other relevant disciplines;
- (e) co-ordinate the available and applicable child protection services to ensure the safety and well-being of the child;
- (f) develop and implement a child protection plan in consultation with the child, his or her parents, guardian or care-giver and, if required, other relevant disciplines;
- (g) review the child protection plan on a six-monthly basis or earlier, depending on the severity of the abuse or neglect;
- (h) ensure that the prescribed particulars of the child are recorded in Part A of the National Child Protection Register; and
- (i) take the protective measures contemplated in the Act prescribed in Section 151 and 152 of the Act.

Conditions for examination or assessment of abused or neglected children and consent of such children

38.(1) A child who is suspected of having been abused or neglected must, upon the examination or assessment of such child—

- (a) be addressed, in a language which he or she can understand;
- (b) be accompanied by a support person of the child's choice, unless he or she is of sufficient maturity and mental capacity to understand the reasons for the assessment or examination and expresses a wish not to be accompanied by such person;
- (c) be treated with empathy, care and understanding, with due regard to the child's right to privacy and confidentiality;
- (d) as far as possible be examined or assessed in a child-friendly environment;
- (e) not be subjected to the presence of any other person who is not required to be present at the examination or assessment; and

(f) not be subjected to cruel or degrading language.

(2) A child must, prior to his or her being examined or assessed for purposes of establishing whether such child has been abused or neglected, consent, either verbally or in writing, to the assessment or examination if such child is of sufficient maturity and has the mental capacity to understand the reasons for the examination or assessment: Provided that an assessment or examination may proceed in the absence of a child's consent if it is deemed to be in the best interests of such child, in which case the reasons for proceeding with the assessment or examination must be noted in writing by the person doing the assessment or examination and explained to the child and to his or her parent, guardian or care-giver.

CHAPTER 7

THE NATIONAL CHILD PROTECTION REGISTER

(Sections 111 – 128 and 142(g) – (k) of the Act)

PART I

PART A OF NATIONAL CHILD PROTECTION REGISTER

Contents of Part A of National Child Protection Register

39.(1) (a) A provincial department of social development or a designated child protection organisation must notify the Director-General in writing of a report relating to a child in need of care and protection or a report relating to the abuse or deliberate neglect of a child as contemplated in sections 110(5) and 114(1)(a) of the Act made by any person referred to in section 110(1), (2) or (4) of the Act, within 21 days of conclusion of the investigation by that department or organisation if the department or organisation is satisfied that the safety or well-being of the child concerned is at risk and that the report is not frivolous or obviously unfounded.

(b) The notification contemplated in paragraph (a) must-

- (i) if not submitted electronically, be contained in a sealed envelope marked confidential;
- (ii) reflect the particulars set out in section 114(2)(a) of the Act and in sub-regulation (4)(a); and

- (iii) be in a form identical to **Form 22**.
- (c) The Director-General must upon receipt of the notification, cause the particulars set out in the notification to be included in Part A of the National Child Protection Register forthwith.
- (2)
 - (a) The Director-General must be notified in writing of the conviction of a person on a charge as contemplated in section 114(1)(b) of the Act, or of a finding as contemplated in section 114(1)(c) of the Act, by the registrar or clerk of the court concerned, as the case may be, within 14 days of such conviction or finding.
 - (b) The notification contemplated in paragraph (a) must—
 - (i) if not submitted electronically, be contained in a sealed envelope marked confidential;
 - (ii) reflect the particulars set out in section 114(2)(b) and (c) of the Act and in sub-regulation (4)(b) and (c); and
 - (iii) be in a form identical to **Form 25**.
 - (c) The Director-General must upon receipt of a notification contemplated in paragraph (a), cause the particulars set out in the notification to be included in Part A of the National Child Protection Register forthwith.
- (3) A registrar or clerk of the court who has notified the Director-General of a conviction of a person as contemplated in sub-regulation (2), must inform the Director-General in writing of any successful appeal against or review of such conviction within seven days of receipt of a notice of the outcome of the appeal or review, upon which the Director-General must remove the name and particulars of the relevant person from Part A of the National Child Protection Register forthwith.
- (4) The particulars to be included in Part A of the National Child Protection Register in terms of section 114(2) of the Act must include—
 - (a) in the case of section 114(2)(a) of the Act relating to reports of abuse or deliberate neglect made to the Director-General-
 - (i) the child's passport number, where applicable;
 - (ii) the whereabouts of the alleged perpetrator;
 - (iii) the persons with whom the child was living at the time of the incident;