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## GENERAL NOTICE

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### NOTICE 1002 OF 2014

#### **SOCIAL ASSISTANCE ACT, 2004 (ACT NO. 13 OF 2004) AS AMENDED**

#### **CALL FOR COMMENTS ON THE AMENDMENTS TO THE REGULATIONS TO THE SOCIAL ASSISTANCE ACT, 2004**

I, Bathabile Olive Dlamini, Minister responsible for Social Development, under Section 32(1) and (2) of the Social Assistance Act, 2004 (Act No.13 of 2004) intend to make amendments to the Regulations to the Social Assistance Act, 2004 as set out in the Schedule.

Interested persons or organisations are hereby invited to submit written comments on the draft regulations within 30 calendar days from the date of publication. Comments shall be forwarded to Mr. Brenton van Vrede; Chief Director: Social Assistance by:

**(a) Post to:**

The Department of Social Development  
Private Bag X901,  
Pretoria  
0001;

**(b) Hand to:**

The Department of Social Development  
Chief Directorate: Social Assistance  
164 Totius Street  
Harlequins Office Park  
Groenkloof  
PRETORIA  
0001;

(c) fax to:

+27 (0) 86 214 6553

(d) by email to:

brentonv@dsd.gov.za



B. O. DLAMINI (MP)

MINISTER OF SOCIAL DEVELOPMENT

DATE: 09.10.14

[                      ]      **Words in bold type in square brackets indicate omissions from the existing regulations.**

\_\_\_\_\_      **Words underlined with a solid line indicates insertions in the existing regulations.**

## **SCHEDULE**

1. In these regulations “the Regulations” means the regulations published by Government Notice No. R. 898 of 22 August 2008, as amended by Government Notice No. R.67 of 28 January 2009, Government Notice No. R.208 of 26 February 2009, Government Notice No. R.591 of 29 May 2009, Government Notice No. R. 1252 of 31 December 2009, Government Notice No. R. 193 of 12 March 2010, Government Notice No. R. 232 of 15 March 2011, Government Notice No. R. 286 of 31 March 2011, Government Notice No. R 566 of 15 August 2011, Government Notice No. R 746 of 19 September 2011, Government Notice No. R 269 of 30 March 2012 and Government Notice No. R 211 of 28 March 2014.

### **Amendment of regulation 1 of the Regulations**

1. Regulation 1 of the Regulations is hereby amended by the insertion, before the definition of “Child Care Act”, of the following definition:

“**card**” means a pocket-sized Agency branded card with embedded integrated circuits, which is able to store data, process payment and communicate with a Card Reader;

2. Regulation 1 of the Regulations is hereby amended by the substitution for the definition of “Child Care Act” of the following definition:

“**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005) as amended;

3. Regulation 1 of the Regulations is hereby amended by the insertion, after the definition of “children’s court”, of the following definition:

“**cluster foster care scheme**” means a cluster foster care scheme as defined in the Children’s Act, 2005 (Act No. 38 of 2005) as amended;’

4. Regulation 1 of the Regulations is hereby amended by the insertion, after the definition of “children’s court”, of the following definition:

“**credit provider**” means credit provider as defined in the National Credit Act, 2005 (Act No. 34 of 2005) as amended;’

5. Regulation 1 of the Regulations is hereby amended by the insertion, after the definition of “permanent resident”, of the following definition:

“**person**” for the purpose of social relief of distress means the head of the household or any person within the family acting on his or her behalf;’

6. Regulation 1 of the Regulations is hereby amended by the insertion, after the definition of “refugee”, of the following definition:

“**representative**” means an authorised representative of a non-profit organisation registered as a child protection organisation managing a cluster foster care scheme;’

7. Regulation 1 of the Regulations is hereby amended by the insertion, after the definition of “spouse”, of the following definition:

“**temporary safe care**” means temporary safe care as defined in the Children’s Act, 2005 (Act No.38 of 2005) as amended;’

## **Amendment of regulation 7 of the Regulations**

9. Regulation 7 of the Regulations is hereby substituted of the following regulation:

### **Persons eligible for foster child grant**

“7(1) [a] In addition to the requirements contemplated in section 8 of the Act, a foster parent or representative is eligible for a foster child grant if **[the child is placed in his or her custody in terms of the Child Care Act, 1983]:–**

(a) **[In addition to the requirements contemplated in section 8 of the Act, a foster parent is eligible for a foster child grant if the child is placed in his or her custody in terms of the Child Care Act, 1983;]** the foster parent is a South African citizen, a permanent resident or a refugee residing in the Republic;

(b) **[child remains in his or her custody; and]** “the cluster foster care scheme is registered by the Head of the Provincial Department of Social Development”;

(c) **[foster parent is a South African citizen, permanent resident or a refugee]** the child is placed and remains in the care of the foster parent or cluster foster care scheme in terms of the Children’s Act; and

(d) “the child is not admitted to an institution funded by the State”.

“(2). **[Provided that]** A foster parent may not be eligible for a foster child grant for more than six children except where [if] the children are [not his or her] siblings or blood [relatives] relations or the court considers this for any reason to be in the best interest of all the children as contemplated in section 185(1) of the Children’s Act”.

“(3). A registered cluster foster care scheme may be eligible for a foster child grant for more than 6 children as contemplated in section 185(2) of the Children’s Act”.

### **Substitution of regulation 9 of the Regulations**

10. Regulation 9 of the Regulations is hereby substituted for the following regulation:

### **Persons eligible for social relief of distress**

9. (1) Subject to the provisions of the Act, a person or representative of a cluster foster care scheme in need of temporary assistance qualifies for social relief of distress if he or she –

(a) has insufficient means; and

(b) is a South African citizen or a permanent resident or a refugee residing in the Republic and complies with any of the following conditions-

- (i) **[the person]** is awaiting payment of an approved social grant; or
- (ii) **[the person has, for a period of less than six months, been assessed to be medically unfit to undertake remunerative work]** the breadwinner –

(aa) has been assessed to be disabled for a period of less than six months;

(bb) **[(iii) no maintenance is received from a parent, child or a spouse obliged in law to pay maintenance and proof is furnished that efforts made to trace such a person or obtain maintenance were unsuccessful]** of that household has died and application is made within 12 months following the

death of the breadwinner; or

**(cc) [(iv) the breadwinner of that person's family has died and the application is made within three months of the death of such breadwinner] of that household has been admitted to a public or private institution for at least one month.**

**[(v) the breadwinner of that person's family has been admitted to an institution funded by the State; or**

**(vi) the person has been affected by a disaster as defined in the Fund-raising Act, 1978 (Act No. 107 of 1978) or the Disaster Management Act, 2002 (Act No. 57 of 2002) ; and**

**vii) refusal of the application for social relief of distress may cause undue hardship as contained in the Procedure Manual for Social relief of Distress as approved by the Minister.]**

**(2) [A person is not entitled to a social grant in respect of himself or herself and social relief of distress simultaneously] Subject to the provisions of sub-regulation (1), a person may qualify for social relief of distress if refusal of the application may cause undue hardship as contained in the Procedure Manual for Social Relief of Distress as approved by the Minister.**

**(3) [Where a person has received both social relief of distress and a social grant, the value paid for social relief of distress must, subject to the provisions of sub-regulation (4), be recovered from any social grant payment, including an arrear payment] A person is not entitled to a social grant in respect of himself or herself and social relief of distress simultaneously.**

(4) [Notwithstanding the provisions of sub-regulation (3) the value of social relief of distress paid to a person as a result of a disaster referred to in sub-regulation (1)(b)(vi), shall not be recovered from any social grant payment, including an arrear payment] “Where a person has received both social relief of distress and a social grant, the value paid for social relief of distress must, subject to the provisions of sub-regulation (5), be recovered from any social grant payment, including an arrear payment”.”

“(5) Notwithstanding the provisions of sub-regulation (1), in the event of a declared or undeclared disaster:

(a) a person may qualify for social relief of distress if that household has been affected by a disaster as defined in the Disaster Management Act, 2002 (Act No. 57 of 2002).

(b) the value of social relief of distress paid to a person as a result of a disaster referred to in paragraph (a), shall not be recovered from any social grant payment, including an arrear payment.

(c) a list of households affected by a disaster as verified by the Provincial or Local Disaster Management Response Unit shall be regarded as the final list for the provision of immediate humanitarian relief”.”

### **Amendment of regulation 14 of the Regulations**

11. Regulation 14 of the Regulations is hereby amended by the substitution of the following regulation:

### **Procedure to be followed in application for social relief of distress**

14. (1) An application for social relief of distress must be made on the relevant form and be-

(a) completed by the applicant [or his or her procurator at the offices



**of the Agency or at a designated place]** in the presence of a designated officer, or with the assistance of the designated officer **[for the area in which the applicant resides];** and

(b) signed, certified or confirmed by the applicant in the presence of the designated officer **[by the applicant or his or her procurator].**

(2) The **[designated officer]** Agency must approve or reject the application for social relief of distress immediately.

(3)(a) The designated officer must inform the applicant for social relief of distress that if the documentation required in terms of regulation 15(1) is not available when the application is made, such documentation **[will]** must be **[required]** produced before any **[further]** subsequent payments are made.

(b) The applicant for social relief of distress must be furnished with a receipt or notification of outcome for the application for social relief of distress which must be dated and stamped with the official Agency stamp and must contain the name of the applicant, the designated officer and the date of the application.

(4) **[The Agency must keep a register of all applications for social relief of distress that are received in which the following must be recorded, where applicable–**

**(a) identifying particulars;**

**(b) the date of application;**

**(c) the date on which social relief of distress is granted for the first time;**

**(d) the date to which social relief of distress is extended;**

- (e) the form of social relief of distress granted, whether in cash or in any other form and the value thereof; and
- (f) the date on which the applicant was referred to a social worker]
- Where an application for social relief of distress is approved, the Agency must inform the applicant in writing of such approval, the amount or form of relief and date on which such approval is granted.

(5) [With regard to the extension of social relief of distress, the Agency may request a social worker or any other person to investigate the circumstances of an applicant and to submit to the Agency a written report containing a recommendation whether social relief of distress should be extended or not.] Where an application for social relief of distress is rejected, the Agency must inform the applicant in writing of such rejection and of-

- (a) the reasons for such rejection;
- (b) the applicant's right to [appeal] request the Agency to reconsider its decision; and
- (c) the [mechanism and procedure] applicant's right, if he or she disagrees with the reconsidered decision, to lodge [such] an appeal[.], in writing, with the Independent Tribunal; and
- (d) the mechanism and procedure to lodge such an appeal.

(6) [Where an application for social relief of distress is approved, the Agency must inform the applicant in writing of such approval and of date on which such approval is granted] With regard to the extension of social relief of distress, the Agency may request a social worker or any other designated person to investigate the circumstances of an applicant and to submit to the Agency a written report containing a recommendation whether social relief of distress should be extended.

(7) [Where an application for social relief of distress is rejected, the Agency must inform the applicant in writing of such rejection and of-

(a) the reasons for such rejection;

(b) the applicant's right to appeal the decision; and

(c) the mechanism and procedure to lodge such an appeal] "The Agency must keep a register of all applications for social relief of distress that are received in which the following must be recorded, where applicable—

(a) identifying particulars;

(b) the date of application;

(c) the date on which social relief of distress is granted for the first time;

(d) the form of social relief of distress granted, whether in cash or in any other form and the value thereof; and

(e) the date to which social relief of distress is extended"."

### **Amendment of regulation 15 of the Regulations**

12. Regulations 15 of the Regulations are hereby amended by the substitution for sub-regulation (1) of the following subregulation:

### **Documents to accompany application for social relief of distress**

15. (1) The following documents or certified copies thereof must, subject to regulation 14(3)(a), accompany an application for social relief of distress, where applicable—

(a) the identity document or birth certificate or any other document

acceptable to the Agency, which proves the identity of –

- (i) the applicant;
  - (ii) his or her spouse; and
  - (iii) children dependent on the applicant;
- (b) proof of spousal relationship;
- (c) proof of insufficient means, by way of a declaration of assets and income;
- (d) proof of admission of the breadwinner **[his or her spouse]** to **[a prison, treatment centre or hospital]** a public or private institution;
- (e) proof of temporary medical disability; or
- (f) alternative proof to that contemplated in paragraphs (a), (b), (c), (d) and (e) as may be approved by the Agency; and
- “(g) in the case of a disaster, the list of households affected by a disaster as verified by the Provincial or Local Disaster Management Response Unit.”.

### **Amendment of regulation 16 of the Regulations**

13. Regulation 16 of the Regulations is hereby amended by the substitution of the following regulation:

#### **“Determination of amount and period of social relief of distress**

16. (1) Subject to the provisions of the Act, the value of social relief of distress, may, in the case of –

- (a) a single person, not exceed the maximum amount payable per

month in respect of an older person's grant;

(b) a person in a spousal relationship, where both spouses living together apply, not exceed the maximum amount payable per month in respect of an older person's grant for each spouse;

(c) a child, not exceed the maximum amount payable per month in respect of a child support grant for the child concerned: Provided that in the case of a child awaiting the payment of an approved care dependency grant, the amount must not exceed the maximum amount of the care dependency grant payable per month for the child concerned: Provided further that in the case of a foster parent awaiting the payment of an approved foster child grant, the amount must not exceed the maximum amount of the foster child grant payable per month for the child concerned;

“(d) a disaster –

(i) a once off payment for each affected household which may not exceed the amount payable per month for an older person's grant, for each affected household; or

(ii) an amount determined by the Agency to provide humanitarian relief to the displaced person.

(2) Social relief of distress must be issued monthly but may not be paid for **[longer than]** a period **[of]** exceeding three successive months.

(3) Social relief of distress may, at the end of the period contemplated in sub-regulation (2), and on the recommendation of a social worker or any other person **[authorised]** designated by the Agency, be extended for a further period not exceeding three months.

(4) Subsequent applications for social relief of distress within **[a]** one **[-year period]** calendar year from the date of application must be supported by a

report from a social worker.

(5) The Agency may provide non-financial assistance or relief to eligible applicants for social relief of distress.

### **Amendment of regulation 28 of the Regulations**

14. Regulation 28(3) is hereby amended by the substitution of sub-regulation (3) of the following sub-regulation:

(3) A foster child grant lapses –

(a) on the last day of the month in which the foster child dies;

(b) on the last day of the month in which the last living foster parent dies or ceases to be a refugee;

(c) on the last day of the month in which the foster child, in terms of **[any] the Children's Act**, is no longer in the **[custody] care** of the foster parent or a cluster foster care scheme; or

(d) at the end of the calendar year in which the foster child attains the age of 18 years **[ : Provided that in the case of a foster child or a disabled foster child who has attained the age of 18 years, the Agency may authorise the continuation of the payment of the foster child grant on the recommendation of the social worker in order to enable the person to complete his or her secondary schooling or training or special educational training].**

(e) **[with effect from the first day of the month following the month in which the foster child leaves school: Provided that the Agency may authorise continuation of the payment of the foster child grant on the recommendation of a social worker in the case of a child under the age of**

**18 years, for an interim period not exceeding 12 months, pending placement.]** “Notwithstanding the provisions of sub-regulation (3) (b), (c) and (d) the Agency may continue payment of a foster child grant:

- (i) in respect of a foster child under the age of 18 years to an alternative caregiver or designated child protection organisation on the recommendation of a social worker for an interim period not exceeding 6 months pending placement; or
  - (ii) in respect of a foster child who has attained the age of 18 years, provided that the provincial head of social development allow such a person to remain in the care of the current alternative care-giver to enable the person to complete his or her education or training.”
- (f) Subject to the provisions of sub-regulation (3)(e)(ii) a foster child grant may be payable until the end of the calendar year in which the person attains the age of 21 years provided that the provincial head of social development’s decision that the person remain in the care of the current alternative care-giver be submitted to the Agency annually.”

### **Amendment of the heading of regulation 32 of the Regulations**

15. The heading in regulation 32 is hereby amended by the insertion, after the word “at”, of the following words:

**“AGENCY OFFICES AND”...**

### **Substitution of regulation 32 of the Regulations**

11. The following regulation is hereby substituted for regulation 32:

**“Prohibition of [creditors] credit providers and other persons [enforcing debts] conducting and marketing credit provider services within areas of Agency offices and pay-points**

**“32 (1). Subject to the provisions of section 20 (1) and (2) of the Act-**

(a) **[enter any premises, building or place on any day or any time during the payment of social assistances to beneficiaries for the purposes of collecting from any such beneficiaries any money owing in terms of any verbal or written agreement] A person, must not market or offer any form of credit, whether or not registered as a credit provider, within any Agency offices or pay-point for the purposes of soliciting or enticing a beneficiary to engage in any form of credit or credit granting, funeral scheme or life insurance scheme.**

(b) **[accompany any beneficiary or a procurator to any pay-point on any day or at any time during which a beneficiary or a procurator is to receive any payment of a social assistance for the purposes of collecting any money owing to such person by the beneficiary; or] The Agency branded card must not be ceded, pledged or retained to secure a loan, repayment of debt or payment of a funeral or insurance premium.**

### **Substitution of regulation 33 of the Regulations**

16. The following regulation is hereby substituted for regulation 33:

**“Prohibition [against conducting money-lending business] of credit providers and other persons enforcing credit agreements [at] within areas of Agency offices and pay-points”**

**“33. [No person may conduct any business, whether registered or not, within any pay-point for the purposes of soliciting a beneficiary to join any money- lending scheme or to borrow money from any such person.] Subject to the provisions of Section 20 (1) and (2) of the Act-**



(1) A credit provider, credit agent or any person must not-

(a) enter any Agency office or any pay-point premises, building or place on any day or any time during the payment of social assistance for the purposes of engaging or offering to engage in any form of credit or concluding a credit agreement or contract or collecting from any such beneficiaries any money owing in terms of any verbal or written credit agreement or contract;

(b) accompany a beneficiary or a procurator to any Agency office or pay-point on any day or at any time during which a beneficiary or a procurator is to receive payment of social assistance for the purposes of engaging or offering to engage in any form of credit, concluding a credit agreement, funeral policy, life insurance policy or collecting money owing to such person by the beneficiary in terms of any form of credit agreement; or

(c) be within 100 metres of any pay-point for purposes of engaging or offering to engage in any form of credit, concluding a credit agreement, funeral policy, life insurance policy or collecting money owing to such person by the beneficiary in terms of any form of credit agreement”.

### **Insertion of regulation 37A in the Regulations**

17. The following regulation is hereby inserted after regulation 37:

#### **“Penalties**

37A. A person who contravenes any provision of the regulations to the Social Assistance Act, 2004 shall be guilty of an offence and liable on conviction to a fine or imprisonment or both such fine and imprisonment.”.

**Commencement**

18. These regulations are the Social Assistance Amendment Regulations, 2014.

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