

NOTICE 1106 OF 2013**DEPARTMENT OF SOCIAL DEVELOPMENT****PUBLICATION OF CHILDREN'S AMENDMENT BILL, 2013**

The Minister of Social Development intends to introduce table the Children's Amendment Bill, 2013 in Parliament, next year.

Interested persons are invited to submit any substantiated comments or representations on the proposed draft amendment to the Act, to the Director – General of Social Development, Private Bag X901 Pretoria, 0001 (for the attention of the Chief Director: Legal Services), within 30 days of the date of publication of this notice.

The Bill is attached and further copies can be obtained from Mr Siyabonga Shoji of the Department of Social Development: Legal Services at-

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REPUBLIC OF SOUTH AFRICA

CHILDREN'S AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B — 2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Children's Act, 2005, so as to insert a definition; to provide that a person convicted of a sexual offence be deemed unsuitable to work with children; to deem persons convicted of a sexual offence, whether in or outside the Republic, unsuitable to work with children; to instruct the National Commissioner of the South African Police Service to forward all the particulars of persons deemed unsuitable to work with children to the Director-General; to instruct the Director-General, to enter such particulars in the National Child Protection Register; to provide that the removal of a child to a temporary safe care without a court order be placed before the Children's Court for review before the expiry of the next court day; to provide for the review of decisions to remove a child without a court order; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 38 of 2005, as amended by section 3 of Act 41 of 2007

1. Section 1 of the Children's Act, 2005 (Act 38 of 2005), (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "**sexual abuse**" of the following definition:

" **'sexual offence'** means **'sexual offence'** as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007(Act No. 32 of 2007);".

Amendment of section 120 of Act 38 of 2005

2. Section 120 of the principal Act is hereby amended—

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

"(4) In criminal proceedings, a person must be **[found]** deemed to be unsuitable to work with children—";

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

"(a) on conviction of murder, attempted murder, rape, **[indecent assault]** or assault with the intent to do grievous bodily harm with regard to a child, a sexual offence; or";

- (c) by the substitution for subsection (5) of the following subsection:

"(5) Any person who has been convicted of a sexual offence as stipulated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007(Act No. 32 of 2007), against a child, whether committed in or outside the Republic during the five years preceding the commencement of this section, is deemed to be unsuitable to work with children."; and

- (d) by the addition of the following subsections:

"(7) The National Commissioner of the South African Police Service must, in the prescribed manner, forward to the Director-General all the particulars of persons referred to in sub-section (4).

(8) The Director-General must, upon receipt of the particulars referred to in subsection (7), enter such particulars in the Part B of the National Child Protection Register."

Amendment of section 150 of Act 38 of 2005

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

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

"(1) A child is in need of care and protection if, [the] such a child—"; and

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

"(a) has been abandoned or orphaned and **[is without any visible means of support]** does not have the ability to support himself or herself and such inability is readily evident, obvious or apparent;".

Amendment of section 151 of Act 38 of 2005

4. Section 151 of the principal Act is hereby amended—

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

"(2) A presiding officer issuing an order in terms of subsection (1) may also issue an interim order **[that the child be placed in]** for the temporary safe care of the child if it appears that it is necessary for the safety and well-being of the child."; and

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

"(2A) In issuing an order contemplated in subsection (2), the presiding officer must also issue an order directing that the—
(a) interim order be placed before the Children's Court, before the expiry of the next court day following the interim order, for confirmation or setting aside such interim order; and
(b) child concerned and where reasonably possible, the parents, guardians or care giver as the case may be, are present in court for the purposes of assisting the court in making a decision which is in the best interest of the child.".

Insertion of section 152A in Act 38 of 2005

5. The following section is hereby inserted in the principal Act after section 152:

"Review of decision to remove child without court order

152A. (1) When a matter contemplated in section 152(2)(c) is brought before court the presiding officer may—

- (a) if he or she is satisfied, after considering all relevant information, that the police official or designated social worker, in removing the child, has satisfied the provisions of section 152(1)(a)(i), (ii), (b), (c) and issue an order confirming the removal of the child; or
- (b) if he or she is not satisfied that the police official or designated social worker, in removing the child, has satisfied the provisions of section 152(1)(a)(i), (ii), (b), (c) and (d), issue an order setting aside the removal and placement of the child.

(2) Where the court has issued an order contemplated in—

- (a) subsection (1)(a) the presiding officer may, in addition, issue an order contemplated in section 151(2); or
- (b) subsection (1)(b) the presiding officer may, in addition, order that the child be returned to its parents, guardians or care giver as the case may be.

(3) Notwithstanding any order contemplated in this section the presiding officer must order that the question of whether the child is in

need of care and protection be referred to a designated social worker for an investigation contemplated in section 155(2)."

Amendment of section 155 of Act 38 of 2005

6. Section 155 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A children's court must decide the question of whether a child who was the subject of proceedings in terms of section 47, 151, 152, 152A or 154 is in need of care and protection."

Amendment of Table of Contents of Act 38 of 2005

7. The Table of Contents after the long title of the principal Act is hereby amended by the insertion after "152. Removal of child to temporary safe care without court order" of the following:

"152A. Review of decision to remove child without court order".

Short title and commencement

8. This Act is called the Children's Amendment Act, 2013, and comes into operation on a date determined by the President by proclamation in the *Gazette*.