

NOTICE 1105 OF 2013**DEPARTMENT OF SOCIAL DEVELOPMENT****PUBLICATION OF CHILDREN'S SECOND AMENDMENT BILL, 2013**

The Minister of Social Development intends to introduce table the Children's Second 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 Shozi of the Department of Social Development: Legal Services at-

6th Floor HSRC Building
134 Pretorius Street
Pretoria
Tel: (012) 312 7171

OR

Government Printers- Pretoria

REPUBLIC OF SOUTH AFRICA

CHILDREN'S SECOND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); 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 new definitions; to extend the definition of adoption social worker; to provide that the interim order granted in respect of the removal of a child to temporary safe care be placed before the children's court before the expiry of the next court date and that the parents, guardians or care giver be present in court; to provide for the provincial head of social development to transfer a person from one form of alternative care to another; 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 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "adoption social worker" of the following definition:

" **'adoption social worker'** means—

- (a) a social worker in private practice—
 - (i) who has a speciality in adoption services and is registered in terms of the Social Service Professions Act, 1978 (Act No. 110 of 1978); and
 - (ii) who is accredited in terms of section 251 to provide adoption services; or
- (b) a social worker in the employ of a child protection organisation which is accredited in terms of section 251 to provide adoption services; and
- (c) a social worker in the employ of the department or the provincial department of social development, including a social worker employed on a part-time, contract or casual basis."

- (b) by the insertion after the definition of "foster parent" of the following definition:

" **'further education and training'** means 'further education and training' as defined in section 1 of Further Education and Training Colleges' Act, 2006 (Act No. 16 of 2006);"

- (c) by the insertion after the definition of "genital mutilation" of the following definition:

" **'Grade 12'** means 'grade 12' as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);"; and

- (d) by the insertion after the definition of "High Court" of the following definition:

" **'Higher education'** means 'higher education' as defined in section 1 of the Higher Education Act 1997 (Act No. 101 of 1997);".

Amendment of section 152 of Act 38 of 2005

2. Section 152 of the principal Act is hereby amended—

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

"(2) If a designated social worker has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the designated social worker must—";

- (b) by the deletion in subsection (2) of the word "and" at the end of paragraph (a);

- (c) by the substitution for paragraph (c) of the following paragraph:

"(c) without delay, but within 24 hours, report the matter to the relevant provincial department of social development of the removal of the child and of the place where the child has been placed."; and

- (d) by the deletion in subsection (2) of the word "and" at the end of paragraph (b), the insertion in that subsection of the word "and" at the end of paragraph (c) and the addition to that subsection of the following paragraph:

"(d) ensure that the—

- (i) matter is placed before the children's court for review of the designated social worker's or police official's action in terms of subsection (1)(a)(i), (ii), (b) and (c) before the expiry of the next court day following the referral; and
- (ii) 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;".

Amendment of section 159 of Act 38 of 2005

3. Section 159 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) An order made by a children's court in terms of section 156, except an order contemplated in section 46(1)(c)—"; and

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

"(3) **[No]** Subject to section 176(2), no court order referred to in subsection (1) extends beyond the date on which the child in respect of whom it was made reaches the age of 18 years."

Amendment of section 171 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

4. Section 171 of the principal Act is hereby amended—

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

"(1) The provincial head of social development in the relevant province may, subject to subsection (5), by **[order]** notice in writing transfer a child **[in alternative care from the child and youth**

care centre or person in whose care or temporary safe care that child has been placed to any other child and youth care centre or person] from one form of alternative care to another.";

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

"(1A) The provincial head of social development in the relevant province may, subject to subsection (5), by notice in writing transfer a person referred to in section 176(2) from one form of alternative care to another."; and

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

"(5) If the provincial head of social development transfers a child or a person referred to in section 176(2) from a secure care [child and youth centre] to a less restrictive [child and youth care centre or to the care of a person] form of alternative care, the provincial head of social development must be satisfied that the transfer will not be prejudicial to other children."

Amendment of section 176 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

5. Section 176 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) the continued stay in that care is necessary to enable that person to complete his or her grade 12, higher education or further education [or] and training."

Amendment of section 186 of 2005, as inserted by section 10 of Act 41 of 2007

6. Section 186 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"(2) A children's court may, despite the provisions of section 159(1)(a) regarding the duration of a court order and after having considered the need for creating stability in the child's life, place a child in foster care with a family member for more than two years[, **extend such an order for more than two years at a time**] or order that the foster care placement subsists until the child turns 18 years, if—".

Short title and commencement

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

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*.