

**DEPARTMENT OF SOCIAL DEVELOPMENT  
DEPARTEMENT VAN MAATSKAPLIKE ONTWIKKELING**

No. R. 648

7 July 2006

**REGULATIONS UNDER THE SOCIAL ASSISTANCE ACT, 2004**

**INSPECTORATE FOR SOCIAL ASSISTANCE**

The Minister of Social Development intends, in terms of section 32 of the Social Assistance Act, 2004 (Act No. 13 of 2004), to make the regulations set out in the Schedule hereto.

Interested parties are invited to submit comments on the proposed regulations to the Director-General: Social Development, Private Bag x901, Pretoria, 0001, fax number (012) 3127560 or e-mail: [Nezipho.Buthelezi@socdev.gov.za](mailto:Nezipho.Buthelezi@socdev.gov.za) / [Pierred@socdev.gov.za](mailto:Pierred@socdev.gov.za) (for attention: Ms Nozipho Buthelezi or Mr Pierre Du Preez) within 21 days of the date of publication of this notice.

**SCHEDULE**

- Chapter 1 - Definitions
- Chapter 2 – Appointment to the Inspectorate**
- Chapter 3 - Procedures
- Chapter 4 - Provision of information by organ of state
- Chapter 5 - Provision of Information by financial institution
- Chapter 6 - Offences and Penalties
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## CHAPTER 1 – DEFINITIONS

### DEFINITIONS

1. In these regulations, unless the context otherwise indicates -
  - 1.1 **"certificate of appointment"** means the document issued by the Executive Director in terms of section 26 (6) of the Act;
  - 1.2 **"financial institution"** means an institution as defined in Section 1 of the Financial Services Board Act 1990 (Act No 97 of 1990);
  - 1.3 **"organ of state"** means any Government Department, institution or office;
  - 1.4 **"protected person"** means a person who qualifies for protection under the witness protection programme referred to in regulation 8.1;
  - 1.5 **"the Act"** means the Social Assistance Act, 2004 (Act No. 13 of 2004);

## CHAPTER 2 – APPOINTMENT TO THE INSPECTORATE

2. The Executive Director must issue a certificate of appointment, in the form contained in Annexure A of these regulations with the person's photo affixed thereto, to every inspector of the Inspectorate who has been appointed to perform the functions and exercise the powers contemplated in sections 27 and 28 of the Act.
3. No person other than the Executive Director may be appointed or seconded to the Inspectorate in order to perform the functions and exercise the powers contemplated in sections 27 and 28 of the Act unless—
  - (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994); and
  - (b) the Executive Director, after evaluating the gathered information, is satisfied that such person is not a security risk and will not in any way act prejudicial to the functions or powers of the Inspectorate.

4. No person other than the Executive Director may be appointed to the Inspectorate unless he or she has signed a document acknowledging that he or she will not wilfully disclose information regarding the operations of the Inspectorate while knowing that such disclosure would prejudicially affect any of those operations.

## **CHAPTER 3 - PROCEDURES**

### **5. INFORMATION**

- 5.1 Information received by the Inspectorate is restricted information.
- 5.2 The Executive Director, the inspectors and any other employee of the Inspectorate must not disclose any information received in the course of carrying out the duties for the purposes of the Act. Such information must be kept confidential and must form part of a report to the Minister requested in terms of section 24 (5) (a) of the Act.
- 5.3 Any person, when submitting information to the Executive Director, may identify information that the person claims to be confidential information, but must support that claim at the same time, in a sworn statement explaining why the information is confidential.
- 5.4 If a person makes a claim referred to in regulation 5.3, the Executive Director may-
  - (a) agree to be bound by that claim without determining whether or not the information is confidential information; or
  - (b) report the matter to the Minister or instruct any inspector or employee of the Inspectorate to investigate the confidentiality of the information.

### **6. PROCEEDINGS IN TERMS OF SECTION 28(5) OF THE ACT**

- 6.1 An inspector may not institute proceedings in terms of section 28(5) of the Act unless the Executive Director or anyone authorised by him or her in writing to do so has in writing approved the institution of such proceedings.
- 6.2 The proceedings in terms of section 28(5) of the Act must be recorded in the manner determined by the Executive Director.

**6.3** A person who has been cross-examined in terms of section 28(5)(c) has a right to request a copy of such cross-examination at the payment of a fee provided for in terms of and under the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

**6.4** No person may communicate to any other person any matter or information which may have come to his or her knowledge in connection with proceedings in terms of section 28(5) of the Act, or allow or permit any other person to have access to any records of the Inspectorate, except -

- (a) by order of the High Court;
- (b) in so far as it is necessary in the performance of his or her functions with the Inspectorate;
- (c) where it is permitted by leave of the Executive Director; or
- (d) where such matter, information or record is disclosed or referred to in any pleadings or papers or evidence in any proceedings instituted in a court of law.

**6.5** In addition to section 28(7) of the Act and these Regulations, the rules of natural justice apply to any proceedings conducted in terms of section 28(5) of the Act.

**6.6** A person subpoenaed in terms of section 28(5) of the Act has a right to legal representation.

**6.7** The proceedings conducted in terms of section 28(5) of the Act are not open to the public unless ordered otherwise by a court of law.

**7. REFERRAL TO THE SOUTH AFRICA POLICE SERVICE, THE AGENCY OR THE INSPECTORATE OF SPECIAL OPERATIONS ESTABLISHED BY SECTION 7(1) (A) OF THE NATIONAL PROSECUTING AUTHORITY, 1998 (ACT NO. 32 OF 1998)**

**7.1** Upon completion of an investigation by the Inspectorate as contemplated in section 27(1) (a) of the Act, the Executive Director shall if he or she deems it necessary refer the matter to the South Africa Police Service, the Agency or the Inspectorate of Special Operations established by section 7 (1)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) for further execution including but not limited to the arrest of any person suspected of fraud, corruption, abuse of social assistance or the commitment of any act deemed to be an offence in terms of the Act.

## **8. WITNESS PROTECTION PROGRAMME**

- 8.1 The Inspectorate must in consultation with the South African Police Service, the Agency or the Inspectorate of Special Operations established by section 7(1) (a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) or any other organ of state established by law and which has the appropriate powers to investigate and act on any alleged contravention of the Act, devise, adopt and maintain a witness protection programme to protect the identity and integrity of complainants and other sources of information.
- 8.2 The Executive Director, the inspectors and any other employee of the Inspectorate must take all reasonable steps to safeguard all information and documents relating to the witness protection programme.

## **9. ELIGIBILITY FOR WITNESS PROTECTION**

- 9.1 The Executive Director must upon receipt of an application to the witness protection programme determine whether a complainant or other source of information in respect of any matter being investigated or being considered for investigation by the Inspectorate requires protection relating to its identity and integrity.
- 9.2 The Executive Director must, in determining whether a person is eligible for protection under the witness protection programme, have regard to-
- (a) the nature and extent of the risk to the safety of the complainant or any other source of information;
  - (b) any possible threat to the interests of the community if the complainant or any other source of information is not placed under protection;
  - (c) the nature of the proceedings in which the complainant or any other source of information has given evidence or ~~is~~ or may be required to give evidence, as the case may be;
  - (d) the importance, relevance and nature of the evidence given or to be given by the complainant or any other source of information ~~in~~ the proceedings concerned;

- (e) the probability that the complainant or any other source of information will be able to adjust to protection, having regard to the personal characteristics, circumstances and family or other relationships of the complainant or any other source of information;
- (f) the costs likely to be incurred in the protection of the complainant or any other source of information;
- (g) whether that person had previously been afforded protection and had left the witness protection programme voluntarily or had been discharged on any grounds referred to in paragraphs (c) to (g) of regulation 12.1;
- (h) the **availability** of any other means of protecting the complainant or any other source of information without invoking the provisions of the Act or these Regulations; and
- (i) any other factor that the Executive Director deems relevant.

9.3 For purposes of regulation 9.2, a threat to the safety of the complainant or any other source of information includes any occupational detriment as defined in section 1 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

9.4 The Executive Director may –

- (a) request the applicant to furnish him or her with any information relevant to the application for protection;
- (b) request the applicant to confirm any information furnished by way of sworn affidavit or solemn declaration.

9.5 If the Executive Director has in his or her sole discretion determined that such a complainant or any other source of information requires protection in terms of the witness protection programme, he or she must issue a certificate recording –

- (a) his or her approval of the application for protection;
- (b) the nature, extent and period of such protection;
- (c) the conditions upon which the Inspectorate offers witness protection to that person, including conditions in respect of communication by the protected person with family members

and friends, access to the protected person and co-operation by the protected person with the Inspectorate;

- (d) whether any other person, who is the husband, wife, life partner, child, grandchild, parent, grandparent, brother or sister of the person to be placed under protection, must also be protected, and in what way;
- (e) the conditions under which the protected person may voluntarily leave the witness protection programme; and
- (9) any other relevant matter.

## 10. PROTECTION AGREEMENT

10.1 The Executive Director must, before he or she places any person under protection, on behalf of the Inspectorate enter into a written protection agreement with such person setting out the obligations of the Inspectorate and the person in respect of his or her placement under protection.

10.2 The Executive Director must—

- (a) enter into a protection agreement with the parent or guardian of—
  - (i) a child; or
  - (ii) a person who is otherwise not competent to enter into a legally binding agreement; or
- (b) enter into a protection agreement with a child referred to in regulation 11.

10.3 If the Executive Director has entered into a protection agreement as contemplated in regulation 10.2(a)), he or she may, as soon as possible after the protected person concerned becomes competent to enter into a legally binding agreement, require the protected person to enter into a new protection agreement.

10.4 A protection agreement must set out the terms and conditions under which a person is to be placed under protection, including—

- (a) an obligation on the Inspectorate—

- (i) to take such reasonable steps as are necessary to provide the protected person with the protection and related services, as referred to in the protection agreement concerned; and
  - (ii) not to keep a protected person under protection in any prison or police cell, unless otherwise agreed upon;
- (b) an obligation on the protected person—
  - (i) where applicable, to give the evidence as required in the proceedings to which the protection relates;
  - (ii) to meet all financial obligations incurred by him or her that are not payable by the Director in terms of the protection agreement;
  - (iii) to meet all legal obligations incurred by or applicable to him or her, including any obligations regarding the custody and maintenance of children;
  - (iv) to refrain from activities that constitute a criminal offence;
  - (v) to refrain from activities that might endanger his or her safety or that of any other protected person;
  - (vi) to accept and give effect to all reasonable requests and directions made or given by any member of the Inspectorate in relation to the protection provided to him or her and his or her obligations;
  - (vii) to inform the Executive Director of any civil proceedings which have or may be instituted by or against him or her or in which he or she is otherwise involved;
  - (viii) to inform the Executive Director of any proceedings in which he or she was or may be involved, either as a witness or accused or otherwise; and
  - (ix) not to endanger the security or any other aspect of the protection of witnesses and other persons or related services or any other matter relating to a witness protection programme provided for in the Act or these Regulations;



- (c) the manner in which and the conditions where under any decision of or steps taken by ~~the~~ Executive Director or any person acting on behalf of the Executive Director under a provision of the Act, these Regulations or an agreement contemplated in this regulation may be subject to review by the Minister;
- (d) mechanisms to be put in place in order to monitor the circumstances under which a person is kept under protection;
- (e) any other terms and conditions or obligations agreed upon; and
- (f) a procedure in accordance with which the protection agreement may, if necessary, be amended.

## 11. CHILDREN UNDER PROTECTION

11.1 The Executive Director may not place a child under protection without the consent ~~of~~ his or her parent or guardian, but any child—

- (a) who, as a witness, applies for protection in respect of proceedings against his or her parent or guardian or in which his or her parent or guardian is a suspect;
- (b) who has no parent or guardian;
- (c) whose parent or guardian cannot be identified or found, notwithstanding reasonable efforts to do so; or
- (d) whose parent or guardian is unreasonably withholding or is unable to give his or her consent,

may be placed under protection without the consent of his or her parent or guardian if the Executive Director is of the opinion that it is necessary to do so for the safety of that child and if it is in the best interests of the child.

11.2 If a judge of a High Court in an ex parte application, made to him or her in chambers by the Executive Director, is satisfied that the safety of a child who is under protection might be endangered by the exercising by anyone of his or her right of access to that child, the judge may suspend such right of access or make any order he or she deems appropriate with regard to the exercising of such right in a manner aimed at—

- (a) preventing the disclosure of the identity or whereabouts of the said child; or
- (b) achieving the objects of the Act and these Regulations.

## 12. DISCHARGE FROM PROTECTION

12.1 The Executive Director may, subject to regulation 12.2, on his or her own accord and after consideration of any representations referred to in regulation 12.2, discharge any protected person from protection if the Executive Director is of the opinion that—

- (a) the safety of the person is no longer threatened;
- (b) satisfactory alternative arrangements have been made for the protection of the person;
- (c) the person has failed to comply with any obligation imposed upon him or her by or under this Act or the protection agreement;
- (d) the person, in making application for placement under protection, wilfully furnished false or misleading information or particulars or made a statement which is false or misleading in any material respect, or wilfully failed to disclose any information or particulars material to his or her application;
- (e) the person refuses or fails to enter into a protection agreement contemplated in regulation 10;
- (f) the behaviour of the person has endangered or may endanger the safety of any other protected person or the integrity of the witness protection programme;
- (g) the person has wilfully caused serious damage to the place of safety where he or she is protected or to any property in or at such place of safety; or
- (h) another witness protection programme managed or executed by an organ of state is more appropriate and is willing to offer protection to the protected person.

12.2 The Executive Director must, before he or she discharges a protected person from protection, in writing notify the protected person and, if he or she is a child, his or her parent or guardian, and must allow the

protected person, and, where applicable, his or her parent or guardian, to make written representations to him or her regarding such discharge.

- 12.3 The Executive Director must upon receipt of a waiver of protection without delay discharge the protected person from protection.

### **13. TEMPORARY PROTECTION**

The Executive Director may, pending the finalisation of an application for the protection of a complainant or any other source of information, place such person under temporary protection for a period not exceeding 14 days, if he or she deems it necessary for the safety of such person.

### **14. WITNESSES AND DOCUMENTS**

14.1 A subpoena calling any person to appear before the Inspectorate or deliver certain documentation for purposes of section 28(6) of the Act must be issued with the clerk of the Magistrate's Court having jurisdiction.

14.2 A subpoena must give any person referred to above 15 (fifteen) days within which to respond to the Inspectorate.

14.3 A return of service of the subpoena by the inspector serving the subpoena to the effect that it took place may be handed in during the proceedings and must on its mere production be proof of the service thereof.

## **CHAPTER 4 – PROVISION OF INFORMATION BY ORGAN OF STATE**

15. Subject to any Act of Parliament prohibiting the disclosure of information, an organ of state must forthwith upon receipt of a written request by the Executive Director furnish him or her free of charge with all relevant information in its possession in respect of the receipt of financial assistance of whatsoever nature by any person or group of persons, including •
- (a) the information provided in the application for such financial assistance;
  - (b) details of all instances of financial assistance paid by the State; and
  - (c) the personal details and address of such person kept on record by the organ of state.

**CHAPTER 5 - PROVISION OF INFORMATION BY FINANCIAL INSTITUTION**

16. A financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), must forthwith after receipt of a written request by the Executive Director furnish him or her free of charge with copies of all records contemplated in section 21 and 22 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) in its possession relating to a person or group of persons.

**CHAPTER 6 - OFFENCES AND PENALTIES**

17. Any person who wilfully contravenes regulation 6.4 is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment as contemplated in section 26(9) (a) and (b).
18. An organ of state or a financial institution that refuses or fails to comply with the provisions of regulations 15 or 16 respectively, or a request for information issued by the Executive Director, is guilty of an offence and upon conviction liable to a fine not exceeding an amount which in relation to a period of imprisonment of 15 years is in the same ratio as the ratio between the amount of the fine which the Minister of Justice may from time to time determine in terms of section 92 (1) (b) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).
19. Any person who -
- (a) wilfully hinders or obstructs an inspector or any person duly authorised by the Executive Director and acting upon the authority of the Inspectorate, in the exercise of his or her powers or the performance of his or her duties or functions; or
  - (b) wilfully interrupts the proceedings in terms of section 28(5) of the Act or misbehaves in any other manner during the proceedings,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year.

## CHAPTER 7 – DELEGATION

- 20.** The Executive Director may in writing delegate to an appropriate staff member of the Inspectorate any power or duty which her or she may or must exercise or perform in terms of this Chapter.
- 21.** A person to whom a power has been delegated or who has been authorised to perform a duty in terms of regulation **20**, must exercise that power or perform that duty subject to the conditions determined by the Executive Director.
- 22.** A delegation of a power or authorisation to perform a duty under regulation 20 does not prevent the Executive Director from —
- (a) exercising that power or performing that duty himself or herself;
  - (b) in writing amending or withdrawing the delegation at any time.

## CHAPTER 8 - FORMS

- 23.** The Inspectorate uses the following forms in carrying out its duties –

**23.1** Annexure "B" - Subpoena; and

**23.2** Annexure "C" – Referral Form.

## **24. COMMENCEMENT**

These regulations come into operation on the date of publication thereof in the Gazette.

## Annexure A

Photo

## INSPECTORATE FOR SOCIAL ASSISTANCE

## APPOINTMENT CERTIFICATE

[Section 26 (6) of the Social Assistance Act, 2004 (Act No. 13 of 2004)]

I, ....., Executive Director of the Inspectorate for Social Assistance established in terms of section 24 of the Social Assistance Act, 2004 (Act No. 13 of 2004), hereby certify that ..... with ID No. .... is employed by the Inspectorate and has been appointed as an inspector of the Inspectorate for Social Assistance and has been authorised to exercise the powers and perform the duties contemplated in section 27 and 28 of the Social Assistance Act, 2004.

Please note that –

- in terms of section 25(2) of the Social Assistance Act, 2004, it is an offence to interfere with, hinder or obstruct an inspector of the Inspectorate in the performance of his or her functions;
- in terms of section 25(3) of the Social Assistance Act, 2004, all organs of state must accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Inspectorate in the performance of its functions;

Signed at Pretoria on this the ..... day of .....

EXECUTIVE DIRECTOR

INSPECTORATE FOR SOCIAL ASSISTANCE

## Annexure B

## SUBPOENA

issued by the inspectorate for Social Assistance

in terms of 28(5)(a) of the Social Assistance Act, 2004 (Act No. 13 of 2004)

In the matter of .....

.....

.....

To:

(1) ..... of .....

(2) ..... of .....

(3) ..... of .....

(4) ..... of .....

You are hereby required to appear in person before an inspector of the Inspectorate at (place, address) ..... on the ..... day of ..... 20....., at (time) ..... in the above-mentioned matter and to remain in attendance until excused by the person presiding at the enquiry from further attendance, to take an oath or to make an affirmation as a witness, to give evidence and to bring with you and produce books, papers or documents specified in the list hereunder.

Please note that in terms of section 30(d) and 31 of the Act, a person is guilty of an offence if he or she has been subpoenaed under section 28 of the Act and fails or refuses, without sufficient cause, to comply with the subpoena or any relevant aspect thereof, and a person convicted of such an offence is liable to a fine or imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.

Please note further that in terms of section 28(7) of the Act, the rules with regard to privilege which are applicable in the case of a person who has been subpoenaed to give evidence or to produce a book, document or thing before a court of law, also apply in respect of the examination of a person and the production of a book, document or thing contemplated in this subpoena.

Dated at ..... this ..... day of ..... 20.....

.....

Executive Director: Inspectorate for Social Assistance

**LIST OF BOOKS, PAPERS OR DOCUMENTS TO BE PRODUCED**

Description

Original or Copy

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**Annexure C**  
**INSPECTORATE FOR SOCIAL ASSISTANCE**  
**REFERRAL FORM**

In the matter of:

Reference No.

To: the Director of Public Prosecutions, Station Commander *(delete whichever is not applicable)*

By virtue of my appointment by the Minister of Social Development in terms of section 26(2) of the Social Assistance Act 13 of 2004 and powers vested in me including but not limited to investigating the abuse of social assistance, I hereby refer this matter to your office for you or your duly authorised official to:

1. Interrogate.. ..... identity number.. .....of.. .....
  2. Effect arrest of .....identity number.....of .....
  3. Detain. .... identity number .....of .....
- (Delete whichever is not applicable)*

I enclose herewith statements already obtained by the Inspectorate from the complainant / any other source of information.

**Signed at Pretoria on this the .....day of .....**

.....

**EXECUTIVE DIRECTOR**  
**INSPECTORATE FOR SOCIAL ASSISTANCE**