
GENERAL NOTICE

NOTICE 780 OF 2008

DEPARTMENT OF SOCIAL DEVELOPMENT

PUBLICATION FOR COMMENT: DRAFT REGULATIONS UNDER THE CHILDREN'S ACT, 2005 (INCLUDING THE CHILDREN'S AMENDMENT ACT, 2007)

The Minister of Social Development intends to make regulations in terms of section 306 of the Children's Act, 2005 (Act No. 38 of 2005) and the Minister for Justice and Constitutional Development intends to make regulations in terms of sections 75 and 280 of the Children's Act, 2005 (Act No. 38 of 2005).

Interested parties are invited to submit comments on the proposed draft regulations to the Director-General: Social Development, Private Bag X901, Pretoria, 0001, fax number (012) 312 7390 or e-mail: Agnes.Muller@socdev.gov.za (for attention: Ms Agness Muller), or to the Director-General: Justice and Constitutional Development, Private Bag X81, Pretoria, 0001, fax number 086 648 0963 or e-mail: alvanderwalt@justice.gov.za (for attention: Adv Alta van der Walt) within 45 days of the date of publication of this notice.

Copies of the draft regulations can be obtained from the Government Printer Pretoria, from Ms Agness Muller, Department of Social Development, 7th Floor, HSRC Building, 134 Pretorius Street, Pretoria, Tel: (012) 312-7586 or Adv Alta van der Walt, Department of Justice and Constitutional Development, Momentum Centre, 329 Pretorius Street, Pretoria, Tel: (012) 315-1705. The draft regulations are also available on the Department of Social Development's website: www.dsd.gov.za.



THE CHILDREN'S ACT 38 OF 2005

CONSOLIDATED DRAFT REGULATIONS

PERTAINING TO THE CHILDREN'S ACT, 2005

**(INCLUDING REGULATIONS PERTAINING TO BILL 19 OF 2006
NOW ACT 41 OF 2007 BUT HEREINAFTER REFERRED TO AS
THE BILL)**

(Note 1: For ease of distinction, regulations pertaining to the Act are indicated in black font, while those pertaining to the Bill are reflected in grey font)

(Note 2: The regulations pertaining to Children's Courts (Chapter 4 of the Act), Contribution Orders (Chapter 10 of the Act) and Child Abduction (Chapter 17 of the Act) are Justice and Constitutional Development responsibilities and are attached to these regulations)

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CHAPTER 1 GENERAL PROVISIONS

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates –

“Register” means the National Child Protection Register established by Part 2 of Chapter 7 of the Act;

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

2. Intervals of provincial profiles

The relevant MEC 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 after 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

3. Consent to undergo a virginity test

(1) Consent to undergo a virginity test by a child who is 16 years of age or older must be in a form substantially corresponding with **Form 1** and must be –

- (a) completed in writing and signed by the child;
- (b) signed by the person conducting the virginity test; and
- (c) accompanied by proof of the age of the child as provided for in regulation 4(3)(b).

(2) Where a person whose signature is required in terms of paragraph (a) or (b) of subregulation (1) is incapable of furnishing a signature, a thumbprint must be effected and duly attested by a commissioner of oaths.

(3) A copy of the form referred to in subregulation (1) must be retained by the person performing the virginity test for a period of 12 months after consent as contemplated in this regulation has been furnished.

4. Manner of conducting virginity test

- (1) The person who conducts a virginity test must ensure that –
- (a) each child is tested individually and in private;
 - (b) such test is conducted in a hygienic manner, which includes –
 - (i) the use of a separate pair of sterile surgical gloves for each test in the case of a virginity test involving the penetration of any bodily orifice of the child being tested;
 - (ii) the disposal of such surgical gloves after each virginity test in accordance with medical standards for the disposal of surgical gloves;

- (iii) the sterilization of any instrument used in the performance of any virginity test in accordance with acceptable medical practice; and
- (iv) the 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 only be performed on a girl child by a female person.

(3) (a) No virginity test may be performed on a child unless the person conducting the test is satisfied that the child concerned is 16 years of age or older.

(b) The age of a child consenting to a virginity test must be established by having regard to an identity document or birth certificate, 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.

5. Suitability of persons to perform virginity tests

(1) No person whose name appears in Part B of the Register or the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), may perform a virginity test upon a child.

(2) Any person who contravenes 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.

6. Disclosure of results of virginity test

Consent to disclose the results of a virginity test must be completed in writing in a form substantially corresponding with **Form 2** and signed by the child concerned or, if such child is incapable of furnishing a signature, a thumbprint must be effected and duly attested by a commissioner of oaths.

7. Good practice guidelines and charges levied for virginity testing

The Minister for Health may –

- (a) from time to time prescribe the fees that may be levied for the performance of a virginity test by notice in the *Gazette*;
- (b) develop culturally appropriate good practice guidelines concerning the manner in which virginity tests may be performed; and
- (c) develop public awareness about any potentially negative consequences of virginity testing.

PART II

MALE CIRCUMCISION

8. Consent to circumcision

Consent by a male child older than 16 years to circumcision must be in a form substantially corresponding with **Form 3**.

9. Religious circumcision

(1) Circumcision performed for religious purposes on male children under the age of 16 years 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 subregulation (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 be disposed of after each circumcision unless sterilised in accordance with medical standards for the sterilisation of surgical instruments;
- (d) 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; and
- (e) the disposal of any instruments used for circumcision including any human tissue must be in compliance with any applicable legal provision and 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 12 years; or
 - (b) over the age of 12 years but below the age of 18 years,
- must be in a form substantially corresponding with **Form 4**.

CHAPTER 3

PARENTAL RESPONSIBILITIES AND RIGHTS

(Sections 18 – 35 of the Act)

PART I

PARENTAL RESPONSIBILITIES AND RIGHTS AGREEMENTS

10. General requirements pertaining to a parental responsibilities and rights agreement

(1) An application for the registration of a parental responsibilities and rights agreement or for a parental responsibilities and rights agreement to be made an order of court must be in writing in a form substantially corresponding with **Form 5** and must –

- (a) be signed by the mother of the child or any other person or persons having parental responsibilities and rights in respect of the child or children and by the biological father of the child or children or other person having an interest in the care, well-being and development of the child or children upon whom parental

responsibilities and rights are being conferred or, if a person whose signature is required is incapable of furnishing a signature, a thumbprint must be effected and duly attested by a commissioner of oaths;

- (b) include the title, full names, date of birth, identity number or passport number, as the case may be, residential and work address and contact details of the mother of the child or children or any other person or persons having parental responsibilities and rights in respect of the child or children;
- (c) include the title, full names, date of birth, identity number or passport number, as the case may be, residential and work address and contact details of the biological father of the child or children or any other person or persons having an interest in the care, well-being and development of the child or children upon whom parental responsibilities and rights are being conferred;
- (d) include the full names, date of birth, identity number or passport number, as the case may be, residential address and contact details of any child or children concerned; and
- (e) where applicable, include the name and signature of the family advocate responsible for registering the agreement.

(2) 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, only one such parental responsibilities and rights agreement must be completed.

(3) The applicant or applicants for the registration of a parental responsibilities and rights agreement must file sufficient 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.

(4) Where the family advocate is required to satisfy himself or herself that a parental responsibilities and rights agreement is in the best interests of the child, this must be done in a form substantially corresponding with **Form 6**.

(5) No person may divulge or publish for the information of the public or any section of the public any particulars of a parental responsibilities and rights agreement without the consent of the parties to the agreement and the child or children in respect of whom the agreement has been registered or made an order of court, where such child is of sufficient age and maturity to furnish such consent.

11. Contents of parental responsibilities and rights agreements

(1) A parental responsibilities and rights agreement must contain particulars of those aspects pertaining to the care of, contact with, financial responsibility for, and 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 other person having an interest in the care, well-being and development of the child including, but not limited to, particulars similar to those referred to in relation to parenting plans as provided for in regulation 16(1)(a) – (g).

(2) The particulars referred to in subregulation (1) must be specified on **Form 5** or must be attached to the application for registration of the parental responsibilities and rights agreement in the form of –

- (a) written documentation containing the relevant details relating to care, contact, financial responsibility or any other matters incidental to the exercise of parental rights and responsibilities; or
- (b) a parenting plan completed in a form substantially corresponding with **Form 7**.

(3) Where a parental responsibilities and rights agreement is to be confirmed by a High Court, such agreement may contain particulars relating to the guardianship of the child or children.

12. Mediation where dispute arises between biological father and biological mother concerning the fulfillment of conditions for acquisition of parental responsibilities and rights

(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 fulfillment by that father of the conditions set out in paragraph (a) or (b) of section 21(1) of the Act, may certify the outcome of that mediation in a form substantially corresponding with **Form 8**.

(2) A certificate of non-attendance of the mediation required by section 21(3) of the Act may be completed in a form substantially corresponding with **Form 9** 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) Non-attendance by a person of the mediation required by section 21(3) of the Act on two occasions without good reason must be construed as an unwillingness to submit to mediation and forms a basis for the institution of legal proceedings to determine the parental responsibilities and rights of the biological father of the child.

13. Participation of child or children with respect to parental responsibilities and rights agreements

(1) (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.

(2) Where a child or children of sufficient age and maturity and stage of development, and 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, psychologist or social service professional.

PART II

PARENTING PLANS

14. General provisions concerning an application for registration of parenting plans

(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 substantially corresponding with **Form 10** 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 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 and 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 such rights and responsibilities with respect to more than one child in the same family, only one application for registration of the parenting plan must be completed.

(3) The application for registration of a parenting plan must be accompanied by –

- (a) written particulars of the parenting plan as specified in regulation 16(1)(a) – (q) and, where applicable, regulation 16(2), concerning the manner of exercise of their respective responsibilities and rights by the co-holders of the parental responsibilities that have been agreed upon; or
- (b) a parenting plan completed in a form substantially corresponding with **Form 7**.

(4) The applicant or applicants for the registration of a parenting plan must file sufficient 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.

(5) No person may divulge or publish for the information of the public or any section of the public any particulars of a parenting plan without the consent of the parties to the parenting plan and the child or children in respect of whom the parenting plan has been registered or made an order of court, where such child is of sufficient age and maturity to furnish such consent.

15. Parenting plans prepared with the assistance of a family advocate, social worker or psychologist, or after mediation by a social worker or other suitably qualified person

(1) A statement by a family advocate, social worker or psychologist to the effect that a parenting plan was prepared with the assistance of such family advocate, social worker or psychologist, as contemplated in section 33(5)(a) of the Act, must be completed in writing in a form substantially corresponding with **Form 11**.

(2) A family advocate who confirms that a parenting plan which was prepared without the assistance of a family advocate, social worker or psychologist, complies with the best interests of the child or children concerned, may do so in writing in a form substantially corresponding with **Form 11**.

(3) A statement by a social worker or other suitably qualified person to the effect that a parenting plan was prepared after mediation by such social worker or other suitably qualified person, as contemplated in section 33(5)(b) of the Act, must be completed in writing in a form substantially corresponding with **Form 12**.

16. Particulars relating to the co-exercise of parental responsibilities that may be included in a parenting plan

(1) The particulars related to the co-exercise of parental responsibilities and rights that may be specified in a parenting plan include, but are not limited to –

- (a) details concerning the person with whom the child or children will reside and for which specified periods, and the manner in which the child or children is to be cared for;
- (b) details concerning responsibilities for the maintenance of the child or children, including, but not limited to, the amounts payable, the allocation of such amounts for the child's or children's accommodation, schooling, clothing, extra-mural or sporting activities, medical and other aspects of the child's or children's health care, overall care and upbringing, and whether one or more co-holder of parental responsibilities and rights will be responsible for such payments;
- (c) details concerning parental responsibilities and rights in respect of contact with the child or children including, but not limited to, specified periods of time during which specified contact will take place, and including, but not limited to, the specifics of the forms that such contact may take and the responsibility for the costs of ensuring such contact;
- (d) details concerning contact on any special days, public holidays or during holiday periods;
- (e) the financial responsibility to be borne by a co-holder of parental responsibilities and rights for any travel costs that may be incurred in giving effect to contact with the child or children;
- (f) the way in which decisions in respect of a child or children's life or lives are to be exercised by bearers of parental responsibilities and rights, with due regard to the provisions of section 31 of the Act and the desirability of mediation and reconciliation;
- (g) the roles and responsibilities of any co-holders of parental rights and responsibilities regarding the child or children's education, health care and participation in cultural or religious activities;
- (h) the manner in which effect will be given to obligations to consult the co-holder or parental responsibilities and rights as required by section 31 of the Act;

- (i) the specific steps to be taken in instances where co-holders of parental responsibilities and rights disagree upon a decision or decisions, or where there is a dispute about the exercise of parental responsibilities and rights, with due regard to mediation and the desirability of reconciliation;
- (j) the person or persons who will bear the costs of any dispute resolution undertaken;
- (k) the care of the child or children by persons other than the co-holders of parental responsibilities and rights;
- (l) contact with other family members or the extended family;
- (m) guidance of the child or children's behaviour in a manner consistent with the objectives of the Act;
- (n) the accommodation of any special needs that a child or children may have;
- (o) any obligation to notify the family advocate, the High Court, the children's court or any co-holder of parental responsibilities and rights of a change of address or contact details of the holder of parental responsibilities and rights or of the child or children;
- (p) the procedure to be followed in the event of a material change in circumstances relating to the holder of parental responsibilities and rights or to the child; and
- (q) the termination or amendment of the parenting plan.

(2) Where a parenting plan is to be registered by a High Court, such plan may contain particulars relating to the guardianship of the child or children.

17. Participation of child or children with respect to parenting plans

(1) Bearing in mind the child's or children's age, maturity and stage of development, such child or children must be consulted during the development of a parenting plan involving them, and granted an opportunity to express their views, which must be taken into account and accorded due consideration.

(2) When a parenting plan has been agreed, the child or children must, bearing in mind their age, maturity and stage of development, be informed of the contents of the parenting plan 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.

18. Requirements for persons suitably qualified to mediate disputes concerning fulfillment of conditions for the acquisition of parental responsibilities and rights and to provide assistance in the development of parenting plans

(1) A person is suitably qualified to mediate disputes concerning fulfillment of conditions for the acquisition of parental responsibilities rights and to provide assistance in the development of parenting plans if he or she –

- (a) has at least five years' expertise in mediation, arbitration, restorative justice or other forms of alternative dispute resolution after attainment of his or her professional qualification;
- (b) belongs to a recognised body aimed at the education and professional development of mediators;
- (c) possesses a recognised qualification in child development, child psychology or in early childhood development and has at least five years' experience after attainment of such qualification;
- (d) is an admitted attorney or an advocate of the High Court with at least five years' experience in child and family law; or
- (e) possesses any other similar qualification which renders him or her suitably qualified to mediate disputes or provide assistance in the development of parenting plans, or who, due to practical experience, can be regarded as being suitably qualified.

(2) A person who alleges that he or she is suitably qualified to mediate disputes concerning fulfillment of conditions for the acquisition of parental responsibilities and rights or to provide assistance in the development of parenting plans must substantiate this allegation by providing details of the grounds on which he or she believes that suitable qualification exists, and, where appropriate, furnish written proof of any expertise, qualification or membership of a professional body.

(3) The substantiation referred to in subregulation (2) must be provided on Form 12, Form 8 or Form 9, as the case may be.

CHAPTER 4

BIOGRAPHICAL AND MEDICAL INFORMATION CONCERNING GENETIC PARENTS

(Section 41 of the Act)

19. Access to biographical and medical information concerning genetic parents

Further to the provisions of section 41(3) of the Act, the Director-General may require a person to receive counselling before any information relating to biographical and medical information concerning genetic parents is disclosed in terms of section 41(1) of the Act.

CHAPTER 5

PARTIAL CARE

(Sections 76 – 90 of the Act)

20. Categories of partial care facilities

For purposes of registration of a partial care facility the following different types of partial care may be provided for:

- (a) A crèche, providing partial care for a child from birth to an age of 3 years;
- (b) an educare centre, providing partial care for a child from three years until school going age;
- (c) an after school centre, providing partial care for a child attending a primary school;
- (d) a private hostel, providing partial care for children attending a primary or a secondary school;
- (e) a temporary respite care facility, providing temporary full-time partial care for a child during the temporary absence of his or her parent or parents or the caregiver of the child; and
- (f) a place of care providing partial care for children with disabilities who require a high level of support.

21. Exemption from registration as a partial care facility

(1) 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.

(2) Partial care organised or provided by casinos or shopping centres or any other similar partial care organised and provided irregularly and for limited periods during the absence of a child's parent, parents or care-giver is exempted from registration in terms of section 80 of the Act.

(3) Notwithstanding the provisions of subregulation (2) a partial care facility or provider of a partial care service referred to in that subregulation must comply with the national norms and standards for partial care contemplated in section 79 of the Act and reflected in Annexure A to these regulations.

(4) A provincial head of social development or, where the function has been assigned to a municipality in terms of section 88 of the Act, the municipal manager, may by way of a written notice of enforcement instruct a partial care facility contemplated in subregulation (2) to terminate its operation in the event of non-compliance with the norms and standards referred to in subregulation (3).

(5) Any person employed at a partial care facility contemplated in subregulation (2) must provide clearance certificates to the effect that his or her name does not appear in Part B of the Register or the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), to his or her employer.

22. National norms and standards

The national norms and standards with which a partial care facility or provider of a partial care service referred to in regulation 20 must comply as contemplated in section 79 of the Act, are reflected in Annexure A.

23. Application for the registration of a partial care facility

(1) Subject to the provisions of subregulation (2), an application for the registration or conditional registration or for 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 that substantially corresponds with **Form 13**.

(2) If the performance of the functions contemplated in sections 80 and 81 of the Act has been assigned to a municipality, an application referred to in subregulation (1) must be lodged with the head of social services of that municipality.

(3) An application referred to in subregulation (1) must contain the following particulars:

- (a) The particulars of the applicant;
- (b) the physical and postal address of the partial care facility;
- (c) the category or categories of partial care in respect of which the application is made;
- (d) the number of children that will be accommodated in each of the categories of partial care in respect of which the application is made;
- (e) the qualifications, skills and experience of the applicant in partial care in the category or categories 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) In addition to the requirement contained in section 81(1)(c)(i) of the Act, an application referred to in subregulation (1) must be accompanied by the following 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 including an exposition of the staff members' prescribed and other skills with supporting documents and copies of any qualifications of the staff members that would enhance partial care of children; 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 category or categories of children it will cater for;
 - (iii) the composition, powers and duties of the management;
 - (iv) the powers, obligations and undertaking of management to delegate all authority with regards 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 A;
- (c) an original copy of the approved plans or a copy of the plans that has been submitted for approval if the application for the approval of the plans is still under consideration;
- (d) an emergency plan; and
- (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 Register or the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).

24. Consideration of application

(1) On granting an application referred to in regulation 23(1), the provincial head of social development or, where the function has been assigned to a municipality 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 that substantially corresponds with **Form 14**.

(2) The provincial head of social development or, where the function has been assigned to a municipality in terms of section 88 of the Act, the municipal manager or social service professional concerned, may grant an application referred to in regulation 23(1) for a period not exceeding five years.

(3) In granting an application referred to in subregulation (2), the provincial head of social development or, where the function has been assigned to a municipality in terms of section 88 of the Act, the municipal manager or social service professional concerned, may impose such conditions as he or she deems necessary or expedient.

(4) In rejecting an application for registration of a partial care facility, the provincial head of social development must duly inform the applicant of the refusal in a form that substantially corresponds with **Form 15** by registered post and must furnish reasons for such rejection to the applicant.

(5) (a) An applicant or a registration holder aggrieved by a decision of a provincial head of social development may appeal against such decision to the MEC for social development of that province in a form that substantially corresponds with **Form 16** within 90 days of the receipt of such decision.

(b) An applicant or a registration holder aggrieved by a decision in terms of Chapter 14 of the Act by an official in the employ of a municipality in a case where any powers contained in sections 95 to 100 of the Act have been assigned to a municipality, may appeal against such decision to the municipal council concerned in a form that substantially corresponds with **Form 17** within 90 days of the receipt of such decision.

25. Management of partial care facility

(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 or primary care-giver;
- (c) the date of the child's admission to the partial care facility and the date of termination of partial care;
- (d) any chronic medical condition, any dietary requirements and any other critical information for the care and development of the child; and
- (e) any period of absence from the partial care facility, including leave, sick leave or family responsibility leave of any staff member.

(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 documents or correspondence relating to the child;
- (c) reports and notes by the provider of a programme within a partial care facility on the development of the child with particular reference to any possible deviations 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 patterns of the child; and
- (e) reports and notes on any injury or bruises 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.

(4) (a) No physical punishment may be imposed on a child in a partial care facility.

(b) No group punishment for individual behaviour may be imposed on a child in a partial care facility.

(c) Positive disciplinary measures appropriate to the child's age and maturity may be imposed at a partial care facility.

(d) 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, where their whereabouts are known.

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

(8) Monthly staff meetings in respect of which minutes are kept must be convened at each partial care facility.

26. Employment of staff at a partial care facility

(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 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 the regulations must provide –

- (a) a certified copy of his or her identity document;
- (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 Register or the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007),

to his or her employer.

(2) An employee at a partial care facility who works directly with a child in such facility should be able to communicate with the child in a language which he or she understands.

27. Closure of partial care facility

(1) When –

- (a) the 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 in terms of section 85 of the Act,

that person or organisation must be allowed a reasonable time 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, the parents or care-givers of children in that facility must receive at least two months written notice of such intention.

28. Assignment of functions to municipalities

(1) Before a provincial head of social development may assign functions to a municipality 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) The provincial head of social development, before assigning all or part of the functions contemplated in section 88 of the Act, must be satisfied that the municipality concerned has –

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

(3) The agreement between the provincial head of social development and the municipal manager contemplated in section 88(2) of the Act must –

- (a) be reduced to writing and signed by the parties in the presence of two witnesses; and
- (b) contain a provision that the particulars referred to in subregulation (4) be reviewed and updated annually.

(4) The agreement between the provincial head of social development and the municipal manager 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; and
- (c) an organogram for the establishment responsible for the administration of the assigned functions.

CHAPTER 6
EARLY CHILDHOOD DEVELOPMENT
(Sections 91 – 103 of the Act)

29. National norms and standards

The national norms and standards for early childhood development as contemplated in section 94 of the Act are reflected in Annexure A.

30. Application for the registration of an early childhood development programme

(1) Subject to the provisions of subregulation (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 programme is provided in a form that substantially corresponds with **Form 18**.

(2) If the performance of the functions contemplated in sections 96 and 97 of the Act has been assigned to a municipality, an application referred to in subregulation (1) must be lodged with the head of social services of that municipality.

(2) An application referred to in subregulation (1) must contain the following particulars:

- (a) The particulars of the applicant;
- (b) the physical and postal address of the applicant;
- (c) the contact particulars of the applicant;
- (d) 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 including an exposition of the staff members' prescribed and other skills with supporting documents and copies of any qualifications in

- respect of the staff members 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 including an exposition of the funds available for providing the programme as applied for; and
 - (h) a clearance certificate to the effect that the name of the applicant does not appear in Part B of the Register or the National Register for Sex Offenders established by Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007).

31. Consideration of application

(1) On granting an application referred to in regulation 30(1), 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 issue to the applicant a certificate of registration or conditional registration or renewal of registration in a form that substantially corresponds with **Form 19**.

(2) 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, may grant an application referred to in regulation 30(1) for a period not exceeding five years.

(3) In granting an application referred to in subregulation (2), 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, may impose such conditions as he or she deems necessary or expedient.

(4) 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 substantially corresponding with **Form 20** by registered post and must furnish reasons for such rejection.

(5) (a) An applicant or a registration holder aggrieved by a decision of a provincial head of social development may appeal against such decision to the MEC for social development of that province in a form that substantially corresponds with **Form 21** within 90 days of the receipt of such decision.

(b) An applicant or a registration holder aggrieved by a decision in terms of Chapter 6 of the Act by an official in the employ of a municipality in a case where any powers contained in sections 95 to 100 have been assigned to a municipality, may appeal against such decision to the municipal council concerned in a form that substantially corresponds with **Form 22** within 90 days of the receipt of such decision.

32. Skills and training

(1) The applicant must possess the following skills and training:

- (a) The National Certificate in Early Childhood Development at National Qualification Framework (NQF) Level 4 of the South African Qualifications Authority; or
- (b) an appropriate early childhood qualification; or
- (c) a minimum of three years experience of working in the early childhood development field; and
- (d) appropriate knowledge about child development;
- (e) the ability to identify, record and report on the progress and developmental needs of the child to inform early childhood development opportunities and interventions;
- (f) the ability to design and produce stimulating indoor and outdoors activities and routines according to the developmental needs of the children;
- (g) 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, social development;
- (h) 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;

- (i) 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
- (j) the ability to implement systems, policies and procedures and to manage physical, financial and human resources.

(2) Support personnel are required to undergo basic training to understand the context of early childhood development.

33. Assessment and monitoring of early childhood development programmes

(1) All early childhood development programmes must be subject to assessment and monitoring to determine compliance with the prescribed norms and standards.

(2) Assessment and monitoring must be executed by a competent official or person designated by the provincial head of social development and must be conducted in accordance with the indicators contained in the evaluation guidelines of the Department.

(3) 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.

(4) Assessment and monitoring of early childhood development programmes at partial care facilities and child and youth care centres must take place annually.

(5) The assessment of early childhood development programmes must be assessed in terms of quality assurance contained in a quality assurance report in a form that substantially corresponds with **Form 23**.

34. Assignment of functions to municipalities

(1) Before a provincial head of social development may assign functions to a municipality 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) The provincial head of social development, before assigning all or part of the functions contemplated in section 102 of the Act, must be satisfied that the municipality concerned has –

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

(3) The agreement between the provincial head of social development and the municipal manager contemplated in section 102(2) of the Act must –

- (a) be reduced to writing and signed by the parties in the presence of two witnesses; and
- (b) contain a provision that the particulars referred to in subregulation (4) be reviewed and updated annually.

(4) The agreement between the provincial head of social development and the municipal manager contemplated in section 102(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; and
- (c) an organogram for the establishment responsible for the administration of the assigned functions.