

**FORM 72**  
**POST ADOPTION AGREEMENT**  
**(Regulation 116(1))**  
**[SECTION 234 OF THE CHILDREN'S ACT 38 of 2005]**

Reference No.: \_\_\_\_\_

REPUBLIC OF SOUTH AFRICA

TO THE CLERK OF THE CHILDREN'S COURT: \_\_\_\_\_

(A) **AGREEMENT**

\*I/We (1) \_\_\_\_\_ (full name)

(2) \_\_\_\_\_ (full name)

residing at \_\_\_\_\_

in the capacity as **the prospective adoptive \*parent/parents****AND**

\*I/We (1) \_\_\_\_\_ (full name)

(2) \_\_\_\_\_ (full name)

residing at \_\_\_\_\_

in the capacity as **\*parent/guardian****HEREBY**

**AGREED**, with the assistance of an adoption social worker who provided counseling, to the following arrangements as contemplated by section 234 of the Children's Act 38 of 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Particulars of adoption social worker:

Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

\*Prospective adoptive \*parent/parents

\*Parent/parents/guardian

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\*Delete whichever is not applicable

**PLEASE SEE REVERSE HEREOF**

## REVERSE SIDE OF FORM 72

(B)

## FURTHER PARTICULARS OF PARTIES

## 1. Prospective adoptive \*parent/parents

Postal address: \_\_\_\_\_

\_\_\_\_\_

Postal code: \_\_\_\_\_

Telephone numbers: Code: \_\_\_\_\_ Number: \_\_\_\_\_ (Office hours)

Code: \_\_\_\_\_ Number: \_\_\_\_\_ (Residence)

Mobile phone: \_\_\_\_\_

## 2. Parent/parents/guardian

Postal address: \_\_\_\_\_

\_\_\_\_\_

Postal code: \_\_\_\_\_

Telephone numbers: Code: \_\_\_\_\_ Number: \_\_\_\_\_ (Office hours)

Code: \_\_\_\_\_ Number: \_\_\_\_\_ (Residence)

Mobile phone: \_\_\_\_\_

(B)

## CONSENT OF CHILD

\*I, \_\_\_\_\_ (full names) who stands to be adopted by the prospective adoptive \*parent/parents understands the terms of abovementioned agreement and hereby consent to the agreement.

\_\_\_\_\_

Child

\_\_\_\_\_

Date

\*I, \_\_\_\_\_ (full names), presiding officer: Children's court  
 \_\_\_\_\_ declares that the consent was signed and attested before me and that I have satisfied myself that the child is 10 years or older, or under the age of 10 years, but of an age, maturity and stage of development to understand the implications of the agreement.

\_\_\_\_\_

Presiding officer: Children's court

\_\_\_\_\_

Date

\*Delete whichever is not applicable

**FORM 73**  
**APPLICATION FOR A FREEING ORDER**  
**(Regulation 117)**  
**[SECTION 235 OF THE CHILDREN'S ACT 38 OF 2005]**

Reference No.: \_\_\_\_\_

REPUBLIC OF SOUTH AFRICA

TO THE CLERK OF THE CHILDREN'S COURT: \_\_\_\_\_

(A)

**APPLICATION**

1. \*I/The \_\_\_\_\_  
(state capacity of applicant – see reverse side of form for eligible applicants) \*residing /or doing business at \_\_\_\_\_

hereby apply/applies for a freeing order in terms of Section 235 of the Children's Act 38 of 2005.

Applicant

Capacity

Date

\*Delete whichever is not applicable

(B)

**FURTHER PARTICULARS OF APPLICANT(S)**

1. Postal address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Postal code: \_\_\_\_\_
2. Telephone numbers: Code: \_\_\_\_\_ Number: \_\_\_\_\_ (Office hours)  
Code: \_\_\_\_\_ Number: \_\_\_\_\_ (Residence)  
Mobile phone: \_\_\_\_\_

3. In the case of a child protection organisation attach proof of accreditation

Accreditation attached:

Yes ☐No ☐

(C)

**REASONS FOR APPLICATION**

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PLEASE SEE REVERSE SIDE

## REVERSE SIDE OF FORM 73

(C)

**CONSENT**

\*I/We \_\_\_\_\_ hereby \*consent/consents to a freeing order in terms of section 235 of the Children's Act 38 Of 2005.

1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
	Signature of person granting consent	Capacity	Date

\*Delete whichever is not applicable

(C)

**COURT ORDER**

I, \_\_\_\_\_, presiding officer of the Children's court at \_\_\_\_\_ hereby grants a freeing order in terms of Section 235 of the Act and authorizes the following \*person/child protection organisation accredited in terms of section 251. of the Act to exercise parental responsibilities and rights in respect of the child pending the adoption of the child:

\_\_\_\_\_

\_\_\_\_\_  
Presiding officer: Children's court

\_\_\_\_\_  
Date

**Section 235 of the Child Care Act 38 of 2005 provides :**

- (1) The court, on application by the Department, a provincial department of social development, a child protection organisation accredited in terms of section 251 to provide adoption services or an adoption social worker may issue an order freeing a parent or person whose consent to the adoption of the child is required in terms of section 233 from parental responsibilities and rights in respect of the child pending the adoption of the child.
- (2) The parent or person whose consent to the adoption of the child is required in terms of section 233 must support an application for a freeing order.
- (3) A freeing order must authorise a child protection organisation accredited in terms of section 251 to provide adoption services or a person to exercise parental responsibilities and rights in respect of the child pending the adoption of the child.
- (4) A freeing order lapses if-
- (a) the child has not been adopted within a period of 12 months and there is no reasonable prospects that the child will be adopted;
  - (b) the order is terminated by the court on the ground that it is no longer in the best interests of the child; or
  - (c) the child, parent or person who consented to the adoption withdraws such consent in terms of section 233 (8).
- (5) A freeing order relieves a parent or person from the duty to contribute to the maintenance of the child pending the adoption, unless the court orders otherwise.

**FORM 74**  
**RECORD OF ADOPTION PROCEEDING**  
**(Regulation 118)**

Reference No.: \_\_\_\_\_

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF \_\_\_\_\_  
HELD AT \_\_\_\_\_

PROCEEDINGS HELD *IN CAMERA* IN TERMS OF SECTION 56 OF ACT 38 OF 2005 IN RESPECT OF THE  
ADOPTION OF THE FOLLOWING CHILD(REN):

	NAME(S) OF CHILD(REN)	GENDER	DATE OF BIRTH
1.			
2.			
3.			
4.			

BEFORE \_\_\_\_\_, Presiding officer: Children's  
court on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

The said \*child/children was/were \*present/not present at the proceedings.

**AND THERE APPEARED**

Clerk of the Children's Court : \_\_\_\_\_

Interpreter: \_\_\_\_\_

Applicant(s) (1) \_\_\_\_\_

(2) \_\_\_\_\_

Mother/guardian (allowed to be present at the discretion of the court): \_\_\_\_\_

Father/guardian (allowed to be present at the discretion of the court): \_\_\_\_\_

The designated adoption social worker: \_\_\_\_\_

Permission for the attendance of other persons \*not granted/granted to: \_\_\_\_\_

Legal representative(s): \_\_\_\_\_

**THE FOLLOWING EVIDENCE WAS ADDUCED**

\*Delete whichever is not applicable



**FORM 76**  
**ORDER OF INTER-COUNTRY ADOPTION**  
**(Regulation 131, 135)**  
**[SECTION 261(5) OF THE CHILDREN'S ACT 38 OF 2005]**

REPUBLIC OF SOUTH AFRICA

IN THE CHILDREN'S COURT FOR THE DISTRICT OF \_\_\_\_\_  
HELD AT \_\_\_\_\_

**IN THE MATTER OF AN APPLICATION FOR THE INTER-COUNTRY  
ADOPTION OF**

\_\_\_\_\_  
(full name of child)  
identity number \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_  
before \_\_\_\_\_, Presiding Officer of the  
Children's Court.

**In the case of an inter-country adoption by a person living in a Hague Convention Country**

**THE COURT IS SATISFIED THAT: -**

- ☐ The adoption is in the best interests of the child;
- ☐ The child is in the Republic; and is not prevented from leaving the Republic;
- ☐ The arrangements for the adoption are in accordance with the Hague Convention and requirements of regulation 130;
- ☐ The Central Authority of the convention country, \_\_\_\_\_, has agreed to the adoption;
- ☐ The Central Authority of the Republic has agreed to the adoption;
- ☐ The name of the child has been in the RACAP for at least 60 days; and
- ☐ No fit and proper adoptive parent for the child is available in the republic.

**In the case of an inter-country adoption of a person living in a non-Hague Convention country**

**THE COURT IS SATISFIED THAT: -**

- ☐ The adoption is in the best interests of the child;
- ☐ The child is in the Republic; and is not prevented from leaving the Republic;
- ☐ The arrangements for the adoption are in accordance with the requirements of regulation 134;
- ☐ The competent authority of the non-convention country, \_\_\_\_\_, has agreed to the adoption;

- ☐ The Central Authority has agreed to the adoption;
- ☐ The name of the child has been in the RACAP for at least 60 days; and
- ☐ No fit and proper adoptive parent for the child is available in the republic.

**IT IS ORDERED THAT**

\_\_\_\_\_ (full name of child)  
 a \_\_\_\_\_ child, born on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
 (sex)  
 be and is hereby adopted by \_\_\_\_\_  
 (full name)  
 born on \_\_\_\_\_, identity number \_\_\_\_\_ \*and his/her spouse  
 \_\_\_\_\_  
 (full name)  
 born on \_\_\_\_\_, identity number \_\_\_\_\_, in terms of and subject  
 to the provisions of the Children's Act, 2005 (Act No. 38 of 2005).

**IT IS FURTHER ORDERED THAT**

the family name \_\_\_\_\_ \*be given to the child/be retained by the child.  
 GIVEN at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 at \_\_\_\_\_ : \_\_\_\_\_ (time).

\_\_\_\_\_  
**Presiding Officer: Children's Court**

1. Date of registration of adoption \_\_\_\_\_
2. Adoption register number \_\_\_\_\_
3. Amendment of the birth register in terms of section 245 of the Children's Act, 2005 (Act No. 38 of 2005), may proceed.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Registrar of Adoptions**

\*Delete whichever is not applicable



**FORM 77****DECLARATION RECOGNISING ADOPTION****(Regulation 139(1))****[SECTIONS 266(3) AND 268 OF THE CHILDREN'S ACT 38 OF 2005]**

THE CENTRAL AUTHORITY OF THE REPUBLIC OF SOUTH AFRICA hereby declares that the adoption of

\_\_\_\_\_  
(full name of child)

born in \_\_\_\_\_ on \_\_\_\_\_  
(name of convention country) (date of birth (if known))

who was adopted by (1) (full names) \_\_\_\_\_  
(2) (full names) \_\_\_\_\_  
identity number(s) \_\_\_\_\_ (2) \_\_\_\_\_

on \_\_\_\_\_ in \_\_\_\_\_  
(date of adoption) (country where adoption was concluded)

is recognized as an adoption in the Republic of South Africa, and that this declaration is admissible as evidence in any proceedings before the court and for purposes of recording of adoption in births register and adoption register in the Republic of South Africa.

\_\_\_\_\_  
*for the CENTRAL AUTHORITY*

PLACE: \_\_\_\_\_

DATE: \_\_\_\_\_

\*Delete whichever is not applicable.

## FORM 78

## DECLARATION OF NON-RECOGNITION OF ADOPTION

(Regulation 140)

[SECTION 270 OF THE CHILDREN'S ACT 38 OF 2005]

THE CENTRAL AUTHORITY OF THE REPUBLIC OF SOUTH AFRICA hereby declares that the adoption of

\_\_\_\_\_

(full name of child)

born in \_\_\_\_\_ on \_\_\_\_\_

(name of convention country) (date of birth (if known))

who was adopted by (1) (full names) \_\_\_\_\_

(2) (full names) \_\_\_\_\_

identity number(s) \_\_\_\_\_ (2) \_\_\_\_\_

on \_\_\_\_\_ in \_\_\_\_\_

(date of adoption) (name of country where adoption concluded)

which is a convention/ non-convention country,

is not recognised as an adoption in the Republic of South Africa, and that an application for the adoption of the child shall be made to the children's court in accordance with section 271.

\_\_\_\_\_

*for the CENTRAL AUTHORITY*

PLACE: \_\_\_\_\_

DATE: \_\_\_\_\_

\*Delete whichever is not applicable.

**FORM 79****NOTIFICATION BY INTERNET SERVICE PROVIDER OF BEHAVIOUR FACILITATING TRAFFICKING IN  
CHILDREN****(Regulation 142(1))****[SECTION 285(2) OF THE CHILDREN'S ACT 38 OF 2005]****REPUBLIC OF SOUTH AFRICA**

To: The Station Commander: ..... (Police Station)  
South African Police Service

.....  
.....  
.....

The following information was located on our server that alludes to the facilitation of child trafficking, (for example, an advert for children to engage in travel, or a call for children to be employed as domestic workers, or a bulletin or group for traffickers making arrangements regarding the transport of children etc):

Details of the site/s on which it was found:

Details on whether the information was found in the ISP database or whether through another mechanism, e.g usage statistics or firewall data or real-time (or other):

Details on the manner in which the information came to our attention, for example through detection, on account of a complaint or report or any other manner:

Specific details regarding the manner in which the information came to our attention, including names of persons detecting information or names and contact details of persons who made a complaint or report:

Is a copy of the electronic report containing the information alluding to the facilitation of trafficking found on the server attached? Please circle your answer:      **Yes / No**

If **no**, can a copy be obtained upon request?

**Yes / No**

Details of the person that can be contacted for such copy:

SIGNED at ..... on this ..... day of .....  
..... 2...

Representative of Internet Service Provider:

Full name (in print):  
Designation:  
Telephone:  
Fax:  
Cell:  
Email

**GOVERNMENT NOTICE****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NO. R.****2008****CHILDREN'S ACT, 2005: REGULATIONS**

The Minister for Justice and Constitutional Development intends, after consultation with the Minister of Social Development, under section 75 and section 280 of the Children's Act, 2005 (Act No. 38 of 2005) to make the regulations in the Schedule.

**SCHEDULE****REGULATIONS RELATING TO THE CHILDREN'S ACT, 2005****CHAPTER I****GENERAL PROVISIONS****Classification of Regulations****Regulation**

1. Definitions

**CHAPTER II****CLERKS OF CHILDREN'S COURTS**

2. Application for appointment as clerk
3. Appointment requirements of clerk
4. Conditions of appointment of clerk
5. Additional functions, powers and duties of clerk

**CHAPTER III****CHILDREN'S COURTS*****Part 1***

6. Bringing matter to court
7. Deviation of time periods
8. Attendance of proceedings

9. Witnesses
10. Additional powers of court

### **Part 2**

11. Investigations
12. Pre-hearing conferences
13. Family group conferences
14. Lay forums

## **CHAPTER IV CHILD ABDUCTION**

15. Application for the return of child to the Republic
16. Access to child wrongfully removed or retained
17. Application to return child to a contracting state
18. Appointment of persons by the Chief Family Advocate
19. Obstruction of Chief Family Advocate, Family Advocate or person appointed
20. Court appearances
21. Fees of person appointed by Chief Family Advocate
22. Recovery of expenditure
23. Expeditious handling of proceedings
24. Procedure in High Court
25. Declarations by High Court
26. Proof of documents and evidence
27. Power to order disclosure of child's whereabouts
28. Evidence in support of application
29. Adjournment
30. Assistance to prevent removal from jurisdiction
31. Surrender of passport documents

## **CHAPTER V MISCELLANEOUS**

32. Keeping of records
33. Submission of statistics to Magistrates Commission
34. Remuneration of persons not in employ of state
35. Contribution orders

- 36. Offences and penalties
- 37. Short title and commencement

### **ANNEXURE**

#### **Form No**

- 1. Bringing matter to court in terms of section 53 Children's Act, 2005 (Act No. 38 of 2005)
- 2. Notice to attend proceedings of the Children's Court in terms of section 57 of the Children's Act, 2005 (Act No. 38 of 2005)
- 3. Notice to parties to attend a pre-hearing conference in terms of section 69 of the Children's Act, 2005 (Act No. 38 of 2005)
- 4. Referral of matter for a family group conference/ to a lay-forum in terms of sections 70 and 71 of the Children's Act, 2005 (Act No. 38 of 2005)
- 5. Notice to witnesses to appear before the children's court in terms of section 59 of the Children's Act, 2005 (Act No. 38 of 2005)
- 6. Medical report and/or age assessment of child section 48(2) of the Children's Act, 2005 (Act No. 38 of 2005)
- 7. Court Certificate of estimated age of child
- 8. Summons in a contribution order or the attachment of wages order proceedings
- 9. Notice of hearing of application for the variation, suspension, rescission or revival of a contribution order
- 10. Application for the variation, suspension, rescission or revival of a contribution order
- 11. Contribution order
- 12. Order to an employer to deduct an amount from the respondent's wages
- 13. Application for a return of a child wrongfully removed / retained in terms of the Hague Convention on the Civil Aspects of International Child Abduction
- 14. Application for access to a child wrongfully removed / retained in terms of the Hague Convention on the Civil Aspects of International Child Abduction

### **CHAPTER I**

#### **GENERAL PROVISIONS**

#### **Classification of Regulations**

## **Regulation**

### **Definitions**

1. 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—

"applicant" means any person, institution or body vested with parental authority that applies for assistance under the Convention;

"Chief Family Advocate" means the Chief Family Advocate referred to in section 276(1)(a) of the Act;

"chairperson of the pre-hearing conference" means the person who sets up and conducts a pre-hearing conference as contemplated in section 69(4)(a) of the Act;

"clerk" means a clerk of the children's court;

"Convention" means the Hague Convention on the Civil Aspects of International Child Abduction;

"court" means a children's court;

"day" means a day excluding a Saturday, Sunday or public holiday;

"Director-General" means the Director-General of the Department of Justice and Constitutional Development;

"facilitator" means a facilitator of a family group conference as contemplated in regulation 13(1) of the Regulations;

"family group conference" means a family group conference as contemplated in section 70 of the Act;

"lay forum" means a lay forum as contemplated in section 71 of the Act;

"pre-hearing conference" means a pre-hearing conference as contemplated in section 69 of the Act;

"respondent" means a person who removed or retained a child, or who prevented the exercise of rights of access; and

"the Act" means the Children's Act, 2005 (Act No. 38 of 2005);

## **CHAPTER II**

### **CLERKS OF CHILDREN'S COURTS**

#### **Application for appointment as clerk**

2.(1) An application for appointment as a clerk, contemplated in section 67(1) of the Act, must be in writing on Form Z 83 and must be submitted to the Director-General.

(2) The application referred to in subregulation (1) must be accompanied by a sworn affidavit that the applicant is suitable to work with children and that his or her name does not appear in Part B of the National Child Protection Register.

#### **Appointment requirements of clerk**

3.(1) A person may be appointed as a clerk by the Director-General if he or she complies with the appointment requirements as stipulated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the appointment policies for a post of administrative clerk in the Department.

(2) A person may only be appointed or designated as a clerk if his or her name does not appear in Part B of the National Child Protection Register.

#### **Conditions of appointment of clerk**

4.(1) The Director-General may appoint a person as a clerk for the period agreed to between the Director-General and the applicant, who is entitled to an all inclusive remuneration equal to the total remuneration package of an administrative clerk in the Department.

(2) The conditions of service of a person appointed as a clerk in terms of subregulation (1) are the same as the conditions of service applicable in respect of a person appointed as clerk of the court in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

#### **Additional functions, powers and duties of clerk**

5. In addition to the functions determined by the Act, a clerk must—
- (a) upon receipt of the notification contemplated in regulation 6 open a file and number the matter with a consecutive number of the year;
  - (b) keep a register regarding all the matters brought to the court in which he or she must record—
    - (i) the following particulars of the child or children in each matter—
      - (aa) full names;
      - (bb) date of birth;
      - (cc) residential address;



- (dd) full names and physical addresses of parents, care-givers or guardians of the child or children, if any;
- (ee) telephone or cellular phone and facsimile numbers of parents, care-givers or guardians of the child or children, if any; and
- (ff) e-mail addresses of parents, care-givers or guardians of the child or children, if any;
- (ii) the number of the matter referred to in paragraph (a);
- (iii) the reason why the matter is before the court;
- (iv) the date and the outcome of each matter; and
- (v) the outcome of an appeal or review, if applicable;
- (c) mark every document received afterwards relating to such matter with such number as assigned to the specific matter;
- (d) file any documentation received on the appropriate file;
- (e) assist, to the best of his or her ability, any person who is illiterate or disabled with the completion of any document relating to the proceedings in the court;
- (f) perform the duties assigned to him or her in terms of these regulations;
- (g) inform a witness who is summoned by the presiding officer in the matter that he or she is entitled to witness fees and ensure that a witness is assisted in this regard, where necessary;
- (h) perform the duties of the clerk of a civil court insofar as it is necessary to give effect to the provisions of the Act; and
- (i) keep a register of investigators appointed by the court in terms of section 75(1)(b) of the Act, in which the following must be entered—
  - (i) the full names of the investigator;
  - (ii) the address and contact details of the investigator; and
  - (iii) the matter for which the investigator was appointed.

### CHAPTER III CHILDREN'S COURTS

#### *Part 1*

#### **Bringing matter to court**

6.(1) A person contemplated in section 53 of the Act, who intends to bring a matter to court in terms of section 53 of the Act, must notify the clerk of his or her intention to do so on a form which corresponds substantially with Form 1 of the Annexure.

(2) The clerk must, within seven days after receipt of the notice referred to in subregulation (1), refer the matter to a court, which must, within seven days after receiving the documentation relating to the matter, make an order whether—

- (a) the matter should be referred for mediation to a—
  - (i) family group conference in terms of section 70 of the Act;  
or
  - (ii) lay-forum in terms of section 71 of the Act;
- (b) a pre-hearing conference should be held in terms of section 69(1) of the Act; or
- (c) the matter should be heard in court.

(3) If the court decides that the matter should be heard in court, the clerk must, within three days after such order, assign a date for the matter to be heard in court.

(4) The clerk must, after a date as contemplated in subregulation (3) has been assigned, notify the parties involved in the matter on a form which corresponds substantially with Form 2 of the Annexure of the date, place and time of the hearing.

(5) A written report as contemplated in section 63(1) of the Act must be submitted to the court within 21 days prior to the hearing of the matter.

(6) If a person's rights are prejudiced by a report as contemplated in section 63(1) of the Act, the court must disclose the relevant parts of the report to that person within 14 days prior to the date of the hearing.

#### **Deviation of time periods**

7.(1) Upon written application to the court and in the case of an urgent matter, the court may approve a deviation from the periods of time prescribed in the regulations.

(2) A party to the proceedings may request the court to extend any period of time prescribed in the regulations, which request must be in writing, stating the reasons for such request and submitting any proof to substantiate his or her reasons.

(3) Upon receipt of such a request the court may refuse the request or direct the clerk to inform any other party within two days of such a request, requesting such party's view on an extension of time within five days.

(4) The court may—

(a) grant an extension of time once only for a period of not more than 20 days, if any other party—

- (i) did not raise any objections; or
- (ii) raised objections but his or her rights will not be affected if an extension of time is granted;
- (iii) did not respond but his or her rights will not be affected if an extension of time is granted;

(b) refuse an extension of time if any other party—

- (i) raised an objection and whose rights will be affected if such an extension of time is granted; or
- (ii) did not respond but his or her rights will be affected if an extension of time is granted.

#### **Attendance of proceedings**

8.(1) The clerk must within seven days after the presiding officer has made an order and at least 15 days before the date of the hearing, notify a person contemplated in section 57 of the Act, to attend the proceedings of the court, on a form which corresponds substantially with Form 3 of the Annexure.

(2) The notice referred to in subregulation (1) must be—

(a) served personally on the person by a sheriff or a clerk;

(b) submitted to the person by—

- (i) registered post;
- (ii) facsimile; or
- (iii) e-mail, if proof of receipt thereof can be given by the person who sent the e-mail; or

- (c) served or submitted in any other manner as directed by a presiding officer.
- (3) If a notice is submitted to the person by—
- (a) registered post, proof thereof must be kept; or
  - (b) facsimile or e-mail, proof thereof must be kept and the original form must be sent without delay to the person by registered post.

### **Witnesses**

9.(1) The clerk must summons a person to appear as a witness in a matter before the court at least 14 days before the date of the hearing on a form that corresponds substantially with Form 5 of the Annexure.

(2) A person contemplated in section 59(1)(b) or (c) of the Act, who intends to have a witness summoned must, within 14 days before the date of the hearing, request the clerk to issue a notice, and the clerk must forthwith issue the notice.

### **Additional powers of court**

10.(1) The court may, if there is any uncertainty regarding the age of a person who appears to be a child—

- (a) require any documentation, evidence or statements relevant to the determination of the age of the person from any person, body or institution; or
  - (b) refer that person to a district surgeon of the court's choice for an estimation of that person's age.
- (2) The district surgeon referred to in subregulation (1), must complete a form which corresponds substantially with Form 6 of the Annexure.
- (3) The court must, on all the available evidence, make a determination of the age of the child which must be entered into the record as the age of the child, which age must be considered to be the correct age until any contrary evidence is placed before the court.

(4) Where a court makes a determination of age that is not supported by a valid birth certificate, identity document or passport, a record of the determination must be forwarded to the Department of Home Affairs on a form that corresponds substantially with Form 7 of the Annexure for the issue of relevant identification documents.

(5) The court may, upon the application by any person affected by a decision of that court, on its own accord correct patent errors in any ruling in respect of which no appeal is pending.

## ***Part 2***

### **Investigations**

**11.(1)** A person who has been ordered by a court in terms of section 50(1) of the Act to carry out an investigation or further investigation may, for the purpose of performing his or her functions—

- (a) examine a person who is likely to give material or relevant information about any matter the children's court ordered him or her to investigate; and
- (b) direct a person to identify himself or herself to the satisfaction of the investigator.

(2) An investigator may, in investigating a matter so ordered by the court and with due consideration to expediting the investigation of that matter, direct any person to-

- (a) appear on a specific time and date before him or her; and
- (b) produce to him or her on the date of appearance, information relating to the matter and documentary proof of the information, if applicable.

(3)(a) A direction contemplated in subregulation (2) may be given in the manner the investigator deems fit.

(b) An investigator must keep a written record—

- (i) of the manner in which the direction was given;
- (ii) of any matter he or she investigates;
- (iii) of any proceedings held before him or her; and
- (iv) the outcome of the investigation.

(4) After the investigator has concluded his or her investigation he or she must compile a report which must contain the following information:

- (a) the matter which was investigated;
- (b) the reason for the investigation;
- (c) the manner of the investigation; and
- (d) the outcome of the investigation.

(5) The investigator must submit the report contemplated in subregulation

(4) within 14 days after the conclusion of the investigation to the court.

### **Pre-hearing conferences**

12.(1) If the court has ordered that a pre-hearing conference must be held, the court—

- (a) must direct who must attend the pre-hearing conference;
- (b) must direct who will chair the pre-hearing conference; and
- (c) may, if necessary, direct that a court interpreter must attend the pre-hearing conference.

(2) The clerk must, within three days after such order—

- (a) assign a date for a pre-hearing conference, which may not be longer than 14 days after the order was made; and
- (b) notify the parties involved on a form which corresponds substantially with Form 2 of the Annexure, of the date, place and time of the pre-hearing conference.

(3) At a pre-hearing conference the chairperson of the pre-hearing conference must—

- (a) give such directions in respect of the conduct of the proceedings as he or she deems fit; and
- (b) if a party is unrepresented, inform him or her of his or her right to be represented at his or her own expense by a legal representative of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance.

(3) The chairperson of the pre-hearing conference must, within five days after the conclusion of the pre-hearing conference, submit to the court—

- (a) a full written report of the pre-hearing conference;
- (b) any agreement reached between the parties;
- (c) any settlement reached between the parties;
- (d) issues to be heard by the court; and
- (e) any other matter the chairperson deems necessary.

(4)(a) If a person, so directed, fails to attend a pre-hearing conference without any good cause, the chairperson of the pre-hearing conference may—

- (i) proceed with the pre-hearing conference in the absence of that person;
- (ii) postpone the pre-hearing conference once only for not longer than three days, if the person in question is likely to make a valuable contribution regarding the best interests of the child in question; or
- (iii) refer the matter back to the court for a hearing.

(b) A person who failed to attend a pre-hearing conference without good cause, may forfeit his or her right to be present at any further discussions regarding the best interests of the child in question.

### **Family group conferences**

13.(1) If the court orders that the matter must be referred for mediation to a family group conference as contemplated in regulation 6(2)(a)(i), the presiding officer of that court must appoint a person as contemplated in subregulation (2), as facilitator of the family group conference.

(2) The facilitator of a family group conference can be any suitably qualified person, including, but not limited to a—

- (a) family advocate;
- (b) social worker;
- (c) social service professional; or
- (d) traditional leader.

(3) On receipt of an order as contemplated in regulation 6(2)(a)(i) the clerk must, within three days, in the manner determined by the court—

- (a) refer the matter to the facilitator by means of a form which corresponds substantially with Part A of Form 4 of the Annexure;
  - (b) submit all relevant original documents relating to the matter, to the facilitator;
  - (c) retain certified copies of all the documentation relating to the matter;
  - (c) forward a copy of the referral to the parties; and
  - (d) notify the parties of the documents submitted to the facilitator.
- (4) After a facilitator has received the documentation as contemplated in subregulation (3), he or she must convene a family group conference within 14 days but not later than 21 days after such receipt of the documentation by –
- (a) setting the time and place of the conference; and
  - (b) taking steps to ensure that all persons entitled to attend the conference are notified within a reasonable time, of the time and place of the conference.
- (5) No notice contemplated in subregulation (4)(b) need be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subregulation does not affect the validity of the proceedings of a family group conference unless such failure is likely to affect the outcome of the family group conference materially.
- (6) Where a family group conference fails to take place, the facilitator must arrange for an alternative date and notify the persons entitled to attend the family group conference accordingly.
- (7) It is the duty of the facilitator to confer with the parties and endeavour to obtain an agreement in respect of the matter.
- (8) Before entering into discussions at the family group conference, the parties must decide whether the facilitator is to file—
- (a) a full report on the conference, including anything that the facilitator considers to be relevant to the matter; or



- (b) a report that either sets out the agreement reached by the parties or states only that the parties did not reach agreement on the matter.
- (9) The report contemplated in subregulation (8) must be submitted to the court within 21 days after conclusion of the family group conference.
- (10) If the facilitator refers the matter back to the court for a hearing, such referral must be in writing on a form which corresponds substantially with Part B of Form 4 of the Annexure, stating the reasons why the matter was referred back.
- (11) The court must, within seven days from the date on which the matter was referred back to the court, give instructions that the matter must be heard in court and the clerk must—
  - (a) within three days after such order, assign a date for the matter to be heard in court; and
  - (b) notify the parties involved in the matter on a form which corresponds substantially with Form 2 of the Annexure of the date, place and time of the hearing.

### **Lay forums**

**14.(1)** The court may order that the matter must be referred for mediation to a specified lay forum as contemplated in regulation 6(2)(a)(ii).

- (2) On receipt of an order as contemplated in regulation 6(2)(a)(ii) the clerk must, within three days, in the manner determined by the court—
  - (a) refer the matter to a specific lay forum by means of a form which corresponds substantially with Part A of Form 4 of the Annexure;
  - (b) submit all relevant original documents relating to the matter, to such lay forum;
  - (c) retain certified copies of all the documentation relating to the matter;
  - (c) forward a copy of the referral to the parties; and
  - (d) notify the parties of the documents submitted to the lay forum.

(3) After a lay forum has received the documentation as contemplated in subregulation (2), that lay forum must appoint a person to act as chairperson, within five days, who must arrange a meeting within 14 days but not later than 21 days after receipt of the documentation by the lay forum by –

- (a) setting the time and place of the meeting; and
- (b) taking steps to ensure that all persons entitled to attend the meeting are notified within a reasonable time, of the time and place of the meeting.

(4) No notice contemplated in subregulation (3)(b) need be given to any person whose whereabouts, after reasonable enquiries, are unknown and failure to notify any person in accordance with that subregulation does not affect the validity of the proceedings of a lay forum meeting, unless such failure is likely to affect the outcome of the lay forum meeting materially.

(5) Where a lay forum meeting fails to take place, the chairperson must arrange for an alternative date and notify the persons entitled to attend the lay forum meeting accordingly.

(6) It is the duty of the chairperson to confer with the parties and endeavour to obtain an agreement or settlement in respect of the matter.

(7) Before entering into discussions at the meeting, the parties must decide whether the chairperson is to file—

- (a) a full report of the meeting, including anything that the chairperson considers relevant to the matter; or
- (b) a report that either sets out the agreement reached by the parties or states only that the parties did not reach agreement on the matter.

(8) The report contemplated in subregulation (7) must be submitted to the court within 21 days after conclusion of the proceedings of the lay forum.

(9) If the lay forum refers the matter back to the court for a hearing, such referral must be in writing on a form which corresponds substantially with Part

B of Form 4 of the Annexure, stating the reasons why the matter was referred back.

(10) The court must, within seven days from the date on which the matter was referred back to the court, give instructions that the matter must be heard in court and the clerk must—

- (a) within three days after such order, assign a date for the matter to be heard in court; and
- (b) notify the parties involved in the matter on a form which corresponds substantially with Form 2 of the Annexure of the date, place and time of the hearing.

#### **CHAPTER IV CHILD ABDUCTION**

##### **Application for return of child to the Republic**

15.(1) An application for the return of a child under article 8 of the Convention from another contracting state to the Republic, must be in writing on a form that corresponds substantially with Form 13 of the Annexure.

(2) An application as contemplated in subregulation (1) must be accompanied by—

- (a) recent photographs of the child and of the person alleged to have removed or retained the child;
- (b) a certified copy or copies of birth certificates of the child;
- (c) proof of parental rights and responsibilities,
- (d) a certified copy of the marriage certificate, where applicable;
- (e) details of the location of the child or the possible location of the person alleged to have removed or retained the child, if known;
- (f) sworn translations of all the relevant documentation in English, if the documentation is in a foreign language; and

- (g) a chronological exposition of events and circumstances leading to the abduction of the child.

(3) An application as contemplated in subregulation (1) must be submitted to the Central Authority in the Republic, who must within 48 hours of receipt thereof forward it to the Central Authority of the country to which the child has been taken.

#### **Access to child wrongfully removed or retained**

**16.(1)** An application for access to a child wrongfully removed to the Republic or retained in the Republic must be—

- (a) in writing on a form that corresponds substantially with Form 14 of the Annexure; and
- (b) submitted to the office of any Family Advocate in the Republic, which must, without delay, submit the application to the office of the Chief Family Advocate.

(2) Upon receipt of the application as contemplated in subregulation (1), the Chief Family Advocate must bring an application, within 14 days after the child has been located to the High Court having jurisdiction.

#### **Application to return child or children to a contracting state**

**17.(1)** If a child has been wrongfully removed to the Republic or retained in the Republic, the Central Authority, must—

- (a) upon receipt of the documents from the other country's Central Authority study the application; and
- (b) within 14 days after the child has been located, bring an application to the High Court on behalf of the left behind parent or person with parental rights and responsibilities to have the child returned to his or her place of habitual residence.

(2) An application for assistance made by an applicant to the Chief Family Advocate must, unless the contrary is proved, be deemed to constitute authorisation by the applicant for the Chief Family Advocate or a Family Advocate to exercise any power and perform any duty conferred or imposed

on him or her under the Convention, and to appear on the applicant's behalf in any proceedings that may be necessary under the Convention.

#### **Appointment of persons by Chief Family Advocate**

**18.(1)** Where no Government department can grant the assistance sought or where the Chief Family Advocate considers it necessary to give effect to the provisions of the Convention he or she may, subject to any condition he or she may deem appropriate, appoint any person or persons to assist him or her, or a Family Advocate, to exercise any power or perform any duty conferred or imposed upon the Central Authority under the Convention.

(2) The appointment and any conditions thereof must be in writing and in a certified copy or duplicate original thereof must be handed to the person concerned: Provided that in urgent cases the appointment may be made orally but must subsequently be confirmed in writing without delay.

#### **Obstruction of Chief Family Advocate, Family Advocate or person appointed**

**19.** Any person who hinders or obstructs the Chief Family Advocate, a Family Advocate or a person appointed by the Chief Family Advocate in terms of regulation 18 in the exercise of his or her powers or the performance of any duty conferred or imposed on him or her under the Convention, the Act or these Regulations is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

#### **Court appearances**

**20.** The Chief Family Advocate or a Family Advocate must appear on behalf of an applicant in any court proceedings that may be necessary to give effect to the provisions of the Convention, where the applicant does not—

- (a) qualify for legal aid in terms of the Legal Aid Act, 1969 (Act 22 of 1969), read with Article 25 of the Convention; or
- (b) wish to appoint a legal representative of his or her choice.

#### **Fees of person appointed by Chief Family Advocate**

**21.** (1) Any person appointed in terms of regulation 18 who is not an officer in the Public Service is for assistance thus rendered by him or her entitled to the following remuneration:

- (a) Where he or she is a tracing agent or some other person appointed to locate a child or any other person: an amount of not more than R500 if such child or other person is located.
  - (b) Where he or she is a social worker or some other person appointed to investigate and report on the social background, living conditions or other circumstances of a child or to obtain any other information or to harbour, keep safe or escort a child and, for the purposes of rendering such assistance:
    - (i) A transport allowance as prescribed from time to time for the Public Service; and
    - (ii) if he or she is required to rent overnight accommodation or is absent for a period of 24 hours or longer from the city or town where he or she normally works or resides—
      - (aa) the reasonable actual expenses incurred; or
      - (bb) the expenses as prescribed from time to time for the Public Service.
- (2) A person contemplated in subregulation (1) must when submitting a claim for actual real expenses incurred by him or her, submit the necessary receipts, vouchers or any other proof in support of his or her expenses to the Central Authority, whose decision regarding the amounts payable in terms of this regulation is final.

#### **Recovery of expenditure**

**22.(1)** Where an application for the return of a child has been successful, the State may recover from the applicant the expenses incurred or to be incurred in bringing about the return of the child.

(2) Where an application for the return of a child or for the right of access to a child has been successful and no order was made against the respondent to pay any of the expenses or costs incurred by or on behalf of the applicant, the State may recover such expenses or costs from the respondent.

(3) Any expenses or costs recovered by the State in terms of subregulation (1) or (2) shall accrue to the National Revenue Fund.