

CHAPTER 7
CHILD PROTECTION SYSTEM
(Sections 104 – 110 and 142(a) – (f) of the Act)

35. National norms and standards for child protection services

The national norms and standards concerning child protection as contemplated in section 106 of the Act are reflected in Annexure A.

36. Criteria to be met by child protection organisations

(1) A child protection organisation complies with the criteria contemplated in section 107(1) of the Act if such organisation, upon application to be designated as a child protection organisation, has shown that it –

- (a) is a legal persona and is registered with the appropriate authority or in terms of service-specific related legislation which requires registration;
- (b) as a non-profit organisation in terms of the Non-Profit Organisations Act 71 of 1997, is affiliated to a non-profit organisation that is so registered or can provide proof that the organisation is in the process of registering under the Non-Profit Organisations Act;
- (c) has the necessary capacity and expertise to deliver statutory services in terms of the Act, and that its operation conforms to the MEC for social development's plan for the delivery of child protection services in the relevant province;
- (d) has a constitution that embraces the provision of child protection services;
- (e) has the ability to provide effective and efficient services;
- (f) promotes an equitable distribution of services, taking into account historical imbalances, including race, gender and the geographical urban and rural areas;
- (g) promotes inclusiveness and representativity in the management and organisation of services;
- (h) is able to account for the utilisation of financial awards made by the Department in an acceptable manner and in terms of the prescripts of the Public Finance Management Act 1 of 1999, implying that the focus should be on the efficiency, economy and effectiveness of programmes and best practice financial management; and

- (i) supports and commits itself to partnerships and collaboration with emerging organisations.

(2) An application to be designated as a child protection organisation must include a business plan which should contain the following information –

- (a) the biographic information of the organisation;
- (b) information on the management board, staff, volunteers and current beneficiaries of the organisation;
- (c) objectives, outputs and outcomes; and
- (d) activity-based budgets reflecting the amount of funds required and the purposes for which such funds will be utilised.

(3) An application to be designated as a child protection organisation must be accompanied by the following documents or certified copies thereof –

- (a) the organisation's most recent audited financial statements or, if audited statements cannot be furnished, such financial statements as are available accompanied by a sworn statement as to why audited statements cannot be furnished;
- (b) proof of such registration as may be required;
- (c) social workers' certificates of registration;
- (d) the organisation's constitution and, if available, its code of conduct;
- (e) confirmation of banking details; and
- (f) a financial assurances declaration.

(4) The Director-General may designate an appropriate organisation that complies with the requirements specified in subregulations (1), (2) and (3) as a child protection organisation for a period not exceeding five years at a time.

(5) An organisation which has been designated as a child protection organisation in terms of section 107 of the Act or deemed to be designated in terms of section 108 of the Act must submit a new application for designation in accordance with this regulation at least two months before the expiry of the period of designation referred to in subregulation (4) or section 108(2) of the Act, as the case may be.

37. Quality assurance to evaluate child protection organisations prior to withdrawal of designation

The quality assurance referred to in section 109(2) of the Act which must be conducted to evaluate an organisation prior to withdrawal of designation as a child protection organisation is the developmental quality assurance process contemplated in regulation 104 to be conducted in respect of child and youth care centres, which process must be applied, with such changes as may be required by the context, to evaluate a child protection organisation prior to withdrawal of designation.

38. Reporting of abuse and deliberate neglect of children

Any person contemplated in section 110(1) of the Act who concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberate neglected, must report that conclusion to a designated child protection organisation, a provincial department of social development or a police official in a form substantially corresponding with **Form 25** by completing that form to the best of his or her ability and by including in the form such particulars as are available to him or her.

39. Request for removal of offender

A request by a provincial department of social development or a designated child protection organisation for the removal of an alleged offender from his or her home or from the place where he or she resides as contemplated in section 110(6)(b) of the Act, must –

- (a) be submitted to the South African Police Service having jurisdiction in writing;
- (b) contain particulars regarding the alleged offender; and
- (c) substantially correspond with **Form 24**.

40. Broad risk assessment framework to guide decision-making in provision of designated child protection services

(1) The broad risk assessment framework contemplated in section 142(c) of the Act aims to provide guidelines for –

- (a) the identification of children who are being abused or deliberately neglected;
- (b) the assessment of risk factors to support a conclusion of abuse and neglect on reasonable grounds as contemplated in section 110 of the Act;
- (c) the investigation by a provincial department of social development or a designated child protection organisation upon receipt of a report of the abuse or neglect of a child; and
- (d) the appropriate protective measures to be taken in respect of a child.

(2) The framework consists of, but is not limited to, the following guidelines:

- (a) The presence of indicators of physical abuse, including bruises in and around the mouth, face or any other part of the body; grasp marks on the arms, chest or face; variations in bruising colour; black eyes; belt marks; bruising or tears around or behind the ears; cigarette or other burn marks; cuts; welts; fractures; head injuries; fits; convulsions that are not due to epilepsy or high temperature; drowsiness; irregular breathing; vomiting; pain; fever or restlessness;
- (b) the presence of indicators of sexual abuse, including vaginal bleeding; genital lacerations or bruising; penile or vaginal discharge; sexually transmitted infections; abnormal dilation of the vagina, anus or urethra as assessed by a health care professional competent to perform the relevant examination; itching, soreness or unexplained bleeding of the genitals; faecal soiling or retention; pain on passing urine and recurrent urinary tract infections; semen in the vagina, anus, external genitalia or on clothes as determined through recognised forensic procedures; pregnancy; recurrent abdominal pain; difficulty in walking or sitting; withdrawal from peer group activities; deterioration in school work or sudden and quiet behaviour trends in otherwise lively and active children;
- (c) the presence of emotional and behavioural indicators of physical, psychological or sexual abuse, including aggression; physical withdrawal when approached by adults; anxiety; irritability; persistent fear of familiar people or situations; sadness; suicidal actions or behaviour; self-mutilation; obsessional behaviour; neglect of personal hygiene; age or socially inappropriate sexual behaviour or knowledge; active or passive bullying; unwillingness or fearfulness to undress or wearing layers of clothing;
- (d) the presence of developmental indicators of physical, psychological or sexual abuse, including failure to thrive; failure to meet physical and psychological

developmental norms; withdrawal; stuttering; unwillingness to partake in group activities; clumsiness; lack of coordination or orientation or observable thriving of children away from their home environment;

- (e) the presence of indicators of deliberate neglect, including underweight; reddish scanty hair; sores around the mouth; slight water retention on the palm of the hands or in the legs; extended or slightly hardened abdomen; thin and dry skin; dark pigmentation of skin, especially on extremities; abnormally thin muscles; developmental delay; lack of fatty tissue; disorientation; intellectual disability; irritability; lethargy or withdrawal;
- (f) a disclosure of abuse or deliberate neglect from the child; or
- (g) a statement relating to a pattern or history of abuse or deliberate neglect from a direct witness relating to the abuse of the child.

(3) A person who, due to the presence of indicators referred to in subregulation (2), suspects that a child has been sexually abused, abused in a manner causing physical injury or deliberately neglected, must assess the total context of the child's situation in accordance with the following guidelines:

- (a) Many indicators may be non-specific to abuse or neglect;
- (b) a cluster or pattern of indicators as opposed to a single isolated indicator will provide support for a conclusion of abuse or neglect;
- (c) information about specific times of any incidents, places where incidents have taken place and the context within which incidents have taken place, which must be noted in writing, may provide support for a conclusion of abuse or neglect;
- (d) abuse may be unintentional, but failure on the part of the parent or care-giver to prevent abuse of the child may amount to neglect;
- (e) abuse may be physical, psychological or sexual without any visible indicators and is likely to exist if the child continuously reports threats of harm or punishment;
- (f) a series of minor incidents, any of which may, when considered in isolation, not amount to abuse or neglect, may constitute abuse or neglect when considered together;
- (g) the child's age, personality and temperament should be taken into account; and
- (h) discrepancies in the rendition of incidents by the child and his or her parent or care-giver may either provide or diminish support for a conclusion of abuse or neglect.

(4) The provincial department of social development or a designated child protection organisation to whom a report has been made in terms of section 110(1), (2) or (4) of the Act must –

- (a) make an assessment of the indicators referred to in subregulation (2) by taking the guidelines in subregulation (3) into account; and
- (b) if a further investigation is required,
 - (i) establish the facts surrounding the circumstances giving rise to the concern;
 - (ii) evaluate the child's parental circumstances, including parental characteristics, mental stability, maturity; physical or emotional impairment, substance abuse, capabilities, temperament, employment status, level of support given to the parent or care-giver by friends; the capacity and disposition of the parent or care-giver to give the child guidance and to give adequate and appropriate support to a child with disabilities; emotional bonding between the parent or care-giver and the child; and a history of parental abuse or neglect of the child;
 - (iii) evaluate the child's family circumstances, including family violence; inappropriate discipline; dependency; marital stress; temporary or permanent unemployment; and family or parental composition;
 - (iv) evaluate the child's environmental circumstances, including poverty; overcrowding; homelessness; isolation; high mobility of the parents; the presence of social, environmental or financial stress; and the type of neighbourhood and community;
 - (v) identify sources who may verify the alleged abuse;
 - (vi) identify the level of risk that the child's safety or well-being is exposed to, including factors indicating that the child has suffered, or is likely in the near future to suffer, a non-accidental physical injury due to conditions which his or her parent or care-giver has failed to correct, or due to their having failed, to provide adequate protection; that the child is displaying symptoms of emotional damage and the unwillingness of the parent to address the problem or to seek assistance; that the child has been sexually abused by a member of the household; and that the child is in

need of medical treatment, without which he or she will suffer severe ill-effects;

- (vii) identify actual and potential protective and supportive factors in the home and broader environment to minimise risk to the child; and
- (viii) decide on the appropriate protective measures or intervention as provided for in the Act.

(5) In deciding upon the appropriate protective measures or intervention as provided for in the Act, the provincial department of social development or a designated child protection organisation must take account of the following:

- (a) The total context of the child's situation, given his or her age, and the level of risk that the child is exposed to, bearing in mind that certain injuries may be more prevalent in younger than older children;
- (b) the feasibility of prevention and early intervention measures to protect the child, as well as other measures that would minimise the level of risk yet allowing the child to remain in his or her home environment, including the removal of the abuser;
- (c) the emotional risk to the child involved in a sudden, unprepared removal; and
- (d) placement of the child in alternative care should only be considered in cases where a serious and immediate danger to the child outweighs the trauma involved in such a removal.

41. Criteria for determining suitable persons to investigate child abuse or neglect

A person is suitable to conduct investigations into cases of alleged child abuse or neglect as contemplated in section 142(d)(i) of the Act if such person –

- (a) is a registered social worker or is employed by the Department or a provincial department of social development;
- (b) is employed by a designated child protection organisation;
- (c) has sufficient experience in the field of child protection or is working under the supervision of a person who has at least five years experience in child protection;
- (d) has not been found unsuitable to work with children and has no previous convictions relating to child abuse;

- (e) demonstrates a willingness to enhance his or her skills on a regular basis;
- (f) upholds the rights of the child and children's best interests; and
- (g) is willing to work in a multi-disciplinary team with the objective of securing the best protection plan based on a child's developmental needs.

42. Powers and duties of persons suitable to investigate child abuse or neglect

A person who is suitable to conduct investigations into cases of alleged child abuse or neglect as contemplated in regulation 41 must –

- (a) receive a report alleging the abuse or neglect of a child;
- (b) investigate such report as referred to in the broad risk assessment framework contemplated in regulation 40 within such reasonable time as may be required by the severity of the case, with due regard to the need for post-exposure prophylaxis within 72 hours in cases of sexual abuse;
- (c) if necessary, accompany the child or cause the child to be accompanied to a police station for purposes of laying a complaint;
- (d) if necessary, accompany the child or cause the child to be accompanied to a medical facility for purposes of medical treatment of the child;
- (e) facilitate counselling and support to reduce trauma to the child and his or her family members, and if necessary, refer the child to other relevant disciplines;
- (f) co-ordinate the available and applicable child protection services to ensure the safety and well-being of the child;
- (g) develop and implement a child protection plan in consultation with the child, his or her family and, if required, other applicable disciplines;
- (h) review the child protection plan on a six-monthly basis or earlier, depending on the severity of the abuse or neglect;
- (i) ensure that the prescribed particulars of the child are recorded in Part A of the National Child Protection Register established by Part 2 of Chapter 7 of the Act; and
- (j) take such protective measures as are contemplated in the Act or in guidelines issued by the Department.

43. Conditions for examination or assessment of abused or neglected children and consent of such children

(1) A child who is suspected of having been abused or neglected must, upon the examination or assessment of such child –

- (a) be addressed in a language which he or she can understand;
- (b) be accompanied by a support person of the child's choice, unless he or she, if of sufficient maturity and mental capacity to understand the reasons for the assessment or examination, expresses a wish not to be accompanied by such person;
- (c) be treated with empathy, care and understanding, with due regard to the child's right to privacy and confidentiality;
- (d) as far as possible be examined or assessed in a child-friendly environment;
- (e) not be subjected to the presence of any other person who is not required to be present at the examination or assessment; and
- (f) not be subjected to cruel or degrading language.

(2) A child must, prior to him or her being examined or assessed for purposes of establishing whether such child has been abused or neglected, consent, either orally or in writing, to the assessment or examination if such child is of sufficient maturity and has the mental capacity to understand the reasons for the examination or assessment: Provided that an assessment or examination may proceed in the absence of a child's consent if it is deemed to be in the interests of such child, in which case the reasons for proceeding with the assessment or examination must be noted in writing by the person doing the assessment or examination and explained to the child and to his or her parent, guardian or care-giver.

CHAPTER 8

**THE NATIONAL CHILD PROTECTION REGISTER
(Sections 111 – 128 and 142(g) – (k) of the Act)**

PART I

PART A OF REGISTER

44. Contents of Part A of Register

(1) (a) The Director-General must be notified in writing by a provincial department of social development or a designated child protection organisation of a report of abuse or deliberate neglect of a child or the fact that a child is in need of care and protection as contemplated in sections 110(5) and 114(1)(a) of the Act made by any person referred to in section 110(1), (2) or (4) of the Act, within 21 days after such department or organisation has investigated the report and is satisfied that the safety or well-being of the child concerned is at risk and that the report is not frivolous or obviously unfounded.

(b) The notification must –

- (i) if not submitted electronically, be contained in a sealed envelope marked confidential;
- (ii) reflect the particulars set out in section 114(2)(a) of the Act and in subregulation (4)(a); and
- (iii) be in a form substantially corresponding with **Form 25**.

(c) The Director-General must upon receipt of the notification, cause the particulars as set out in the notification to be included in Part A of the Register forthwith.

(2) (a) The Director-General must be notified in writing of the conviction of a person on a charge involving the abuse or deliberate neglect of a child, as contemplated in section 114(1)(b) of the Act, or of a finding by a children's court that a child is need of care and protection because of abuse or deliberate neglect, as contemplated in section 114(1)(c) of the Act, by the registrar or clerk of the court concerned, as the case may be, within 14 days after such conviction or finding.

(b) The notification must –

- (i) if not submitted electronically, be contained in a sealed envelope marked confidential;
- (ii) reflect the particulars set out in section 114(2)(b) and (c) of the Act and in subregulation (4)(b) and (c); and
- (iii) be in a form substantially corresponding with **Form 26**.

(c) The Director-General must upon receipt of the notification, cause the particulars as set out in the notification to be included in Part A of the Register forthwith.

(3) The registrar or clerk of the court who has notified the Director-General of the conviction of a person as contemplated in subregulation (2), must inform the Director-General in writing of any successful appeal against or review of such conviction within seven days of receiving notice of the outcome of the appeal or review, upon which the Director-General must remove the name and particulars of the convicted person from Part A of the Register forthwith.

(4) The particulars to be included in Part A of the Register in terms of section 114(2) of the Act must, in addition, include –

(a) in the case of section 114(2)(a) relating to reports of abuse or deliberate neglect made to the Director-General –

- (i) the child's passport number, where applicable;
- (ii) the whereabouts of the alleged perpetrator;
- (iii) the persons with whom the child was living at the time of the incident;
- (iv) previous history of abuse or deliberate neglect of the child, if any; and
- (v) the title, full names, surname, physical address and capacity of the person who reported the abuse or deliberate neglect of the child; and

(b) in the case of section 114(2)(b) relating to convictions on charges involving abuse or deliberate neglect –

- (i) the child's passport number, where applicable;
- (ii) the convicted person's alias or nickname, passport number, driver's license number and relevant prisoner identification number, where applicable; and
- (iii) the particulars of the court in which the trial took place and the case number; and

(c) in the case of section 114(2)(c) relating to a finding by a children's court that a child is in need of care and protection because of abuse or deliberate neglect –

- (i) the child's passport number, where applicable; and
- (ii) the particulars of the children's court in which the finding was made and the case number.

45. Inquiries on information in Part A of Register

(1) An inquiry by a person, including a child, ("the affected person") in terms of section 117 of the Act to establish whether or not his or her name appears in Part A of the Register, must be –

- (a) directed to the Director-General;
- (b) contained in a sealed envelope marked confidential;
- (c) accompanied by a certified copy of the affected person's birth certificate, identity document or passport; and
- (d) in a form substantially corresponding with **Form 27** which must contain the following particulars –
 - (i) the full names, surname, physical address and postal address of the affected person; and
 - (ii) a request for the furnishing of reasons why the affected person's name was included in Part A of the Register in the event that such an entry is found.

(2) If the person making the inquiry in terms of subregulation (1) is a child below the age of 12 years, such child must be assisted in making the inquiry by his or her parent, guardian or care-giver or by a designated social worker, unless it is demonstrated to the satisfaction of the Director-General that the child is of sufficient maturity to make the inquiry on his or her own.

(3) In furnishing reasons for the inclusion of an affected person's name in Part A of the Register as contemplated in subregulation (1)(d)(ii), the Director-General must –

- (a) give particulars regarding the date, time and place of the incident or act that led to the inclusion of the affected person's name in Part A of the Register; and
- (b) give a brief description of the incident or act that led to the inclusion.

(4) The Director-General must respond to an inquiry in terms of this regulation within the periods referred to in section 117(3) of the Act by way of a form determined by the Director-General.

PART II
PART B OF REGISTER

46. Contents of Part B of Register

The particulars to be included in Part B of the Register in terms of section 119 of the Act of a person found unsuitable to work with children, must, in addition, include –

- (a) the passport number and driver's license number of that person, where applicable;
- (b) that person's date of birth;
- (c) any known alias or nickname of that person, where applicable;
- (d) the relevant prisoner identification number of that person, where applicable; and
- (e) particulars of the court or forum in which the finding of unsuitability to work with children was made.

47. Finding persons unsuitable to work with children

(1) If a court or forum makes a finding that a person is unsuitable to work with children in terms of section 120 of the Act based on the conviction of that person in any foreign jurisdiction of –

- (a) murder;
- (b) rape;
- (c) culpable homicide involving gross negligence;
- (d) indecent assault;
- (e) incest;
- (f) kidnapping;
- (g) any statutory sexual offence;
- (h) any offence relating to the manufacture, distribution or possession of child pornography;
- (i) any offence relating to the trafficking of children;
- (j) abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities, whether domestic or as contemplated in the Hague Convention on International Child Abduction;

- (k) assault with intent to cause grievous bodily harm;
 - (l) common assault; or
 - (m) any attempt to commit any of the offences listed in paragraphs (a) to (l),
- with regard to a child, or the equivalent of any such offence, including any offence involving any form of exploitation of a child, the equivalent information as is contemplated in section 119 of the Act and in regulation 46, as obtained from the relevant country or any other legal source, must as far as possible be included in Part B of the Register.

(2) A person may be found unsuitable to work with children as contemplated in section 120 of the Act –

- (a) by a court or relevant administrative forum on evidence that such person has, on a balance of probabilities, caused or participated in or colluded in the maltreatment, abuse, deliberate neglect or degradation of any child or has subjected any child to child labour in the current proceedings before the court or administrative forum;
- (b) by a court or relevant administrative forum on evidence that such person has, on a balance of probabilities, previously caused or participated in or colluded in the maltreatment, abuse, deliberate neglect or degradation of any child or has subjected any child to child labour as became evident in any other court proceedings, disciplinary proceedings of any forum established or authorised by law or in an inquest, including an inquest or proceedings in a foreign jurisdiction;
- (c) in criminal proceedings by a court if such person has in such proceedings been convicted, in addition to the offences contemplated in section 120(4) of the Act, of –
 - (i) any statutory sexual offence;
 - (ii) abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities, whether domestic or as contemplated in the Hague Convention on the Civil Aspects of International Child Abduction;
 - (iii) kidnapping;
 - (iv) culpable homicide involving gross negligence;
 - (v) any offence relating to the manufacture, distribution or possession of child pornography;

- (vi) any offence relating to the trafficking of children;
 - (vii) common assault; or
 - (viii) any attempt to commit any of the offences listed in subparagraphs (i) to (vii), or an attempt to commit assault with the intent to do grievous bodily harm,
- in relation to a child;
- (d) by a court or relevant administrative forum on evidence that such person has previously been convicted of –
- (i) murder;
 - (ii) any statutory sexual offence;
 - (iii) culpable homicide involving gross negligence;
 - (iv) any offence relating to the manufacture, distribution or possession of child pornography;
 - (v) any offence relating to the trafficking of children;
 - (vi) abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities, whether domestic or as contemplated in the Hague Convention on International Child Abduction;
 - (vii) kidnapping;
 - (viii) assault with intent to cause grievous bodily harm;
 - (ix) common assault; or
 - (x) any attempt to commit any of the offences listed in subparagraphs (i) to (ix),
- in relation to a child, including a conviction or similar conviction in a foreign jurisdiction.

(3) An application to a court or forum for a finding that a person is unsuitable to work with children as contemplated in section 120(2) of the Act may not be brought *ex parte* and must be made in the manner and contain the particulars set out in the Magistrate's Court Rules, if the finding is to be made by a Regional or District Court or forum, and as set out in the Supreme Court Rules, if the finding is to be made by a High Court.

(4) The National Commissioner of the South African Police Service must, within 18 months after the commencement of these regulations, forward to the Director-

General all the available particulars as required by section 119 of the Act and regulation 46 in his or her possession relating to the previous conviction of persons of the offences contemplated in section 120(5) of the Act during the five years preceding the commencement of Part 2 of Chapter 7 of the Act, upon which the Director-General must cause such particulars to be included in Part B of the Register forthwith.

48. Findings to be reported to Director-General

(1) (a) The relevant registrar, clerk of the court or a person contemplated in subregulation (2) must notify the Director-General of a finding that a person is unsuitable to work with children ("the affected person") within 21 working days after such finding has been made.

(b) The notification must –

- (i) if not submitted electronically, be contained in a sealed envelope marked confidential;
- (ii) indicate whether any appeal or review of the finding has been lodged by the affected person or is likely to be lodged;
- (iii) reflect the particulars of the affected person set out in section 119 of the Act and in regulation 46; and
- (iv) be in a form substantially corresponding with **Form 28**.

(c) The Director-General must upon receipt of the notification, cause the particulars as set out in the notification to be included in Part B of the Register forthwith.

(2) In the event that a relevant administrative forum, as contemplated in section 122(1) of the Act, has no official or staff member acting in the capacity of registrar or clerk of the court, the person responsible for convening the meeting or hearing of the administrative forum where the finding of the unsuitability of a person to work with children was made must notify the Director-General of such finding as contemplated in section 122 and subregulation (1).

(3) The registrar or clerk of the court which has reconsidered a finding that a person is unsuitable to work with children in terms of section 121 of the Act, must inform the Director-General in writing of any successful appeal against or review of such finding

within seven days of receiving notice of the outcome of the appeal or review, upon which the Director-General must remove the name and particulars of the relevant person from Part B of the Register forthwith.

49. Consequences of entry of name in Part B of Register

Further to the provisions of section 123(1) of the Act relating to types of prohibited employment or activity of a person whose name appears in Part B of the Register, no such person may –

- (a) be employed or involved in any position, whether in the public or private sector and whether against remuneration or not, where he or she will be placed in a position of authority, supervision or care of a child;
- (b) be employed or involved in any position, whether in the public or private sector and whether against remuneration or not, where he or she will be able to gain access to a child or to a place or places where children are present or congregate;
- (c) own or have any economic or business interest in any entity, business concern or trade relating to the supervision or care of a child if such interest would cause that person to have direct access to or would place him or her in a position of authority, supervision or care of a child; or
- (d) be permitted to become the guardian or care-giver, whether on a permanent or temporary basis, of a child.

50. Establishment of information in Part B of Register

(1) (a) An inquiry by an employer ("the applicant") in terms of section 126(1) or (2) of the Act to establish whether or not the name of a person ("the affected person") appears in Part B of the Register prior to or during his or her employment, must be –

- (i) directed to the Director-General;
- (ii) contained in a sealed envelope marked confidential;
- (iii) accompanied by an authentic letterhead or other form of appropriate identification of the applicant, duly signed by an authorised representative of the applicant;

- (iv) accompanied by a certified copy of the identity document or passport of the person whose signature is required in terms of subparagraph (iii); and
- (v) in a form substantially corresponding with **Form 29** which must contain the following particulars—
 - (aa) the name under which the applicant's business is conducted, its physical address, postal address, telephone numbers and any other relevant contact details;
 - (bb) details of the position that will be or is held by the affected person; and
 - (cc) the full names and surname, including any alias or nickname, identity number or passport number or driver's license number, physical address, postal address, telephone numbers and any other relevant contact details of the affected person.

(b) An inquiry by a person ("the affected person") in terms of section 126(3) of the Act to establish whether or not his or her name appears in Part B of the Register, must be –

- (i) directed to the Director-General;
- (ii) contained in a sealed envelope marked confidential;
- (iii) accompanied by a certified copy of the affected person's birth certificate, identity document or passport; and
- (iv) in a form substantially corresponding with **Form 30** which must contain the following particulars—
 - (aa) the full names, surname, physical address and postal address of the affected person; and
 - (bb) a request for the furnishing of reasons why the affected person's name was included in Part B of the Register in the event that such an entry is found.

(2) In furnishing reasons for the inclusion of an affected person's name in Part B of the Register as contemplated in subregulation (1)(b)(iv)(bb), the Director-General must –

- (a) give particulars regarding the date, time and place of the incident or act that led to the inclusion of the affected person's name in Part B of the Register; and
- (b) give a brief description of the incident or act that led to the inclusion.

(3) The Director-General must respond to an inquiry in terms of subregulation (1) within the periods referred to in section 126(5) of the Act by way of a form determined by the Director-General.

(4) The Director-General must, upon each entry of a person's name in Part B of the Register as being unsuitable to work with children, notify the affected person of such entry in writing within 21 working days after the entry was made by way of a form determined by the Director-General.

51. Removal of name from Register

(1) (a) An application to the Director-General for the removal of a person's name and information from Part B of the Register based on an erroneous entry as contemplated in section 128(2)(b) of the Act must be accompanied by an affidavit by such person and must be in a form substantially corresponding with **Form 31**.

(b) The Director-General must notify the applicant of the outcome of the application referred to in paragraph (a) within 21 working days from receipt of the application by way of a form determined by the Director-General.

(2) An application to a court for the removal of a person's name and any information relating to that person from Part B of the Register in terms of section 128(3) of the Act, unless the application is based on an erroneous entry of that person's name and information in the Register –

(a) must be accompanied by proof of the rehabilitation of that person, which must include –

- (i) a report, obtained at the applicant's own cost, compiled by a psychologist or psychiatrist duly registered or deemed to be registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974) to the effect that the applicant has been rehabilitated and is unlikely to commit another act or offence similar to that which has led to the inclusion of the applicant's name in Part B of the Register;
- (ii) an outline of the steps taken by the applicant to rehabilitate himself or herself since the time of entry of the applicant's name in Part B of the Register;

- (iii) an official document obtained from the South African Police Service confirming that the applicant has not been convicted of any offence in relation to a child during the period that the applicant's name had been included in Part B of the Register up until the time of making the current application; and
 - (iv) an affidavit by the applicant that no proceedings with regard to the maltreatment, abuse, deliberate neglect or degradation of a child are pending against him or her in any court or administrative forum at the time of making the current application; and
- (b) may only be lodged, in the case where that person –
- (i) has been convicted of an offence in relation to a child, which conviction gave rise to the inclusion of that person's name in Part B of the Register, and sentenced to –
 - (aa) a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), for a period of at least six months without the option of a fine, whether the sentence was suspended or not, after a period of ten years has lapsed after that person has been released from prison or the period of suspension has lapsed;
 - (bb) a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, for a period of six months or less without the option of a fine, whether the sentence was suspended or not, after a period of seven years has lapsed after that person has been released from prison or the period of suspension has lapsed;
 - (cc) any other form of lesser punishment or compliance with an order of court, after a period of five years has lapsed since the inclusion of that person's particulars in Part B of the Register;
 - (ii) is alleged to have committed an offence in relation to a child, which alleged offence gave rise to the inclusion of that person's name in Part B of the Register, in respect of whom a court has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure

Act, 1977, after a period of five years has lapsed after that person has recovered from the mental illness or mental defect in question and is discharged in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), from any restrictions imposed upon him or her.

(3) In considering an application in terms of section 128(3) of the Act and subregulation (2), the court may –

- (a) direct the applicant to submit such other information as the court may deem fit in order to satisfy itself that the applicant has been rehabilitated;
- (b) require the applicant to be evaluated by an additional registered psychologist or psychiatrist designated by the court, at the applicant's own cost or at state expense in the case of an indigent applicant;
- (c) have regard to evidence submitted by or on behalf of the victim of the incident or act that led to the inclusion of the applicant's name in Part B of the Register; or
- (d) cause the application to be investigated by a designated social worker.

(4) The clerk or registrar of the court, as the case may be, must notify the Director-General in writing, in a form substantially corresponding with **Form 32**, of the finding of the court regarding an application for the removal of a person's name and information from Part B of the Register within 14 days after such finding was made, upon which the Director-General, if the application for removal had been successful, must cause the name and information to be removed forthwith.

(5) The Director-General must notify each person of the removal of his or her name and information from Part B of the Register upon the direction of a court within 14 working days after such removal by way of a form determined by the Director-General.

52. Updating of information in Part B of Register

(1) A person whose name has been included in Part B of the Register and who has been duly informed of such inclusion in terms of regulation 50(4), must notify the Director-General of any change in his or her name or names, sex, identity number, physical or postal address within 14 days after such change.

(2) Any person who intentionally fails to notify the Director-General of any change contemplated in subregulation (1), 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.

CHAPTER 9

PROTECTIVE MEASURES RELATING TO HEALTH OF CHILDREN

(Section 129 of the Act)

53. Consent by the Minister to the medical treatment of or surgical operation on a child in certain circumstances

(1) An application to the Minister to consent to the medical treatment of or surgical operation on a child –

- (a) whose parent or guardian unreasonably refuse to give consent or to assist the child to give consent;
- (b) whose parent or guardian is incapable of giving consent or assisting the child to give consent;
- (c) whose parent or guardian cannot readily be traced or is deceased; or
- (d) who himself or herself unreasonably refuses consent,

must be made in writing in a form substantially corresponding with **Form 33**.

(2) The Minister must, within 14 days of receipt of the application referred to in subregulation (1), reply to the applicant indicating whether consent is approved or denied.

54. Consent by a child to the performance of a surgical operation

(1) Consent by a child to the performance of a surgical operation must be completed in writing by the person performing such operation or by a representative of the institution at which such operation is going to be performed, and signed by the child and may be furnished in a form substantially corresponding with **Form 34**.

(2) A parent or guardian who duly assists a child to consent to the performance of a surgical operation on such child must assent to this in writing in a form substantially corresponding with **Form 34**.

(3) A copy of the form referred to in subregulation (2) must be kept by the hospital, clinic, surgery or other institution at which the surgical operation is performed for a period which is in accordance with accepted medical practice.

55. Consent to a surgical operation of a child where parent is a child below 18 years of age

(1) Where the parent of a child in respect of whom consent to the performance of a surgical operation on such child is required, is himself or herself a child below the age of 18 years (a "child parent"), such child parent must be duly assisted by his or her parent or guardian in giving consent to the performance of a surgical operation on the child concerned.

(2) The parent or guardian of a child parent who duly assists such child parent to consent to the performance of a surgical operation on the child concerned, must assent to this in writing in a form substantially corresponding with **Form 35**.

(3) A copy of the form referred to in subregulation (2) must be kept by the hospital, clinic, surgery or other institution at which the surgical operation is performed for a period which is in accordance with accepted medical practice.

CHAPTER 10
OTHER PROTECTIVE MEASURES
(Section 137 of the Act)

56. Duties of supervising adult in relation to child-headed households

An adult designated in terms of section 137(2) of the Act to supervise a recognised child-headed household must, subject to the provisions of section 137(6) of the Act –

- (a) facilitate psychological, social and emotional support to all members of such household when required;

- (b) ensure that all members of such household who are by law required to attend school or who are required to attend an appropriate education programme, do so;
- (c) assist with the supervision of homework of members of such household;
- (d) educate the members of such household with regard to basic health and hygiene and, if possible, sexually transmitted infections;
- (e) assist with the health care requirements of any member of such household, including the supervision of the taking of medicine and assistance to members with disabilities;
- (f) assist the members of such household with legal documentation when required;
- (g) compile a roster indicating the responsibility of various members of such household in relation to domestic chores in consultation with the members of such household;
- (h) in consultation with a social worker, attempt to reconnect the members of such household with their parents or relatives;
- (i) engage the members of such household in issues that affect the household;
- (j) ensure proper provision of resources for such household's basic needs;
- (k) ensure proper utilization of available resources and adherence to a financial budget;
- (l) keep record of all expenditure of such household; and
- (m) utilise available and applicable child protection services to ensure the safety and well-being of the members of such household if and when required.

57. Accountability of supervising adult regarding administration of money

(1) An adult designated in terms of section 137(2) of the Act to supervise a recognised child-headed household and who collects and administers money on behalf of such household must, for purposes of accountability –

- (a) in consultation with the members of such household, bearing in mind the varying financial needs of different members of such household, develop a monthly expenditure plan reflecting available financial resources and payment;
- (b) ensure that the monthly expenditure plan is signed by the child at the head of such household; and

- (c) submit the monthly expenditure plan, duly signed as contemplated in paragraph (b), to the clerk of the children's court, the organ of state or the non-governmental organisation, as the case may be, which designated the adult to supervise the child-headed household, together with such original documents, receipts, invoices and other documentation that may serve as proof of the expenditure incurred.

(2) The clerk of the children's court, the organ of state or the non-governmental organisation which designated the adult referred to in subregulation (1) may, upon the absence of a counter-signature as contemplated in that subregulation or, if there is reason to suspect that there is a misappropriation or maladministration of money, cause the matter to be investigated and may take such steps as may be required by the circumstances, including the institution of criminal charges against such adult and the replacement of such adult by another supervising adult.

CHAPTER 11

PREVENTION AND EARLY INTERVENTION

(SECTIONS 143 – 149 OF THE ACT)

58. National norms and standards

The national norms and standards for prevention and early intervention programmes as contemplated in section 147 of the Act are reflected in Annexure A.

CHAPTER 12

CHILDREN IN NEED OF CARE AND PROTECTION

(Sections 150 – 160 of the Act)

59. Removal of child to temporary safe care and review of detention

(1) A person authorised by a court order, a designated social worker or a police official who removes a child and places such child in temporary safe care in terms of –

- (a) a children's court order contemplated in section 151(2) of the Act;

(b) an order by another court in terms of section 47(3); or

(c) without a court order in terms of section 152(1),

must grant authority to the place where the child is to be placed in temporary safe care for the interim placement of that child in a form substantially corresponding with **Form 36** and must request the children's court of the district where the child resides or happens to be for a review of the continued placement of the child in a form substantially corresponding with **Form 37**.

(2) (a) If the periods referred to in section 151(7) and section 152(2) and (3) of the Act expires –

(i) on a day which is not a court day or on any court day after four o' clock in the afternoon, the period must be deemed to expire at four o' clock on the afternoon of the next succeeding court day; or

(ii) on any court day before four o' clock in the afternoon, the said period must be deemed to expire at four o' clock in the afternoon on that court day.

(b) A court day for purposes of this regulation means a day on which the court in question normally sits as a court.

(3) The parent, guardian or care-giver of the child in whose custody the child had been immediately before removal to temporary safe care as contemplated in subregulation (1), must be informed by the designated social worker or police official, as the case may be, of the date and time of the review of the placement of the child by a presiding officer, which review must take place on the first, but by not later than the second, court day after the removal of the child to temporary safe care.

(4) (a) A child who has been removed to temporary safe care must, if practicable, be brought or caused to be brought before a children's court for a review of the placement of that child or for a periodic review of the placement as contemplated in paragraph (c), as the case may be, by a social worker.

(b) Upon the review of the placement of the child in temporary safe care as contemplated in subregulation (3), the presiding officer must, after consideration of the reasons for the placement of the child and such other information, given on oath, as he or she may obtain or as may be furnished to him or her by the parent, guardian or care-giver of the child in whose custody the child had been immediately before the

removal, or by the child, if present, the designated social worker or police official, as the case may be –

- (i) confirm the placement of the child by issuing an order of placement in temporary safe care in a form substantially corresponding with **Form 38** with such special requirements, subject to variations, as may be deemed necessary in the interests of the child from time to time; or
- (ii) set the authority referred to in subregulation (1) aside and direct that the child be restored to the custody of his or her parent, guardian or care-giver,

and must direct the designated social worker to compile a report on whether the child is in need of care and protection in terms of section 155(2) of the Act by no later than 90 days from the date of the review of placement.

(c) If the placement of the child in temporary safe care is confirmed as contemplated in paragraph (b)(i), the children's court must, at intervals of 21 days, reconsider –

- (i) the continued placement of the child in temporary safe care; and
- (ii) the place where the child is kept,

until such time as a decision contemplated in section 155 of the Act can be made, and may make such order as the court deems fit.

(d) A child must, if practicable, be brought or caused to be brought before the children's court for a reconsideration of placement as contemplated in paragraph (c) by a social worker.

60. Bringing of children before children's courts to decide whether child is in need of care and protection

(1) A child –

- (a) whose placement in temporary safe care has been confirmed by a presiding officer in terms of regulation 59(4)(b)(i);
- (b) who is not in temporary safe care but is the subject of an investigation as to whether he or she is in need of care and protection;
- (c) who is a victim of trafficking and has been returned to the Republic as contemplated in section 286(1) of the Act; or
- (d) who is a victim of trafficking and is found in the Republic as contemplated in section 289(1) of the Act,

must be brought or caused to be brought before the children's court of the district where the child resides, is found or happens to be by a designated social worker or, in the case of a child referred to in paragraph (b), be brought by his or her parent, guardian or care-giver for a decision on whether the child is in need of care and protection by not later than 90 days after –

- (i) the removal of the child to temporary safe care, in the case of a child contemplated in paragraph (a);
- (ii) the commencement of the investigation, in the case of a child contemplated in paragraph (b);
- (iii) the date of return of the child to the Republic, in the case of a child contemplated in paragraph (c); or
- (iv) the date upon which the child was found in the Republic, in the case of a child contemplated in paragraph (d).

(2) The parent, guardian or care-giver of a child who is placed in temporary safe care as contemplated in subregulation (1)(a) or who has been a victim of trafficking and has been returned to the Republic as contemplated in subregulation (1)(c) must be notified by the clerk of the court to attend proceedings of the children's court where a decision will be made as to whether the child is in need of care and protection in a form substantially corresponding with **Form 39**.

(3) The clerk of the court must notify the parent, guardian or care-giver of a child who is not placed in temporary safe care of the date and time of the proceedings of the children's court where a decision will be made as to whether the child is in need of care and protection and must warn such parent, guardian or care-giver to bring the child before the children's court in a form substantially corresponding with **Form 39**.

(4) A parent, guardian or care-giver who has been notified to attend proceedings of a children's court or to bring a child before such court in terms of this regulation and who fails to do so, is guilty of an offence and liable upon conviction to a fine or to a sentence of imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

61. Report by designated social worker

(1) (a) A report by a designated social worker in terms of section 155(2) of the Act must be in a form substantially corresponding with **Form 40** and must -

- (i) contain an introduction and personal details of the social worker;
- (ii) reflect a history of and background to the matter to be decided by the court;
- (iii) give reasons for the removal of the child, if applicable;
- (iv) address any relevant factors referred to in section 150 of the Act;
- (v) contain details of previous interventions and family preservation services that have been considered or attempted;
- (vi) contain an evaluation of the matter to be decided by the court;
- (vii) indicate whether, after investigation, the child concerned is considered to be in need of care and protection;
- (viii) contain a recommendation as to which order or orders in terms of section 156 of the Act, including an order in terms of section 46, would be appropriate to the child;
- (ix) contain recommendations, where necessary, regarding measures to assist the child's parent or care-giver, including -
 - (aa) counselling;
 - (bb) mediation;
 - (cc) prevention and early intervention services;
 - (dd) family reconstruction and rehabilitation;
 - (ee) behaviour modification;
 - (ff) problem solving; and
 - (gg) referral to another suitably qualified person or organisation;
- (x) contain an assessment of the therapeutic, educational, cultural, linguistic, developmental, socio-economical and spiritual needs of the child; and
- (xi) address any written request by a presiding officer to the designated social worker concerned.

(b) If the report contemplated in paragraph (a) contains a recommendation that the court should order the removal of the child from the care of the child's parent or care-giver, the report must in addition contain a documented permanency plan contemplated in subregulation (2).

(2) (a) In compiling a documented permanency plan referred to in subregulation (1)(b), a designated social worker must take account of –

- (i) the ideal that every child should be provided with the opportunity to grow up within his or her family and where this is proved not to be in his or her best interest or not possible, to have a permanency plan which works towards life-long relationships in a family or community setting;
- (ii) the best way of securing stability in the child's life;
- (iii) the age of the child;
- (iv) the developmental stage of the child;
- (v) the child's therapeutic, educational, cultural, linguistic, developmental, socio-economical and spiritual needs; and
- (vi) the views of the child and the need for his or her participation in all decision-making processes.

(b) A permanency plan must explore the following options, taking into account that the first option is the most desirable and the last option the least desirable –

- (i) if the child is to be removed from the care of his or her parent or care-giver, the possibility of placing the child in foster care with relatives or non-relatives as geographically close to the parent or care-giver as possible to encourage visiting by the parent or care-giver;
- (ii) the possibility of adoption of the child by relatives;
- (iii) the possibility of a relative or relatives obtaining guardianship of the child;
- (iv) the possibility of adoption of the child by non-relatives, preferably of similar ethnic, cultural and religious backgrounds; or
- (v) the possibility of placing the child in permanent foster care with relatives or non-relatives or with a cluster foster care scheme.

(c) A permanency plan approved by a children's court must, unless the court directs otherwise in terms of section 157(1)(b)(v) of the Act, be evaluated by the social worker concerned within two months after its implementation and thereafter at intervals of six months with a view to establishing, unless he or she had been adopted or placed in permanent foster care, whether the child may be returned to the care of his or her parent or care-giver.

(d) A child may only be returned to the care of his or her parent or care-giver as contemplated in paragraph (c) with the approval of the children's court which approved the permanency plan concerned.

62. Abandoned or orphaned children

(1) If it appears to a designated social worker that a child has been abandoned or orphaned, whether for purposes of determining if such child is in need of care and protection or if such child can be made available for adoption, such social worker must cause an advertisement to be published in at least one national newspaper and at least one local newspaper circulating in the area where the child has been found calling upon any person to claim responsibility for the child.

(2) In determining whether a child has been abandoned or orphaned for purposes of section 150(1)(a) or section 157(3) of the Act, a presiding officer must –

- (a) be satisfied that the child has been abandoned or orphaned as contemplated in section 1 of the Act;
- (b) be furnished with a copy of the advertisement contemplated in subregulation (1) and be satisfied that, for purposes of –
 - (i) section 150(1)(a) of the Act, a period of at least one month has lapsed since the publication of the advertisement; or
 - (ii) section 157(3) of the Act, a period of at least three months have lapsed since the publication of the advertisement,and that no person has claimed responsibility for the child;
- (c) have regard, in the case of an orphaned child, to the death certificate or certificates of the child's parent or parents, guardian or care-giver, obtained by the social worker concerned, or, if such certificate cannot be obtained, to an affidavit by a person or persons who can testify to the death of the child's parent, guardian or care-giver;
- (d) have regard, in the case of an abandoned child, to an affidavit, setting out the steps taken to trace the child's parent, guardian or care-giver, by the social worker concerned to the effect that the child's parent, guardian or care-giver cannot be traced and an affidavit by any other person who can testify to the fact that the child has had no contact with his or her parent, guardian or care-giver for a period of at least three months; and
- (e) have regard to a previous finding by any court that the child has been abandoned or orphaned, if such a finding was made.

CHAPTER 13
ALTERNATIVE CARE
(Sections 167 – 179 of the Act)

63. Approval of person, facility, place or premises for temporary safe care by head of social development and criteria for approval

(1) A child may not be placed in temporary safe care, excluding temporary safe care provided by a registered child and youth care centre, a hospital or school hostel, unless the relevant provincial head of social development, a person to whom such power has been delegated in terms of section 311(1) of the Act or a person in the employ of a designated child protection organisation to whom such power has been assigned in terms of section 107(3) of the Act, has approved the person, facility, place or premises to provide temporary safe care to children in accordance with the provisions of this regulation.

(2) Subject to subregulation (3), approval to provide temporary safe care to a child as contemplated in subregulation (1) must be in writing in a form determined by the provincial head of social development, a copy of which must be handed to the relevant person or the head of the relevant place, facility or premises immediately upon approval.

(3) Approval to provide temporary safe care to a child may not be granted to a person, facility, place or premises unless the relevant provincial head of social development or the person authorised to grant approval is satisfied that –

- (a) the child will be cared for in a healthy, hygienic and safe environment in line with the reasonable standards of the community where the temporary safe care is to be provided;
- (b) the child will be provided with adequate nutrition and sleeping facilities;
- (c) the person responsible for providing the child with temporary safe care is suitable and willing to provide such care;
- (d) the area in which the child is to be placed in temporary safe care will not be severely disruptive to the child's daily routine; and

- (e) care will be provided in accordance with the definition of care as set out in section 1 of the Act.

(4) A person in his or her private capacity or the head of a facility, place or premises who has been approved to provide temporary safe care to a child must –

- (a) be furnished with a copy of **Form 36** (interim authority for placement of child in temporary safe care), **Form 37** (request for review of placement of child in temporary safe care) or a court order authorising the child's placement in temporary safe care as soon as is practicable;
- (b) give the relevant parent, guardian, care-giver, next of kin, social worker, religious counsellor, medical practitioner, psychologist, psychiatrist, legal representative, child and youth care worker or any other person, with the approval of the managing social worker, access to the child at all reasonable times, subject to the terms of the court order and provided that such access is in the best interests of the child; and
- (c) notify the social worker immediately of any difficulties with such placement and of any change in the child's residential address.

64. Limitations and conditions for leave of absence of child from alternative care

(1) Leave of absence may, subject to subregulation (2), be granted to a child in alternative care in terms of section 168(1) of the Act at any time and for a period not exceeding six weeks.

(2) No leave of absence may be granted to a child in alternative care –

- (a) unless the leave will serve the best interests of the child and unless suitable arrangements for the accommodation, care and supervision of the child have been made by a social worker for the duration of the child's leave;
- (b) for a period exceeding six weeks at a time or for consecutive periods which, in total, exceed six months, unless approved by the Minister;

- (c) if placed in a child and youth care centre on an order of the children's court, for a period exceeding six weeks without the approval of the relevant children's court; and
- (d) where such leave is based only on staff shortages or on an absence of developmental programmes at a child and youth care centre during the holiday period.

(3) When leave of absence from a child and youth care centre is granted in terms of section 168(1)(a) of the Act, the relevant provincial head of social development must immediately inform the children's court which ordered the placement of the child in such centre in writing that leave has been granted to that child for the period or periods stipulated.

65. Fees payable to child and youth care centre or person on transfer or provisional transfer of child from alternative care

For purposes of section 171(2) of the Act, the monthly fees payable by a provincial department of social development in respect of a child in alternative care in that province ("the original province"), must, upon transfer of that child to a child and youth care centre or to a person in another province, be terminated by the original province and must be paid, in accordance with the rates applicable in such other province and as from the date of arrival of the child in such other province, by the provincial department of social development in such other province until the child is transferred, removed or discharged from the child and youth care centre or from the care of a person in such other province.

66. Procedures before issue of notice of provisional transfer of child from alternative care

(1) The procedure for assessing the best interest of the child before the issue of a notice of provisional transfer of the child from alternative care as contemplated in section 174(2)(a)(i) of the Act comprises the following –

- (a) the assessment must be conducted by a designated social worker in consultation with –

- (i) the parent, guardian or care-giver of the child or the person in whose custody the child had been prior to placement in alternative care if available and provided that their parental responsibilities and rights have not been terminated;
 - (ii) the foster parent, the head of the child and youth care centre or the head of the facility, place or premises where the child had been placed in temporary safe care, as the case may be; and
 - (iii) the child himself or herself;
- (b) the assessment must take account of –
- (i) the child's basic need for love, parental care and permanent family life;
 - (ii) the child's need for protection and security;
 - (iii) the child's physical and psychological well-being;
 - (iv) the ascertainable wishes and feelings of the child, considered in the light of his or her age and understanding;
 - (v) the likely effect on the child of any changes in his or her circumstances;
 - (vi) the child's age, sex, background and any individual characteristics;
 - (vii) the harm which the child has suffered; and
 - (viii) the capability of the child's immediate family or family members of meeting the child's needs; and
- (c) the outcome of the assessment must be contained in a report which addresses all factors referred to in paragraph (b).

(2) The procedure for reunification of the child with his or her immediate family or other family members before the issue of a notice of provisional transfer of the child from alternative care as contemplated in section 174(2)(a)(ii) of the Act comprises the following –

- (a) a designated social worker rendering family reunification services must compile a report in consultation with –
- (i) the parent, guardian or care-giver of the child or the person in whose custody the child had been prior to placement in alternative care;
 - (ii) the foster parent, the head of the child and youth care centre or the head of the facility, place or premises where the child had been placed in temporary safe care, as the case may be; and
 - (iii) the child himself or herself;