

REPUBLIC OF SOUTH AFRICA

CHILDREN'S AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43656 of 26 August 2020)
(The English text is the official text of the Bill)

(MINISTER OF SOCIAL DEVELOPMENT)

[B 18—2020]

ISBN 978-1-4850-0658-9

No. of copies printed 350

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Children’s Act, 2005, so as to amend and insert certain definitions; to provide for children’s right to privacy and protection of information; to further provide for the rights of unmarried fathers; to extend the children’s court jurisdiction; to further provide for funding of early childhood development programmes; to provide for the designation and functions for a Registrar of the National Child Protection Register; to further provide for the care of abandoned or orphaned children and additional matters that may be regulated; to further provide for rules relating to care and protection proceedings; to further provide for medical testing of children in need of care and protection or adoption; to provide for additional matters relating to children in alternative care; to further provide for matters relating to adoption and inter-country adoption; to further provide for the hearing of child abduction matters; to further provide for matters relating to surrogate motherhood; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 38 of 2005, as amended by section 3 of Act 41 of 2007, section 48 of Act 7 of 2013, section 1 of Act 17 of 2016 and section 1 of Act 18 of 2016 5

1. Section 1 of the Children’s Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “abandoned” of the following definition:

“**‘abandoned child’** [, in relation to a child,] means a child who— 10

(a) has [obviously] been deserted by [the] a parent, guardian or care-giver; [or]

(b) [has,] for no apparent reason, had no contact with the parent, guardian or care-giver for a period of at least three months; or

(c) has no knowledge as to the whereabouts of the parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities;” 15

(b) by the substitution for the definition of “adoption service” of the following definition:

“**‘adoption service’** includes— 20

(a) counselling of [the] a parent or guardian of the child and, where applicable, the child;

(b) an assessment of a child by an adoption social worker in terms of section 230(2);

- (c) an assessment of a prospective adoptive parent by an adoption social worker in terms of section 231(2);
- (d) the gathering of information for proposed adoptions as contemplated in section 237; **[and]**
- (e) a report contemplated in section 239 (1) (b); and 5
- (f) after-care provided to the adoptive family;”;
- (c) by the substitution for the definition of “after-care” of the following definition:
- “**‘after-care’** means the supportive service provided by a social worker **[or]**, a social **[service professional]** auxiliary worker or a social service practitioner responsible for adoption services, to monitor progress with regard to the child’s developmental adjustment as part of—
- (a) family preservation or reunification services;
- (b) adoption or placement in alternative care; or
- (c) discharge from alternative care;” 15
- (d) by the substitution for paragraph (a) in the definition of “care” of the following paragraph:
- “(a) within available means, providing the child with—
- (i) a **[suitable]** place to live;
- (ii) living conditions that are conducive to the child’s health, 20 well-being and development; and
- (iii) the necessary financial support;”;
- (e) by the deletion of paragraph (e) in the definition of “care-giver”;
- (f) by the deletion of the definition of “circumcision”;
- (g) by the substitution for the definition of “clerk of the court” of the following 25 definition:
- “**‘clerk of the court’** means clerk of the children’s court appointed or designated as such either in terms of section 67 of this Act or section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);”;
- (h) by the substitution for the definition of “cluster foster care scheme” of the 30 following definition:
- “**‘cluster foster care scheme’** means a scheme providing for the reception of children in foster care, managed **[by a non-profit organisation]** and operated by a designated child protection organisation or the provincial department of social development and registered by the provincial head of social development for this purpose;” 35
- (i) by the deletion of the definition of “divorce court”;
- (j) by the insertion after the definition of “drop-in centre” of the following definition:
- “**‘early childhood development centre’** means a centre that provides 40 an early childhood development programme as contemplated in section 91(3) for more than six children from birth to school-going age;”;
- (k) by the substitution for the definition of “early childhood development services” of the following definition:
- “**‘early childhood development service’** means a service or support 45 provided to children from birth to school-going age or a service or support provided to a child’s parent, guardian or care-giver with the intention to promote the child’s emotional, cognitive, sensory, spiritual, moral, physical, social and communication development;”;
- (l) by the insertion after the definition of “family advocate” of the following 50 definition:
- “**‘family counsellor’** means a family counsellor appointed in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987);”;
- (m) by the substitution for the definition of “genital mutilation” of the following 55 definition:
- “**‘genital mutilation’** means a procedure performed for non-medical reasons that has no health benefit and intentionally—
- (a) causes injury to genitals;
- (b) removes any part of the genitals; or
- (c) alters genital organs;” 60

- (n) by the insertion after the definition of “higher education” of the following definition:
 “**‘inter-country adoption’** means the placement, for purposes of adoption, of a child habitually resident in one country in the permanent care of a person habitually resident in another country in accordance with the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption and the provisions of this Act;”;
- (o) by the substitution for the definition of “midwife” of the following definition:
 “**‘midwife’** means a person registered as a midwife under the Nursing Act, [1978 (Act 50 of 1978)] 2005 (Act No. 33 of 2005);”;
- (p) by the substitution for the definition of “nurse” of the following definition:
 “**‘nurse’** means a person registered as a nurse under the Nursing Act, [1978 (Act 50 of 1978)] 2005 (Act No. 33 of 2005);”;
- (q) by the substitution for the definition of “orphan” of the following definition:
 “**‘orphan’** means a child whose parent or both parents are deceased;”;
- (r) by the substitution for paragraph (e) in the definition of “party” of the following paragraph:
 “(e) the [department] Department, provincial department of social development or the designated child protection organisation managing the case of the child; or”;
- (s) by the insertion after the definition of “RACAP” of the following definition:
 “**‘regional court’** means a court for any regional division as contemplated in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);”;
- (t) by the insertion after the definition of ‘secure care’ of the following definition:
 “**‘separated migrant child’** means a child who is not a citizen of the Republic and who has been separated from both parents or from previous legal or customary care-givers, but not necessarily from other adult family members, including a child accompanied by an adult family member;”;
- (u) by the substitution for the definition of “sexual abuse” of the following definition:
 “**‘sexual abuse’**, in relation to a child, means any sexual offence against a child;”;
- (v) by the insertion after the definition of “sexual offence” of the following definition:
 “**‘social service practitioner’** means any person registered in a social service profession or occupation with the South African Council of Social Service Professions as contemplated in the Social Service Professions Act, 1978 (Act No. 110 of 1978), to practise and render a service within the social service sector;”;
- (w) by the deletion of the definition of “social service professional”;
- (x) by the substitution for the definition of “temporary safe care” of the following definition:
 “**‘temporary safe care’** [, in relation to a child,] means care of a child in an approved and registered child and youth care centre[, shelter or private home or any other place,] or in the care of an approved person, including a place as contemplated in section 167(3) where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell;”;
- (y) by the insertion after the definition of “traditional authority” of the following definition:
 “**‘unaccompanied migrant child’** means a child who is not a citizen of the Republic of South Africa and who has been separated from both parents or other adult family members and is not being cared for by an adult who, by law or custom, is responsible for doing so;” and
- (z) by the substitution for subsection (4) of the following subsection:
 “(4) Any proceedings arising out of the application of [the Administration Amendment Act, 1929 (Act 9 of 1929),] the Divorce Act, the Maintenance Act, the Domestic Violence Act, 1998 (Act No. 116 of 1998), the Civil Union Act, 2006 (Act No. 17 of 2006), and the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998),

in so far as these Acts relate to children, may not be dealt with in a children's court.”.

Amendment of section 6 of Act 38 of 2005

2. Section 6 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 5

“(d) protect the child from unfair discrimination on any ground[, **including on the grounds of the health status or disability of the child or a family member of the child**];”; and

(b) by the substitution in subsection (2) for paragraph (f) of the following paragraph: 10

“(f) recognise a child's disability and create an **[enabling] accessible and inclusive** environment to respond to the special needs that the child has.”.

Insertion of section 6A in Act 38 of 2005

15

3. The following section is hereby inserted in the principal Act after section 6:

“Children's right to privacy and protection of personal information

6A. (1) A child's right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.”. 20

Amendment of section 7 of Act 38 of 2005

25

4. Section 7 of the principal Act is hereby amended—

(a) by the deletion of the word “and” at the end of subsection (1)(m);

(b) by the substitution in subsection (1) for paragraph (n) of the following paragraph:

“(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child[.] **and**”; and 30

(c) by the insertion in subsection (1) after paragraph (n) of the following paragraph:

“(o) any special needs that a child may have.”.

Amendment of section 8 of Act 38 of 2005

35

5. Section 8 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) This Act applies to every child in the Republic of South Africa.”.

Amendment of section 12 of Act 38 of 2005

6. Section 12 of the principal Act is hereby amended—

40

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

“(a) below the minimum age set by law for a valid marriage **[may] must** not be given out in marriage or engagement; and”; and

(b) by the substitution for subsection (3) of the following subsection: 45

“(3) Genital mutilation **[or the circumcision]** of **[female]** children is prohibited.”.