

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.

 (English text signed by the President)
 (Assented to 22 December 2022)

ACT

To amend the Children's Act, 2005, so as to amend and insert certain definitions; to extend the children's court jurisdiction; to further provide for the care of abandoned or orphaned children and additional matters that may be regulated; to provide for additional matters relating to children in alternative care; 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, if applicable, no knowledge as to the whereabouts of the 15
parent, guardian or care-giver and such information cannot be ascertained by the relevant authorities;”;
- (b) by the substitution for the definition of “cluster foster care scheme” of the following definition:
- “**‘cluster foster care scheme’** means a scheme providing for the 20
 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;”;
- (c) by the substitution for the definition of “orphan” of the following definition: 25
 “**‘orphan’** means a child whose parent or both parents are deceased;”;
- (d) by the deletion of the definition of “social service professional”;

- (e) 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;”.

Amendment of section 24 of Act 38 of 2005

2. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person having an interest in the care, well being and development of a child may apply to the High Court or children’s court for an order granting guardianship of the child”.

Amendment of section 45 of Act 38 of 2005

3. Section 45 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) guardianship of a child as contemplated in section 24;”;

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

“(j) a child and youth care centre, a partial care facility or a [**shelter or**] drop-in centre, or any other facility purporting to be a care facility for children; [**or**]”;

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

“(jA) an unaccompanied or separated migrant child or a child who is an asylum seeker or refugee as contemplated in the Refugees Act, 1998 (Act No. 130 of 1998); or”;

- (d) by the substitution for subsection (2) of the following subsection:

“(2) A children’s court must refer any criminal matter arising from the non-compliance with an order of such court or a charge relating to any offence contemplated in section 305 to a criminal court having jurisdiction.”;

- (e) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Pending the establishment of family courts by an Act of Parliament, the High Courts [**and Divorce Courts**] have exclusive jurisdiction over the following matters contemplated in this Act:”;

- (f) by the deletion in subsection (3) of paragraphs (a) and (b);

- (g) by the substitution in subsection (3) for paragraph (h) of the following paragraph:

“(h) surrogate motherhood agreement;; and

- (h) by the insertion after subsection (3) of the following subsections:

“(3A) The High Court and children’s court have concurrent jurisdiction over the guardianship of a child as contemplated in section 24 of this Act.

(3B) The High Court, children’s court and regional court have concurrent jurisdiction over the assignment, exercise, extension, restriction, suspension or termination of guardianship in respect of a child.”.

Amendment of section 105 of Act 38 of 2005, as inserted by section 5 of Act 41 of 2007

4. Section 105 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

- “(6) The Department must, as prescribed, develop and conduct a quality assurance process for the evaluation of— 5
(a) child protection services; and
(b) child protection organisations as contemplated in section 107.”.

Amendment of section 142 of Act 38 of 2005, as amended by section 6 of Act 41 of 2007 10

5. Section 142 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of the following paragraph:
 “(f) prescribing the conditions for the examination or assessment of children who have been abused, abandoned or neglected, including the consent of the child for any such examination or assessment given the age and maturity of the child;” and 15
 (b) by the deletion of the word “and” at the end of paragraph (j) and the insertion after paragraph (j) of the following paragraphs:
 “(jA) prescribing the powers, duties and responsibilities of the Registrar of the National Child Protection Register; 20
 (jB) prescribing the criteria for the establishment and resourcing of designated child care and protection units; and”.

Amendment of section 150 of Act 38 of 2005, as amended by section 5 of Act 17 of 2016

6. Section 150 of the principal Act is hereby amended— 25

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) has been abandoned or orphaned and **[does not have the ability to support himself or herself and such inability is readily apparent]** has no family member who is able and suitable to care for that child;” 30
 (b) by the deletion of the word “or” at the end of subsection (1)(h);
 (c) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
 “(i) is being maltreated, abused, deliberately neglected or degraded by a parent, a care-giver, a person who has parental responsibilities and rights or a family member of the child or by a person **[under]** in whose **[control]** care the child is;” and 35
 (d) by the insertion after paragraph (i) of the following paragraphs:
 “(j) is an unaccompanied migrant child from another country; 40
 (k) is a victim of trafficking; or
 (l) has been sold by a parent, care-giver or guardian.”.

Amendment of section 155 of Act 38 of 2005, as amended by section 7 of Act 17 of 2016

7. Section 155 of the principal Act is hereby amended— 45

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) **[Before the child is brought before the children’s court, a]** A designated social worker must investigate the matter and within 90 days compile a report in the prescribed manner on whether the child is in need of care and protection.”; 50
 (b) by the substitution for subsection (5) of the following subsection:
 “(5) If, after an investigation contemplated in subsection (2), the designated social worker finds the child to be in need of care and protection, that child must be brought before the children’s court for a hearing upon which such court must make a determination.” 55

- (c) by the substitution for subsection (6) of the following subsection:
 - “(6) The children’s court hearing the matter may—
 - (a) adjourn the matter for a period not exceeding **[14]** 30 days at a time; and
 - (b) order that, pending decision of the matter, the child must—
 - (i) remain in temporary safe care at the place where the child is kept;
 - (ii) be transferred to another place in temporary safe care;
 - (iii) remain with the person **[under]** in whose **[control]** care the child is;
 - (iv) be **[put under]** placed in the **[control]** care of a family member or other relative of the child; or
 - (v) be placed in temporary safe care.”; and
- (d) by the substitution in subsection (8) for paragraph (a) of the following paragraph:
 - “(a) must make an order that the child, if the child is in temporary safe care, be returned to the person in whose **[control]** care the child was before the child was **[put]** placed in temporary safe care;”.

Amendment of section 156 of Act 38 of 2005, as amended by section 9 of Act 41 of 2007

- 8. Section 156 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) confirming that the person **[under]** in whose **[control]** care the child is, may retain **[control]** care of the child, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;”;
 - (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - “(c) that the child be returned to the person **[under]** in whose care the child was before the child was placed in temporary safe care, if the court finds that that person is a suitable person to provide for the safety and well-being of the child;”;
 - (c) by the insertion in subsection (1) after paragraph (c) of the following paragraph:
 - “(cA) that the child be placed in the care of a parent or family member, if the court finds that such person is a suitable person to provide for the safety and well-being of the child;”;
 - (d) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
 - “(d) that the person **[under]** in whose care the child was must make arrangements for the child to be taken care of in a partial care facility at the expense of such person, if the court finds that the child became in need of care and protection because the person **[under]** in whose care the child was lacked the time to care for the child;”;
 - (e) by the substitution in subsection (1)(e) for subparagraph (ii) of the following subparagraph:
 - “(ii) foster care with **[a group of persons or an organisation operating]** an identified foster parent who is part of a cluster foster care scheme;”.

Amendment of section 157 of Act 38 of 2005

- 9. Section 157 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “Before a children’s court makes an order in terms of section 156 for the removal of the child from the care of the child’s parent, guardian or care-giver, the court must—”;

- (b) by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph:
 - “(i) leaving the child in the care of the parent, guardian or care-giver under the supervision of a designated social worker, provided that the child’s safety and well-being must receive first priority;”;
- (c) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:
 - “(ii) placing the child in alternative care for a limited period to allow for the reunification of the child and the parent, guardian or care-giver with the assistance of a designated social worker;”;
- (d) by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:
 - “(iii) placing the child in alternative care with or without terminating parental responsibilities and rights of the parent, guardian or care-giver;”;
- (e) by the substitution for subsection (3) of the following subsection:
 - “(3) A [**very young**] child who is three years of age or less who has been orphaned or abandoned [**by its parents**] must be made available for adoption in the prescribed manner and within the prescribed period except when this is not in the best interests of the child.”; and
- (f) by the substitution for subsection (4) of the following subsection:
 - “(4) When issuing an order involving the removal of the child from the care of the child’s parent, guardian or care-giver, the court may include in the court order instructions as to the implementation of the permanency plan for the child.”.

Amendment of section 159 of Act 38 of 2005, as amended by section 8 of Act 17 of 2016

10. Section 159 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

- “2A. A court may extend an alternative care order that has lapsed or make an interim order for a period not exceeding six months on good cause shown.
- 2B. Notwithstanding the amendment to section 150(1)(a), an order placing an orphaned or abandoned child in foster care with a family member in terms of section 156 before or on the date of this Amendment Act, may be extended by the court in terms of section 159(2) or section 186(2).”.

Amendment of section 160 of Act 38 of 2005

11. Section 160 of the principal Act is hereby amended—

- “(cA) the procedure, form and manner that a social service practitioner must follow when assessing, screening, investigating, referring to the relevant authority and placing a child who is in need of care and protection.”.

Amendment of section 183 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

12. Section 183 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 - “(a) The organisation operating or managing the cluster foster care scheme must [**be a non-profit organisation registered in terms of the Non-profit Organisations Act, 1997 (Act 71 of 1997)]** register as a designated child protection organisation within two years of this provision coming into operation;”;

- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) the provincial department of social development or a designated child protection organisation must manage and operate a cluster foster care scheme in the prescribed manner;”.

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Amendment of section 185 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

13. Section 185 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[More]** Not more than six children may be placed in foster care with a single person or two persons sharing a common household in terms of a registered cluster foster care scheme.”.

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Amendment of section 186 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

14. Section 186 of the principal Act is hereby amended—

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- (a) by the insertion after subsection (1) of the following section:

“(1A) Despite the provisions of subsection (1), a children’s court may deem it necessary to order further supervision services as contemplated in section 65(2)(a)(ii).”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“A children’s court may, despite the provisions of section 159(1)(a) regarding the duration of a court order and after having considered the need for creating stability in the child’s life, place a child in foster care with a family member **[for more than two years, extend such an order for more than two years at a time or]** and order that the foster care placement subsists until the child turns 18 years, if—”;

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- (c) by the substitution for subsection (3) of the following subsection:

“(3) Despite the provisions of subsections (1) and (2), a social service **[professional] practitioner** must visit a child in foster care at least **[once every two years]** annually to monitor and evaluate the placement.”; and

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- (d) by the insertion after subsection (3) of the following subsection:

“(4) This section does not apply to a cluster foster care scheme contemplated in section 183.”.

Short title and commencement

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15. This Act is called the Children’s Amendment Act, 2022, and comes into operation on a date determined by the President by proclamation in the *Gazette*.