

## CHAPTER 5:06 CHILDREN'S ACT

*Acts 22/1971, 39/1973 (ss. 43 and 52), 43/1973 (s. 4), 18/1974, 44/1974 (s. 4), 26/1979, 15/1981 (s. 66), 29/1981 (s. 59), 15/1982 (s. 3), 11/1986 (s. 29), 24/1987 (s. 8), 2/1989 (s. 7), 20/1994(s. 3), 14/1995; 9/1997 (s. 10), 22/2001 (s. 4), 23/2001, 14/2002 (s. 4); 5/2014 (s. 33), 3/2016 (Part VIII); R.G.N. 327/1977; S.I. 689/1979.*

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**AN ACT to provide for the establishment of children's courts; to make provision for the protection, welfare and supervision of children and juveniles; to provide for the establishment, recognition and registration of certain institutions and institutes for the reception and custody of children and juveniles and for the treatment of children and juveniles after their reception in such institutions and institutes; to require the contribution by certain persons towards the maintenance of children and juveniles; to provide for the adoption of minors; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 27th October, 1972.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Children's Act [*Chapter 5:06*].

[Section amended by section 2 of Act 23 of 2001]

#### 2 Interpretation

In this Act—

“adopted child” means a person adopted in terms of Part VII;

“adopter” means a person who has adopted a person in terms of Part VII;

“adoption order” means an order of adoption made in terms of Part VII;

“attendance centre” means a building or place which a child or young person has to attend on the order of a children’s court to receive guidance and to undergo treatment in order that he may be rehabilitated and disciplined;

“certified institution” means a training institute or an institution established and maintained in terms of subsection (1) of section *twenty-nine* and, if the context so requires, includes the persons responsible for managing such institution;

[Definition substituted by section 3 of Act 23 of 2001]

“child” means a person under the age of sixteen years and includes an infant;

“child in need of care” means a child or young person—

- (a) who is destitute or has been abandoned; or
- (b) both of whose parents are dead or cannot be traced and who has no legal guardian; or
- (c) whose legal guardian or parents do not exercise proper control and care over him; or
- (d) whose legal guardian or parents are unfit to have or exercise control over him; or
- (e) who is in the custody of a person who has been convicted of committing upon or in connection with that child or young person any offence specified in the First Schedule; or
- (f) who cannot be controlled by his parents or guardian; or
- (g) who is a habitual truant; or
- (h) who frequents the company of any immoral or vicious person or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution; or
- (i) who begs or, being a child, engages in street trading contrary to this Act or any other enactment; or
- (j) who is being maintained in circumstances which are detrimental to his welfare or interests; or
- (k) who is found in possession, without reasonable excuse, of any drug to which the Dangerous Drugs Act [*Chapter 15:02*] applies or of any specified drug as defined in the Drugs and Allied Substances Control Act [*Chapter 15:03*]; or
- (l) who suffers from a mental or physical disability and requires treatment, training or facilities which his parents or guardian are unable to provide; or
- (m) whose parent or guardian has given him up to another person in settlement of a dispute in accordance with custom; or
- (n) whose parent or guardian makes him perform work that is likely to be hazardous or to interfere with his education or to be harmful to his health or to his physical or mental development; or
- (o) whose parent or guardian has denied him proper health care; or
- (p) whose parent or guardian has unlawfully removed him from lawful custody;

[Definition amended by section 3 of Act 23 of 2001, by insertion of paragraphs (m) to (p).]

“clerk of a children’s court” means any official carrying out the duties of such clerk on the instruction of the officer presiding over the children’s court;

“contribution order” means an order made in terms of Part VI for the periodical payment of sums of money towards the maintenance of a child, young person or pupil;

“Council” means the Child Welfare Council established in terms of section *two A*;

[Definition inserted by section 3 of Act 23 of 2001]

“designated country” means a country declared to be a designated country in terms of section *seventy-five B*;

[Definition inserted by section 3 of Act 23 of 2001]

“Director” means the person for the time being holding the office of Director of Social Affairs, Youth and Rehabilitation or lawfully acting in the capacity thereof;

“earnings”, in relation to a responsible person, means any money payable to that person—

- (a) by way of salary, wages, remuneration or allowances and includes any fees, bonus, commission, overtime pay or other emoluments payable in addition thereto; or
- (b) by way of a pension and includes—
  - (i) an annuity, gratuity, commutation of pension or other like allowance or refund of pension contributions, including interest payable thereon, whether the same is payable in respect of past services or otherwise; and
  - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, howsoever arising, or any diminution in the emoluments of any office or employment;

“education officer” means a person or class of persons involved in the education of a child or young person who is designated as an education officer for the purpose of this Act by the Minister after consulting the Minister responsible for education;

[Definition inserted by section 3 of Act 23 of 2001.]

“employer”, in relation to a responsible person, means a person, including the State, by whom earnings are payable or are likely to become payable to the responsible person;

"Fund" means the Child Welfare Fund established by section *seventy-five H*;

[Definition amended by section 3 of Act 23 of 2001]

“guardian”, in relation to a child or young person, means the legal guardian, and includes any person who has the custody, charge or care of the child or young person, either permanently or temporarily;

“hazardous labour”, in relation to a child or young person, means any work—

- (a) which is likely to jeopardise or interfere with the education of that child or young person;
- (b) involving contact with any hazardous substance, article or process, including ionising radiation;
- (c) involving underground mining;
- (d) that exposes a child or young person to electronically-powered hand-tools, cutting or grinding blades
- (e) that exposes a child or young person to extreme heat, cold, noise or whole body vibration;
- (f) that is night shift work;

[Definition amended by section 3 of Act 23 of 2001]

"health officer" means a health practitioner who is registered in terms of the Medical Dental and Allied Professions Act [*Chapter 27:08*] and is designated as a health officer for purposes of this Act by the Minister after consulting the Minister responsible for health;

[Definition inserted by section 3 of Act 23 of 2001.]

“infant” means a person under the age of seven years;

“institution” means a creche or other institution maintained and controlled by a person for the reception, maintenance and supervision of children or young persons but does not include—

- (a) a building for the accommodation of school children which forms part of a private school registered in terms of the Education Act [*Chapter 25:04*]; or
- (b) a certified institution;

and, if the context so requires, any reference to an institution shall be deemed to include a reference to the management of that institution;

“legal guardian” means a tutor testamentary, tutor dative or assumed tutor to whom letters of confirmation have been granted in terms of the law relating to the administration of estates and includes a husband of a girl who is under eighteen years of age;

“local authority” means—

- (a) a municipal council or town council; or
- (b) any rural council, district council or other authority which is designated by the Minister, by notice in a statutory instrument, to be a local authority for the purposes of this Act;

“maintain”, in relation to a child or young person, includes to undertake the custody or care of that child or young person;

“maintenance”, in relation to a child or young person, includes the custody or care of that child or young person;

“management” means a person or persons who have the management and control of a certified institution, training institute or institution;

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“minor” means a person under the age of eighteen years;

“parent” means the father or mother of a person born of, or legitimated by, a lawful marriage or the mother of an illegitimate person and includes a step-parent and, except in Part VII, an adopter;

“period of further supervision”, in relation to a pupil, means the period during which that pupil shall, in terms of subsection (2) of section *twenty-five* or subsection (3) of section 352 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], remain under the supervision of a certified institution or training institute;

“period of retention” means the period during which a child, young person or person shall, in terms of subsection (1) of section 25 or subsection (1) of section 352 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], remain in a certified institution or training institute or under any supervision or custody;

[Definition amended by section 3 of Act 23 of 2001]

“place of safety” means any police station or hospital or any place suitable for the reception of a child or young person into which the occupier thereof is willing to receive a child or young person or any place established in terms of subsection (1) of section *twenty-eight*;

“probation officer” means a person registered as a social worker in terms of the Social Workers Act [*Chapter 27:21*] who is appointed in terms of section 46;

[Definition substituted by Part VIII of Act 3.of.2016]

“public place” means any place to which the public has access, whether free or on payment of a fee;

“pupil” means any person who—

- (a) in terms of this Act or any other enactment, has been placed in or received in a certified institution or training institute; or
- (b) has been released on licence or has been granted leave of absence or has absconded from a certified institution, training institute or South African institution and who is still under the control or supervision of the management of that certified institution or training institute or is liable to be brought back thereto;

[Definition amended by section 3 of Act 23 of 2001]

“Registrar-General” means the Registrar-General referred to in section 3 of the Births and Deaths Registration Act [*Chapter 5:02*];

“remand home” means a remand home established in terms of subsection (1) of section *twenty-eight*;

“respondent” means any person legally liable to maintain or to contribute towards the maintenance of a child, young person or pupil for whose maintenance a contribution order is sought or has been made;

“rule” means a rule made in terms of subsection (11) of section five;

“school-going age”, in relation to a child or young person, means a child or young person between the ages of five and a half years and sixteen years;

[Definition inserted by section 3 of Act 23 of 2001]

“South Africa” ...

[Definition repealed by section 3 of Act 23 of 2001]

“South African institution” ...

[Definition repealed by section 3 of Act 23 of 2001]

“street trading” includes—

- (a) the hawking of any article and the distribution of handbills or advertisements; and
- (b) shoe cleaning, motor car attending and any other like occupation carried on in a public place;

“training institute” means a training institute established in terms of subsection (1) of section *twenty-nine*;

[Definition amended by section 3 of Act 23 of 2001.]

“young person” means a person who has attained the age of sixteen years but has not attained the age of eighteen years.

## PART IA

### CHILD WELFARE COUNCIL

[Part inserted by section 3 of Act 23 of 2001]

#### **2A Establishment of Child Welfare Council**

(1) The Minister shall, for the purpose of this Act, establish a council to be known as the Child Welfare Council which shall consist of the following members—

- (a) one representative each from the Ministries responsible for education, health, the registration of births and deaths, justice, local government and the creation of employment; and
- (b) one representative from the Police Force; and
- (c) six representatives from private voluntary organizations or other organizations which the Minister considers deal with issues concerning the welfare and upbringing of children; and
- (d) one representative from the Council of Chiefs established in terms of section 37 of the Traditional Leaders Act [*Chapter 29:17*]; and
- (e) one representative from an association which the Minister considers represents local authorities; and
- (f) the Director.

(2) Members of the Council referred to in paragraphs (a), (b), (c) (d) and (e) of subsection (1) shall be appointed by the Minister from persons nominated for that purpose by the Ministry, organization or association concerned, and such persons shall not have a criminal record.

(3) Before making an appointment in terms of subsection (2), the Minister shall call upon the Ministry, organization or association concerned to nominate such number of persons as the Minister may specify who in its opinion are suitable and available for appointment as members of the Council:

Provided that—

- (i) the Minister may appoint a person to be a member of the Council who has not been so nominated and may decline to appoint any person so nominated;
- (ii) where the Minister has called for nominations in terms of this subsection in respect of any appointment to the Council and no nominations have been made within such period as he may specify when calling for them, the Minister may appoint any person to be a member of the Council whether or not the person so appointed is able to represent the views of the body whose nominations were called for.

(4) Members of the Council shall be appointed by the Minister for such period, not exceeding three years, as he shall specify on their appointment.

(5) The Minister shall designate one member of the Council to be its chairman and another to be its deputy chairman.

(6) Half the members of the Council shall constitute a quorum at any meeting of the Council.

(7) The Council shall—

- (a) hold its meetings at least four times a year and in accordance with such procedure; and
- (b) keep and furnish to the Minister such records of its meetings;

as may be prescribed or as may be directed by the Minister.

(8) Members of the Council shall be paid, out of moneys appropriated for the purpose by Act of Parliament, such remuneration and allowances as may be prescribed.

(9) The Director shall be responsible for performing the functions of secretary of the Council.

(10) The Minister, with the approval of the Public Service Commission, shall assign as staff of the Council such persons employed in his Ministry as will enable the Council properly to carry out its functions in terms of this Act.

## **2B Functions of Council**

The functions of the Council shall be—

- (a) to advise the Minister and any other person that the Council thinks appropriate on any matter relating to the welfare of children;
- (b) to monitor the overall situation of children in need of care and to try to ensure that their welfare and rights are advanced;
- (c) to promote and encourage the co-ordination of the activities of organizations which have as their object the promotion and protection of the rights of children; and
- (d) to administer the Child Welfare Fund; and
- (e) to perform any other function that may be assigned to it by the Minister.

## **2C Validity of decisions and acts of Council**

No decision or act of the Council shall be invalid solely because there was a vacancy in the membership of the Council or because a disqualified person purported to act as a member of the Council at the time the decision was taken or the act was done or authorized.

## **PART II**

### **CHILDREN'S COURTS**

## **3 Establishment of children's courts**

(1) The Minister responsible for justice may, after consultation with the Minister, establish a children's court for any area of Zimbabwe.

(2) Every magistrates court shall be a children's court for any part of the area of its jurisdiction for which no children's court has been established in terms of subsection (1).

## **4 Officers of children's courts**

(1) The Minister responsible for justice shall designate a magistrate to preside over a children's court established in terms of subsection (1) of section *three*.

(2) The officer presiding over a children's court may summon to his aid to sit with him as assessor or assessors any person who has or any two persons who have, in his opinion, experience in any matter which may arise for decision at any sitting, inquiry or hearing:

Provided that whenever the children's court is inquiring into the case of a female child or female young person the officer presiding shall summon a woman assessor if a suitable woman is available to act as such.

(2a) The Minister, in consultation with the Minister responsible for justice, shall appoint a probation officer for each children's court, and that probation officer shall—

- (a) be responsible for safeguarding the interests of any child or young person who is brought before the court;
- (b) be present during all the proceedings of the court:

Provided that the probation officer's absence from any such proceedings shall not invalidate them unless it causes prejudice to the child or young person concerned.

[Subsection inserted by section 5 of Act 23 of 2001]

(3) An assessor may be summoned in terms of subsection (2) to sit with the officer presiding over a children's court at any particular sitting or for the holding of a particular inquiry or hearing or for the holding of any inquiry or hearing or at any sitting during the period specified in the summons.

(4) Assessors shall advise the officer presiding over a children's court on all questions, except questions of law, arising during any sitting or during the inquiry or hearing, but the final determination or order of the children's court in question shall be determined by the officer presiding thereover.

(5) An assessor may be paid out of moneys appropriated by Act of Parliament for the purpose such allowances as the Minister, after consultation with the Minister responsible for finance, may from time to time determine.

(6) There shall be for every children's court such number of children's court assistants as may be required whose offices shall be public offices and part of the Public Service.

(7) Every officer delegated by the Prosecutor-General to conduct the prosecutions at the public instance before the magistrates court of any province shall *ex officio* be a children's court assistant of any children's court held within that province.

(8) A children's court assistant at any proceedings of the children's court to which he is attached—

- (a) shall adduce any available evidence relevant to those proceedings; and
- (b) may cross-examine any witness giving evidence thereat whom he did not call; and
- (c) shall generally assist the children's court in performing its functions.

## 5 Procedure of children's courts

(1) A children's court shall not be bound by any rules relating to civil or criminal proceedings and, in any case not provided for in this Act or in rules, the proceedings of a children's court shall be conducted in such manner as to the officer presiding over the children's court seems best fitted to do substantial justice.

(2) The officer presiding over a children's court may in his discretion permit evidence to be given to the court by way of affidavit or report and may permit the child or young person to express his views or opinion on the matter before the children's court:

Provided that the officer presiding over the children's court shall, upon the request by or on behalf of any person who in his opinion is a properly interested person, require the appearance before the court of the maker of any such affidavit or report and shall afford that person an opportunity to cross-examine the maker of the affidavit or report upon oath.

[Subsection as amended by section 6 of Act 23 of 2001]

(3) Any person who in the opinion of the officer presiding over a children's court is a properly interested person shall be entitled to examine any witness appearing before the children's court in person or by a legal practitioner:

Provided that the officer presiding shall disallow any question which in his opinion is not relevant or is not otherwise a proper question.

(4) Where it appears to the officer presiding over a children's court that a witness has been asked any question tending to incriminate such witness, he shall inform the witness that he may refuse to answer the question.

(5) No person shall publish the name, address or school or any other information likely to reveal the identity of any child or young person who is or has been concerned in any proceedings in a children's court:

Provided that, if the officer who presides or presided at such proceedings considers that such publication would be just and equitable and in the public interest, he may by written order dispense with the prohibition of this subsection and to such extent as may be specified in the order.

(6) At any sitting of a children's court no person shall be present unless—

- (a) his presence is necessary in connection with the proceedings of that court or he is an officer of that court; or
- (b) he is a parent or guardian of a child or young person whose presence is necessary in connection with the proceedings of that court; or
- (c) he is the legal practitioner representing such child or young person or parent or guardian; or
- (d) the officer presiding at that sitting has granted him permission to be present; or
- (e) he is the person in charge of the home or institution in which the child is residing or the nominee of such person.

(7) On the application of a children's court assistant, the clerk of the children's court to which that assistant is attached shall subpoena any witness to give evidence or to produce a book or document at any proceedings of that court.

(8) On the application of any person who is likely to be affected by any order which may be made by a children's court as a result of any proceedings therein, or on the application of the representative of such person, the clerk of the children's court shall subpoena any witness to give evidence or to produce a book or document at those proceedings.

(9) Any subpoena referred to in subsection (7) or (8) shall be served in the same manner as if it were a subpoena for the attendance of a witness at a criminal trial in a magistrates court.

(10) Sections 74, 75 and 76 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in connection with a person subpoenaed in terms of subsection (7) or (8) or required by the officer presiding over a children's court to give evidence in any proceedings in such court.



(11) The Minister responsible for justice may make rules for regulating the procedure in children's courts and may make different rules for the various matters which in terms of this Act or any other enactment are to be dealt with in children's courts.

[Subsection as amended by section 4 of Act 14 of 2002]

(12) Such records of the proceedings of a children's court shall be kept as may be prescribed and shall, subject to section *seventy-four*, be accessible to such persons and upon such conditions as to payment of fees and otherwise as may be prescribed.

## **6 Certain provisions of Cap 7:10 to apply to children's courts**

Subject to this Act and any rules, the Magistrates Court Act [*Chapter 7:10*] and the rules made thereunder as to—

- (a) the appointment and functions of officers; and
- (b) the issue and service of process; and
- (c) the appearance in court of legal practitioners; and
- (d) the execution of judgments; and
- (e) the imposition of penalties for non-compliance with orders of court, for obstruction of the execution of judgments and for contempt of court;

shall apply, *mutatis mutandis*, to children's courts.

## **PART III**

### **PREVENTION OF NEGLECT, ILL-TREATMENT AND EXPLOITATION OF CHILDREN AND YOUNG PERSONS**

## **7 Ill-treatment or neglect of children and young persons**

(1) Subject to subsection (4), if any parent or guardian of a child or young person assaults, ill-treats, neglects, abandons or exposes him or allows, causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or to injure or detrimentally to affect his health or morals or any part or function of his mind or body, he shall be guilty of an offence.

(2) Subject to subsection (4), a parent or guardian of a child or young person shall be deemed to have abandoned or neglected that child or young person if he has—

- (a) failed to provide or to pay for adequate food, clothing or lodging for him or failed to pay for the maintenance of a child or young person who has been placed in an institution; or
- (b) failed to provide or pay for dental, medical or surgical aid or other effective remedial care necessary for his health or well-being; or
- (c) left the child or young person in the care of some other person or an institution and thereafter has shown inadequate interest in the well-being of that child or young person for a period in excess of one year; or
- (d) in the case of a child, failed to provide adequate supervision of that child; or
- (e) in the case of an infant, left that infant unattended in circumstances which were likely to cause the infant physical or mental distress or harm.

(3) A person may be convicted of an offence specified in subsection (1) notwithstanding that—

- (a) actual suffering or injury or detriment to health, morals, mind or body has been obviated by the action of another person; or
- (b) actual suffering or injury or detriment to health, morals, mind or body has not occurred; or
- (c) the child or young person, who is the subject of the charge, has died.

(4) Proof that any failure which is the subject of a charge in terms of subsection (1) was due to a lack of means and that such lack of means was due to none of the following—

- (a) unwillingness to work;
- (b) misconduct;
- (c) the incurring of debts or obligations which, in all the circumstances of the case, are unreasonable;
- (d) omission to take reasonable steps to obtain relief from any other person legally liable to maintain the child or young person concerned or from any association, authority or institution whose purpose is the relief of indigency;

shall be a good defence to the charge.

(5) Any person convicted of an offence in terms of this section shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine or such imprisonment:

Provided that if it is proved that such person would to his knowledge directly or indirectly acquire any property or an interest in any property or indirectly derive any benefit from any such acquisition by any other person in the event of the death of the child or young person in respect of whom the offence was committed, he shall be liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(6) Nothing in this section shall be construed as derogating from the right of any parent or guardian of any child or young person to administer reasonable punishment to such child or young person.

## 8 Corruption of children and young persons

(1) Any person who allows a child or young person to reside in or to frequent a brothel shall be guilty of an offence.

(2) Any person who causes or conduces to the seduction, abduction or prostitution of a child or young person or the commission by a child or young person of immoral acts shall be guilty of an offence.

(3) For the purposes of subsection (2), a person shall be deemed to have caused the seduction, abduction or prostitution of a child or young person who has been seduced or abducted or has become a prostitute if he knowingly allowed the child or young person to consort with or enter or continue in the employment of any prostitute or person of known immoral character.

(4) Any person convicted of an offence in terms of this section shall be liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001 and by section 7 of Act 23 of 2001]

## 9 Medical examination and treatment of children and young persons

(1) Where a Government medical officer or a medical officer of a local authority has reason to suspect that a child or young person is suffering from a disease or physical defect or is infested with vermin or that the clothing of that child or young person is verminous or filthy, he may examine or authorize any other medical practitioner to examine the person and clothing of that child or young person.

(2) For the purpose of conducting an examination in terms of subsection (1), the medical officer concerned may, by notice in writing, direct the parent or guardian of the child or young person concerned to remove such child or young person within a period specified in the notice to a hospital or other place for such examination.

(3) Where on an examination in terms of subsection (1) it appears that the child or young person concerned is suffering from any disease or physical defect, the medical officer concerned shall give notice in writing of such fact to the parent or guardian of that child or young person and shall in that notice direct the parent or guardian to provide, within a period to be specified in the notice, such dental, medical, surgical or other treatment for the child or young person as may be specified in the notice.

(4) Where on an examination in terms of subsection (1) it appears that the child or young person concerned is infested with vermin or that his clothing is verminous or filthy, the medical officer concerned may, by notice in writing, direct the parent or guardian of the child or young person to cleanse the person or clothing of the child or young person in such manner and within such period as may be specified in the notice:

Provided that the period so specified shall not be shorter than twenty hours from receipt by the parent or guardian of the notice.

(5) For the purpose of ascertaining whether a direction given in terms of subsection (3) or (4) has been complied with, the medical officer who gave the direction may examine or authorize any other medical practitioner to examine the person and clothing of the child or young person in respect of whom the direction was given, and for this purpose the medical officer may exercise the powers conferred by subsection (2).

(6) Where a parent or guardian to whom a direction has been given in terms of subsection (2), (3) or (4) fails to comply therewith within the period specified therein, the medical officer who gave the direction shall report the fact to the magistrate appointed to preside over the children's court of the district in which the child or young person is resident.

(7) A magistrate to whom a report has been made in terms of subsection (6) may—

(a) after due inquiry and after affording the parents and the guardian, if any, of the child or young person concerned a reasonable opportunity of being heard in the matter or without affording any such person such opportunity if his whereabouts are unknown or if in the circumstances it is not reasonably practicable to afford him such opportunity; and

(b) if satisfied that any examination of the child or young person concerned or his clothing or any dental, medical, surgical or other treatment is necessary or desirable in the interests of the health of the child or young person concerned;

by order in writing authorize the removal of the child or young person or his clothing to a hospital or other suitable place and the performance there upon the child or young person or his clothing of such examination or such dental, medical, surgical or other treatment as may be specified in the order.

(8) Where authority for the performance of an examination or treatment has been given in terms of subsection (7), the person legally liable to maintain the child or young person concerned shall be liable for the cost of such examination or treatment.

(9) A medical officer or medical practitioner who is entitled in terms of subsection (1) or (5) to examine a child or young person may at any time during the day and at any reasonable hour during the night demand admittance into any premises or room in which he has reason to believe that child or young person to be and may call upon the parent or guardian of such child or young person to produce such child or young person to him at that person's residence.

(10) Where a Government medical officer or a medical officer of a local authority has reason to suspect that a child or young person is in need of dental treatment, he may examine or authorize a dentist to examine that child or young person in order to ascertain whether he is in need of dental treatment this section, other than subsections (1) and (4), shall apply, *mutatis mutandis*, as if any reference to a medical officer or medical practitioner included a reference to that dentist.

(11) A parent or guardian who fails to comply with a direction given to him in terms of subsection (4) or who, having complied therewith or after the child or young person or his clothing has been cleansed in terms of subsection (7), permits or allows such child or young person again to become infested with vermin or his clothing again to become verminous or filthy, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001 and by section 8 of Act 23 of 2001]

(12) Any person who hinders or obstructs any other person in the performance of his duties in terms of this section shall be guilty of an offence and liable to a fine not level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 8 of Act 23 of 2001]

## 10 Begging and public entertainment

(1) Any parent or guardian of a child or young person who allows that child or young person or any person who causes any child or young person—

- (a) to beg; or
- (b) to accompany him or any other person while he begs; or
- (c) to induce or to endeavour to induce the giving of alms; or
- (d) to perform or be exhibited in any way for public entertainment in a manner likely to be detrimental to the child's or young person's health, morals, mind or body;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001 and by section 9 of Act 23 of 2001]

(2) Where a child or young person has acted in a manner described in subsection (1), the parent or guardian of the child or young person shall be deemed to have allowed such action unless he proves that he did not allow it and that he could not have prevented it.

(3) A police officer or probation officer may at all reasonable times enter and inspect any premises in which a child or young person performs or is exhibited for any consideration at a public entertainment, and may attend any such entertainment free of charge.

(4) Any person who obstructs or hinders any police officer or probation officer in the performance of his duties in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

## 10A Restriction on employment of children and young persons

(1) Except in such circumstances as may be prescribed, no—

- (a) parent or guardian of a child or young person of school-going age shall knowingly cause or permit the child or young person to absent himself from school in order to engage in employment for gain or reward;
- (b) person shall employ for gain or reward a child or young person of school-going age at a time when the child or young person might reasonably be expected to attend school.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand five hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) It shall be a defence to a charge under paragraph (b) of subsection (1) for the accused person to prove that he believed on reasonable grounds that the child or young person whom he employed was not of school-going age.

(4) Subject to the Labour Relations Act [*Chapter 28:01*], no parent or guardian of a child or young person shall permit such child or young person to engage in hazardous labour.

[Section inserted by section 10 of Act 23 of 2001.]

## 11 Safeguarding of child audiences at public entertainments

(1) Any person in occupation of premises in which is given a public entertainment for children or a public entertainment at which a substantial number of persons who are expected to attend are likely to be children or young persons who—

- (a) fails to provide and keep stationed wherever necessary upon the premises a sufficient number of adult attendants properly instructed and sufficiently qualified as to their duties to prevent more children or young persons from entering any part of the premises than that part can properly accommodate; or

- (b) fails to control the children or young persons whilst they are on the premises or entering or leaving the premises; or
- (c) otherwise fails to take all reasonable precautions for the safety and well-being of the children or young persons;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001 and by section 11 of Act 23 of 2001]

(2) A police officer or probation officer may enter any premises in which he has reason to believe that a public entertainment is being or is about to be provided for children or young persons or at which a substantial number of persons attending are or will be children or young persons and may inspect such premises for the purposes of ascertaining whether the provisions of subsection (1) are being carried into effect.

(3) Where the occupier of any premises is convicted in terms of subsection (1) of an offence committed in connection with those premises, the court convicting such occupier may, apart from any penalty which it may impose for the said offence, cancel any licence which such occupier may hold for any public entertainment in the premises in question, and thereupon he shall be disqualified from obtaining another licence for those premises.

## **12 Power to bind over person having custody of young girl, child or young person to exercise proper care**

(1) Where upon the complaint of any person it is shown to the satisfaction of a children's court that—

- (a) a girl under the age of eighteen years is exposed to the risk of seduction or prostitution or is living a life of prostitution; or
- (b) a child or young person is being neglected or is being maintained in domestic circumstances detrimental to his welfare;

the court may, if it thinks fit, having regard to all the circumstances, order the parent or guardian of the girl, child or young person to enter into his own recognizances, with or without such sureties and in such amount as the court thinks fit, that he will exercise due care and supervision of the girl, child or young person.

(2) Whenever a children's court makes an order in terms of subsection (1), the officer who presided over such court shall cause to be forwarded to the registrar of the High Court, not later than seven days after the making of such order, the record of the proceedings in the matter together with such report, if any, as he may wish to append.

(3) The registrar of the High Court shall, with all convenient speed, lay any record of proceedings and report received by him in terms of subsection (2) before a judge in chambers who may—

- (a) confirm, vary or set aside the order of the children's court; or
- (b) remit the matter to the children's court with instructions as to the further proceedings to be had in such matter as the judge thinks fit.

(4) Where a person who has been ordered to enter into recognizances in terms of subsection (1) refuses or fails to do so, the children's court may commit him to prison for a period not exceeding one month until such recognizances are entered into:

Provided that no person shall be committed to prison in terms of this subsection until the order to enter into the recognizances has been confirmed or varied, as the case may be, by a judge in terms of subsection (3).

(5) Where the conditions upon which any recognizances referred to in subsection (1) were given are not observed by the person who gave them, the children's court may declare the recognizances to be forfeited and such declaration of forfeiture shall have the effect of a judgment in a civil action in the magistrates court in favour of the Minister.

(6) A children's court may at any time amend or revoke an order made by it in terms of subsection (1) and, where an order has been so amended, this section shall apply, *mutatis mutandis*, in respect of such amendment as if it were an order made in terms of subsection (1).

## **13 Conducting to commission of offence by child or young person**

(1) Any person who—

- (a) encourages a child or young person to commit an offence; or
- (b) trains a child or young person in the commission of an offence; or
- (c) knowingly provides a child or young person with facilities to commit an offence;

shall be guilty of an offence and liable to the penalties that could have been imposed on him had he been guilty of the offence that the child or young person committed.

[Subsection as amended by section 12 of Act 23 of 2001]

(2) Any parent or guardian of a child or young person who fails to take reasonable steps to ensure that that child or young person does not commit an offence is guilty of an offence and liable to any penalty that may be imposed on a person convicted of the offence committed by the child or young person.

[Subsection as amended by section 12 of Act 23 of 2001]

(3) Where a person has been convicted of an offence in terms of subsection (1) the court may, in addition to any penalty which may be imposed therefore, order the person convicted to pay to any party who has been caused damage or loss by the commission of the offence concerned by the child or young person compensation for that damage or loss, whether the injured party makes any claim therefore or not.

## PART IV

### REMOVAL OF CHILDREN AND YOUNG PERSONS TO OTHER CARE

#### **14 Removal of children and young persons to place of safety**

(1) Any police officer, health officer, education officer or probation officer may remove a child or young person from any place to a place of safety—

- (a) if he is, in the opinion of that police officer, health officer, education officer or probation officer, a child in need of care; or
- (b) if there are reasonable grounds for believing that an offence specified in the First Schedule is being or has been committed upon or in connection with that child or young person.

[Subsection as amended by section 13 of Act 23 of 2001]

(2) Unless it would be impracticable or detrimental to the best interests of the child or young person concerned, a police officer, probation officer, education officer or health officer shall place a child or young person in a place of safety in terms of subsection (1) within the family or community where the child or young person was raised.

[Subsection as amended by section 13 of Act 23 of 2001]

(3) A police officer, education officer or health officer who has removed a child or young person to, and any person who receives a child or young person in, a place of safety in terms of subsection (1) shall notify a probation officer for the area in which the place of safety is situated of such removal or reception as soon as possible and in any event within five days of such removal or reception.

[Subsection as amended by section 13 of Act 23 of 2001]

#### **15 Court or magistrate may authorize removal of child or young person to place of safety**

(1) If it appears to any court in the course of any proceedings before that court or to a magistrate, in the course of a preparatory examination that an offence specified in the First Schedule has been or is being committed upon or in connection with any child or young person, or if the parent or guardian of a child or young person is by any such court or magistrate convicted of or committed for trial for any such offence, that court or magistrate, as the case may be, may, if it or he considers it expedient, issue a warrant authorizing a police officer to search for and to take the child or young person to a place of safety.

(2) If it appears to any magistrate, on information given on oath by any person, that there are reasonable grounds for suspecting that an offence specified in the First Schedule is being or has been committed upon or in connection with a child or young person who is within the area of his jurisdiction or that a child or young person is in need of care and that it is expedient that such child or young person shall be taken into a place of safety, the magistrate may issue a warrant authorizing any police officer to search for and to take the child or young person to a place of safety.

(3) Any police officer acting under a warrant issued in terms of subsection (1) or (2) may enter, by force if necessary, any house or other premises wherein the child or young person who is the subject of the warrant is suspected to be and may remove such child or young person from the place where he finds him to a place of safety.

(4) Any warrant issued in terms of subsection (1) or (2) may authorize any person named therein to accompany the police officer who is to execute the warrant.

(5) It shall not be necessary in any warrant issued in terms of subsection (1) or (2) to state the name of the child or young person whose removal is thereby ordered.

#### **16 Authority to detain child or young person in place of safety**

Any child or young person who—

- (a) has been taken to a place of safety in terms of this Act or who has sought refuge in a place of safety, may be detained therein: or
- (b) has been ordered by a court, which has convicted him of an offence, to be dealt with in terms of this Act, may be detained in a place of safety;

until he has been brought before and dealt with by a children's court.

#### **17 Duty to bring child or young person before children's court**

Any police officer or probation officer who has removed a child or young person to, and any person who is detaining a child or young person in, a place of safety shall bring such child or young person before a children's court as soon as possible and in any event within seven days of such removal or the commencement of such detention, as the case may be.

[Section as amended by section 14 of Act 23 of 2001]

## 18 Alleged child in need of care may be brought before children's court

Any child or young person alleged to be a child in need of care may be brought before the children's court for the area in which such child or young person resides or happens to be by any police officer or probation officer or by the parent or guardian of such child or young person.

## 19 Children's court to hold inquiry in respect of child or young person brought before it

(1) A children's court before which a child or young person has been brought—

- (a) in terms of this Act, shall inquire and determine whether he is a child in need of care and, if such be the case, shall inquire into and determine the appropriate order to be made in terms of this Act; or
- (b) in terms of an order of a court, which has convicted him of an offence, in order to be dealt with in terms of this Act, shall inquire into and determine the appropriate order to be made in terms of this Act;

or may refer the inquiry and determination to the children's court of the area in which the child or young person or his parent or guardian resides.

(2) A court holding an inquiry in terms of subsection (1)—

- (a) may hold such inquiry in the absence of the child or young person;
- (b) may order the child or young person to be removed during the whole or part of such inquiry;
- (c) shall order the child or young person to be removed during any part of such inquiry when his presence becomes unnecessary and undesirable
- (d) shall, wherever it is possible and appropriate to do so, seek the opinion of the child or young person on the matter under inquiry.

[Subsection as amended by section 15 of Act 23 of 2001]

## 20 Powers of children's court

(1) A children's court, after holding an inquiry in terms of section *nineteen* in respect of—

- (a) a child or young person brought before it in terms of this Act and whom it has determined to be a child in need of care; or
- (b) a child or young person who has been ordered by a court, which has convicted him of an offence, to be dealt with in terms of this Act;

may, subject to section *twenty-three*—

- (i) upon being satisfied that a certified institution will accept the child or young person, order that the child or young person shall be placed in that certified institution, which shall be named in the order; or
  - (ii) order that the child or young person shall be placed in, returned to or remain for foster care in the custody of any suitable person named in the order; or
- [Paragraph as amended by section 16 of Act 23 of 2001]
- (iii) order that the child or young person shall be placed in, returned to or remain in the custody of his parent or guardian; or
  - (iv) order that the child or young person shall reside in such place as the court may determine; or
  - (v) order that the child or young person shall render service for the benefit of the community or a section thereof; or

[Paragraph as substituted by section 16 of Act 23 of 2001]

- (vi) upon being satisfied that a training institute will accept the child or young person, order that the child or young person be placed in that training institute, which shall be named in the order;

for the period specified in subsection (1) of section *twenty-five*.

(2) A children's court which makes an order in terms of subparagraph (ii), (iii) or (iv) of subsection (1) may also order, at the same or any later time, that the child or young person shall be placed under the supervision of a probation officer for such period, not exceeding three years, as the court may determine.

(3) A children's court which makes an order in terms of subparagraph (ii), (iii), or (iv) of subsection (1) may order that the child, if he is of or above the age of twelve years, or the young person shall attend an attendance centre specified in the order on such days and during such hours as may be stated in the order:

Provided that no child or young person may be ordered to attend such centre for longer than three hours per week or forty-eight hours in all.

(4) A children's court which has held an inquiry in terms of section *nineteen* in respect of a child or young person may direct that the child or young person shall be kept in a place of safety or returned to the custody of his parent or guardian until such court has made an order in respect of that child or young person in terms of subsection (1) or until any order made thereunder can be put into effect.

(4a) A child or young person who fails to comply with an order in terms of subsection (3) shall be guilty of an offence and liable to a sentence of moderate corporal punishment, not exceeding six strokes, in accordance with section 353 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

[Subsection inserted by section 4 of Act 22 of 2001]

(5) The parent or guardian of a child or young person in respect of whom an order has been made in terms of subsection (3) shall take all reasonable steps to ensure that the order is complied with.

[Paragraph as substituted by section 16 of Act 23 of 2001]

(6) Where the parent or guardian of a child or young person in respect of whom an order has been made in terms of this section changes his place of residence during the currency of the order, he shall forthwith give notice in writing to the clerk of the children's court by which the order was made and shall in that notice state fully and clearly where the place of residence to which he has removed is situated.

(7) Any person who contravenes subsection (5) or (6) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001 and by section 16 of Act 23 of 2001]

## 21 Adjourment of inquiry

A children's court which is holding an inquiry in terms of section *nineteen* may—

- (a) from time to time postpone or adjourn such inquiry for such periods as it thinks fit;
- (b) order that during any postponement or adjournment of the inquiry the child or young person concerned shall remain or be placed in a place of safety or that he shall be returned to the custody of his parents or guardian on such conditions as the court may fix to ensure the proper care of the child or young person pending the determination of the inquiry and to ensure the attendance of the child or young person at any resumption of the inquiry:

Provided that, where the court orders that the child or young person shall remain or be placed in a place of safety, the court shall not order a postponement or adjournment for more than fourteen days at a time.

## 22 Summoning of parent or guardian of child or young person

(1) Notice of the holding of an inquiry in terms of section *nineteen* shall be served upon the parent or guardian of the child or young person if his whereabouts in Zimbabwe are known, and, unless the children's court otherwise directs, shall state that the attendance of such person is required at such inquiry.

(2) If any parent or guardian of a child or young person who has been served with a notice in terms of subsection (1) which requires his attendance at the inquiry fails to attend and remain in attendance during the inquiry unless excused by the children's court, the officer presiding over the children's court may—

- (a) issue a warrant for the apprehension of that parent or guardian;
- (b) order that parent or guardian to pay a fine not exceeding level four or, in default of payment to be imprisoned for a period not exceeding three months or to both such fine and such imprisonment;

[Paragraph as amended by section 4 of Act 22 of 2001 and by section 17 of Act 23 of 2001]

- (c) on cause shown, remit any penalty imposed in terms of paragraph (b).

(3) Any person arrested in terms of subsection (2) may be detained in any prison and compelled to attend the inquiry until the determination thereof.

## 23 Determination of certified institution or training institute to which child or young person shall be sent

(1) A children's court which makes an order in terms of subparagraph (i) or (vi) of subsection (1) of section *twenty* shall order that the child or young person shall be placed in the specific certified institution or training institute selected by that court after consultation with the Director or such person as Director may appoint as his deputy for the purposes of this section.

(2) ...

[Subsection repealed by section 18 of Act 23 of 2001]

## 24 Children's court may review orders

(1) A children's court may at any time review (1) an order made by it in terms of section *twenty* and may, upon such review—

- (a) discharge the order; or
- (b) discharge the order and make any other order in terms of section *twenty*; or
- (c) refer the matter to any other children's court.

(2) A children's court to which the review of an order has been referred in terms of paragraph (c) of subsection (1) shall have all the powers upon review of the order as if the order had been made by it.

(3) The management of the certified institution or training institute or the person in whose care a child or young person has been placed in terms of an order made in terms of section *twenty* shall be entitled to be heard by the children's court upon any review by it of such order.

## 25 Period of retention and further supervision of child or young person

(1) A child or young person in respect of whom an order has been made in terms of subsection (1) of section *twenty* shall reside in the place determined by the court or shall remain in the certified institution or training institute or in the custody in which he was placed or ordered to return to or remain in any other certified institution, training institute or custody to which he may be transferred in terms of this Act or shall render service for the benefit of the community, as the case may be—

- (a) until a period of three years from the date of the order has elapsed; or

- (b) until he is released on licence in terms of this Act; or
- (c) until the order has been discharged or he has been discharged from the effect of the order in terms of this Act;

whichever is the soonest.

[Subsection amended by section 19 of Act 23 of 2001]

(2) Upon the expiration of the period of retention of a pupil in a certified institution or training institute, whether by effluxion of time or release on licence, that pupil shall remain under the supervision of the management of that certified institution or training institute or under the supervision of the management of any other certified institution or training institute to which he may be transferred in terms of this Act—

- (a) for a period not exceeding three years from the date of the expiry of his period of retention; or
- (b) until he is discharged from that supervision in terms of this Act;

whichever is the soonest.

(3) A children's court may, if it thinks it necessary, order that—

- (a) any former pupil of a certified institution or training institute whose period of retention has expired shall return to and remain in that institution or institute; or
- (b) any pupil in a certified institution or training institute whose period of retention is about to expire shall remain in that institution or institute; or
- (c) a child or young person who was ordered to render service for the benefit of the community and whose period of service is about to expire, shall continue to render such service to the community;

for such further period or periods as the court may fix and may at any time revoke such order:

Provided that—

- (i) the period or the aggregate of periods fixed in terms of this section shall not exceed two years at a time; and
- (ii) any such order shall lapse upon the pupil or former pupil attaining the age of eighteen years.

[Paragraph inserted by section 19 of Act 23 of 2001 and proviso substituted by s.19 of Act 23 of 2001]

(4) The certified institution or training institute shall be entitled, before the making of an order in terms of subsection (3), to appear before the children's court and make representations or adduce evidence in regard to the desirability or otherwise of such an order.

[Subsection inserted by section 19 of Act 23 of 2001]

## **26 Person attaining age of eighteen years during inquiry in children's court**

If during the course of an inquiry in terms of section *nineteen* in respect of a young person, such young person attains the age of eighteen years, or if a young person who upon conviction of any offence has been ordered by the court to be dealt with by a children's court attains the age of eighteen years before being so dealt with, the children's court may nevertheless make an order in terms of that section in respect of such person.

## **27 Review by High Court of certain orders and discharge of certain orders by various other orders**

(1) Whenever a children's court makes an order in terms of subsection (1), (2) or (3) of section *twenty* or subsection (3) of section *twenty-five*, the officer who presided over such court shall cause to be forwarded to the registrar of the High Court, not later than seven days after the making of such order, the record of the proceedings in the matter together with such report, if any, as he may wish to append.

(2) The registrar of the High Court shall, with all convenient speed, lay any record of proceedings and report received by him in terms of subsection (1) before a judge in chambers who may—

- (a) confirm, vary or set aside the order of the children's court; or
- (b) remit the matter to the children's court with instructions as to the further proceedings to be had in such matter as the judge thinks fit.

(3) The execution of any order made in terms of subsection (1), (2) or (3) of section *twenty* or subsection (3) of section *twenty-five* shall not be suspended by the transmission of or the obligation to transmit the record of the proceedings in terms of subsection (1) nor by reason of the fact that there is in existence an order of the High Court relating to the custody of the child or young person to whom the order of the children's court relates.

(4) An order made in terms of subsection (1), (2) or (3) of section *twenty* in respect of any child or young person shall be deemed to discharge any previous order made in terms of any such subsection or in terms of subsection (3) of section *twenty-five* in respect of the same child or young person unless the court otherwise directs.

(5) An order made in terms of subsection (1) or (2) of section 351 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] in respect of any person shall be deemed to discharge any previous order made in terms of subsection (1), (2) or (3) of section *twenty* or subsection (3) of section *twenty-five* in respect of the same person unless the court otherwise directs.



## PART V

## PLACES OF SAFETY, REMAND HOMES, INSTITUTIONS AND TRAINING INSTITUTES

**28 Places of safety and remand homes**

(1) The Minister may establish and maintain places of safety for the reception of children and young persons in terms of this Act.

(1a) The Minister shall encourage local authorities and other persons or organizations to establish and maintain places of safety for the reception of children and young persons in terms of this Act.

[Subsection inserted by section 20 of Act 23 of 2001

(1b) The Director shall maintain a register of all private homes which are established as places of safety in terms of this section.

[Subsection inserted by section 20 of Act 23 of 2001

(2) The Minister may establish and maintain remand homes for the reception and detention of children and young persons awaiting trial, sentence or removal to a certified institution or training institute.

[Subsection amended by section 48 of Act 23 of 2001

(3) The Director may authorize the use of a certified institution or a training institute as a remand home for the purposes of subsection (2).

(4) A remand home established in terms of subsection (2) shall be under the management of the Director.

**29 Minister may establish training institutes and institutions**

(1) The Minister may establish and maintain training institutes and institutions for the reception, maintenance and training of children, young persons and others placed therein in terms of this Act or any other enactment.

(2) A training institute or institution established in terms of subsection (1) shall be under the management of the Director.

(3) The Minister may appoint for any training institute or institution established in terms of subsection (1) an advisory committee which shall consist of not less than three and not more than nine members, representative of both sexes, who shall hold office for such period as the Minister may fix.

(4) The Minister may at any time terminate the appointment of any member of an advisory committee and may appoint a member in place of any member who dies or resigns his appointment or whose appointment has been terminated.

(5) An advisory committee shall advise the Director on the management and conduct of the training institute or institution for which it has been appointed:

Provided that nothing in this subsection contained shall be construed as requiring the Director to comply with the advice of an advisory committee.

**30 .....**

[Section repealed by section 21 of Act 23 of 2001

**31 Registration of institutions**

(1) Subject to subsection (2), no person shall receive any child or young person in an institution unless that institution has been registered in terms of this section in the name of that person or otherwise than in accordance with the conditions on which that institution has been so registered.

(2) Application for the registration of an institution in terms of this section shall be made to the Minister and the Minister may—

(a) before considering any such application, require the applicant to publish in one or more newspapers named by the Minister a notice in a form to be fixed by the Minister to the effect that he has applied for the registration of the institution in question;

(b) reject any such application or grant it either unconditionally or on such conditions as he may think fit and issue to the applicant a certificate of registration in the prescribed form.

(3) A certificate of registration issued in terms of subsection (2) may at any time be cancelled by the Minister or surrendered to the Minister by the person in whose name it was issued:

Provided that no such certificate shall be cancelled unless at least one month's written notice of intention to cancel that certificate has been given to the person in whose name it was issued and the Minister has considered any representations submitted by such person in pursuance of such notice.

(4) If the Minister is satisfied that the management of any registered institution or the accommodation, transport or other facilities provided for, or the treatment of, the children and young persons therein is such as to endanger their welfare, he may serve upon the person responsible for the management of such institution such general or special directions with respect to the matters aforesaid or any of them as he thinks expedient for the welfare of the children and young persons in the institution.

(5) The Minister shall cause notice of the registration of any institution and of the cancellation or surrender of any certificate of registration issued in terms of this section to be published in the *Gazette*.

(6) The Chief Health Officer or any medical officer of health of a local authority or any person authorized thereto in writing by either of them may visit and inspect any institution.

(7) No person shall obstruct any person referred to in subsection (6) in the exercise of his powers in terms of that subsection.

(8) Any person who contravenes any provision of this section or any direction given in terms thereof shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 22 of Act 23 of 2001

### **32 Liability for maintenance of child or young person received in terms of this Act**

Any certified institution or person who has received any child or young person placed with it or in his custody in terms of this Act or any other enactment shall be deemed to have the custody of that child or young person and shall be bound to maintain and care for that child or young person for so long as he has been placed with that institution or in the custody of that person:

Provided that such certified institution or person may at any time, after giving to the Director not less than three month's written notice, disclaim further responsibility for the maintenance and custody of any such child or young person.

[Section amended by section 22 of Act 23 of 2001

### **33 Pupil of certified institution or training institute may be released on licence**

(1) The management of a certified institution or training institute may by licence permit any pupil in that institution or institute to live in the custody of a suitable person for such period, not exceeding three years, and on such conditions as may be agreed between that person and such management or to reside as may be directed by such management from time to time:

Provided that no such licence shall, without the authority of the court which made the order placing the pupil in that institution or institute, be granted to a pupil before the expiration of the period of one year next following the date of commencement of his current period of retention.

(2) The management of a certified institution or training institute may stipulate in a licence granted in terms of subsection (1) that the pupil shall be subject to the supervision of a probation officer or of a person working for the protection, welfare and reclamation of children and young persons.

(3) The management which has granted a licence in terms of subsection (1) may at any time, by notice in writing addressed to the person in whose custody the pupil is or to the pupil himself if he is not in custody, revoke the licence and direct that the pupil shall return to the certified institution or training institute from which he was released.

(4) Any interested person may, within one month from the date of a notice referred to in subsection (3), appeal to the Minister against the revocation of the licence and the Minister may, after reference to the management concerned and such further inquiry as he may think necessary, either confirm the revocation or restore the licence.

(5) Where the Minister has restored a licence in terms of subsection (1), the management which granted the licence shall not revoke it again without the consent of the Minister.

(6) Where the period for which a licence has been granted to a pupil expires before the expiration of the period of further supervision of the pupil, the management which granted the licence may require the pupil to return to the certified institution or training institute from which he was released or may extend the licence.

(7) Upon the return to a certified institution or training institute of a pupil whose licence has been revoked or who has been required to return thereto in terms of subsection (6), such pupil shall, as soon as possible after his return, be again released on licence by the management and, until such further release, he may be retained in the certified institution or training institute.

(8) Where a licence has been revoked or where a pupil has been required to return to a certified institution or training institute in terms of subsection (6), the management concerned shall forthwith report the reasons for the revocation or the requirement to return, as the case may be, to the Minister and, if the pupil is again released on licence shall forthwith report that fact to the Minister.

(9) The Minister may at any time, by order in writing, cancel a licence granted to a pupil if he thinks it necessary in the interests of that pupil and may direct the pupil to return to the certified institution or training institution whose management granted the licence or transfer him in terms of section *thirty-eight* to any other certified institution or training institute.

(10) Where a pupil has been directed by an order referred to in subsection (9) to enter a certified institution or training institute other than the one from which he was released on licence, he shall, as from the date of the order, cease to be a pupil of the institution or institute from which he was so released and shall become a pupil of the institution or institute which he has been directed to enter.

### **34 Licence may be varied**

(1) The management of a certified institution or training institute may, at any time with the consent of the person in whose custody a pupil has by licence granted by that management been permitted to live, vary the terms of the licence or substitute therein for the name of such person the name of any other suitable person

(2) The management of a certified institution or training institute may at any time vary the conditions of residence of a pupil who has been released on licence granted by that management but who is not required to be in the custody of any person.

### **35 Reports on pupils**

(1) The management of a certified institution or training institute shall, on the completion by a pupil in that institution or institute of the first year of his period of retention, and on the completion of every succeeding year of his period of retention, report to the Director the reasons why the pupil has not been released on licence or recommended for discharge and if, in the opinion of the management, any further retention of the pupil in that institution or institute is advisable, the grounds on which that opinion is based.

(2) Whenever the Director so directs, the management of a certified institution or training institute shall submit to him a report similar to the report mentioned in subsection (1).

### **36 Leave of absence from certified institution or training institute**

The management of a certified institution or training institute may grant leave of absence to any pupil in that institution or institute for such period and on such conditions as may be specified and may at any time revoke such leave and direct the pupil to return to the institution or institute from which he was granted leave.

### **37 Discharge from effect of various orders made**

The Minister may at any time, by order in writing, discharge any pupil, child or young person from the effect of any order made by a court in terms of section *twenty* or subsection (3) of section *twenty-five* or of section 351 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]:

Provided that, before discharging a pupil from a certified institution or training institute or from the supervision of the management of a certified institution or training institute, the Minister shall consult the management concerned.

[Proviso amended by section 48 of Act 23 of 2001.]

### **38 Transfer of pupil, child or young person**

(1) Subject to this section, a pupil, child or young person who, in terms of this Act or any other enactment, has been placed in any certified institution, training institute or foreign institution to which an agreement under section *forty* applies, or in or under any custody or supervision, shall be transferred to another such institution, institute, custody or supervision if the Minister, by written order, so directs.

[Subsection substituted by section 24 of Act 23 of 2001]

(2) The Minister shall, upon making an order of transfer of any pupil, child or young person in terms of subsection (1) to any institution outside Zimbabwe, cause notice to be given to the parent or guardian of the pupil, child or young person of the making of the order, if the whereabouts of such parent or guardian are known to him.

(3) Where the Minister has in terms of this section dealt with a pupil, child or young person to whom an order made by any court applies, that order shall be deemed to have been varied by the Minister's order in so far as it relates to the transfer of the pupil, child or young person.

(4) No order shall be made by the Minister for the transfer of a pupil, child or young person to a training institute from any certified institution or the custody or supervision in or under which he has been placed by order made in terms of this Act or any other enactment except after consideration by him of a report upon the reasons for the proposed transfer made by a magistrate either of his own accord or by direction of the Minister.

[Subsection amended by section 24 of Act 23 of 2001]

(5) No order shall be made by the Minister for the transfer of a pupil, child or young person from a training institute in which he has been placed in terms of this Act or any other enactment to a certified institution unless the Minister has consulted the management of the certified institution to which it is proposed to transfer the pupil, child or young person and is satisfied that the transfer will not be prejudicial to the pupils in that certified institution.

[Subsection amended by section 48 of Act 23 of 2001]

(6) The Minister responsible for justice may, after consultation with the Minister, by order in writing, transfer any minor who is undergoing in any prison a sentence of imprisonment, the unexpired term of which is not less than four months, to a training institute, and from the date of that order that minor shall be deemed to have been placed in that training institute in terms of section 351 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

[Subsection amended by section 48 of Act 23 of 2001.]

(7) If the parent or guardian of a minor in respect of whom an order of transfer has been made in terms of this section changes his place of residence during the currency of the order, he shall forthwith give notice in writing to

the Director and shall in that notice state fully and clearly where the place of residence to which he has removed is situated.

(8) Any person who fails to comply with subsection (7) shall be guilty of an offence.

### **39 Admission of children and young persons from foreign states to certified institutions**

(1) The Minister may authorize the admission to any certified institution, subject to acceptance by the management of such certified institution, of any child or young person committed thereto by any competent court or officer of any foreign state.

(2) The relevant provisions of this Act and of the regulations made thereunder shall apply to any child or young person received into or detained in a certified institution in terms of subsection (1).

### **40 Reception in training institutes of juveniles from foreign states**

(1) The President may enter into an agreement with the head of the government of any foreign state for the reception into and retention in any training institute of any person under the age of twenty-one years whose detention in a training institute has been ordered by a competent court of the said state according to the law in force therein.

(2) The Minister may direct the reception and detention in a training institute of any person under the age of twenty-one years whose detention in a training institute has been ordered by a competent court of a state with the head of whose government the President has entered into an agreement in terms of subsection (1).

(3) The relevant provisions of this Act and of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply to a person received into or detained in a training institute in terms of this section as if he had been sent to that training institute in terms of section 351 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]:

Provided that in connection with any such person the application of those provisions shall be subject to the following qualifications—

- (a) the Minister shall not transfer such a person in terms of section *thirty-eight* except to another training institute;
- (b) subject to the agreement, if any, by virtue whereof such a person was received into a training institute, the Minister need not consult the management of that training institute in terms of the proviso to section *thirty-seven* before discharging that person therefrom;
- (c) the management of the training institute in which such a person is detained shall not release him on licence in terms of subsection (1) of section *thirty-three*;
- (d) subsection (3) of section 352 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall not apply to such a person.

### **41 Transfer of certain persons to institutions outside Zimbabwe**

(1) The President may enter into an agreement with the government of any country for the reception and detention in any institution in that country of children, young persons or other persons who have been ordered by a competent court in Zimbabwe, or by the Minister in terms of section *thirty-eight*, to be placed in an institution outside Zimbabwe.

(2) Subject to this Act and any other enactment, a person whom a competent court or the Minister has ordered to be placed in an institution outside Zimbabwe in accordance with an agreement made in terms of subsection (1) may be removed to and detained in that institution in accordance with the law of the foreign country concerned.

(3) Any person who is in the course of removal to an institution outside Zimbabwe in accordance with an order signed by the Minister in terms of section *thirty-eight* shall be deemed to be in lawful custody whilst he is in Zimbabwe.

(4) Any person who is lawfully released from any institution outside Zimbabwe shall, upon re-entry to Zimbabwe, be deemed to be under the supervision of the probation officer of the area in which he lives, and such supervision shall be for a period not exceeding three years or until the children's court has made an order in terms of paragraph (a) or (b) of subsection (1) of section *twenty-four*.

[Section substituted by section 25 of Act 23 of 2001]

### **42 Absconding pupils and other persons**

(1) Any pupil who has absconded from any certified institution, training institute or South African institution or any person who has absconded from any place of safety or remand home or from the custody of any person in which he has been placed in terms of this Act or any other enactment or while he is proceeding to an institution, may be apprehended without warrant by any police officer or probation officer or member of staff of the institution from which he absconded, and shall be brought as soon as possible before a children's court of the district in which he was apprehended or from which he absconded.

(2) Any pupil or person who has been granted leave of absence or who has been released on licence from a certified institution, training institute or South African institution and who—

- (a) on the revocation or expiration of his leave of absence fails to return to the certified institution, training institute or South African institution from which he was granted leave of absence; or

- (b) on the revocation of his licence fails to return to or enter the certified institution, training institute or South African institution to which he was directed to return or which he was directed to enter as a result of the revocation of his licence;

shall be deemed to have absconded from the certified institution, training institute or South African institution from which he was granted leave of absence or to which he was directed to return or which he was so directed to enter, as the case may be.

(3) When any pupil, child or young person who has absconded as specified in subsection (1) or (2) has been brought before a children's court, the children's court shall, after questioning the pupil, child or young person as to the reasons why he absconded—

- (a) order that he shall be returned to the certified institution, training institute, place of safety, remand home or custody from which he absconded; or
- (b) if the order in terms of which the pupil, child or young person was placed in the certified institution, training institute, place of safety, remand home or custody has expired, make a fresh order in terms of section *twenty*; or
- (c) exercise the powers of review conferred upon it by section *twenty-four*;

and shall report to the Director the result of the interrogation of the pupil, child or young person and the order which the court made in terms of this subsection.

[Subsection amended by section 48 of Act 23 of 2001.]

### **43 Unlawful removal of juveniles**

(1) Any person who—

- (a) abducts or removes a pupil, child or young person from a certified institution or training institute, place of safety, remand home or custody in which such pupil, child or young person was lawfully placed; or
- (b) directly or indirectly counsels, induces or aids a pupil, child or young person to abscond from a certified institution or training institute, place of safety, remand home or custody in which such pupil, child or young person was lawfully placed; or
- (c) knowingly harbours or conceals a pupil, child or young person who has absconded or been removed from a certified institution or training institute, place of safety, remand home or custody in which such pupil, child or young person was lawfully placed; or
- (d) prevents a pupil, child or young person from returning to the certified institution or training institute, place of safety, remand home or custody from which he absconded or was removed;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 26 and 48 of Act 23 of 2001.]

(2) If any person refuses to return a pupil, child or young person to a certified institution or training institute, place of safety, remand home or custody to which such pupil, child or young person has been committed, upon expiration of any period of leave of absence granted to such pupil, child or young person from such certified institution or training institute, place of safety, remand home or custody, such person shall be deemed to have prevented such pupil, child or young person from returning to such certified institution or training institute, place of safety, remand home or custody.

[Section amended by section 26 and 48 of Act 23 of 2001]

### **44 Imprisonment of absconding pupils**

(1) If any pupil of the age of eighteen years or over absconds from any training institute he shall be guilty of an offence and shall be liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 27 of Act 23 of 2001]

(2) When the pupil has undergone any sentence imposed upon him in terms of subsection (1), the Director may order that he shall be returned to the training institute or that he shall be discharged.

### **45 Inspection of children and young persons**

(1) For the inspection of certified institutions, training institutes, institutions, children and young persons, there shall be such number of inspectors as may be required, whose offices shall be public offices and shall form part of the Public Service.

(2) Any inspector appointed in terms of subsection (1) shall have power to enter any certified institution, training institute or institution or the dwelling of any person in whose custody a child or young person has been placed in terms of this Act or any other enactment and to inspect any such certified institution, training institute, institution or dwelling and the books and documents appertaining thereto and any pupil, child or young person therein.

(3) The powers conferred by subsection (2) upon an inspector may be exercised by any magistrate within his province and by any probation officer who has been generally or in any case specially authorized thereto by the Director.

(4) Refusal by the management of any certified institution, training institute or institution or by the occupant of any dwelling to allow a person exercising his powers in terms of this section to enter and inspect those premises or to have access to any pupil, child or young person shall be a reasonable ground within the meaning of section *fourteen* for suspecting that an offence specified in the First Schedule is being or has been committed upon or in connection with a pupil, child or young person in those premises.

(5) Any person who obstructs any other person in the exercise of his powers in terms of this section or who fails to produce any pupil, child or young person or book or document whose production is demanded in terms of this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 28 of Act 23 of 2001]

#### **46 Probation officers**

(1) There shall be such number of probation officers as may be required, whose offices shall be public offices and shall form part of the Public Service, and whose functions shall be—

(a) to inquire into and report to any court or magistrate upon the character and environment of any minor on trial or undergoing a preparatory examination or in respect of whom an inquiry is being or is intended to be conducted in terms of section *nineteen*, and into and upon the causes and circumstances contributing to the delinquency of such minor:

Provided that nothing in this paragraph shall be regarded as varying the law in force governing the admissibility of evidence in criminal cases;

(b) to devise and carry out measures for the observation and correction of tendencies to delinquency in children and young persons and for the discovery and removal of conditions causing or contributing to juvenile delinquency;

(c) to counsel, supervise and control any person placed under the supervision of the probation officer;

[Paragraph amended by section 29 of Act 23 of 2001]

(d) to perform such other duties as may be imposed upon them in terms of this Act or any other enactment or by the Minister.

(1a) The Minister may, where a public officer is not available, engage social workers who are registered in terms of the Social Workers Act [*Chapter 27:21*], and are not public officers, to perform the functions of a probation officer in terms of this Act on such terms and conditions as the case may be agreed.

[Subsection amended by section 29 of Act 23 of 2001]

(2) A probation officer shall be an officer of the High Court, every children's court and every magistrates court.

(3) When a person is placed under the supervision of a probation officer, that officer shall be designated by his office and not by the name of any particular person holding that office.

(4) Any person who—

(a) obstructs or hinders a probation officer in the exercise of his powers or the execution of his duties in terms of this Act; or

(b) fails to comply with a requirement of a probation officer in the exercise of his powers or the execution of his duties in terms of this Act: or

(c) impersonates a probation officer;

shall be guilty of an offence and liable to a fine not exceeding level five or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 29 of Act 23 of 2001]

#### **47 Transfer of certain parental powers**

(1) Subject to subsections (4) and (5), a parent or guardian of any pupil, child or young person who has, in terms of this Act or any other enactment, been placed in a certified institution or training institute or in the custody of some person shall be divested of his right of control over and of his right to the custody of such pupil, child or young person and those rights shall be vested in the management of the certified institution or training institute in which that pupil, child or young person has been placed or in the person in whose custody such pupil, child or young person has been placed.

(2) Subject to subsections (4) and (5), the parent or guardian of a child or young person may, in writing, consent to the child or young person being placed in the custody of the management of a certified institution or an institution, and the parent or guardian shall thereupon be divested of his right of control over and of his right to the custody of the child or young person and those rights shall be vested in the management of the certified institution or institution in whose custody that child or young person has been placed:

Provided that—

(i) the parent or guardian shall remain responsible for the maintenance of the child or young person;

(ii) the parent or guardian or the management of the certified institution or institution may, by notice in writing to the other party, terminate the control over and custody of the child or young person by the

management, and thereupon the rights vested in the management in terms of this subsection shall be re-vested in the parent or guardian.

(3) If a minor living with his parent or guardian is by virtue of an order made or licence granted in terms of this Act or any other enactment under the supervision or control of a probation officer or other person, the parent or guardian of such minor shall exercise his right of control over the minor in accordance with any directions which he may have received from such probation officer or other person.

(4) The rights transferred by subsection (1) or (2) from a parent or guardian to the management of any certified institution or institution or training institute or person shall not include the powers to deal with any property of a pupil, child or young person or the power to consent to the marriage of a pupil, child or young person or to the performance upon him of a surgical operation which is attended with serious danger to life:

Provided that—

- (i) if the Director is satisfied, after due inquiry, that an operation is necessary to preserve the life of or to save the pupil, child or young person from a serious or lasting physical injury or disability and that a parent or guardian unreasonably refuses his consent to the performance of that operation or that a parent or guardian cannot be found within a reasonable time, the Director may himself authorize the performance of the operation upon the pupil, child or young person;
- (ii) if the principal of a certified institution or institution or training institute or the person in whose custody a pupil, child or young person has been placed in terms of this Act or any other enactment has good grounds for believing that the performance of any surgical operation is necessary to preserve the life of or to save the pupil, child or young person from a serious or lasting physical injury or disability, and that the need for such operation is so urgent that it should not be deferred for the purpose of consulting his parent or guardian or the Director, the principal or person concerned may himself authorize the performance of such operation.

(5) The management of a certified institution or institution or training institute or the person in whose custody any pupil, child or young person has been placed in terms of this Act, including subsection (2), or any other enactment shall not consent to the performance of a surgical operation on any pupil, child or young person which is not attended with serious danger to life unless—

- (a) the operation is necessary to preserve the life of such pupil, child or young person or to save him from a serious or lasting physical injury or disability; and
- (b) except where it is not reasonably practicable to do so, notice of the proposed operation has been given to the parent or guardian of the pupil, child or young person and reasonable opportunity has been afforded to the parent or guardian to object to the performance of the operation and any objection raised has been considered.

#### **48 Unlawful removal of pupil, child or young person from Zimbabwe**

If any person without the consent in writing of the Director or except in terms of any order made in terms of this Act, removes from Zimbabwe a pupil, child or young person who is, in terms of any order made in terms of this Act, in the custody or under the supervision of any person, he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment..

[Section amended by section 30 of Act 23 of 2001

### **PART VI**

#### **CONTRIBUTION ORDERS**

#### **49 Making of contribution order**

(1) Subject to this Part, a children's court may make a contribution order against a respondent towards the maintenance of—

- (a) a child or young person who is the subject of an inquiry in terms of section *nineteen*; or
- (b) a child or young person in respect of whom an order has been made in terms of section *twenty*; or
- (c) any pupil.

(2) The children's court may direct that the whole or portion of the payments due in terms of a contribution order shall be made by an employer of the respondent from earnings due to the respondent by that employer.

(3) No contribution order and no direction in terms of subsection (2) shall be made unless—

- (a) notice of the proposal to make any such order or direction has been given to the respondent and, where applicable, the employer of the respondent concerned; and
- (b) the respondent and, where applicable, the employer of the respondent have been given an opportunity to appear before and to be heard by the court in relation to the proposal to make the order or the direction, as the case may be.

(4) Where a direction is to be made against the State or a fund, the notice referred to in subsection (3) shall be deemed to have been correctly given if it is served upon such person as may be prescribed:

Provided that, if no such person is prescribed in relation to the State, the notice shall be deemed to have been correctly given if it is served upon the Secretary of the Ministry by which the earnings are payable or are likely to become payable.

(5) In making a contribution order the children's court shall have regard to—

- (a) the means of the respondent and the child, young person or pupil concerned;
- (b) the general standard of living of the respondent and of the child, young person or pupil concerned;
- (c) any previous order made by any court for the maintenance of the child, young person or pupil concerned.

(6) Where there is in existence an order of the High Court for the maintenance of a child, young person or pupil a children's court may, in making a contribution order in respect of that child, young person or pupil, further order that the order of the High Court shall be suspended during the period of operation of the contribution order.

## **50 Provisional contribution order**

(1) A provisional contribution order may, on application by a children's court assistant, be made against a respondent residing in any state to which the Maintenance Orders (Facilities for Enforcement) Act [*Chapter 5:10*] have been extended, by a children's court towards the maintenance of any child, young person or pupil referred to in paragraph (a), (b) or (c) of subsection (1) of section *forty-nine*.

(2) In making a provisional contribution order a children's court shall have regard to the matters specified in subsection (5) of section *forty-nine*.

(3) A provisional contribution order shall have the effect of a provisional maintenance order referred to in section 5 of the Maintenance Orders (Facilities for Enforcement) Act [*Chapter 5:10*] and that Act shall apply, *mutatis mutandis*, in relation to such provisional contribution order.

## **51 Effect of direction to make payments and of contribution order**

(1) Subject to subsection (1) of section 7 of the Maintenance Act [*Chapter 5:09*], a direction made in terms of subsection (2) of section *forty-nine* shall have precedence over any other order of court requiring payments to be made from the earnings due to the respondent by the employer concerned.

(2) Where a direction in terms of subsection (2) of section *forty-nine* has been made, no part of the earnings due to the respondent by the employer concerned shall be applied to the settlement of any debt, including set-off, or in accordance with any agreement, arrangement or instruction of any kind whatsoever until all payments due in terms of the direction have been made:

Provided that nothing in this subsection contained shall be construed as relieving an employer from the obligation to withhold and make payments of employees' tax in accordance with section 73 of the Income Tax Act [*Chapter 23:06*].

(3) Where a respondent ceases to be entitled to receive any earnings from an employer against whom a direction in terms of subsection (2) of section *forty-nine* has been made—

- (a) that direction shall cease to have effect as regards that employer; and
- (b) the respondent shall make payments which were the subject of the direction and which are due to a child, young person or pupil, as the case may be.

(4) A direction made in terms of subsection (2) of section *forty-nine* and a contribution order shall have the effect of a garnishee order and a civil judgment, respectively, of the magistrates court in favour of the clerk of the children's court and the Magistrates Court Act [*Chapter 7:10*] and of the rules made thereunder shall apply, *mutatis mutandis*, to any proceedings for the enforcement of the direction or order.

(5) A contribution order, other than one made against a father for the maintenance of an illegitimate child, shall have the effect of a maintenance order referred to in section 4 of the Maintenance Orders (Facilities for Enforcement) Act [*Chapter 5:10*] and that Act shall apply, *mutatis mutandis*, to such contribution order.

(6) Any person who fails to comply with any direction made against him in terms of subsection (2) of section *forty-nine* shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 31 of Act 23 of 2001]

## **52 Provisions of contribution order as to payments**

(1) A contribution order shall direct that payment in terms of the order shall be made to the clerk of the children's court making the order.

(2) A contribution order shall not impose any obligation to pay any money for the maintenance of any person during any period after his attainment of the age of twenty-one years.

(3) Moneys received in terms of any contribution order shall be paid into the Consolidated Revenue Fund.

## **53 Variation or rescission of direction to make payments and of contribution order**

(1) A children's court which has made a contribution order or a direction in terms of subsection (2) of section *forty-nine* may at any time vary, suspend or rescind the order or direction or revive the order or direction after it has been rescinded.



(2) An order made in terms of subsection (1) shall have effect from the date on which it was made unless the court directs that it shall have effect from some specified earlier or later date:

Provided that no rescission or variation of contribution order or direction made in terms of subsection (2) of section *forty-nine* with effect from an earlier date shall entitle the respondent or the employer to recover or set off any money already paid by him in accordance with the terms of the contribution order or direction, as the case may be.

#### **54 Appeal against contribution order or direction**

(1) An appeal shall lie to the High Court against—

- (a) any contribution order or direction made in terms of subsection (2) of section *forty-nine* or the variation, suspension, rescission or revival of a contribution order or such direction;
- (b) the refusal of an application for a contribution order or for the variation, suspension, rescission or revival of a contribution order or direction made in terms of subsection (2) of section *forty-nine*.

[Subsection as amended by section 10 of Act 9 of 1997]

(2) The Magistrates Court Act [*Chapter 7:10*] and the High Court Act [*Chapter 7:06*] and the rules made thereunder shall apply, *mutatis mutandis*, to such appeal as if it were an appeal against the judgment in a civil suit by a magistrate.

[Subsection as amended by section 10 of Act 9 of 1997]

#### **55 Change of place of residence of respondent**

(1) If a respondent against whom a contribution order has been made during the currency of the order changes his place of residence, he shall forthwith give notice in writing to the clerk of the children's court by which the order was made and shall in that notice state fully and clearly where the place of residence to which he has removed is situated.

(2) When a respondent against whom a contribution order is in force removes to and becomes resident in a district other than that of the court which made the order, that court may, if it thinks it desirable, without prior notice to the respondent, vary the order by designating as the officer to whom payment shall be made the clerk of the children's court of the district to which the respondent has removed, and when a court has so varied an order it shall transmit a certified copy of the order to such clerk of the court and inform the respondent by notice in writing of the variation of the order.

(3) An order which has been transmitted to another court in terms of subsection (2) shall thereupon have effect and be enforceable as if it were an order of that court.

#### **56 Service of process**

(1) Any summons, rule, subpoena or notice in connection with any proceedings in terms of this Part may be served without fee by any police officer in the manner prescribed by the rules made in terms of the Magistrates Court Act [*Chapter 7:10*] for the service of similar documents in civil proceedings in magistrates courts, unless any other manner of service has been prescribed in terms of subsection (11) of section *five* or by registered letter.

(2) Any writ of attachment in execution of a contribution order shall be executed by the messenger of the magistrates court of the district in which the property to be attached is situated, and the messenger's fee and charges for the execution shall be paid out of the proceeds of the sale of any such property attached in execution and shall be levied in addition, and in preference, to the sum payable in terms of the contribution order.

(3) Save as is provided in subsection (2), no costs of any proceedings in terms of this Part or of any appeal in terms of section *fifty-four* shall be recoverable by any party thereto from any other party, and no court fee shall be payable in connection with the issue or lodging of any document in any such proceedings or appeal.

### **PART VII**

#### **ADOPTION OF CHILDREN**

#### **57 Jurisdiction and procedure in relation to adoption order**

(1) The court having jurisdiction to make adoption orders in terms of this Part shall be the children's court established in terms of subsection (1) of section *three* within the jurisdiction of which either the applicant or the minor resides at the date of the application for the adoption order.

(2) For the purpose of any application in terms of this Part, the court shall appoint a probation officer to act as guardian *ad litem* of the minor upon the hearing of the application with the duty of safeguarding the interests of the minor before the court:

Provided that, where the child is being adopted following a decision by its mother to give it up for adoption, the Director shall appoint a probation officer to act as the child's guardian *ad litem* from the time the child is born or the mother makes the decision, whichever is the later, and the probation officer shall be responsible for safeguarding the child's interests from his appointment until the completion of the adoption proceedings.

[Proviso inserted by section 32 of Act 23 of 2001]

(3) Applications for adoption orders shall be held in private and no persons, other than those permitted by the court, shall be present at any proceedings relating to such applications.

## 58 Power to make adoption order

(1) Upon application in the prescribed manner by any person desirous of being authorized to adopt a minor who has never been married, the court may, subject to this Act, make an order authorizing the applicant to adopt that minor.

(2) Where an application for an adoption order is made by two spouses jointly, the court may make an order authorizing the two spouses jointly to adopt but save as aforesaid no adoption order shall be made authorizing more than one person to adopt a minor.

(3) An order may be made authorizing an applicant who is the spouse of the parent of a minor to adopt such minor and, notwithstanding section *sixty-four*, such adoption order shall not terminate the rights and legal responsibilities existing between such adopted child and the said parent and his relatives.

## 59 Restrictions on making adoption order

(1) An adoption order shall not be made except with the consent of the Minister in any case where—

- (a) the applicant is under the age of twenty-five years; or
- (b) the applicant is less than twenty-one years older than the minor in respect of whom the application is made:

Provided that—

- (i) where the applicant and the minor are within the prohibited degrees of consanguinity, the court may, if it thinks fit, make the order notwithstanding that the applicant is less than twenty-one years older than the minor;
- (ii) a husband and his wife jointly may adopt any minor born of one of the spouses even though one of them is or both of them are under the age of twenty-five years, or even though one of them is or both of them are less than twenty-one years older than the minor;
- (iii) the spouse of the parent of a minor may adopt such minor even though the adopter is under the age of twenty-five years or is less than twenty-one years older than the minor;
- (iv) any person may adopt a minor born of him or her which has previously been adopted by any person, whether or not he or she is under the age of twenty-five years or is less than twenty-one years older than the minor;
- (v) no person shall adopt, otherwise than jointly with his or her spouse, a minor less than twenty-five years younger than the said person, unless the minor is of the same sex as that person or that person is a widower, widow or an unmarried or divorced person and is the natural parent of the minor.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the minor in respect of whom the application is made is a female, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or legal guardian of the minor in respect of whom the application is made or who is liable to contribute to the support of the minor:

Provided that—

- (i) in the case of a minor who is an illegitimate child, the consent of—
  - (a) the father shall not be required for the purposes of this subsection; and
  - (b) the mother shall not be regarded as invalid solely on the ground that at the time of giving the consent she was a minor or a married woman and was not assisted thereto by her parent, guardian or husband, as the case may be;
- (ii) the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the minor or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the minor, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with;
- (iii) the court shall dispense with the consent of the parent or guardian of the minor if, in anticipation of any application for an order of adoption being made, a judge of the High Court has, upon an application made to him in chambers by the guardian *ad litem*, declared that such parent or guardian has abandoned or neglected such minor in circumstances deemed to be abandonment or neglect in terms of subsection (2) of section *seven*.

(4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(5) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in Zimbabwe or in respect of any minor who is not so resident:

Provided that, if the applicant and the minor are within the prohibited degrees of consanguinity, the adoption may be made in favour of an applicant who is not resident or domiciled in Zimbabwe.

(6) An adoption order shall not be made unless the minor has been medically examined and a copy of the report relating to such examination has been furnished to the court and its contents have been made known to the applicant without disclosure to the applicant of any name appearing in the report.

(7) Except with the consent of the Minister, no adoption order shall be made in favour of an applicant who is not a citizen of Zimbabwe:

Provided that this subsection shall not apply in a case where the applicant and the minor are within the prohibited degrees of consanguinity.

### **60 Consent to adoption given by minor mother of illegitimate child**

Any consent given on or before the 26th October, 1973, by a mother to the adoption of her illegitimate child shall not be regarded as invalid for the purpose of the making of an adoption order in terms of this Act or any other enactment relating to adoption solely on the ground that at the time of giving the consent the mother was a minor or a married woman and was not assisted thereto by her parent, guardian or husband, as the case may be.

### **61 Matters with respect to which court to be satisfied**

The court, before making an adoption order, shall be satisfied—

- (a) where the consent of a parent is necessary in terms of this Act and has not been dispensed with, that such consent is in the prescribed form and—
  - (i) is signed before a magistrate; and
  - (ii) states that the consent of the parent has been given to the adoption of the minor—
    - A. by the applicant or applicants for the adoption whose full names are known or have been made known to the parent and which, together with their residential address, shall be specified on the prescribed form; or
    - B. by an applicant or applicants approved and selected by the court in terms of this Act from the register of names of persons kept by the Director in terms of subsection (1) of section *sixty-two*; and
  - (iii) contains a certificate endorsed thereon by the magistrate that the parent understands the nature and effect of the adoption order applied for and that, if granted, the parent will be permanently deprived of his or her parental rights in respect of the minor; and
- (b) where the consent of any person other than a parent is necessary in terms of this Act and has not been dispensed with, that such person has consented to and understands the nature and effect of the adoption order for which application is made; and
- (c) that the order if made will be for the welfare of the minor, due consideration being for this purpose given to the wishes of the minor, having regard to the age and understanding of the minor; and
- (d) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption, except such as the court may sanction.

### **62 Register of applicants for adoption**

(1) The Director shall keep a register of names of persons who wish to adopt a minor.

(2) Upon an application being made to him by any person who wishes to have his name recorded on the register referred to in subsection (1) the Director may—

- (a) if he considers that such person would be suitable as an adopter, record such person's name on the register;
- (b) if he does not consider that such person would be suitable as an adopter, refuse to record such person's name on the register.

(3) Where the Director considers that any person whose name is recorded on the register referred to in subsection (1) is no longer suitable to be an adopter he may remove that person's name from the register and shall notify the person concerned.

(4) Any person who is aggrieved by the decision of the Director in refusing to record his name on the register referred to in subsection (1) or in removing his name therefrom may appeal to the children's court which may confirm the decision of the Director or direct him to record the appellant's name on the register, and the Director shall comply with any such direction.

### **63 Terms and conditions of order**

The court in an adoption order may impose such terms and conditions as the court may think fit, and may require the adopter by bond or otherwise to make for the adopted child such provision, if any, as in the opinion of the court is just and expedient.

## 64 Effect of adoption order

(1) An adoption order shall, unless otherwise thereby provided, confer the surname of the adopter on the adopted child.

(2) Where at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate, his property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(3) In any disposition of property made by an instrument which has effect after the date of an adoption order—

- (a) any reference, whether express or implied, to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person; and
- (b) any reference, whether express or implied, to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and
- (c) any reference, whether express or implied, to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

(4) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the person to whom the order relates shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if that person were a child born to the adopter in lawful wedlock, and in respect of those matters that person shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(5) In any case where two spouses are the adopters, the spouses shall, in respect of the matters mentioned in subsection (4) and for the purpose of the jurisdiction of any court to make any order as to the custody and maintenance of and right of access to children, stand to each other and to the adopted person in the same relation as they would have stood if they had been the lawful father and mother of that person, and the adopted person shall stand to them in the same relation as to a lawful father and mother.

## 65 Power to make interim order

(1) Upon any application for an adoption order the court may postpone the determination of the application and may make a provisional order, which shall not be an adoption order for the purposes of this Act, giving the custody of the minor to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance, education, supervision of the welfare of the minor and otherwise as the court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to a provisional order, but subject to a like power on the part of the court to dispense with any such consent.

(3) The court may, within the period laid down in subsection (1), either confirm or cancel its provisional order according to whether it considers such order is or is not in the best interests of the minor.

## 66 Power to make subsequent order in respect of minor already subject to an order

An adoption order or a provisional order may be made in respect of a minor who has already been the subject of an adoption order and, upon any application for such order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the minor for all the purposes of this Act.

## 67 Rescission of adoption order

(1) A parent of a minor for whose adoption an order has been made in terms of this Part, or the person who was at the time of the making of the adoption order the legal guardian of the minor, or the adopter of such a minor, or the Minister may apply to the court by which the adoption order was made for the rescission thereof on one or more of the following grounds—

- (a) where the applicant is the parent of the minor, that he did not consent to the adoption and that the adoption order should not have been made without his consent;
- (b) where the applicant is an adopter, that his adoption of the minor was induced by fraud, misrepresentation or *justus error*, or that the minor was suffering from a serious physical defect or that the minor is a mentally disordered or defective person in terms of the Mental Health Act [*Chapter 15:06*] and that the physical defect or mental disorder or defect existed at the time of the making of the adoption order;
- (c) that for reasons set out in the application the adoption is to the detriment of the minor:

Provided that—

- (i) no application made on the ground specified in paragraph (a) may be made more than six months after the date upon which the applicant became aware of the fact that an order for the adoption of his minor child had been made, or more than five years after the date upon which that order was made;

- (ii) no application made on a ground specified in paragraph (b) may be made more than six months after the date upon which the applicant became aware of that ground;
- (iii) no application made in terms of paragraph (c) may be made more than five years after the date upon which the adoption order was made.

(2) Where the application is made by a parent of the minor, he shall give due notice of the application to the adopter of the minor.

(3) Where the application is made by an adopter, he shall give notice of the application to the Minister and to the parent or parents, or the person who was, prior to the adoption, the legal guardian of the adopted child, if he or they can be found.

(4) Where the application is made by the Minister, he shall give notice to the adopter and to the parent or parents, or the person who was, prior to the adoption, the legal guardian of the adopted child, if he or they can be found.

(5) The court to which the application is made shall, after having satisfied itself that the applicant has complied with subsection (2), (3) or (4), as the case may be, and after having afforded any person interested in the application an opportunity to be heard, and after having considered any relevant evidence, whether oral or in the form of affidavit, which was tendered in support of or in opposition to the application, rescind or confirm the adoption order:

Provided that—

- (i) the court shall not rescind an adoption order on the application of a parent of the adopted child if it is satisfied that the applicant is unfit to have the custody of the minor and that it is in the interests of the minor that the adoption order be confirmed;
- (ii) if the application is made on the ground that the minor was suffering from a serious physical defect or that the minor is a mentally disordered or defective person, the court shall not rescind the adoption order unless it is satisfied that the applicant was or, if a husband and wife jointly adopted the minor concerned, they were both at the time of the making of the adoption order ignorant of the physical defect or mental disorder or defect of the minor.

(6) On the rescission of an adoption order the adopted child shall for all purposes be restored to the position in which he would have been if no adoption order had been made and the court shall notify the Registrar-General of such rescission:

Provided that the rescission shall not affect anything lawfully done while the adoption order was in force.

## **68 No consideration in connection with adoption permitted**

If any person or agent of that person who has obtained or applied for an adoption order gives or undertakes to give or, except with the consent of the court which made the order or to which application for the order is made, receives or contracts to receive any consideration in respect of the adoption, or if any parent or legal guardian of a minor receives or contracts to receive or, save with such consent as aforesaid, gives or undertakes to give any consideration in respect of the adoption, he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001 and by section 33 of Act 23 of 2001]

## **69 Concealment of identity of adopted child**

(1) No person shall at any time publish any information likely to reveal the identity of the parent or adopter of any adopted child normally resident in Zimbabwe or, except with the consent in writing of the adopter or of the adopted child if such adopted child is over the age of eighteen years, the fact that such adopted child has been adopted:

Provided that if the Minister is of the opinion that such publication would be just and equitable and in the interests of any particular person he may by written order dispense with the prohibition of this subsection to such an extent as may be specified in the order.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 34 of Act 23 of 2001.]

## **70 Adopted Children Register**

(1) The Registrar-General shall keep and maintain a register to be called the “Adopted Children Register” in which entries shall be made in accordance with this Act.

(2) Every adoption order shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry regarding the adoption in the form prescribed.

(3) Where upon any application for an adoption order there is proved to the satisfaction of the court—

- (a) the date of the birth of the minor; and
- (b) the fact that the minor is the same person in respect of whom an entry or entries have been made in a register of births kept by the Registrar-General;

the adoption order shall contain a further direction to the Registrar-General to cause the entries in the register of births kept by him relating to such minor to be marked with the word “Adopted”, and to include in the entry in the Adopted Children Register in the manner prescribed the date of the child’s birth stated in the adoption order.

(4) The court shall cause every adoption order to be communicated to the Registrar-General and, upon receipt of such communication, the Registrar-General shall cause compliance to be made with the directions contained in the order in regard both to marking any entry in a register of births kept by him with the word “Adopted” and in regard to making the appropriate entry in the Adopted Children Register.

(5) Upon an application in chambers being made to a judge of the High Court in respect of a person who was born in Zimbabwe and adopted in a foreign country according to the law of that country, the judge may, if he is satisfied—

- (a) that the adoption may be recognized in Zimbabwe; and
- (b) that the adopted person is the same person in respect of whom an entry or entries have been made in a register of births kept by the Registrar-General;

order the Registrar-General to cause the entry or entries in the register of births kept by him relating to such adopted person to be marked with the word “Adopted” and to include in the Adopted Children Register an entry relating to the Adopted person with—

- (i) the endorsement “Foreign Adoption”;
- (ii) a reference to the order of the judge and the date and references thereof;
- (iii) such other particulars concerning the name, sex and date of birth of the Adopted person and of the surname, address and occupation of the adopter or adopters as the judge may specify in the order.

[Subsection amended by section 34 of Act 23 of 2001

(6) A certified copy of any entry in the Adopted Children Register, if purporting to be marked with the official stamp of the Registrar-General, shall, without any further or other proof of such entry—

- (a) where the entry does not contain any record of the date of the birth of the Adopted child, be received as evidence of the adoption to which the same relates; and
- (b) where the entry contains a record of the date of the birth of the adopted child, be received, not only as evidence of the adoption to which the same relates, but also as evidence of the date of the birth of the adopted child to which the same relates in all respects as though the same were a certified copy of any entry in a register of births kept by the Registrar-General.

(7) The Registrar-General shall cause an index of the Adopted Children Register to be made and any person authorized by the Minister may search such index and have a certified copy of any entry in the Adopted Children Register on payment of the prescribed fee.

(8) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and make such entries therein as may be necessary to record and make traceable the connection between any entry in a register of births kept by him that has been marked “Adopted”, in terms of this section, and any corresponding entry in the Adopted Children Register, but such last-mentioned registers shall not be, nor shall any index thereof be, open to public inspection or search, nor, except under an order of the Minister, shall the Registrar-General furnish any person with any information contained in, or with any copy or extract from, any such registers.

(9) Upon receiving notice of the rescission of an adoption order the Registrar-General shall note that fact in the Adopted Children Register and shall cause any reference to the adoption in a register of births kept by him to be struck out.

## **71 Change of name of adopted persons**

(1) Where the forename of an adopted person has been registered in the Adopted Children Register and the forename which was registered is changed, the Registrar-General may register the change of forename of the adopted person in the Adopted Children Register upon—

- (a) application made by the adopted person or, if he has not attained the age of eighteen years—
  - (i) in the case of a joint adoption, the application of both adopters; or
  - (ii) in the case of the death of one adopter or a single adopter, the application of the adopter; or
  - (iii) in the case of the death of both adopters, the application of the legal guardian; and
- (b) the payment of the prescribed fee; and
- (c) the production of such evidence as the Registrar-General may consider necessary.

(2) Where the surname of an adopted person has been registered in the Adopted Children Register and the surname which was registered has been changed, the Registrar-General shall register the change of surname in the Adopted Children Register without deleting the original surname upon—

- (a) application made by the adopted person or, if he has not attained the age of eighteen years—
  - (i) in the case of a joint adoption, the application of both adopters; or
  - (ii) in the case of the death of one adopter or a single adopter, the application of the adopter; or

- (iii) in the case of the death of both adopters, the application of the legal guardian; and
  - (b) the payment of the prescribed fee; and
  - (c) production of evidence that a notarial deed, as defined in the Deeds Registries Act [*Chapter 20:05*], setting forth the change of surname has been registered in the Deed Registry; and
  - (d) production of evidence that the change of surname has been advertised in the *Gazette*.
- (3) Notwithstanding subsection (2), the Registrar-General may register a change of surname of an adopted person without a notarial deed having been registered, if he is satisfied that—
- (a) the change of surname is for a lawful purpose; and
  - (b) the change of surname is not being effected for purposes of fraud or misrepresentation; and
  - (c) all other requirements in terms of subsection (2) have been fulfilled by the applicant.

## **72 Effect of adoption on marriage**

(1) With effect from the date of commencement of the Children's Protection and Adoption Amendment Act, 2001, no marriage shall be contracted between an adopter and a person adopted by him.

(2) For the avoidance of doubt, subsection (1) shall not affect the validity of a marriage contracted before it was amended by the Children's Protection and Adoption Amendment Act, 2001.

[Subsection substituted by section 35 of Act 23 of 2001]

## **73 Publication of advertisements for adoption**

(1) No person shall insert in a newspaper published in Zimbabwe an advertisement or other intimation that any person desires any minor to be adopted or that any person is willing to adopt any minor, unless such publisher has first received the written permission of the Director to insert such advertisement or intimation.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding two thousand level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001 and by section 36 of Act 23 of 2001]

(2) A person convicted of an offence under subsection (1a) may, in addition to any other penalty imposed upon him, be ordered by the court before which he is tried to reveal the name and address, if known to him, of any person concerned in any advertisement or intimation which is the subject of the prosecution, and upon his refusal to comply with such order he may, in addition to any penalty imposed on him for the said offence, be committed to prison for a period not exceeding one month or until such time as he has so complied, whichever is the shorter time.

[Subsection amended by section 36 of Act 23 of 2001]

## **74 Accessibility of records relating to adoption**

Notwithstanding anything in any other law contained, the records of proceedings of a court in terms of this Part shall not be open to inspection or be accessible to the public except with the permission of that court.

## **75 Appeals**

(1) Any person who is aggrieved by any order or decision made by a children's court in terms of this Part may appeal against that order or decision to a judge of the High Court who may refer the matter to the court for argument.

(2) An appeal in terms of subsection (1) shall be heard in private and no person other than those permitted by the judge or the court, as the case may be, shall be present at the hearing thereof.

(3) The judge of the High Court or the court, as the case may be, may, in any appeal in terms of subsection (1), confirm, vary or set aside the order or decision appealed against or give such judgment or make any determination or order as the circumstances may require.

## **PART VIIA**

### **FOREIGN ADOPTIONS**

[Part inserted by section 37 of Act 23 of 2001.]

## **75A Application of Part**

This part shall apply to any adoption order made in—

- (a) a designated country, whether the order was made before, on or after the date of commencement of the Children's Protection and Adoption Amendment Act, 2001, or the declaration of that country as a designated country;
- (b) a foreign country which is not a designated country, whether the order was made before, on or after the date of commencement of the Children's Protection and Adoption Amendment Act, 2001.

## **75B Designated countries**

The Minister may by statutory instrument declare that any country shall be a designated country for the purposes of this Act.

## **75C Recognition of adoptions in designated countries**

(1) If the High Court is satisfied that—

(a) an order has been made by a competent authority in a designated country for the adoption of a person who was not born in Zimbabwe; and  
(b) it would not be contrary to public policy to recognize the adoption;

the High Court may declare that the adoption order shall be recognized in Zimbabwe and may issue such order for its recognition as the court thinks appropriate.

(2) The High Court may make a declaration and issue an order in terms of subsection (1) upon application being made to it or in the course of any other proceedings before it.

#### **75D Recognition of adoptions in non-designated countries**

(1) Subject to subsections (3) and (4), if the High Court is satisfied that —

(a) an order has been made by a competent authority in any foreign country which is not a designated country, for the adoption of a person who was not born in Zimbabwe; and  
(b) the adopted person or the adopter was domiciled or permanently resident in the foreign country at the time the adoption order was made; and  
(c) it would not be contrary to public policy to recognise the adoption;

the High Court may declare that the adoption order shall be recognised in Zimbabwe and may issue such order for its recognition as the court thinks appropriate.

(2) The High Court may make a declaration and issue an order in terms of subsection (1) upon application being made to it or in the course of any other proceedings before it.

(3) The High Court shall not make a declaration or issue an order in terms of subsection (1) unless the Director has been notified of the intended declaration or order and has been afforded an opportunity to make such written representations in regard thereto as he may consider appropriate.

(4) The High Court shall take due account of any representations made by the Director in terms of subsection (3) before it makes a declaration or issues an order in terms of subsection (1).

#### **75E Registration of birth of person adopted in foreign country**

(1) Subject to this section, if the Registrar-General is satisfied, in regard to any adoption which the High Court has declared in terms of section *seventy-five C* or *seventy-five D* should be recognized, that —

(a) the adopter is a citizen of Zimbabwe; and  
(b) the adopted person is a minor;

the Registrar-General shall, on application by the adopter, cause the adopted person's birth to be recorded in his register and in the register of births of the district in which the High Court made the declaration.

(2) An application for the registration of a birth in terms of subsection (1) shall be accompanied by —

(a) the adoption order made in the designated or foreign country, or a certified copy thereof; and  
(b) the declaration or order of the High Court or a certified copy thereof; and  
(c) such documentary evidence of the adopted person's date of birth as the Registrar-General considers sufficient; and  
(d) the form prescribed for use in connection with the registration of a birth, completed as far as may be possible and signed by the adopter.

(3) When the Registrar-General has caused entries to be made in the registers in terms of subsection (1), he shall cause the entries to be marked with the word "Adopted" and shall include in the Adopted Children Register an entry relating to the adopted person with —

(a) the endorsement "Recognised Foreign Adoption"; and  
(b) a reference to the declaration or order of the High Court and the date and reference number thereof; and  
(c) such particulars as to the name, sex, age and date of birth of the adopted person as may be available; and  
(d) the surname and address of the adopter or adopters, as the case may be.

#### **75F Effect of recognition of foreign adoption**

Where the High Court has recognized an adoption order in terms of section *seventy-five C* or *seventy-five D*—

(a) the adoption order shall have the same effect, in all respects, as if it had been made in Zimbabwe; and  
(b) the adopted person shall be regarded for all purposes as having been adopted in terms of this Act;

unless the High Court otherwise directs.

#### **75G Part does not limit recognition of foreign adoptions under other laws**

This Part shall not be construed as limiting the power of a court under any other law to recognize or give effect to an adoption effected outside Zimbabwe.

### **PART VIIB**

#### **CHILD WELFARE FUND**

[Part inserted by section 37 of Act 23 of 2001.]



### **75H Establishment of Fund**

(1) There is hereby established a fund, to be known as the Child Welfare Fund, which fund shall be administered by the Child Welfare Council.

(2) The Fund shall consist of—

- (a) such moneys as are payable to the Fund from moneys appropriated by Act of Parliament to the purposes of the Fund; and
- (b) any other moneys to which the Fund may be lawfully entitled, including gifts from any person.

(3) The fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions.

### **75I Object of Fund**

The objects for which the Fund is established shall be the development and promotion of the welfare and protection of children and young persons.

### **75J Application of Fund**

The Fund may be applied to—

- (a) assisting any person who wishes to establish, operate and maintain any service or facility that is aimed at advancing the welfare of children or young persons; and
- (b) providing facilities for developing skills in children or young persons who are in a remand home or certified institution; and
- (c) furthering activities related to the dissemination of information on alcohol and drug abuse, teenage pregnancy and other problems affecting children and young persons; and
- (d) promoting education and health among children and young persons; and
- (e) any other activities or projects aimed at promoting the welfare and protection of children and young persons.

### **75K Estimates of expenditure**

(1) The Minister shall prepare a statement showing in respect of each financial year the estimated—

- (a) receipts and accruals of the Fund;
- (b) expenditure of the Fund, the purpose for which such expenditure is to be made and the estimated amount that will be expended on each such purpose; and
- (c) balance of the Fund at the close of such financial year.

(2) The Minister shall, as soon as possible after the preparation of the statement referred to in subsection (1), lay copies thereof before Parliament.

### **75L Limits on expenditure from Fund**

(1) Subject to this section, the expenditure incurred by the fund in any financial year shall not exceed such amount as Parliament may by resolution have approved for that financial year and the amount of expenditure on any purpose shall not exceed the amount so approved by Parliament to that purpose:

Provided that the Minister may, with the approval of the Minister responsible for finance, authorize any saving on any purpose so approved by Parliament to be expended to meet excess expenditure on any other such purpose.

(2) Until Parliament has approved the expenditure for a financial year, the Minister may, in anticipation of approval by Parliament, expend such amount as the President may authorize, not exceeding twenty-five *per centum* of estimated expenditure for that financial year.

(3) If at any time it appears to the President to be necessary—

- (a) on any purpose to incur unforeseen expenditure of a special character which has not been approved by Parliament, and which cannot, without seriously prejudicing the achievement of the objects of the Fund, be postponed until Parliament has approved it; or
- (b) to incur expenditure in excess of the amount already approved by Parliament on a particular purpose;

the President may authorize the Minister, in anticipation of the approval of Parliament, to expend such sums as may be required from time to time to meet the expenditure on such purpose:

Provided that—

- (i) the total sum so authorized shall not at any time exceed ten *per centum* of the total expenditure already approved by Parliament for that financial year;
- (ii) the sums expended in terms of this subsection shall be submitted for approval by Parliament not later than during its next sitting.

### **75M Accounts and audit of Fund**

(1) The Minister shall—

- (a) keep proper accounts and other records relating thereto, in which he shall record all the financial transactions of the Fund; and
- (b) in respect of each financial year prepare—

- (i) a balance sheet; and
- (ii) a statement of transactions referred to in paragraph (a).

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him by section 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Fund were public moneys or State property.

(3) The financial year of the Fund shall be the period of twelve months ending on 31st December in each year.

### **75N Holding of Fund**

(1) All moneys received on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of a cheque signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister, with the approval of the Minister responsible for Finance, may determine.

## **PART VIII**

### **MISCELLANEOUS**

### **76 Consent to surgical or other treatment**

(1) Where the consent of a parent or guardian is necessary for the performance of any dental, medical, surgical or other treatment upon a minor and the consent of the parent or guardian is refused or cannot be obtained within a period which is reasonable in the circumstances, application may be made to a magistrate of the province where the minor is or is resident for authority to perform the treatment.

(2) A magistrate to whom an application in terms of subsection (1) is made may—

- (a) after due inquiry and after affording the parent or guardian concerned a reasonable opportunity of stating his reasons for refusing to give the necessary consent or without affording such person such opportunity if his whereabouts are unknown or if in the circumstances it is not reasonably practicable to afford him such opportunity; and
- (b) if satisfied that any dental, medical, surgical or other treatment is necessary or desirable in the interests of the health of the minor;

by order in writing authorize the performance at a hospital or other suitable place upon the minor concerned of such dental, medical, surgical or other treatment as may be specified in the order.

(3) Where authority for the performance of any treatment has been given in terms of subsection (2), the person legally liable to maintain the minor concerned shall be liable for the cost of the treatment.

(4) Notwithstanding any other law, a young person may, without the assistance of his parent or guardian, consent to donate blood for medical or scientific purposes:

Provided that no such consent shall be valid if—

- (a) the donation of his blood would endanger the young person's health or life; or
- (b) the young person's parent or guardian has informed the person who is to take the blood that he does not consent to the donation.

### **77 Evidence of husband or wife of accused person**

In proceedings against any person for an offence in terms of this Act, the wife or husband of the person charged shall be competent to give evidence, either for the prosecution or for the defence, without the consent of the person charged.

### **78 Sales of liquor, tobacco and drugs to children prohibited**

(1) No person shall sell, lend, give, supply, deliver or offer so to do to any child any liquor as defined in the Liquor Act [*Chapter 14:12*] tobacco, cigars, cigarettes, cigarette papers or specified drugs as defined in the Drugs and Allied Substances Control Act [*Chapter 15:03*] except upon production of a written order signed by the parent or guardian of the child known to such person, and in accordance with those Acts.

(2) No person other than the parent or guardian of a child shall give a written order referred to in subsection (1) to such child.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 38 of Act 23 of 2001.]

### **79 Seizure and confiscation of liquor, tobacco and drugs in possession of children**

(1) If a police officer or a probation officer or, within a school or the precincts thereof, a teacher finds a child in possession of—

- (a) liquor as defined in the Liquor Act [*Chapter 14:12*]; or
- (b) a drug; or

(c) tobacco or any cigar, cigarette, tobacco pipe, cigarette holder or cigarette paper; he may seize it from the child unless he is satisfied that the child has reasonable cause for possessing it.

(2) A police officer, probation officer or teacher who has seized any liquor or other thing from a child in terms of subsection (1) shall hand it over or cause it to be handed over to the parent or guardian of the child from whom it was seized.

### **80 Provision as to gambling, gaming or automatic machines**

(1) If upon complaint by any person to a children's court it is proved, to the satisfaction of the court, that any gambling or gaming machine or automatic machine for the sale of any cigarettes is being extensively used by children, the court shall order the owner of the machine or person on whose premises the machine is kept to take such precautions to prevent the machine being so used as may be specified in the order or to remove the machine within such time as may be specified in the order.

[Subsection amended by section 39 of Act 23 of 2001.]

(2) Any person who is aggrieved by an order made in terms of subsection (1) may appeal against the order to a judge of the High Court who may refer the matter to the court for argument.

(3) The judge of the High Court or the court, as the case may be, may, in any appeal in terms of subsection (2), confirm, vary or set aside the order appealed against.

(4) Where any person against whom an order in terms of subsection (1) has been made fails to comply with the terms thereof, he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 39 of Act 23 of 2001.]

### **81 Magistrate may order parent to produce his child before children's court**

(1) If it appears to any magistrate from information on oath that there is within his province any child or young person in the custody of his parent or guardian who is in need of care, or who has absconded from any certified institution or training institute or any custody in which he has been placed in terms of this Act or the Criminal Procedure and Evidence Act [*Chapter 9:07*], the magistrate may, by notice in writing served in the prescribed manner, order that parent or guardian to produce the child or young person before the children's court on a day and at a time stated in the notice.

[Subsection amended by section 48 of Act 23 of 2001.]

(2) Any parent or guardian who fails without reasonable excuse, the burden of proof whereof shall rest upon him, to comply with the requirements of a notice served upon him in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 40 of Act 23 of 2001.]

### **82 Estimation of age**

(1) Whenever in any proceedings in terms of this Act, other than criminal proceedings, the age of any person is a relevant fact of which no or insufficient evidence is available, the officer presiding at those proceedings may estimate the age of that person by his appearance or from any information which is available, and the age so estimated shall, for the purposes of this Act, be deemed to be the true age of that person.

(2) Where, after the conclusion of proceedings referred to in subsection (1), proof is adduced that the age of a person estimated in terms of that subsection is not the true age of that person it shall not, if the error has been made in good faith, affect any decision or order in those proceedings.

(3) The age of a person estimated in terms of subsection (1) shall be deemed to have been attained on the day on which the estimate was made.

(4) Whenever a person has been dealt with in accordance with any provision of this Act which can lawfully be applied only in connection with a person of a particular age or under or over a particular age and no evidence of his age was led and no formal estimate of his age was made in terms of subsection (1), the person in question shall be presumed to have been of that age or under or over that age, as the case may be, when he was so dealt with.

(5) Where in a charge of an offence in terms of this Act it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or over any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person or to have been under or over the specified age, as the case may be, he shall, for the purposes of this Act, be presumed at that date to have been a child or young person or to have been under or over that age, as the case may be, unless the contrary is proved.

### **83 Liability of step-parent to maintain his step-child**

A step-parent shall be liable to maintain his step-child until such step-child attains the age of eighteen years:

Provided that—

- (i) a step-parent shall not be obliged to maintain a step-child which is being adequately maintained by its natural parents;

- (ii) the obligation of a step-parent to maintain his step-child shall cease—
  - (a) if the mother of his step-child has deserted him and removed the step-child from his custody; or
  - (b) if in the event of divorce or judicial separation there is no order of maintenance made in favour of his step-child.

#### **84 Detention of juvenile**

(1) A child or young person who is charged with an offence shall not before conviction be detained in a prison or police cell or lock-up unless his detention is necessary and no suitable remand home is conveniently available for his detention.

(2) In deciding the suitability of any place for the detention of a person mentioned in subsection (1), regard may be had to the nature of the offence with which he is charged and to his age, sex, race and character.

(3) ...

[Subsection repealed by section 41 of Act 23 of 2001.]

#### **85 .....**

[Section repealed by section 42 of Act 23 of 2001.]

#### **86 Financial support from public funds to certain institutions**

(1) The Minister, with the approval of the Minister responsible for finance, may, out of money appropriated for the purpose by Act of Parliament, make grants-in-aid—

(a) to any local authority, certified institution or institution or any association of persons working in Zimbabwe for the protection, care and control of children and young persons;

[Paragraph amended by section 43 of Act 23 of 2001.]

(b) towards the maintenance in any certified institution or institution of any child or young person placed therein in terms of this Act or any other enactment;

(c) towards the maintenance—

- (i) of any child or young person by his parent, step-parent or guardian or the person with whom he has been placed in terms of this Act or any other enactment; or
- (ii) of a parent, step-parent or guardian of any child or young person; or
- (iii) of a grandparent or brother or unmarried sister of any child or young person with whom he has been placed in terms of this Act or any other enactment.

(2) A local authority may out of its funds make grants-in-aid to any association of persons working in its area for the protection, care and control of children and young persons.

#### **87 Notice of certain proceedings to be given to High Court**

(1) Whenever summons is issued in connection with proceedings for divorce or judicial separation between the mother and the father of a child or a young person in respect of whom an order in terms of section *twenty* or an application such as is referred to in subsection (2) or (3) of section 5 of the Guardianship of Minors Act [*Chapter 5:08*] was made, the plaintiff shall, on issuing summons, lodge with the registrar of the High Court a notice to the effect that such order or application was made and if the plaintiff has failed to lodge such notice the defendant shall, within the period allowed for entry of appearance, lodge the said notice.

(2) Any plaintiff or defendant who fails to comply with the requirements of subsection (1) shall, unless he proves he was unaware of such order or application, be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 44 of Act 23 of 2001.]

(3) Whenever notice has been lodged in terms of subsection (1), the registrar shall obtain from the clerk of the children's court concerned a copy of the record relating to such order or application, together with the reasons in writing of the officer who presided over the children's court why he made the order or granted or refused the application, and shall lay such record and reasons before the High Court.

(4) Whenever in any such proceedings as are referred to in subsection (1) a notice has been lodged in terms of that subsection, the High Court may, for the purpose of deciding to whom the custody of the child or young person should be given, subpoena and take evidence from a probation officer or any officer of the children's court.

(5) If in any proceedings in respect of which a notice has been lodged in terms of subsection (1) the High Court is satisfied that both parents are unfit to exercise control over any child of the marriage, who is a child or young person, the court may direct that such child or young person shall be removed to a place of safety to be dealt with in terms of sections *nineteen* and *twenty*.

(6) If, after a final order has been made in any proceedings in respect of which a notice should have been lodged in terms of subsection (1), it is brought to the notice of the High Court that such notice was not lodged, the High Court may of its own motion or on the application of a parent, officer of a children's court or any other interested person, re-open the proceedings and make such other order as to the custody of the child or young person as it may think fit.

## 88 Regulations

(1) The Minister may, subject to subsections (3) and (4), make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form of any application, authority, certificate, consent, contract, licence, notice, order, process, register or summons to be made, given, issued or kept in terms of this Act and any other form required in carrying out the provisions of this Act;
- (b) the organization and maintenance of training institutes and of institutions established in terms of section *twenty-nine*;
- (c) the prohibition or restriction of communication with or access to pupils in certified institutions and training institutes or entry in or upon or the introduction of intoxicating liquor, drugs or other articles into certified institutions and training institutes;
- (d) the procedure relating to the registration of institutions in terms of section *thirty-one*, the cancellation and surrender of certificates of registration issued in terms of that section;  
[Paragraph amended by section 45 of Act 23 of 2001]
- (e) the powers and duties of the management of certified institutions and the books, accounts and records to be kept and the returns and reports to be rendered by the management of certified institutions;
- (f) the conditions and terms of licences which may be granted in terms of section *thirty-three*, the methods of supervision of pupils released on licence and the procedure for the revocation of such licence;
- (g) the conditions on which leave of absence may be granted to pupils in certified institutions and training institutes, the period for which leave may be granted or extended and the procedure for revocation of such leave of absence;
- (h) the manner in which inspectors and probation officers appointed in terms of section *forty-six* shall perform their duties in terms of this Act;
- (i) the organization and maintenance of attendance centres;
- (j) the method of registration of adoption orders and of the fees to be paid for an adoption order or for a certified copy thereof and dealing generally with all incidental matters arising out of Part VII;
- (k) the circumstances in which and the conditions on which grants-in-aid mentioned in section *eighty-six* will be made, the amounts or rates of such grants-in-aid and methods of accounting therefor;
- (l) a tariff of allowances which may be paid out of public moneys to witnesses before a children's court;
- (m) the control, regulation or prohibition of—
  - (i) street trading by children;
  - (ii) the employment of children, whether for hire or reward or otherwise;
- (n) the manner in which, and conditions subject to which, a child or young person shall perform service to the community in accordance with any order of a children's court;  
[Paragraph amended by section 45 of Act 23 of 2001.]
- (o) fees and charges for applications made, registrations effected, orders made, documents issued or any other thing done in terms of this Act.  
[Paragraph inserted by section 4 of Act 14 of 2002]

(3) Regulations in terms of subsection (1) may provide for penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Proviso substituted by section 4 of Act 22 of 2001.]

(4) Before making any regulations relating to the imposition of fees the Minister shall consult with the Minister responsible for finance.

## 89 .....

[Section repealed by section 46 of Act 23 of 2001.]

## FIRST SCHEDULE (Sections 2, 14, 15 and 45)

### SPECIFIED OFFENCES

1. Abduction.
2. Child-stealing.
3. Assault.
4. Any sexual offence.
5. Any offence involving bodily injury to a child.
6. Any offence in terms of Part III.

**SECOND SCHEDULE (Section 41)**

[Schedule repealed by section 47 of Act 23 of 2001.]