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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NOTICE 81 OF 2016****INVITATION FOR PUBLIC COMMENTS****ON****CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008):****DRAFT AMENDMENTS TO THE REGULATIONS RELATING TO CHILD JUSTICE****INVITATION**

The Department of Justice and Constitutional Development invites interested parties to submit written comments on the draft amendments to the Regulations relating to Child Justice.

The comments on the draft amendments to the Regulations must be submitted not later than **31 March 2016**, marked for the attention of **Ms T Skhosana**, and if—

- (a) forwarded by post, be addressed to, The Director-General: Justice and Constitutional Development, Private Bag X 81, Pretoria, 0001;
- (b) delivered by hand, be delivered at, SALU Building, Room 2303, 315 Thabo Sehume Street, Pretoria;
- (c) submitted by email, be emailed to [thskhosana@justice.gov.za](mailto:thskhosana@justice.gov.za); or
- (d) faxed, be faxed to 086 648 7875.

For further information, please contact Ms T Skhosana at 012 406 4769.

**BACKGROUND NOTE**

The following background information is furnished to assist interested parties to comment on the draft amendments to the Regulations.

1. The Child Justice Act, 2008 commenced on 1 April 2010. The Act provides for a criminal justice system for children in conflict with the law, a system that is underpinned by the values of the Constitution and international instruments.

2. Section 97 of the Act empowers the Minister to make regulations regarding various matter required to be prescribed in terms of the Act. The Minister made the Regulations which were published in the Gazette in March 2010. Certain sections of the Act have since been amended to enhance the implementation of the Act. These include sections 11, 28, 43, 56, 77, 78 and 97. The amendments to the Act are contained in the Judicial Matters Amendment Act, 2013 (Act No. 42 of 2013) and the Judicial Matters Amendment Act, 2014 (Act No. 12 of 2014). The amendments of the Act have necessitated amendments to some of the Regulations.

3. Sections 11 and 97(3) of the Act, dealing with the proof of criminal capacity of children who are 10 years or older but under the age of 14 years, were amended. In terms of section 11(3) an inquiry magistrate or child justice court may, on its own accord or at the request of the prosecutor or the child's legal representative, order an evaluation of the child's criminal capacity by a suitably qualified person which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child. In terms of the amended section 11(2) the inquiry

magistrate or child justice court, when making a decision regarding the criminal capacity of a child, must consider all evidence placed before him or her including the report of the evaluation of criminal capacity referred to in section 11(3). The Minister has, in terms of section 97(3), determined psychiatrists and clinical psychologists as competent categories of persons to conduct the evaluation of criminal capacity of a child. The Department of Health indicated that psychiatrists and clinical psychologists belong to a specialised profession and they are limited in number. It therefore recommended that consideration be given to the possible broadening of the categories in order to increase capacity. Section 97(3) was therefore amended to allow the Minister to determine different categories to evaluate different elements of the development of a child. In terms of regulation 13 of the Regulations relating to Child Justice the inquiry magistrate or child justice court must issue and sign Form 2 when making an order referred to in section 11(3). Form 2 is being amended in line with the amendments in sections 11(2) and 97(3) of the Act, to allow the inquiry magistrate or child justice court to indicate which aspects of the development of a child must be evaluated.

4. Section 28 of the Act deals with the protection of a child in police custody and requires that where a child in custody complains of an injury or psychological trauma, the person receiving the complaint must record the complaint and compile a report. This report must be submitted to the National Commissioner of Police. During the deliberations in 2010 on the Regulations relating to Child Justice, the Select Committee on Security and Constitutional Development (National Council of Provinces) was concerned that this respect is not consistent with the reporting lines within the South African Police Service. The view was expressed that the report should be submitted to the Provincial Commissioner and only a copy should be submitted to the National Commissioner. The amendment to section 28(2)(b) gives effect to this and requires that the report be submitted to the Provincial Police Commissioner and that a copy of the report, be submitted to the National Commissioner of Police simultaneously. Regulation 21 of the Regulations relating to Child Justice, which regulates the content of the report, is being amended to align it with the amendments to section 28 of the Act.

5. Section 56 of the Act regulates the accreditation of diversion programmes and service providers and empowers the Minister of Social Development to establish and maintain a system of accreditation. The Minister is also empowered to issue and sign certificates of accreditation. Because welfare services fall within the functional areas of concurrent national and provincial competences in terms of Part A of Schedule 4 to the Constitution, the Minister of Social Development requested an amendment to section 56 to allow her to delegate her powers in terms of section 56 to the provincial level to facilitate the successful implementation of the accreditation process. The aforementioned Minister has since delegated the power to issue and to sign certificates of accreditation to the Members of the Executive Council (MEC) of Provinces responsible for welfare services. Regulation 31 of the Regulation relating to Child Justice prescribes a certificate of accreditation (Forms 7 and 8), which are currently issued and signed by the Minister. The Form is being amended in line with the delegation to the MEC's.

6. Regulation 50 of the Regulations relating to Child Justice regulates the procedure for the consideration of an application for the expungement of certain criminal records of children, by the Director-General: Justice and Constitutional Development. Regulation 50(1) provides that an official of the Department designated to deal with the application for expungement may request further information if the information contained in the application form is not sufficient. There has been uncertainty whether this regulation requires the Director-General to

designate an official to deal with applications for expungement. A technical amendment is therefore being effected to regulation 50(1) of the Regulations to clarify this.

**DRAFT****GENERAL EXPLANATORY NOTE:**

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

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

**GOVERNMENT NOTICE****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NO. R****2016****CHILD JUSTICE ACT, 2008:****AMENDMENTS TO REGULATIONS RELATING TO CHILD JUSTICE ACT**

The Minister of Justice and Correctional Services has, under section 97 of the Child Justice Act, 2008 (Act No. 75 of 2008) and after consultation, where appropriate, with the Cabinet members responsible for social development, safety and security and health, made the Regulations in this Schedule.

**SCHEDULE**

In this Schedule "the Regulations" means the Regulations published by Government Notice No. R.251 of 31 March 2010.

**Amendment of regulation 21 of Regulations**

1. Regulation 21 of the Regulations is hereby amended –

- (a) by the substitution for paragraph (d) of subregulation (1) of the following paragraph:

“(d) The police official who received the complaint or made the observation must, upon completion of the actions required in terms of this regulation, ensure that the following details are entered in the register referred to in section 28(3) of the Act:

- (i) The number allocated to the complaint;
- (ii) the date on which the complaint was lodged;
- (iii) the nature of the injury sustained or severe psychological trauma suffered;
- (iv) the circumstances surrounding the injury or trauma;
- (v) the signature and particulars of the complainant;
- (vi) the date on which the report was handed to the station commissioner;
- (vii) the particulars of the medical treatment which the child received, if any;
- (viii) the date on which the report referred to in subregulation (1)(a) was submitted to the **[National] Provincial** Commissioner of Police and a copy thereof to the National Commissioner;
- (ix) the nature of the instructions, if any, given by the **[National] Provincial** Commissioner of Police; and
- (x) the steps taken to comply with the instructions of the **[National] Provincial** Commissioner of Police.”;

- (b) by the substitution for subregulation (4) of the following subregulation:

“(4) The station commissioner must—

- (a) after having investigated the matter and, if necessary, after ensuring that the child received medical treatment, submit the report together with the medical report, if any, to the **[National] Provincial** Commissioner of Police and a copy thereof to the National Commissioner of Police in an appropriate manner;
- (b) ensure that the **[National] Provincial** Commissioner of Police has received the report and that the National Commissioner of Police has received a copy of the report; and

- (c) file a copy of the report and its attachments in the docket.”;
- (c) by the substitution for subregulation (5) of the following subregulation:
- “(5) The **[National] Provincial** Commissioner of Police may, after considering the report and recommendations made by the station commissioner, issue any instruction he or she deems fit.” ; and
- (d) by the substitution for subregulation (6) of the following subregulation:
- “(6) (a) The station commissioner must, upon submission to the **[National] Provincial** Commissioner of Police of the documents referred to in subregulation (4), submit a copy thereof to the Independent Complaints Directorate, established by section 50(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995).
- (b) The station commissioner may submit the documents in any manner he or she deems fit but must keep proof of the manner of submission.”.

### **Amendment of regulation 50 of Regulations**

2. Regulation 50 of the Regulations is hereby amended by the substitution for subregulation (1) of the following subregulation:

“(1) An official of the Department of Justice and Constitutional Development who **[has been designated to deal with]** is responsible for processing applications relating to the expungement of convictions and sentences in terms of the Act may, if the information in Form 13 is inadequate or not clear, request further information from the applicant or any organ of state.”.

### **Amendment of Annexure to Regulations**

3. The Annexure to the Regulations is hereby amended -

(a) by the substitution for Form 2 of the following Form:

**“Form 2**

**ORDER FOR THE EVALUATION OF CRIMINAL CAPACITY OF CHILD  
SECTION 11 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE**

[Regulation 13]

<b>At the Preliminary Inquiry / In the Child Justice Court</b>	
<b>Held at</b>	
<b>Case no/File no.</b>	

**1. Particulars of the child**

Full names and surname:.....  Date of birth/ID.No:.....Age:.....Sex.....
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**2. Particulars of parent, appropriate adult or guardian/ Child and Youth Care Centre**

(State particulars of person or centre where the child is placed)

Full names and surname of parent, appropriate adult or guardian /Name of Child and Youth Care Centre:..... ..... Physical address of parent, appropriate adult or guardian / Child and Youth Care Centre:..... ..... ..... ..... Contact details of parent, appropriate adult or guardian / Child and Youth Care Centre:..... ..... .....
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**3. Order by presiding officer**

To:.....  
 .....  
 .....

....  
 (Particulars of person / institution to conduct evaluation)

In view of the fact that there is doubt about the criminal capacity of the abovementioned child, I hereby make the following order:-

(a) You are ordered to evaluate the following aspects of the criminal capacity of

.....;

- (i) Cognitive development       Yes    No
- (ii) Moral development         Yes    No
- (iii) Emotional development    Yes    No
- (iv) Psychological development  Yes    No
- (v) Social development         Yes    No;

and

(b) to provide the court with a written report on the evaluation within 30 days of this order.

.....  
**Signature: Presiding officer**

.....  
**Date**

**Full names of Presiding officer:.....**  
**Official Stamp**

**Note:** 1. In terms of section 11(4) of the Act, you are required to furnish the inquiry magistrate or child justice court with a written report of the evaluation within 30 days of this order.

2. The written report referred to in paragraph (b) above must contain a brief description of how the evaluation of the cognitive, moral, emotional, psychological and social development of the child was done, and include findings and supporting reasons.”;

(b) by the substitution for **Form 7** of the following Form:



**"Form 7**

**CERTIFICATE OF ACCREDITATION OF DIVERSION SERVICE PROVIDER  
SECTION 56 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE**

[Regulation 31]

This is to certify that:

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*(Name and physical address)*

Reg No:-----

Accreditation Certificate No: -----

is an accredited diversion service provider to provide diversion programmes, provided that the service provider continues to comply with the minimum standards referred to in section 55 of the Act.

This certificate of accreditation is valid for a period of **[four]** ..... years, commencing on ..... and expiring on .....

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**[Minister] Member of the Executive Council: Social Development**

**Date:**

**Official Stamp"; and**

(c) by the substitution for Form 8 of the following Form:

**“Form 8**

**CERTIFICATE OF ACCREDITATION OF DIVERSION PROGRAMME  
SECTION 56 OF THE CHILD JUSTICE ACT, 2008 (ACT NO. 75 OF 2008)  
REGULATIONS RELATING TO CHILD JUSTICE  
[Regulation 31]**

This is to certify that:

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an accredited service provider,

Accreditation Certificate No.-----

is accredited to provide the following diversion programme-

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provided that the diversion programme/s continue to comply with the minimum standards referred to in section 55 of the Act.

This certificate of accreditation is valid for a period of **[four]** ..... years, commencing on .....and expiring on .....

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**[Minister] Member of the Executive Council: Social Development**

**Date:**

**Official Stamp”.**