



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 608

26 February 2016
Februarie

No. 39751

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5843



9 771682 584003

39751



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

Government Printing Works

Notice submission deadlines

Government Printing Works has over the last few months implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submit your notice request.

In line with these business rules, GPW has revised the notice submission deadlines for all gazettes. Please refer to the GPW website www.gpwnonline.co.za to familiarise yourself with the new deadlines.

CANCELLATIONS

Don't forget!

Cancellation of notice submissions are accepted by GPW according to the deadlines stated in the table above.

Non-compliance to these deadlines will result in your request being failed. **Please pay special attention to the different deadlines for each gazette.**

Please note that any notices cancelled after the cancellation deadline will be published and charged at full cost.

Requests for cancellation must be sent by the original sender of the notice and must be accompanied by the relevant notice reference number (N-) in the email body.

AMENDMENTS TO NOTICES

take note!

With effect from 01 October, GPW will not longer accept amendments to notices. The cancellation process will need to be followed and a new notice submitted thereafter for the next available publication date.

CUSTOMER INQUIRIES



Many of our customers request immediate feedback/confirmation of notice placement in the gazette from our Contact Centre once they have submitted their notice – While GPW deems it one of their highest priorities and responsibilities to provide customers with this requested feedback and the best service at all times, we are only able to do so once we have started processing your notice submission.

GPW has a **2-working day turnaround time for processing notices** received according to the business rules and deadline submissions.

Please keep this in mind when making inquiries about your notice submission at the Contact Centre.

PROOF OF PAYMENTS



GPW reminds you that all notice submissions **MUST** be submitted with an accompanying proof of payment (PoP) or purchase order (PO). If any PoP's or PO's are received without a notice submission, it will be failed and your notice will not be processed.

When submitting your notice request to submit.egazette@gpw.gov.za, please ensure that a purchase order (GPW Account customer) or proof of payment (non-GPW Account customer) is included with your notice submission. All documentation relating to the notice submission must be in a single email.

A reminder that documents must be attached separately in your email to GPW. (In other words, your email should have an Adobe Form plus proof of payment/purchase order – 2 separate attachments – where notice content is applicable, it should also be a 3rd separate attachment).

REMINDER OF THE GPW BUSINESS RULES

- Single notice, single email – with proof of payment or purchase order.
- All documents must be attached separately in your email to GPW.
- 1 notice = 1 form, i.e. each notice must be on a separate form
- Please submit your notice **ONLY ONCE**.
- Requests for information, quotations and inquiries must be sent to the Contact Centre **ONLY**.
- The notice information that you send us on the form is what we publish. Please do not put any instructions in the email body.

DISCLAIMER:

Government Printing Works reserves the right to apply the 25% discount to all Legal and Liquor notices that comply with the business rules for notice submissions for publication in gazettes.

National, Provincial, Road Carrier Permits and Tender notices will pay the price as published in the Government Gazettes.

For any information, please contact the eGazette Contact Centre on 012-748 6200 or email info.egazette@gpw.gov.za

Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GENERAL NOTICES • ALGEMENE KENNISGEWINGS			
Justice and Constitutional Development, Department of/ Justisie en Staatkundige Ontwikkeling, Departement van			
81	Child Justice Act (75/2008): Invitation for public comments	39751	4

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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; 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]

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

1. Particulars of the child

Full names and surname:..... Date of birth/ID.No:.....Age:.....Sex.....
--

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:.....

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:

(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

[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:

-----,

an accredited service provider,

Accreditation Certificate No.-----

is accredited to provide the following diversion programme-

-----,

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 onand expiring on

[Minister] Member of the Executive Council: Social Development

Date:

Official Stamp”.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065