

GRANTS AND EMERGENCY AID

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NOTE

In this publication, “Ministry” and “Minister” refer to the Ministry and Minister responsible for child protection, and “Guide” means this *Guide to the Child Care and Protection Act* (which is published in separate chapters).

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The Child Care and Protection Act provides for five types of grants: (1) State maintenance grants; (2) foster parent grants; (3) residential child care facility grants; (4) child disability grants; and (5) short-term emergency grants or assistance in kind. It provides rules for who can apply for and receive a grant on behalf of a child, and for the duration of the different types of grants. It makes abuse of the grants system a crime, and provides for refunds where grant money was wrongfully received or misused.

1. Overview

Grants: The Child Care and Protection Act provides for five types of grants:

- (1) state maintenance grants
- (2) foster parent grants
- (3) residential child care facility grants
- (4) child disability grants
- (5) short-term emergency grants or assistance in kind.

- (1) **State maintenance grant:** Under the *previous rules*, only a parent of a child could apply for a grant. The parent was eligible for a grant only if the other parent was deceased, in prison for longer than three months, or receiving an old age pension or disability grant. Under the *Child Care and Protection Act*, the State maintenance grant is available to a broader group of persons caring for a child, provided that they meet the grant criteria. There is no limit to the number of children in a single household who may receive a State maintenance grant, since all children must be treated equally.

Key change: One key change to the law is allowing registered kinship care-givers to apply for State maintenance grants for the children in their care. Previously, this was possible only if they were formally designated as foster parents by a court order – a burdensome process which tied up social workers and the children’s courts unnecessarily.

- (2) **Foster parent grant:** A foster parent is eligible to claim a grant for each child placed in his or her care by a court order. This grant is intended to offset the costs of caring for a foster child, keeping in mind that foster care now, by definition, involves caring for a child who is not a relative. In terms of the Act, foster parents play a similar role as children’s homes by taking in children who have no family members to care for them.
- (3) **Residential child care facility grant:** Approved places of safety, registered children’s homes and registered child detention centres are eligible to claim a grant for each child placed in their care by court order.

(4) **Child disability grant:** A child may be eligible for a child disability grant if the child has one of the disabilities set out in the regulations. A child disability grant is payable *in addition* to any other state grant.

(5) **Short-term emergency grant or assistance in kind:** The Ministry may provide short-term emergency grants or assistance in kind to families in particular need, such as children in homes affected by illness, accident, death, fire, natural disasters, armed conflict or some other unexpected emergency. For example, emergency aid might be provided to a family whose house has just burned down or a family where both parents were killed in a car accident.



Terminology

Many provisions in the Act and the regulations on grants refer to the “**Permanent Secretary**”. Since the Act was passed, the designation “Permanent Secretary” has been changed to “**Executive Director**”. This chapter uses the current term “Executive Director”.

Many provisions on grants also refer to a “**designated social worker**”. This is a State or private social worker authorised by the Minister to carry out specific tasks.

The rules on grants make reference to the applicant and the recipient. The “**applicant**” is the person who applies for the grant. The “**recipient**” is the person who receives the grant. The child must be in the actual physical care of the recipient. The applicant and the recipient might be the same person in some cases, but this is not necessarily the case. (The Ministry sometimes uses the term “**procurator**” for the grant recipient even though this term does not appear in the law.)

For example, suppose that a mother applies for a grant for her own child, who is in her care. The mother is both the applicant and the recipient. Suppose that a mother applies for a grant for her own child, who is living with the grandmother. The grant must be paid to the grandmother. In that case, the mother is applicant and the grandmother is the recipient. Alternatively, if the mother and the grandmother had concluded a registered kinship care agreement, the grandmother could have completed the grant application. Then the grandmother would be both the applicant and the recipient.

- ◇ Child Care and Protection Act, sections 33, 240(4)
- ◇ Child Care and Protection Regulations, regulation 109(6)-(7)

2. Constitutional and international framework

Namibian Constitution: Article 95(g) commits the State to actively promote and maintain the welfare of the people by enacting legislation “to ensure that the unemployed, the incapacitated, the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State”.

International Covenant on Economic, Social and Cultural Rights: Article 11(1) of this Covenant recognises the right of all persons to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement to living conditions. While this Convention provides for the progressive realisation of rights, all States have a minimum core obligation to ensure minimum essential levels of each of the rights; for example, a State “in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant”. (UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3*, HRI/GEN/1/Rev.8 1990, paragraph 10)

Convention on the Rights of the Child: Article 27(1) recognises the right of every child to a “standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. The primary responsibility for this duty rests with the child’s parents. However, Article 27(3) obligates States, in accordance with national conditions and within their means, to provide parents and others responsible for children with “material assistance” in case of need – particularly to ensure that the child has adequate nutrition, clothing and housing.

“ The Committee notes with concern that even the most basic standard of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation. Growing up in relative poverty undermines children’s well being, social inclusion and self esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children’s survival and their health, as well as undermining the basic quality of life. [...] Implementing children’s right to benefit from social security, including social insurance, is an important element of any strategy. [...] ”

◆ Committee on the Rights of the Child, *General Comment No. 7* (2005), paragraph 26

African Charter on the Rights and Welfare of the Child: Article 20(2)(a) contains an almost identical provision on “material assistance”, giving special mention to nutrition, health, education, clothing and housing.

3. State maintenance grants

Who can apply for a State maintenance grant?: The following persons may apply for a State maintenance grant for a child –

- (1) a **parent or guardian** of a child
- (2) a **kinship care-giver** who is caring for a child in terms of an agreement registered with the children's court

“Kinship care” is the “care of a child by a member of the child's family or extended family” other than the parent or guardian of the child or any other person who has parental responsibilities and rights in respect of the child. A kinship care agreement can be kept private, or it can be registered at the children's court. But a kinship care-giver is eligible to apply for a State maintenance grant **ONLY IF** the kinship care agreement is registered. The clerk of the children's court will stamp or endorse the agreement to show that it has been registered, and give a copy of the endorsed agreement to each of the parties and to the Ministry. This is a mechanism aimed at preventing people from applying for grants for children who are not really in their care. Kinship care is explained in detail in Chapter 12 of this *Guide*.

- (3) a **child heading a household recognised as a child-headed household**, on behalf of any of the children in the household (including himself or herself)

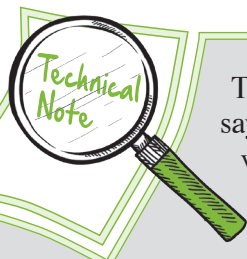
The Minister can officially recognise a household as a child-headed household if no parent or care-giver is available or able to care for the children, and a child in the household is in fact acting as the care-giver for one or more children in the household. Children in a household may prefer such an arrangement to avoid being moved elsewhere, which might involve a change of community or school or the separation of siblings. Every child-headed household will be placed under the supervision of an adult chosen by the children's court, the Minister or a non-governmental organisation designated by the Minister. Child-headed households are explained in detail in Chapter 19 of this *Guide*.

- (4) an **adult supervisor of a child-headed household**, or an **organ of state or a non-governmental organisation**, on behalf of the children in that household.

Grants and other assistance for a child-headed household may be received and administered by the child heading the household or by the adult supervisor, depending on the authorisation contained in the certificate issued by the Minister at the time of recognising the child-headed household. If there is disagreement between the child heading the household and the adult supervisor regarding the receipt or administration of a grant, a non-governmental organisation designated by the Minister must receive and administer the grant or other assistance. Also, if there is an investigation underway into the possible withdrawal of the adult supervisor, the social worker who is conducting the investigation may temporarily assign a community child care worker to receive any grant for children in the household until the investigation is complete. It is a crime to misappropriate grant money or other assistance intended for a child-headed household. The punishment is a fine of up to

N\$20 000 or imprisonment for up to five years, or both. The authority to receive grants for child-headed households is explained in detail in Chapter 19 of this *Guide*.

◇ Child Care and Protection Act, sections 240(3), 243



There seems to be a possible contradiction in the Act here. Section 225(4) says a grant or other assistance can be collected and administered by the **child** who heads the household or by the **adult supervisor**. This is consistent with the approach taken by the Child Care and Protection Regulations, in regulation 86(8)(d).

Section 225(5) allows for collection of the grant by an **NGO** designated by the Minister *if* there is disagreement between the child who heads the household and the adult supervisor on the collection or administration of a grant. In addition, regulation 88(2) of the Child Care and Protection Regulations allows for the temporary collection of a grant by a **community child care worker** if an investigation into the possible withdrawal of the adult supervisor is underway.

However, section 240(3)(d) says a State maintenance grant for a child in a child-headed household can be received by the **child** who heads the household, by the **adult supervisor**, *by an organ of state* or by an **NGO** designated by the Minister.

The more restrictive wording of sections 225(4) and (5) is consistent with the authority in 240(3)(d), so it make sense to follow that wording as the operative rule. The reference to “an organ of state” in section 240(3)(d) does not tie up with any of the other provisions on child-headed households in the Act and seems to have been erroneously replicated from the similar South African legislation on child-headed households. On the other hand, the reference to “an organ of state” may be intended to encompass the temporary collection of a grant by a community child care worker employed by the Ministry during an investigation.

- ◇ Child Care and Protection Act, sections 225(4)-(5), 240(3)(d)
- ◇ Child Care and Protection Regulations, regulation 86(8)(d)

Criteria: State maintenance grants are payable if the following two criteria are met:

- (1) The child is a **Namibian citizen or permanent resident**.
- (2) **Neither of the child’s parents was liable for the payment of income tax in the preceding tax year** under the Income Tax Act 24 of 1981, although an exception can be made IF the applicant can show that there has been a substantial change in circumstances since the last tax year (such as loss of employment or the death of a parent).

Neither parent has sufficient income to be liable to pay tax: What is the theory behind the tax-related requirement? When the Ministry receives an application for a State maintenance grant, it will cross-check information about the child’s parents or parents (if they are living) against the database of the Ministry of Finance to see if either or both parents are tax-payers. If the answer is yes, then the child in question is not eligible for the State maintenance grant. This requirement applies only to the child’s parents (and not other relatives) because parents bear the primary legal duty to maintain a child.

It is difficult to design a workable means test for a country like Namibia, where many people are active in subsistence farming and the informal economy. Few people can provide pay

slips for their actual income, and many people have wealth in the form of livestock or other material goods which is hard to assess. Applying a means test which tries to measure income and assets would be very time-consuming, and the Ministry's past experience shows that this is not a very successful approach for targeting children who are most in need. It also takes Ministry personnel away from important preventative and protective work, to devote large amounts of time to assessing grant applications.

The tax-related requirement is meant to be a substitute for a means test which will help the Ministry to spend resources on those who are most in need. It is also meant to shift the responsibility for financial assessment to the Ministry of Finance, which is particularly well-equipped for this task.

Like a means test, the tax-related requirement will not always separate those in need from those who are not, because some people with means will evade income tax. However, it should be at least as accurate as a means test, while at the same time not being so time-consuming that it takes Ministry personnel away from more urgent tasks.

This approach also simplifies the entire grant system. In the past, the Ministry tried to target "vulnerable children" for grants, defined as children where one parent was deceased, imprisoned or in receipt of an old age or disability pension. This left out many children who were vulnerable because of poverty. The new approach does not look at family circumstances, but only at whether the income of either or both parents is sufficient to trigger tax liability.

The Namibian tax year runs from the beginning of March to the end of February each year. In the 2019/2020 tax year, individuals earning less than N\$50 000/year did not have to pay income tax. This tax threshold changes from time to time.

Number of children: The Act explicitly states that the criteria for state maintenance grants may NOT impose any limit on the total number of children in a single household who may receive such grants. This would unfairly discriminate.

- ◆ Child Care and Protection Act, section 240(3)
- ◆ Child Care and Protection Regulations, regulation 106(2)-(3)
- ◆ Income Tax Act 24 of 1981, Schedule 4

Procedure for application: An application for a State maintenance grant must be made in person at a constituency or regional office of the Ministry. **Ministry staff will provide the appropriate application form** and assist the applicant to complete it.

No one should pay any kind of fee to anyone for assistance with the application form. Ministry staff will complete the form in the applicant's presence without any fee.

The following **documents** must be submitted together with a grant application:

- (1) Certified copy of **applicant's identity document**
- (2) Certified copy of the **proposed recipient's identity document** (if the recipient is a person other than the applicant)

(3) Certified copy of the **full birth certificate of the child**

It does not matter if the birth certificate lists the name of only one parent. It does not matter if the birth certificate fails to name either parent, because the child was abandoned or the child's parentage is unknown. (If a child has no known parents, the child would be eligible for a State maintenance grant since there is no known parent who could be paying tax.) If the child has no birth certificate, a staff member of the Ministry must help to facilitate birth registration for the child. Having the child's birth certificate is necessary to identify the child accurately, but this is not meant to be a barrier to providing a grant to a child in need.

Note that an order of a children's court regarding a child's age or identity can suffice as proof of the child's age or identity for the purposes of a State maintenance grant if the child has no identification documentation.

(4) **Proof of the child's citizenship or permanent residence** (if Namibian citizenship is not apparent from the child's birth certificate)

If the child's birth certificate shows that at least one of the child's parents is a Namibian citizen, then no additional proof of citizenship is needed because the child is clearly a Namibian citizen by either birth or descent. If neither parent listed on the birth certificate is a Namibian citizen, then proof of the child's Namibian citizenship or permanent residence is needed. For example, proof of citizenship could be a Namibian passport, a Namibian citizen ID, or a certificate of citizenship issued by the Ministry of Home Affairs and Immigration.

(5) **If the applicant is not a parent of the child, proof of the applicant's eligibility to apply for the grant:**

- ⑨ **Guardian:** Certificate of guardianship or court order naming the applicant as guardian, or a document from the Master of the High Court confirming that the applicant is named as a guardian in a will
- ⑨ **Kinship care-giver:** Kinship care agreement that has been registered with a children's court
- ⑨ **Child-headed household:** Certificate issued by the Minister officially recognising the household as a child-headed household, and an identification document in respect of the person authorised to receive grants in respect of the children in the household in the form of –
 - Child head: Birth certificate or identity document
 - Adult supervisor: Identity document

(6) If one or both parents are deceased, a certified copy of the relevant **death certificate or certificates**

(7) **Affidavit by the applicant** stating whether either or both of the parents of the child are taxpayers, and if so indicating the relevant tax numbers (if this is known to the applicant)

TECHNICAL NOTE: Regulation 106(3), which is the substantive requirement for grant eligibility, says that a child is not entitled to a State maintenance grant if one or both of the parents are taxpayers. Regulation 106(4) lists the documents which must be provided in support of a grant application. One item on this list is an affidavit by the applicant stating whether either or both of the parents *or a guardian* of the child is a taxpayer. The inclusion of the guardian here appears to be an error.

- (8) **Particulars and proof of banking details** of the applicant or proposed recipient **OR other details about how grant payments will be made** (such as collection at a post office or via a mobile cash point).
- (9) **Proof that the child is in the care of the applicant or other proposed grant recipient:**
- ④ affidavit from the parent or guardian of the child, who may also be the applicant for the State maintenance grant
 - ④ letter from the principal of the school, the head of an early childhood development centre or the head of a place of care attended by the child
 - ④ certified copy of a kinship care agreement that has been registered with the clerk of the children's court
 - ④ letter of confirmation from a designated social worker familiar with the circumstances of the child
 - ④ certificate officially recognising the child's household as a child-headed household (if the grant is to go to a child in a child-headed household).

- ◇ Child Care and Protection Act, section 232(2) (children lacking identification documentation)
- ◇ Child Care and Protection Regulations, regulations 106(1), (3) and (4), 111(1)

Who can receive a State maintenance grant on behalf of a child?: The grant must be paid to **the person who is actually caring for the child**, no matter who applied for the grant. This could include any of the people who are eligible to apply for a grant, but it could also include other persons.

The Ministry sometimes refers to the person caring for the child who will receive the grant on behalf of the child as the “**procurator**”, even though this term does not appear in the law.

Note that the grant application must include **proof** that the child is in the care of the person who will receive the grant on behalf of the child.

- ◇ Child Care and Protection Act, section 240(4)

Duration of a State maintenance grant: A state maintenance grant is normally payable until the child reaches **age 18** (the age of majority), or until the child no longer fulfils the grant criteria. However, the parent, guardian or care-giver of a child may apply to the Executive Director to extend the grant until the child reaches **age 21**, if there are special circumstances that warrant an extension – such as where a social worker recommends extension of the grant to enable the child to complete his or her education.

- ◇ Child Care and Protection Act, section 240(5)
- ◇ Child Care and Protection Regulations, regulation 114(1)(a), (2)-(3)

Payment during temporary absences: A State maintenance grant remains payable even if the child in question is temporarily absent from the care of the person receiving the grant on behalf of the child due to the child being on holiday, hospitalised or absent for any other reason that the Executive Director considers valid.

For example, the grant might continue during a period when the child was travelling on a month-long tour with a sports team, or on a two-month church youth trip to neighbouring countries. This is not unreasonable as the parent or care-giver may have had to pay some costs related to the child's care during this time, or can otherwise save the money for any additional costs that will be needed upon the child's return. It is also not unreasonable to use some portion of the grant towards the costs of accommodation or utilities which must be paid even when the child is temporarily absent from the home.

◇ Child Care and Protection Regulations, regulation 114(4)

4. Foster parent grants

Who can apply for a foster parent grant?: Only a foster parent caring for a child in terms of a court order can apply for a foster parent grant.

Foster care is the care of a child by a person who is *not* the parent, guardian, family member or extended family member of the child. Children are placed in foster care by an order of the children's court after a child protection hearing in situations where the child cannot be adequately cared for by the family for some reason. Foster care is explained in detail in Chapter 15 of this *Guide*.

◇ Child Care and Protection Act, section 242(1)

Criteria: The only criteria is that the child in question must be in foster care **in terms of a children's court order** made in terms of the Act.

There is **no limit on the number of grants payable to a foster parent** in respect of children in that person's care, but foster parents will normally not be allowed to care for more than six children in total – counting both their own children and the foster children placed with them unless the court makes an exception to this rule in the best interests of all the children concerned.

Note that there is **no means test** and **no tax-related requirement** for a foster parent grant. The foster parent is essentially performing a function for the government when it takes care of a child in terms of a court order.

The costs of the grant may be recouped in part by means of a contribution order. Contribution orders are explained in detail in Chapter 16 of this *Guide*.

◇ Child Care and Protection Act, section 242(1)

Procedure for application: An application for a foster parent grant must be made in person at a constituency or regional office of the Ministry. **Ministry staff will provide the appropriate application form** and assist the applicant to complete it.

The following **documents** must be submitted together with a grant application:

- (1) Certified copy of the **foster parent's identity document or other proof of identification**
- (2) Certified copy of the **court order which places the child in the foster care of the applicant.**

◇ Child Care and Protection Regulations, regulations 107, 111(1)

Who can receive a foster parent grant on behalf of a child?: The grant must be paid to the **foster parent** named in the court order.

◇ Child Care and Protection Act, section 243(1)

Duration of a foster parent grant: A foster parent grant is payable while the child remains in foster care in terms of a court order. However, if the order placing a child in foster care lapses but the child remains in foster care, the grant must be extended until the children's court has made a decision on whether or not to extend the order.

An order for foster care is normally made for a maximum of two years at a time, but it can be extended by a children's court, on its own initiative or on application by a designated social worker, for additional periods of up to two years at a time if this is in the child's best interests. The court may also order the placement of a child in foster care for more than two years, after considering the child's need for stability, and may order that the child should remain in foster care until the end of the year in which the child reaches age 18 (the age of majority). The child may apply to the Minister for permission to remain in foster care until the end of the year in which the child reaches age 21 if the foster parent is still willing and able to care for the child and the continued stay in foster care is necessary to enable the child to complete his or her education or training.

◇ Child Care and Protection Act, section 242(2) read together with section 151
◇ Child Care and Protection Regulations, regulation 114(1)(c)

Payment during temporary absences: A foster parent grant remains payable even if the child in question is temporarily absent from the care of the foster parent due to the child being on holiday, hospitalised or absent for any other reason that the Executive Director considers valid.

There is no specified procedure for notifying the Executive Director of a temporary absence. However, a social worker is normally involved in arranging a leave of absence for a child who is in foster care. If the child has been placed under the supervision of a social worker, then the leave of absence must be approved by that social worker. In every case, a social worker must be involved in the arrangements for the accommodation, care and supervision of the child during the leave period. The social worker who is involved in the leave arrangements can assist in obtaining the Executive Director's approval of the reason for the leave of absence (if the reason is something other than a holiday or hospitalisation).

A leave of absence from foster care can be for a maximum of six weeks, unless a longer period is approved by (a) the designated social worker who is supervising the child's placement or (b) where there is no social worker exercising supervision, by the Minister.

◇ Child Care and Protection Act, section 87
◇ Child Care and Protection Regulations, regulations 22, 114(5)

5. Residential child care facility grants

Who can apply?: Any approved place of safety or a registered children's home or child detention centre can apply for a grant for each child placed in its care by a court order made in terms of the Child Care and Protection Act.

Grant eligibility is limited to court orders made in terms of the Child Care and Protection Act. This is important to note, because children in conflict with the law are sometimes placed in residential child care facilities by court orders made in terms of the Criminal Procedure Act 51 of 1977.

Also, note that children's homes may cater for children other than children placed there by court order. For example, a parent may sometimes place a child in a children's home voluntarily for some reason. But only children placed in a residential child care facility by a court order are eligible for a residential child care facility grant.

◆ Child Care and Protection Act, section 244

Criteria: The only criteria is that the child in question must be in the care of the residential child care facility in terms of a children's court order made in terms of the Act.

There is no limit on the number of grants payable to a residential child care facility in respect of children in that facility's care.

Note that there is *no* means test and *no* tax-related requirement for a residential child care facility grant. The facility is essentially performing a function for the government when it takes care of children in terms of a court order. The costs of the grant may be recouped in part by means of a contribution order. Contribution orders are explained in detail in Chapter 16 of this *Guide*.

◆ Child Care and Protection Act, section 244

Procedure for application: An application for a residential child care facility grant must be made to a constituency or regional office of the Ministry by the owner of the facility, or by someone involved in the management of the facility. It does NOT have to be made in person. **Ministry staff will provide the appropriate application form** and assist the applicant to complete it if necessary.

The following **documents** must be submitted together with a grant application:

- (1) Certified copy of the **court order** which places the child in question in the care of the facility
- (2) Certified copy of the **approval** granted to a place of safety OR the **certificate of registration** granted to a children's home or a child detention centre.

◆ Child Care and Protection Regulations, regulations 108, 111(1)

Who can receive a residential child care facility grant on behalf of a child?: The Act and the regulations are not explicit about this, but the practice is that the grant will be paid into the bank account of the residential child care facility.

◆ See Child Care and Protection Regulations, regulation 108(2)

Duration of a residential child care facility grant: A residential child care facility grant is payable as long as the child remains in the residential child care facility in terms of a court order.

A place of safety provides short-term care while a longer-term plan is being made.

A children's court order for alternative care in a children's home or a child detention facility may cover any period up to a maximum of two years, but can be extended by a children's court, on its own initiative or on application by a designated social worker, for any period up to a maximum of two years at a time if this is in the best interests of the child. No order for alternative care in a children's home or a child detention facility may extend beyond the date when the child reaches age 18.

◆ Child Care and Protection Act, sections 64(1), 151

◆ Child Care and Protection Regulations, regulation 114(1)(d)

Payment during temporary absences: A residential child care facility grant remains payable even if the child in question is temporarily absent from the care of the facility due to the child being on holiday, hospitalised or absent for any other reason that the Executive Director considers valid.

There is no specified procedure for notifying the Executive Director of a temporary absence. However, a social worker is normally involved in arranging a leave of absence for a child who is in a residential child care facility. If the child has been placed under the supervision of a social worker, then the leave of absence must be approved by that social worker. In every case, a social worker must be involved in the arrangements for the accommodation, care and supervision of the child during the leave period. The social worker who is involved in the leave arrangements can assist in obtaining the Executive Director's approval of the reason for the leave of absence (if the reason is something other than a holiday or hospitalisation).

A leave of absence from a residential child care facility can be for a maximum of six weeks, unless a longer period is approved by (a) the designated social worker who is supervising the child's placement or (b) where there is no social worker exercising supervision, by the Minister.

◆ Child Care and Protection Act, section 87

◆ Child Care and Protection Regulations, regulations 22, 114(5)

6. Child disability grant

Who can apply for a child disability grant?: The following persons may apply for a child disability grant for a child who has any of the specified disabilities –

- (1) a **parent or guardian** of a child;
- (2) a **kinship care-giver** who is caring for a child in terms of an agreement registered with the children's court

“Kinship care” is the “care of a child by a member of the child's family or extended family” other than the parent or guardian of the child or any other person who has parental responsibilities and rights in respect of the child. A kinship care agreement can be kept private, or it can be registered at the children's court. But a kinship care-giver is eligible to apply for a State maintenance grant **ONLY IF** the kinship care agreement is registered. The clerk of the children's court will stamp or endorse the agreement to show that it has been registered, and give a copy of the endorsed agreement to each of the parties and to the Ministry. This is a mechanism aimed at preventing people from applying for grants for children who are not really in their care. Kinship care is explained in detail in Chapter 12 of this *Guide*.

- (3) a **child heading a household recognised as a child-headed household**, on behalf of any of the children in the household (including himself or herself)

The Minister can officially recognise a household as a child-headed household if no parent or care-giver is available or able to care for the children, and a child in the household is in fact acting as the care-giver for one or more children in the household. Children in a household may prefer such an arrangement to avoid being moved elsewhere, which might involve a change of community or school or the separation of siblings. Every child-headed household will be placed under the supervision of an adult chosen by the children's court, the Minister or a non-governmental organisation designated by the Minister. Child-headed households are explained in detail in Chapter 19 of this *Guide*. See also the Technical Note on page 6 of this chapter.

- (4) an **adult supervisor of a child-headed household, or an organ of state or a non-governmental organisation**, on behalf of the children in that household,

Grants and other assistance for a child-headed household may be received and administered by the child heading the household or by the adult supervisor, depending on the authorisation contained in the certificate issued by the Minister at the time of recognising the child-headed household. If there is disagreement between the child heading the household and the adult supervisor regarding the receipt or administration of a grant, a non-governmental organisation designated by the Minister must receive and administer the grant or other assistance. Also, if there is an investigation underway into the possible withdrawal of the adult supervisor, the social worker who is conducting the investigation may temporarily assign a community child care worker to receive any grant for children in the household until the investigation is complete. It is a crime to misappropriate grant money or other assistance intended for a child-headed household. The punishment is a fine of up to N\$20 000 or imprisonment for up to five years, or both. The authority to receive grants for child-headed households is explained in detail in Chapter 19 of this *Guide*.

- (5) a **foster parent** caring for a child in terms of a court order
- (6) a **residential child care facility** (place of safety, children's home, child detention centre), for children placed in the facility by court order.

✦ Child Care and Protection Act, sections 241(1), 243

A child disability grant is paid *in addition to* a State maintenance or any other grant provided for in the Act. This is because it is designed to cover the *extra* costs related to the disability.

✦ Child Care and Protection Act, section 241(3)

Criteria: Child disability grants are payable if the following two criteria are met:

- (1) The child is a **Namibian citizen or permanent resident**.
- (2) The child is **assessed by a social worker as being eligible on the basis of disability**, after the social worker has considered a medical or psychological report stating that the child –
 - ⦿ suffers from a mental disability
 - ⦿ suffers from a chronic or terminal illness, including HIV or Diabetes Type I
 - ⦿ is partially or completely deaf or blind
 - ⦿ suffers from cerebral palsy
 - ⦿ has lost one or both legs or arms
 - ⦿ is partially or completely paralysed
 - ⦿ suffers from a speech impediment to the extent that the child cannot communicate with others
 - ⦿ suffers from epilepsy that cannot be controlled adequately with medication
 - ⦿ is an albino
 - ⦿ has any other condition or disability which in the view of a medical practitioner or psychologist would make the child eligible for a child disability grant.

The medical/psychological report is not definitive. A designated social worker must independently assess the child and his or her living situation and make a recommendation regarding eligibility for the grant. The child's condition must be considered in light of the overall circumstances.

Note, however, that there is *no* means test and *no* tax-related requirement for a child disability grant. A disability can lead to additional expenses which put strain on a family regardless of the family's underlying financial situation. The purpose of the grant is to make sure that no child is deprived of support due to a disability.

✦ Child Care and Protection Act, section 241(1)

✦ Child Care and Protection Regulations, regulation 109(2), (3)(f), (4)-(5)

Procedure for application: An application for a child disability grant must be made in person at a constituency or regional office of the Ministry. **Ministry staff will provide the appropriate application form** and assist the applicant to complete it.

The following **documents** must be submitted together with a child disability grant application:

- (1) Certified copy of **applicant's identity document**
- (2) Certified copy of the **full birth certificate of the child**

It does not matter if the birth certificate lists the name of only one parent. It does not matter if the birth certificate fails to name either parent, because the child was abandoned or the child's parentage is unknown. If the child has no birth certificate, a staff member of the Ministry must help to facilitate birth registration for the child. Having the child's birth certificate is necessary to identify the child accurately, but this is not meant to be a barrier to providing a grant to a child in need.

- (3) **Proof of the child's citizenship or permanent residence** (if Namibian citizenship is not apparent from the child's birth certificate)

If the child's birth certificate shows that at least one of the child's parents is a Namibian citizen, then no additional proof of citizenship is needed because the child is clearly a Namibian citizen by either birth or descent. If neither parent listed on the birth certificate is a Namibian citizen, then proof of the child's Namibian citizenship or permanent residence is needed. For example, proof of citizenship could be a Namibian passport, a Namibian citizen ID, or a certificate of citizenship issued by the Ministry of Home Affairs and Immigration.

- (4) **If the applicant is not a parent of the child, some proof of the applicant's eligibility to apply for the grant**

- ⑨ **Guardian:** Certificate of guardianship or court order naming the applicant as guardian, or a document from the Master of the High Court confirming that the applicant is named as a guardian in a will
- ⑨ **Kinship care-giver:** Kinship care agreement that has been registered with a children's court
- ⑨ **Child-headed household:** Certificate issued officially recognising the household as a child-headed household, and identification documents in respect of the person authorised to receive grants in respect of the children in the household in the form of –
 - Child head: Birth certificate or identity document
 - Adult supervisor: Identity document
- ⑨ **Foster parent:** Court order placing the child in the foster care of the applicant
- ⑨ **Residential child care facility:** Court order placing the child in the care of the residential child care facility.

- (5) **Particulars and proof of banking details** of the applicant or proposed recipient **OR other details about how grant payments will be made** (such as collection at a post office or via a mobile cash point).

- (6) **Report from a medical practitioner or psychologist**, stating –
 - ⌚ that the child has one of the specified conditions
 - ⌚ whether the disability is permanent or temporary in nature
 - ⌚ if the disability is of a temporary nature, its probable duration (if this can be reasonably estimated).
- (7) **Proof that the child is in the care of the applicant or other proposed grant recipient, if the child is not already receiving any other grant in terms of the Act:**
 - ⌚ affidavit from the parent or guardian of the child, who may also be the applicant for the child disability grant
 - ⌚ letter from the principal of the school, the head of an early childhood development centre or the head of a place of care attended by the child
 - ⌚ certified copy of a kinship care agreement registered with the clerk of the children's court
 - ⌚ letter of confirmation from a designated social worker familiar with the circumstances of the child
 - ⌚ certificate officially recognising the child's household as a child-headed household (if the grant is to go to a child in a child-headed household).

If the child is receiving some other grant under the Act, then there is no need for this documentation because the grant must be received by the same person who is receiving the other grant for the child.

⬢ Child Care and Protection Regulations, regulation 109(3) and (7), 111(1)

Who can receive a child disability grant on behalf of a child?:

- (1) If a child disability grant is paid *in addition to any other grant* under the Act, it must be received by the same person who is receiving the other grant.
- (2) If *no other grant is being paid*, the child disability grant must be paid to the person who is actually taking care of the child, regardless of who applied for the grant.

⬢ Child Care and Protection Regulations, regulation 109(6)-(7)

Duration of a child disability grant: A child disability grant is payable until the child concerned is old enough to qualify for a disability pension in terms of the National Pensions Act 10 of 1992.

This age is **16 years**. Section 1 of the National Pensions Act 10 of 1992 defines a “disabled person” as any person who is, owing to any physical or any mental disability, incapable to obtain from any employment or the practising of any profession or trade, or from the rendering of any service, the means needed to enable him or her to adequately provide for his or her own maintenance, and has attained the age of 16 years”.

However, some disabilities may be temporary. The regulations require the medical or psychological report to indicate if the disability is permanent or temporary and to state its probable duration. If the disability which justifies the grant came to an end, the basis for the grant would fall away.

⬢ Child Care and Protection Act, section 241(4)

⬢ Child Care and Protection Regulations, regulations 109(4), 114(1)(b)

7. Short-term emergency grants and assistance in kind

What kind of assistance is available?: The Minister will decide on the form and amount of the emergency assistance, with the concurrence of the Minister of Finance. The assistance could be a short-term grant, or assistance in kind, including food aid.

◆ Child Care and Protection Act, section 245(1)

Who can apply for emergency aid?: There is no restriction on who can apply, because of the range of emergency circumstances that might arise.

◆ Child Care and Protection Act, section 245(1)

Criteria: This aid is designed for “emergencies”, which include –

- ⑨ the accidental loss by a child of his or her family
- ⑨ the accidental loss by a child of his or her home or possessions
- ⑨ natural disasters which are not covered by any other Government relief measures
- ⑨ armed conflicts
- ⑨ the illness of the child or the child’s financial provider;
- ⑨ other situations described in the regulations: As of 2019, additional emergencies include where a key income provider of the child is awaiting trial, sentenced, imprisoned or admitted to any State health institution *for a period of at least six months*.

The Act and the regulations do not explicitly state that the recipient of a short-term emergency grant or assistance in kind must be a **Namibian citizen or permanent resident**, but this requirement is implied by the fact that the documents which must accompany the application must include proof of citizenship or permanent residence of the child (where Namibian citizenship is not apparent from the child’s birth certificate).

◆ Child Care and Protection Act, section 245(2)

◆ Child Care and Protection Regulations, regulation 110(3)

Procedure for application: An application must be made in writing, delivered in person to a constituency or regional office of the Ministry. There is no special form for applying for these grants, since the circumstances which give rise to them can vary. A simple letter or written statement is sufficient, as long as it includes these points:

- ⑨ the nature of the emergency grant or the assistance being sought by the applicant;
- ⑨ the circumstances which led to the emergency;
- ⑨ details of how payment or assistance in kind should be made to the applicant or other proposed recipient.

Ministry staff will assist the applicant to make an application for emergency aid.

The following **documents** must be submitted together with an emergency aid application:

- (1) Certified copy of **applicant's identity document**
- (2) Certified copy of the **full birth certificate of each child** in respect of whom the application is made

If the child has no birth certificate, or if the birth certificate has been lost or destroyed, a staff member of the Ministry must help to facilitate the birth registration or replacement of the birth certificate of the child.

- (3) **Proof of the child's citizenship or permanent residence** (if Namibian citizenship is not apparent from the child's birth certificate).

The Act and the regulations do not explicitly state that the recipient of a short-term emergency grant or assistance in kind must be a **Namibian citizen or permanent resident**. This criteria is only implied by the fact that the application must be accompanied by this proof.

◇ Child Care and Protection Regulations, regulations 110(2), 111(1)

Duration of a short-term emergency grant or assistance in kind: Emergency aid is payable for a period of up to three months.

◇ Child Care and Protection Regulations, regulation 114(1)(e)

8. General rules for all types of grants

Assistance with applications: The Executive Director will designate staff members at the Ministry's constituency and regional offices to assist applicants to complete their grant applications.

Questioning and investigation: The designated staff member or a designated social worker may carry out any reasonable questioning or investigation necessary to confirm whether or not the applicant complies with the requirements for the grant concerned.

Dated receipt for application: The designated staff member who receives the application must furnish the applicant with a written acknowledgment of receipt, which indicates the **date** the application was received by the Ministry and the **name** of the staff member received the application, and is endorsed with an **official stamp** of the Ministry.

Register of applications received: The designated staff member at each office must keep a register of all applications received. The following information must be recorded in the register –

- ⑨ the particulars of the applicant and any person other than the applicant proposed to receive the grant for the child
- ⑨ the date the application was received
- ⑨ the name of the designated staff member who received the application
- ⑨ the type of grant being applied for
- ⑨ the date when the grant was approved or refused – and in the case of a refusal, the reasons for it
- ⑨ the name of the person approved to receive the grant on behalf of the child.

Decision on grant application: The Executive Director must make a decision on the grant application with three months of receiving it.

If the application is **granted**, the Executive Director must inform the applicant of:

- ⑨ details regarding payment of the grant (such as the grant amount and the payment schedule)
- ⑨ the manner in which payment will be made
- ⑨ the duration of the grant
- ⑨ the applicant's duty to notify the Executive Director of any change of address, as well as any change of circumstances that may influence continued eligibility for the grant.

If the application is **refused**, the Executive Director must inform the applicant of

- ⑨ the reasons for the refusal
- ⑨ the right to appeal the decision.

In either case, the notification must be delivered to the applicant by hand, or sent by courier or registered post.

Appeals: A person may appeal the Executive Director's decision or action in respect of a grant to the Minister. The appeal must be in writing, and it must state the reasons for the appeal. It must be lodged with the Minister within 90 days from the date on which the applicant is notified of the decision or action.

An **appeal** considers the merits of a decision. The Minister may change an incorrect order, ruling or judgment based on his or her own judgment, or return the case to the decision-maker for a new decision.

A person who is not happy with the decision of the Minister on appeal could ask the High Court to **review** the decision as a matter of administrative law. A review involves more limited intervention than an appeal. The reviewing court checks to see that the correct law and procedure were followed and that the decision was reasonable.

Payment method: All grants are paid monthly "in arrears" – which means at the end of the time period which they cover, not at the beginning.

Dealing with deaths:

- (1) **If the person who receives the grant on behalf of the child dies:** The Executive Director must assign a social worker to review the matter and determine to whom the grant must now be paid. **This investigation can also make sure that the child has appropriate care and protection.**
- (2) **If the child who is the beneficiary of the grant dies:** Any payment made in respect of that child for a period after the death of the child must be refunded to the Ministry. If the person who receives the grant fails to refund the payment, the Ministry may recover the amount in question as a debt owed to the State. **This means that the Ministry could, for example, attach property owned by the person who failed to return the money in order to secure the amount that should have been refunded.**

◆ Child Care and Protection Act, section 251

◆ Child Care and Protection Regulations, regulation 110(2), 111, 112(1)-(3)

9. Automatic exemptions

Any child who receives a state maintenance grant, or who has been placed in foster care of a residential child care facility by a court order, is automatically entitled to:

- ⑨ free basic education in state schools, including automatic exemption from any contributions to school development funds
- ⑨ subsidised school uniforms, shoes and stationary
- ⑨ free basic health care
- ⑨ exemption from payment of any fees when applying for official government documents (such as a replacement for a lost birth certificate or ID).

◇ Child Care and Protection Act, section 246

10. Monitoring and investigation

Monitoring: The Executive Director *may* appoint a social worker or any other person to monitor the use of grant money to make sure that it is being spent in the best interests of the child.

The Executive Director may also revoke or vary this appointment at any time.

◇ Child Care and Protection Regulations, regulation 113(1)

Investigation: The Executive Director *must* designate a staff member to investigate the situation whenever there are reasons to believe that –

- ⑨ a grant has been misappropriated
- ⑨ the financial circumstances of the applicant have changed since the grant was approved
- ⑨ the child who is the grant beneficiary has died
- ⑨ there is any change in the circumstances under which the grant was approved.

The purpose of the investigation is to determine whether payment of the grant should be cancelled or suspended.

For example, perhaps the child's parent found employment and is now a taxpayer. Perhaps the grant is being received by a kinship care-giver but the kinship care agreement has been cancelled. Perhaps the child who is the grant beneficiary is no longer living in Namibia. The grant recipient has a duty to inform the Ministry of such changes in circumstances, but some grant recipients might fail to do this in hopes of keeping the grant money for themselves.

◇ Child Care and Protection Act, section 249(1)(b)

◇ Child Care and Protection Regulations, regulation 111(6)(d), 113(2)

Investigating public reports of suspected abuse: Anyone (including a child) who has a reasonable suspicion that someone is receiving the grant money under false pretences or failing to use the grant for the benefit of the child can ask a designated social worker to investigate. A designated social worker who receives such a report must conduct an investigation without delay and take appropriate action based on the outcome of the investigation.

The person who makes the report can keep his or her identity confidential, and is not liable for any damages (such as a lawsuit for defamation) if he or she acted in good faith but the suspicion turns out to be mistaken.

✧ Child Care and Protection Act, section 249(4), read together with section 132(5)

11. Suspension and cancellation of grants

Suspension: The Executive Director may suspend payment of any grant if the beneficiary is absent from Namibia for a continuous period exceeding six months, the Executive Director can also resume suspended payments as appropriate.

Cancellation: The Executive Director may cancel the payment of any grant from a date determined by the Executive Director if –

- ⑨ the child has ceased to satisfy the criteria for the grant
- ⑨ the grant has not been collected for a continuous period exceeding six months, with no reasonable explanation and no alternative arrangements
- ⑨ an investigation into possible abuse of a grant indicates that there was some wrongdoing.

Reinstatement of suspended or cancelled grants: If a grant is suspended or cancelled, the person who applied for the grant or the person who was receiving it on behalf of the child can apply for reinstatement. This application must be made in writing to the Executive Director, and it must include a motivation as to why the grant should be reinstated. The Executive Director may appoint a social worker or any other person to investigate the matter before making a decision on whether to reinstate the grant. The Executive Director must make a decision on an application for reinstatement within three months of receiving it.

If the application is **granted**, the Executive Director must inform the applicant of:

- details regarding payment of the grant
- the manner in which payment will be made
- the duration of the grant
- the applicant's duty to notify the Executive Director of any change of address, as well as any change of circumstances that may influence continued eligibility for the grant.

If the application is **refused**, the Executive Director must inform the applicant of

- the reasons for the refusal
- the right to appeal the decision.

In either case, the notification must be delivered to the applicant by hand, or sent by courier or registered post.

The applicant may appeal the Executive Director's decision on reinstatement to the Minister. The appeal must be in writing, and it must state the reasons for the appeal. It must be lodged with the Minister within 90 days from the date on which the applicant was notified of the Executive Director's decision.

✧ Child Care and Protection Act, section 247

✧ Child Care and Protection Regulations, regulation 116, read together with regulation 111(5)-(9)

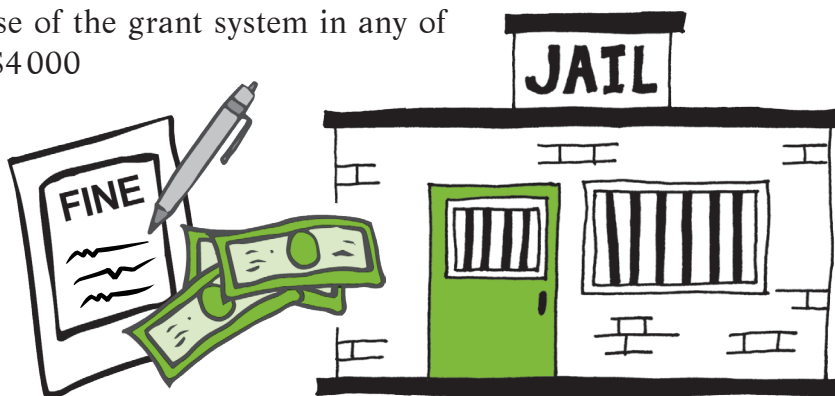
12. Abuse of the grant system

False representations, improper receipt of grant or misuse of grant money: It is a crime to receive grant money for a child under false pretences (such as making a false statement on the grant application, receiving a grant on behalf of a child who is not actually in the person's care, or continuing to receive a grant for a child who has died).

It is also a crime or to use grant money for something other than the child's benefit (such as using the money for drinking or gambling).

Penalty: The penalty for abuse of the grant system in any of these ways is a fine of up to N\$4 000 or imprisonment for up to 12 months, or both.

Refunds: A person who has been wrongfully receiving a grant, or misusing the money, can be ordered to refund the money to the government.



If a person has received money which should have been refunded, the Executive Director must assign a social worker to review the matter. The Executive Director may determine that some other person should receive the grant on behalf of the child. A child who is entitled to a grant should not suffer because the person who received the grant on behalf of that child was dishonest.

The Minister must recover any money which is supposed to be refunded as a debt owed to the State. This means that the Ministry could, for example, attach property owned by the person who failed to return the money in order to secure the amount that should have been refunded.

If the person who acted wrongfully dies before the money which should have been refunded is returned to the State, the refund can come out of his or her estate.

- ◆ Child Care and Protection Act, sections 249-250
- ◆ Child Care and Protection Regulations, regulation 112(4)-(5)

Assignment, transfer, pledge or attachment of grant money: Grants may not be assigned or transferred to another person, or pledged or attached against any debt.

If someone does this, or attempts to do this, the Executive Director may withhold, suspend or cancel the grant, or demand a refund. A designated social worker must also conduct an investigation to see if the child in question is a child in need of protective services.

- ◆ Child Care and Protection Act, section 248

13. Rate of grants

The amounts of the various grants are set in regulations so that it is easy to change them from time to time. The table below shows the rates for the various grants as of 2019.

Rates of grants as of 2019	
State maintenance grant	N\$250 per month per child
Foster parent grant	N\$250 per month per child
Residential child care facility grant	N\$15.25 per day per child (N\$456.50 per child for a 30-day month)
Child disability grant (paid <i>in addition</i> to other grants)	N\$250 per month per child
Short term emergency grant	N\$310 per month per child

14. Transitional provisions

The Child Care and Protection Act introduced a new distinction between foster care and kinship care. Foster care used to apply to anyone other than a parent who was taking care of a child. Now **foster care** refers only to situations where children are placed by court order with someone who is unrelated to them, while **kinship care** is the term for situations where children are placed with extended family members or close family friends. Kinship care-givers do not need court approval. But the kinship care agreement must be registered with a children's court if the kinship care-giver wants to apply for or receive a grant for the child in his or her care.

The change means that some people who were previously foster parents now fall into the category of kinship care-givers. **What does this change mean for a kinship care-giver who was receiving a foster care grant under the old system?**

If a family member of a child was already receiving a foster parent grant when the Child Care and Protection Act came into force on 30 January 2019, that grant remains payable without any change until the expiry of the court order placing the child in foster care.

If a foster parent OTHER THAN a family member of a child was already receiving a foster parent grant when the Child Care and Protection Act came into force on 30 January 2019, that grant also remains payable without any change until the expiry of the court order placing the child in foster care.

In summary, the Act does not affect any grants to foster parents which were already in place before it came into force. The Act applies only to grants which fall under the authority of court orders granted *after* it came into force.

In any event, as of 2019, State maintenance grants and foster parent grants were set at the same rate. Thus, the practical effect is the same, regardless of which category of grant is being received.

◆ Child Care and Protection Regulations, regulation 114(6)-(7)