

SOCIAL WORKERS AND CHILD PROTECTION ORGANISATIONS

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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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Social workers are responsible for carrying out many functions under the Child Care and Protection Act. Many functions in the Act can be carried out only by a “designated social worker” who has a certificate from the Minister responsible for child welfare certifying what statutory work that specific social worker is authorised to do. A similar process applies to “child protection organisations”, which are non-governmental organisations that employ private social workers. The Act also provides for “probation officers”, who are State-employed social workers authorised to work specifically with criminal matters.

1. Overview

Most social work duties covered by the Child Care and Protection Act must be carried out by social workers who are designated to perform those functions. This can include state social workers, private social workers or social workers employed by child protection organisations.

Some social workers may be authorised to perform all of the functions given to social workers under the law, while others may be authorised to perform only specific duties. For example, some tasks might be reserved for state-employed social workers, or for social workers who have an advanced level of experience.

The Minister responsible for child welfare is responsible for determining the criteria that social workers must meet for different duties under the law. The Ministry will provide each designated social worker with a certificate indicating what functions and duties that social worker can perform. Social workers must renew their certificates every two years. The Ministry also has the power to revoke a certificate if necessary – such as in a case where a social worker has not been performing tasks competently.

Child protection organisations are similarly designated by the Minister to perform functions under the Act, and provided with certificates showing what they are authorised to do.

The Minister has a duty to make sure that there are enough designated social workers and child protection organisations to carry out the functions in the Child Care and Protection Act and other laws.

◇ Child Care and Protection Act, sections 1, 33-35

2. Terminology

Social worker: When the Act uses the term “social worker”, as opposed to “designated social worker”, this means any social worker who is registered as a social worker in terms of the Social Work and Psychology Act 6 of 2004.

For example, children can report neglect or abuse of themselves or another child to **any social worker**, who then has a duty to refer the matter for investigation by a designated social worker. Adults can report suspicions of child neglect or abuse to **any State-employed social worker**. A social worker who receives a report of a child who may need protective services has a duty to refer the matter for investigation by a designated social worker.

◆ Child Care and Protection Act, sections 132-133, 134(3)

As another example, parents who are seeking assistance or mediation in connection with a parenting plan can seek help from **any social worker**. People who are negotiating a kinship care agreement may also seek help from **any social worker**.

◆ Child Care and Protection Act, sections 119(5), 123(4)

However, note that the context sometimes shows that the phrase “social worker” actually refers to a “designated social worker”. For example, the Act states:

*If, after an investigation in terms of section 139, **the designated social worker** concludes that the child is not in need of protective services, **the social worker** must submit the report referred to in that section to a children’s court for review in the prescribed manner.*

The reference to “the social worker” clearly refers to “the designated social worker” mentioned in the same sentence.

◆ Child Care and Protection Act, section 140(1)

Designated social worker: This refers to a social worker in the employment of the State, a social worker in private practice, or a social worker in the employment of a child protection organisation who is designated by the Minister as being authorised to carry out work under the Act.

Child protection organisation: This refers to a non-governmental organisation that employs private social workers. An example is the Church Benevolence Board. Child protection organisations successfully performed statutory functions under the previous law, taking some of the pressure off state social workers. This system continues under the Child Care and Protection Act. The Minister will designate the child protection organisations which are authorised to perform duties under the Child Care and Protection Act. However, even after a child protection organisation has been designated, the individual social workers employed by that organisation must also be designated in order to perform functions under the Act.

Probation officer: In the past, the term “probation officer” referred to any social worker who was authorised to do statutory work under the Children’s Act. This conflicts with the general international use of the term. The Child Care and Protection Act uses the term “designated social worker” for social workers who are authorised to perform various functions under the Act. It uses the term “probation officer” to refer to social workers who work specifically with criminal matters. Only State-employed social workers can be designated as probation officers.

◆ Child Care and Protection Act, sections 1, 33, 35

Persons who assist social workers

The Act provides for two categories of persons who can assist social workers with some of their duties:

- (1) **social auxiliary workers:** persons registered with the Social Work and Psychology Council as social auxiliary workers after appropriate training
- (2) **community child care workers:** staff members of the Ministry designated by the Minister as “community child care workers” (regardless of their actual job titles).

These persons work under the supervision of social workers and help with their workload. However, some tasks — such as facilitating adoptions, preparing court reports and removing children or alleged offenders from the home environment — must be performed personally by social workers.

◇ Child Care and Protection Act, sections 1, 34

3. Designated social workers

3.1 Functions

Designated social workers have many powers and duties under the Child Care and Protection Act.

A specific designated social worker may carry out any of the functions indicated on the certificate of authorisation issued to him or her by the Minister. There are two possibilities:

- (1) **EVERYTHING BUT:** The certificate might say that the social worker can do any function assigned to a designated social worker under the Act OTHER THAN probation officer services, inter-country adoption and any other functions listed on the certificate as exclusions.

Probation officers must have special skills and experience. In terms of the Hague Convention on Inter-Country Adoption, only organisations (and not individuals) can be accredited to facilitate inter-country adoptions. That is why these tasks are not included in general authorisations.

- (2) **ONLY THIS:** The certificate might indicate the specific functions that the social worker in question is authorised to carry out. In this case, the social worker can perform ONLY the functions which are specifically indicated on the certificate.

For example, a recently-registered social worker might be authorised to carry out only simpler tasks while he or she is gaining experience. As another example, a social worker might wish to specialise in a particular area, such as assessing grant applications or working with child-headed households, instead of working more broadly.

◇ Child Care and Protection Act, sections 32(2), 33(1)

◇ Child Care and Protection Regulations, regulations 2, 3(6)(b), Form 1B

3.2 Designation

Duty to designate sufficient social workers: The Minister has a duty to designate sufficient numbers of social workers to perform the functions assigned to designated social workers under the Child Care and Protection Act and other laws.

To fulfil this duty, the Ministry might need to appoint additional social workers to its staff component.

◇ Child Care and Protection Act, section 33(1)

Criteria for designation: The following minimum requirements must be met by designated social workers:

- (1) **Registration as a social worker:** The applicant must be registered as a social worker in terms of the Social Work and Psychology Act 6 of 2004.
- (2) **Three years of relevant experience:** The applicant must have three years of continuous experience in the field of child care and protection.

OR

Supervision by a social worker with three years of relevant experience: The applicant must have arranged to work under the supervision of a social worker who has more than three years of continuous experience in child care and protection during the period of designation.

The option of working under the supervision of a more experienced social worker is aimed at helping less experienced social workers enter the field of child care and protection.

Special additional requirement for designation to facilitate adoptions: A social worker who wants to be designated to facilitate adoptions must have, in addition to the general experience requirement, at least four years of practical experience in adoption or court matters. This is discussed in more detail below.

- (3) **Suitability to work with children:** The applicant must NOT have been found unsuitable to work with children by the Social Work and Psychology Council of Namibia established under the Social Work and Psychology Act, or by any court.
- (4) **Absence of previous convictions:** The applicant must NOT have any previous conviction in Namibia or in any other country that relates to child neglect or abuse, drug trafficking or certain other offences listed in the Act (see box on page 6). The applicant must prove the absence of such previous convictions by means of an appropriate **police clearance certificate**.

“ ... the idea of persons performing potentially drastic functions with respect to children, possibly for profit, or on a case by case basis without the requisite depth of knowledge or experience, and acting independently of any supervision, raises the possibility of abuse of power and poor practice procedures, hence the development of the designation mechanism... ”

◇ Julia Sloth-Nielsen, “Protection of children”, in CJ Davel and AM Skelton (eds), *Commentary on the Children’s Act*, 2007, updated in 2015, page 7-17 (discussing designation provisions in the South African Children’s Act 38 of 2005),

Some social workers will need to submit multiple police clearance certificates.

- ⑨ There must be a police clearance certificate from **Namibia** if the applicant is a Namibian citizen or permanent resident, or if the applicant has lived in Namibia for the last five years.
- ⑨ If the applicant is from a country other than Namibia, there must be a police clearance certificate from the applicant's **country of origin**.
- ⑨ Any applicant who has lived in another country (ie, a country other than Namibia or the applicant's country of origin) for the last five years must submit a police clearance certificate from that **country of residence**.

Relevant crimes

- ▷ murder
- ▷ rape
- ▷ indecent assault
- ▷ incest
- ▷ kidnapping
- ▷ any statutory sexual offence
- ▷ any offence relating to the manufacture, distribution or possession of pornography
- ▷ any offence relating to human trafficking
- ▷ abduction, excluding the wrongful removal or retention of a child by a parent with parental responsibilities
- ▷ assault with intent to cause grievous bodily harm

◇ Child Care and Protection Act, section 238(8)

Any police clearance certificate submitted must have been **issued within six months** before the date of designation.

A certificate that is older will not serve the function of proving that applicants can safely work with children. However, the rule also attempts to allow a reasonable time period for applicants to obtain the required certificates from police authorities.



◇ Child Care and Protection Act, section 37(1)(b)
◇ Child Care and Protection Regulations, regulation 3(1)-(3)

- (5) **Skills and interest:** Applicants must have the appropriate skills and interest to uphold the rights and interests of children in their work. An applicant must confirm this by providing a **written reference** from any relevant person or institution.

For example, a reference might be provided by a university lecturer, a more senior social worker who has supervised the applicant in the past or a respected colleague.

Procedure for seeking designation: A State-employed or private social worker who wishes to become a designated social worker must make an application to the Minister on **Form 1A**, which is appended to the Child Care and Protection Regulations. If a State-employed social worker is employed by a ministry other than the Ministry responsible for child welfare, that ministry must agree to the designation of the social worker.

It is possible that various ministries might request social workers on their staff to apply for designation so that they will be able to fulfil the duties expected of a social worker in their position.

The application must include the following **supporting documentation**:

- ⑨ proof of registration under the Social Work and Psychology Act
- ⑨ proof of citizenship in Namibia OR for non-Namibian citizens, permanent residence certificate number or other proof of legal residence in Namibia
- ⑨ appropriate police clearance certificate or certificates
- ⑨ reference letter from any relevant person or institution, confirming that you have the appropriate skills and interest to uphold the rights and interests of children in your work.

Transitional provisions

Any social worker who was already performing the functions of a designated social worker before the Act and the regulations came into force on 30 January 2019 was allowed to continue performing these functions in advance of authorisation. These social workers had eight months (in other words, until 30 September 2019) to apply for designation.

◇ Child Care and Protection Regulations, regulation 3(4)

◇ Child Care and Protection Regulations, regulation 3(2), Form 1A

Decision on application for designation: The Minister must consider the application for designation and make a decision. The test is whether the Minister considers the applicant to be “fit and proper to be entrusted with the performance of functions and duties” in terms of the Act. However, even if an applicant satisfies the criteria for designation, the Minister does not have to authorise that applicant to perform functions under the Act unless there is a need for additional social workers to perform such functions.

The Ministry has a duty to supervise the functions of designated social workers under the Act. If the pool of social workers authorised to perform specific functions is too large, this could place an unnecessary burden on the Ministry. The Minister has a duty in terms of the Act to designate a sufficient number of social workers to perform the functions assigned to designated social workers under the Act or any other law.

The Minister can grant the application for designation fully or in part (by authorising the applicant to do some functions, but not everything that was requested), or refuse it completely.

The Minister must give the applicant written reasons for refusing to grant the application, or for refusing to grant any aspects of it. Notice of the refusal and the reasons for the refusal must be delivered to the applicant by hand, by courier or by registered post.

- ◇ Child Care and Protection Act, sections 33(1)-(2)
- ◇ Child Care and Protection Regulations, regulation 3(5)-(7)

Certificate of authorisation: If the Minister grants the application, the Minister will issue a certificate of authorisation on **Form 1B**, which is appended to the Child Care and Protection Regulations. This certificate will indicate what functions the applicant is authorised to perform. It will also indicate the date of issue, and it will be valid for two years from that date. The certificate must be delivered to the applicant by hand, by courier or by registered post.

- ◇ Child Care and Protection Act, section 33(2)
- ◇ Child Care and Protection Regulations, regulation 3(6)(a) and (7), Form 1B

Designation to facilitate adoptions

Both state-employed social workers and private social workers can be designated to facilitate adoptions. A social worker who wants to facilitate adoptions must satisfy all the criteria for designation for other functions, and also have at least four years of practical experience in adoption or court matters. Private social workers working as individuals may not be accredited to arrange inter-country adoptions in terms of the Hague Convention on Inter-Country Adoption.



3.3 Renewal of designation

Timeline: A certificate of authorisation must be submitted to the Minister for renewal every two years.



Procedure for requesting renewal: A social worker who intends to renew his or her certificate of authorisation must submit the certificate of authorisation to the Minister for renewal at least three months before its expiry date, along with the following documents:

- (1) **proof of continued registration as a social worker** in terms of the Social Work and Psychology Act 6 of 2004.
- (2) a new **police clearance certificate** issued not more than one year prior to the date of submission of the certificate for renewal.

Request for authorisation to carry out additional functions: The social worker who is applying for renewal may at the same time request designation in respect of additional functions. If the application for designation in respect of additional functions is approved, then the Minister must amend the certificate of authorisation accordingly.

The regulations are silent on the possibility of requesting renewed authorisation for *fewer* or *different* functions than those indicated in the original certificate. A social worker might want this kind of amendment to his or her certificate in order to specialise or to reduce workload. However, the fact that a social worker is authorised to carry out a particular range of functions does not mean that this social worker has a legal duty to engage in *every* function that is covered by the certificate. The duties of an individual social worker would depend on issues such as his or her job description, case load and availability.

Reasons for refusing to renew certificate: The Minister may refuse to renew the certificate for any of the following reasons:

- (1) The social worker **performed functions or exercised powers which are not covered by the certificate of authorisation.**
- (2) The social worker **contravened or failed to comply with the Child Care and Protection Act or the Social Work and Psychology Act.**
- (3) The social worker **repeatedly failed to submit reports on time** as required under the Child Care and Protection Act.
- (4) The social worker **did not act in the best interests of children, or lacks the ability to act in the best interests of children.**
- (5) The social worker was **arrested for, or convicted of, a crime listed in the Act** (see the box on page 6).

Procedure where there are possible grounds not to renew: The Minister must **notify the social worker** of an intention not to renew the certificate of authorisation by hand, courier, fax or e-mail at least **seven days** before the final decision is to be made. The Minister must give the social worker an **opportunity to make representations** on the matter, and take into consideration any representations made before making the final decision.

Procedure where renewal is refused: The regulations do not specially require that **written reasons** be given to the social worker if an application for renewal is denied, or if a request for

authorisation in respect of additional functions is refused, but this would be required as a basic principle of administrative law.

There is no right of appeal against the Minister's decision, but any administrative decision can be taken on **review** to the High Court. The Court would consider whether the Minister followed the correct process and came to a reasonable conclusion on the basis of the information available.

The Minister must **inform the Social Work and Psychology Council** of any refusal to renew a certificate.

- ◇ Child Care and Protection Act, section 33(3) and (5)
- ◇ Child Care and Protection Regulations, regulations 3(8), 6

3.4 Altering or revoking designation

Reasons for altering or revoking certificate: The Minister may alter or revoke a certificate of authorisation at any time, if the Minister is satisfied that there is a sufficient reason for this.

Alteration would generally refer to changing the functions which the social worker is authorised to perform.

The regulations list the following reasons:

- (1) The social worker **performed functions or exercised powers which were not covered by the certificate of authorisation.**
- (2) The social worker **contravened or failed to comply with the Child Care and Protection Act or the Social Work and Psychology Act.**
- (3) The social worker **repeatedly failed to submit reports on time** as required under the Child Care and Protection Act.
- (4) The social worker **did not act in the best interests of children, or lacks the ability to act in the best interests of children.**
- (5) The social worker was **arrested for, or convicted of, a crime listed in the Act** (see the box on page 6).

Procedure where there are possible grounds to alter or revoke: Before a final decision is made, the social worker in question must have a chance to make oral or written representations on the problematic conduct or circumstances. The Minister must **notify the social worker** of an intention to alter or revoke the certificate of authorisation by hand, courier, fax or e-mail at least **seven days** before the final decision is to be made. The Minister must give the social worker an **opportunity to make representations** on the matter, and take into consideration any representations made before making the final decision.

Procedure where certificate is altered or revoked: The regulations do not specially require that **written reasons** be given to the social worker if the certificate of authorisation is altered or revoked, but this would be required as a basic principle of administrative law.

There is no right of appeal against the Minister's decision, but any administrative decision can be taken on **review** to the High Court. The Court would consider whether the Minister followed the correct process and came to a reasonable conclusion on the basis of the information available.

The Minister must **inform the Social Work and Psychology Council** if a certificate of authorisation is altered or revoked.

- ◇ Child Care and Protection Act, section 33(4)-(5)
- ◇ Child Care and Protection Regulations, regulation 6

4. Designated child protection organisations

4.1 Functions

Functions of a designated child protection organisation: Designated child protection organisations may carry out any of the functions indicated on the certificate of authorisation issued to them by the Minister. There are two possibilities for the indication of functions on the certificate, as in the case of social workers:

- (1) **EVERYTHING BUT:** The certificate might say that the child protection organisation can do any function assigned to a designated child protection organisation under the Act **OTHER THAN** probation officer services, inter-country adoption and any other functions listed on the certificate as exclusions.

Note that there is a separate procedure whereby child protection organisations can seek authorisation to facilitate inter-country adoptions. See the box on page 18.

- (2) **ONLY THIS:** The certificate might indicate the specific functions that the child protection organisation in question is authorised to carry out. In this case, the child protection organisation can perform **ONLY** the functions which are specifically indicated on the certificate.

For example, the Ministry might decide to reserve certain functions to State-employed social workers in future.

- ◇ Child Care and Protection Act, sections 32(2), 33(4)
- ◇ Child Care and Protection Regulations, regulations 2, 4(5)(b), Form 1B



What can a designated child protection organisation do?

There are only a few specific mentions of “designated child protection organisations” in the Act and regulations. For example, designated child protection organisations are mentioned in the regulations in connection with monitoring and reviewing foster care placements, working towards family re-unification in foster care situations, and facilitating domestic and inter-country adoptions.

However, this is somewhat misleading. Private social workers who are “designated social workers” in terms of the Act may be employees of a designated child protection organisation. In such cases, a child protection organisation may be involved in a matter even where the Act and regulations refer only to a “designated social worker”.

Importantly, the Act provides for the possibility of funding to agencies for prevention and early intervention services, from the Children’s Fund or from money appropriated by Parliament. A child protection organisation is eligible for such funding only if it has been designated to provide prevention and early intervention services under the Act.

- ◆ Child Care and Protection Act, section 129
- ◆ Child Care and Protection Regulations, regulation 43

4.2 Designation

Duty to designate sufficient child protection organisations: The Minister has a duty to designate sufficient numbers of social workers to perform the functions assigned to designated child protection organisations under the Child Care and Protection Act and other laws.

- ◆ Child Care and Protection Act, section 33(1)

Criteria for designation: The following minimum requirements must be met by designated child protection organisations:

- (1) **Registration with appropriate authorities:** The applicant must be registered if any registration is required.

For example, if the child protection organisation is set up as a trust, the trust must be registered with the Master of the High Court as required by the law on trusts. If it is set up as a non-profit company, it must be registered with the Registration Office as required by the law on companies. If it is set up as a voluntary organisation, the law does not require registration with any authority.

If a child protection organization of any form engages in certain forms of social work or social assistance AND gets funds from government or collects money from the general public, it is required to register as a welfare organisation under the law on welfare organisations.

- (2) **Non-profit trust or other legal entity:** The applicant must be set up as a non-profit organisation in the form of a registered trust, or in some structure which gives it an independent existence – such as a voluntary association or a non-profit company.

An organisation which is set up as an independent legal entity can open a bank account in its own name, and sue and be sued in its own name. This is useful for keeping the assets and liabilities of the organisation separate from those of the individuals who operate it. Voluntary associations and non-profit companies have independent legal personalities. A trust does not have an independent legal personality, but the rights and obligations which make up the trust estate comprise an entity which vests in the trustees and is administered by them in their official capacity as trustees.

- (3) **Capacity and expertise:** The applicant must have the necessary capacity and expertise to perform functions in terms of the Act.

This would probably be assessed on the basis of the organisation's experience and/or the experience of the social workers it employs. The applicant's financial position will also be checked, to confirm that it has a reasonable level of resources and sustainability in light of the functions it wants to perform.

- (4) **Objectives which include child care and protection services:** The applicant's constitution or other founding document (such a trust's deed of trust or a company's memorandum of association) must include the provision of child care and protection services.

The concept must be covered, even if the document does not use these exact words. For example, the document might refer to social welfare services for children, or the provision of social work services to children and families. The founding document might also mention only some specific examples of child care and protection services, such as support for foster parents or adoption services.

- (5) **Special needs and disabilities:** The applicant must be able to respond to the needs of children with special needs and disabilities, either directly or through appropriate referrals.

The applicant must have the capacity to recognise when a child needs specialised assistance, and have channels for referral if the child protection organisation does not have the capacity to deal with the issue itself.

- (6) **Financial management abilities:** If the applicant intends to seek State funding, it must show that it has sound financial management practices and that it uses financial resources efficiently. It must also demonstrate that its programmes are run economically and effectively.

An applicant that does not intend to seek any State funding does not have to demonstrate these things, but every applicant must submit basic financial information because its financial position may affect its capacity to carry out functions under the Act.



- (7) **Designated social workers on staff:** The applicant must employ one or more designated social workers.

The staff of a child protection organisation could change from time to time. Even if the organisation is a designated child protection organisation, the individual social workers who carry out functions under the Act must also be designated social workers.

- ◇ Child Care and Protection Act, sections 32(2), 33(4)
- ◇ Child Care and Protection Regulations, regulation 4(1), Form 1C
 - ◇ Companies Act, sections 21 and 38(1)
 - ◇ common law on voluntary associations and trusts
- ◇ *Land & Agricultural Bank of SA v Parker* 2005 (2) SA 77 (SCA) (trust estate as legal entity)

Procedure for seeking designation: A child protection organisation that wishes to be designated to perform work under the Act must make an application to the Minister on **Form 1C**, which is appended to the Child Care and Protection Regulations.

The application must include the following **supporting documentation**:

- ⑨ business plan of the organisation
- ⑨ audited financial statements for the previous financial year, or a sworn statement as to why audited statements cannot be furnished
- ⑨ proof of registration with the appropriate authority, in cases where registration is required
- ⑨ proof of registration under the Social Work and Psychology Act in respect of all social workers employed by the organisation
- ⑨ the constitution or other founding document of the organisation
- ⑨ police clearance certificates issued within six months of the date of application for designation in respect of all social workers and any other persons employed by the organisation who work directly with children
- ⑨ if seeking state funding, proof of sound financial management and efficiency, economy and effectiveness of programmes
- ⑨ other documents that may be relevant to the application.

- ◇ Child Care and Protection Regulations, regulation 3(2), Form 1C

Transitional provisions

Any child protection organisation that was already performing the functions of a “designated child protection organisation” before the Act and the regulations came into force on 30 January 2019 was allowed to continue performing these functions in advance of authorisation. Such child protection organisations had eight months (in other words, until 30 September 2019) to apply for designation.

- ◇ Child Care and Protection Regulations, regulation 4(3)

Decision on application for designation: The Minister must consider the application for designation and make a decision. Even if an applicant satisfies the criteria for designation, the Minister does not have to authorise that applicant to perform functions under the Act unless there is a need for additional child protection organisations to perform such functions.

The Ministry has a duty to supervise the functions of designated child protection organisations under the Act and so has a valid interest in making sure that the pool of service providers is sufficient without being excessive.

The Minister can grant the application for designation fully or in part (by authorising the applicant to do some functions, but not everything that was requested), or refuse it completely. The Minister must give the applicant written reasons for refusing to grant the application, or for refusing to grant any aspects of it. Notice of the refusal and the reasons for the refusal must be delivered to the applicant by hand, by courier or by registered post.

- ◆ Child Care and Protection Act, section 33(1)
- ◆ Child Care and Protection Regulations, regulation 3(5)-(7)

Certificate of authorisation: If the Minister grants the application, the Minister will issue a certificate of authorisation on **Form 1B**, which is appended to the Child Care and Protection Regulations. This certificate will indicate what functions the applicant is authorised to perform. It will also indicate the date of issue, and it will be valid for two years from that date. The certificate must be delivered to the applicant by hand, by courier or by registered post.

- ◆ Child Care and Protection Act, section 33(2)
- ◆ Child Care and Protection Regulations, regulation 3(6)(a) and (7), Form 1B

4.3 Renewal of designation

Timeline: A certificate of authorisation issued to a child protection organisation must be submitted to the Minister for renewal every two years.



Procedure for requesting renewal: A child protection organisation that intends to renew its certificate of authorisation must submit the certificate of authorisation to the Minister for renewal at least three months before the expiry date, along with the following documents:

- (1) proof of registration of the organisation, if applicable;
- (2) proof of registration of all social workers employed by the organisation; and
- (3) police clearance certificates issued not more than one year prior to the date of submission for renewal, in respect of all social workers and any other persons employed by the organisation who work directly with children.

Request for authorisation to carry out additional functions: The child protection organisation that is applying for renewal may at the same time request designation in respect of additional functions. If the application for designation in respect of additional functions is approved, then the Minister must amend the certificate of authorisation accordingly.

The regulations are silent on the possibility of requesting renewed authorisation for *fewer* or *different* functions than those covered by the original certificate. A child protection organisation might want this kind of amendment to its certificate in order to specialise or to reduce workload in light of a reduction in staff. However, the fact that a child protection organisation is authorised to carry out a particular range of functions does not mean that the organisation has a legal duty to engage in *every* function that is covered by the certificate. The duties of a particular child protection organisation would depend on issues such as its staff capacity and the terms of any grant it has received for its work.

Reasons for refusing to renew certificate: The Minister may refuse to renew the certificate for any of the following reasons:

- (1) The child protection organisation **performed functions or exercised powers which were not covered by the certificate of authorisation.**
- (2) The child protection organisation **contravened or failed to comply with the Child Care and Protection Act.**
- (3) A **social worker employed by the child protection organisation acted wrongly** in one of the listed ways **AND the child protection organisation failed to take appropriate action** –
 - (a) The social worker **performed functions or exercised powers which were not covered by the certificate of authorisation.**
 - (b) The social worker **contravened or failed to comply with the Child Care and Protection Act or the Social Work and Psychology Act.**
 - (c) The social worker **repeatedly failed to submit reports on time** as required under the Child Care and Protection Act.
 - (d) The social worker **did not act in the best interests of children, or lacks the ability to act in the best interests of children.**
 - (e) The social worker was **arrested for, or convicted of, a crime listed in the Act** (see the box on page 6).

Procedure where there are possible grounds not to renew: The Minister must **notify the child protection organisation** of an intention not to renew the certificate of authorisation by hand, courier, fax or e-mail at least **seven days** before the final decision is to be made. The Minister must give the child protection organisation an **opportunity to make representations** on the matter, and take into consideration any representations made before making the final decision.

Procedure where renewal is refused: The regulations do not specifically require that **written reasons** be given to the child protection organisation if an application for renewal is denied, or if a request for authorisation in respect of additional functions is refused, but this would be required as a basic principle of administrative law.

There is no right of appeal against the Minister's decision, but any administrative decision can be taken on **review** to the High Court. The Court would consider whether the Minister followed the correct process and came to a reasonable conclusion on the basis of the information available.

The Minister must **inform the Social Work and Psychology Council** of any refusal to renew a certificate.

- ◇ Child Care and Protection Act, section 33(3) and (5)
- ◇ Child Care and Protection Regulations, regulations 3(8), 4(7), 6

4.4 Altering or revoking designation

Reasons for altering or revoking certificate: The Minister may alter or revoke a certificate of authorisation at any time, if the Minister is satisfied that there is a sufficient reason for this.

Alteration would generally refer to changing the functions that the child protection organisation is authorised to perform.

The regulations list the following reasons:

- (1) The child protection organisation **performed functions or exercised powers which were not covered by the certificate of authorisation.**
- (2) The child protection organisation **contravened or failed to comply with the Child Care and Protection Act.**
- (3) A **social worker employed by the child protection organisation acted wrongly** in one of the listed ways **AND the child protection organisation failed to take appropriate action** –
 - (a) The social worker **performed functions or exercises powers which were not covered by the certificate of authorisation.**
 - (b) The social worker **contravened or failed to comply with the Child Care and Protection Act or the Social Work and Psychology Act.**
 - (c) The social worker **repeatedly failed to submit reports on time** as required under the Child Care and Protection Act.
 - (d) The social worker **did not act in the best interests of children, or lacks the ability to act in the best interests of children.**
 - (e) The social worker was **arrested for, or convicted of, a crime listed in the Act** (see the box on page 6).

Procedure where there are possible grounds to alter or revoke: Before a final decision is made, the child protection organisation in question must have a chance to make oral or written representations on the problematic conduct or circumstances. The Minister must **notify the child protection organisation** of an intention to alter or revoke the certificate of authorisation by hand, courier, fax or e-mail at least **seven days** before the final decision is to be made. The Minister must give the child protection organisation an **opportunity to make representations** on the matter, and take into consideration any representations made before making the final decision.

Procedure where certificate is altered or revoked: The regulations do not specifically require that **written reasons** be given to the child protection organisation if the certificate of authorisation is altered or revoked, but this would be required as a basic principle of administrative law.

There is no right of appeal against the Minister's decision, but any administrative decision can be taken on **review** to the High Court. The Court would consider whether the Minister followed the correct process and came to a reasonable conclusion on the basis of the information available.

The Minister must **inform the Social Work and Psychology Council** if a certificate of authorisation is altered or revoked.

- ◇ Child Care and Protection Act, section 33(4)-(5)
- ◇ Child Care and Protection Regulations, regulation 6

Accreditation of Child Protection Organisation for Inter-country Adoption Services

A child protection organisation that has been authorised to facilitate domestic adoptions can apply for authorisation to provide inter-country adoption services and accreditation to act in another country for this purpose.

A request by a child protection organisation for **authorisation** to provide inter-country adoption services is part of the normal designation process described above. Following on that, a child protection organisation which is authorised to facilitate inter-country adoptions may apply for **accreditation** to work in other countries which are also parties to the Hague Convention.

Procedure for seeking accreditation: A child protection organisation that wishes to be accredited to work in other countries to facilitate inter-country adoptions must make an application to the Minister on **Form 23A**, which is appended to the Child Care and Protection Regulations. The application must include the following **supporting documentation**:

- ⑨ evidence of expertise or knowledge relevant to inter-country adoption services
- ⑨ a certificate of designation to facilitate domestic adoptions
- ⑨ a list of social workers employed by the applicant who are designated to facilitate domestic adoptions
- ⑨ the most recent audited financial statements of the applicant
- ⑨ any other information that the Minister may request.

Decision on application for accreditation: The Minister must consider the application for accreditation and make a decision.

- ⑨ If the Minister grants the application, a **certificate of accreditation on Form 23B** (appended to the Child Care and Protection Regulations) must be issued to the applicant by hand, courier or registered post. This certificate will indicate the date of issue, and it will be valid for two years from that date.
- ⑨ If the Minister refuses the application, notice of the refusal and the reasons for the refusal must be delivered to the applicant by hand, by courier or by registered post.

Rights and duties of accredited child protection organisation: A child protection organisation accredited to render inter-country adoption services may charge the maximum fees specified in Annexure 2 to the Child Care and Protection Regulation for such services. It must submit an audited financial statement to the Minister each year showing the financial position of the organisation, including fees received and payments made. If the child protection organisation does not comply with all the requirements of the Act, its accreditation can be cancelled.

Procedure for requesting renewal: A child protection organisation which intends to renew its accreditation must submit the certificate of accreditation to the Minister for renewal at least three months before its expiry date. It must complete **Form 23A** and provide the same supporting documents as if it were making an application for initial accreditation.

Cancelling accreditation: A certificate of accreditation can be cancelled for contravention or non-compliance with the Act. If cancellation is being contemplated, the Minister must **notify the child protection organisation** at least **seven days** before the final decision is to be made. The Minister must give the child protection organisation an **opportunity to make representations** on the matter, and take its representations into consideration before making the final decision.

- ◆ Child Care and Protection Act, section 196
- ◆ Child Care and Protection Regulations, regulation 77, Forms 23A and 23B
 - ◆ Hague Convention on Inter-Country Adoption, Article 10



**SOCIAL
WORKERS**



Accreditation to perform inter-country adoptions under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

There are some inconsistencies in the Act and the regulations on this issue.

- (1) Forms 1A and 1B need to add sections on application and approval to provide inter-country adoption services. See section 196 of the Child Care and Protection Act, which says that a child protection organisation must first be designated under section 33 (the general provision on designation) to perform inter-country adoptions before applying for accreditation under section 196 to work in other countries which are parties to the Hague Convention.

Regulation 77 of the Child Care and Protection Regulations requires an application for accreditation to include a certificate of authorisation to perform *domestic* adoptions, whereas section 196 of the Act indicates that the applicant should possess a certificate of authorisation to perform *inter-country* adoptions. There is a need to harmonise section 196 and regulation 77.

- (2) Section 196 of the Child Care and Protection Act contains an error in the reference to the accreditation of “social workers”.

196. *The Minister may accredit a social worker or a child protection organisation designated to facilitate inter-country adoptions under section 33 to act in another State which is a contracting state to the Convention.*

Article 10 of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption states: “Accreditation shall only be granted to and maintained by **bodies** demonstrating their competence to carry out properly the tasks with which they may be entrusted.” (emphasis added).

Article 22 of the Hague Convention states that a Contracting State may declare to the depositary for the Convention “that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by **bodies or persons** who –

- (a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
- (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.”

This means, in other words, that it is possible for *unaccredited* social workers or bodies to act under on behalf of the Central Authority and under its supervision. This practice is not common in contracting states. In fact, Article 22 represents a compromise between states who wanted the strongest possible safeguards in the Convention and those who wished to preserve some freedom for individuals to operate in the field of inter-country adoption.

However, an individual a social worker” cannot be *accredited* to facilitate inter-country adoption in terms of the Hague Convention. Thus, the reference to “a social worker” in section 196 is in error and should be removed.

5. Social auxiliary workers and community child care workers

Social auxiliary workers: The Minister may appoint social auxiliary workers, or identify social auxiliary workers already employed by the State, to work under the direct supervision of designated social workers and assist them with their functions under the Child Care and Protection Act or any other law. If a social auxiliary worker is employed by a ministry other than the Ministry responsible for child welfare, that ministry must agree to allow the social auxiliary worker to provide such assistance.

Community child care workers: The Minister may identify community child care workers employed by the Ministry to work under the direct supervision of designated social workers and assist them with their functions under the Child Care and Protection Act or any other law.

The designation of these staff members is an informal process in the discretion of the Minister. There is no formal certificate of authorisation, and no specific procedure for withdrawing the designation. The designated social worker who carries out the functions in question remains the responsible official.

Limitations: Social auxiliary workers and community child care workers who are identified to assist designated social workers may **NOT** do any of the following things:

- (1) facilitate adoptions
- (2) prepare reports requested by the children's court on further investigation of the circumstances of a child (under section 47(2)(g)) or reports compiled for submission to the court assessing whether or not a child is in need of protective services (under section 139(1));
- (3) remove children or alleged offenders from the home (under sections 135 or 136)
- (4) perform any other functions which are prohibited by regulations from being carried out by social auxiliary workers and community child care workers.

Social auxiliary workers and community child care workers are prohibited from removing children from the home *with or without a warrant* under sections 135 and 136 of the Act, and from removing an alleged offender from the home *with a warrant* under section 135. (Note that removal of an alleged offender from the home *without a warrant* under section 137 is a function which can be carried out only by police, and not by any social worker. This is why there is no need for a prohibition on allowing social auxiliary workers and community child care workers to remove an alleged offender from the home without a warrant.)



The social auxiliary workers and community child care workers have been a big help with processing grant applications and community outreach. This helps free up time on the part of our designated social workers to do more specialised work with families, and to complete their court reports more quickly.

◆ Child Care and Protection Act, section 34

6. Probation officers

6.1 Functions

In the past, the term “probation officer” referred to any social worker who was authorised to do statutory work under the Children’s Act. This was inconsistent with the general international use of the term. The Child Care and Protection Act uses the term “designated social workers” for social workers who are authorised to perform various functions under the Act. It uses the term “probation officers” to refer to social workers who work specifically with criminal matters. Only State-employed social workers can be named as probation officers.

The general powers and duties of probation officers are addressed in various other laws, including the Criminal Procedure Act 51 of 1977 and the Correctional Service Act 9 of 2012. For example, a probation officer may supervise convicted offenders whose sentences have been suspended or postponed or monitor persons who have been released on parole. Probation officers work with both children and adults.

The Child Care and Protection Act sets out the powers and functions of probation officers in relation to child offenders or children who are suspected of committing criminal offences. Probation officers who are authorised to work with such children may carry out the following functions:

- (1) Probation officers may **investigate** the circumstances of such children for the purpose of –
 - (a) reporting to the court on their treatment or committal to an institution (such as a facility which addresses alcohol or substance abuse)
 - (b) providing a pre-trial report recommending whether or not the Office of the Prosecutor-General should proceed with prosecution
 - (c) providing information to a court on an appropriate sentence
 - (d) rendering assistance to such children and their families.
- (2) Probation officers may **assess and refer** such children for appropriate early intervention services and programmes, including mediation and family meetings.
- (3) Probation officers may **give evidence** before the court.
- (4) Probation officers may **supervise or control** children who are convicted of offences and placed under their supervision.
- (5) Probation officers may **assist convicted children to comply with their probation conditions** in order to improve their social functioning.
- (6) Probation officers should **make an immediate report to the court or to the children’s commissioner when children who are on probation fail to comply with their probation conditions** in any way.

- (7) Probation officers may **report to the court or the children’s commissioner**, as directed, on the **progress and supervision** of children under their supervision, or on **compliance with probation conditions** by a child who is on probation.

◇ Child Care and Protection Act, section 36(1)

“Officer of the Court”

A probation officer is an officer of the High Court, every children’s court and every magistrate’s court. An “officer of the court” is a person who has an obligation to promote justice and the effective operation of the judicial system. Judges, lawyers and various other personnel who carry out duties in court are “officers of the court”.

◇ Child Care and Protection Act, section 35(2)

6.2 Designation

Duty to designate sufficient probation officers: The Minister has a duty to designate sufficient numbers of State-employed social workers to perform the functions assigned to probation officers under the Child Care and Protection Act and other laws.

◇ Child Care and Protection Act, section 33(1)

General criteria for designation: Only State-employed social workers are eligible to be designated as probation officers. The following minimum requirements must be met by probation officers:

- (1) **Registration as a social worker:** The applicant must be registered as a social worker in terms of the Social Work and Psychology Act 6 of 2004. An applicant must provide proof of registration.
- (2) **Experience or skills:** An applicant must have the appropriate experience or skills to work as a probation officer. An applicant must confirm this by providing a **written reference** from any relevant person or institution.

For example, a reference might be provided by a university lecturer, a more senior social worker who has supervised the applicant in the past or a respected colleague.

◇ Child Care and Protection Act, section 35(1)

◇ Child Care and Protection Regulations, regulation 5(1)(a)-(b)

Special additional requirements for probation officers who work with children: In addition to satisfying the general criteria, an applicant who seeks designation to work with children as a probation officer must satisfy the following additional criteria:

- (1) **Suitability to work with children:** The applicant must NOT have been found unsuitable to work with children by the Social Work and Psychology Council of Namibia established under the Social Work and Psychology Act, or by any court.

- (2) **Absence of previous convictions:** The applicant must NOT have any previous conviction in Namibia or in any other country that relates to child neglect or abuse, drug trafficking or certain other offences listed in the Act (see box on page 6).
- ⑨ There must be a police clearance certificate from **Namibia** if the applicant is a Namibian citizen or permanent resident, or if the applicant has lived in Namibia for the last five years.
 - ⑨ If the applicant is from a country other than Namibia, there must be a police clearance certificate from the applicant's **country of origin**.
 - ⑨ Any applicant who has lived in another country (ie, a country other than Namibia or the applicant's country of origin) for the last five years must submit a police clearance certificate from that **country of residence**.

Any police clearance certificate submitted must have been **issued within six months** before the date of designation.

A certificate that is older will not serve the function of proving that applicants can safely work with children. However, the rule also attempts to allow a reasonable time period for applicants to obtain the required certificates from police authorities.

- ◇ Child Care and Protection Act, section 35(1)
- ◇ Child Care and Protection Regulations, regulation 5(1)(c)

Procedure for seeking designation: A State-employed social worker who wishes to become a designated probation officer must make an application to the Minister on **Form 1D**, which is appended to the Child Care and Protection Regulations. If a State-employed social worker is employed by a ministry other than the Ministry responsible for child welfare, that ministry must agree to the designation of the social worker as a probation officer.

The applicant can request to work with adults only, with children only or with both adults and children.

It is possible that various ministries might require social workers on their staff to apply for particular forms of designation so that they will be able to fulfil the duties expected of a social worker in their position.

The application must include the following **supporting documentation**:

- ⑨ proof of registration as a social worker under the Social Work and Psychology Act
- ⑨ reference letter from any relevant person or institution, confirming experience or skills appropriate to the powers and functions of a probation officer
- ⑨ if seeking designation to work with children, an appropriate police clearance certificate or certificates.

Transitional provisions

Any social worker who was already performing the functions of a designated social worker before the Act and the regulations came into force on 30 January 2019 was allowed to continue performing these functions in advance of authorisation. These social workers had eight months (in other words, until 30 September 2019) to apply for designation.

- ◇ Child Care and Protection Regulations, regulation 3(4)

- ◇ Child Care and Protection Act, section 35(1)
- ◇ Child Care and Protection Regulations, regulation 5(2), Form 1D

Decision on application for designation: The Minister must consider the application for designation and make a decision. Even if an applicant satisfies the criteria for designation, the Minister does not have to authorise that applicant to perform functions under the Act unless there is a need for additional probation officers to perform the functions in question.

The Minister can grant the application for designation fully or in part (by authorising the applicant to work with adults only or with children only, regardless of what was requested), or refuse it completely. The Minister must give the applicant written reasons for refusing to grant the application, or for refusing to grant any aspects of it. Notice of the refusal and the reasons for the refusal must be delivered to the applicant by hand, by courier or by registered post.

◆ Child Care and Protection Regulations, regulation 5(3)-(5)

Certificate of authorisation: If the Minister grants the application, the Minister will issue a certificate of authorisation on **Form 1E**, which is appended to the Child Care and Protection Regulations. This certificate will indicate whether the applicant is authorised to work as a probation officer with adults only, with children only or with both adults and children. It will also indicate the date of issue, and it will be valid for five years from that date. The certificate must be delivered to the applicant by hand, by courier or by registered post.

◆ Child Care and Protection Regulations, regulation 5(4)-(5), Form 1E

Social inquiry reports on juvenile offenders

“In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary:

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.”

◆ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), General Assembly Resolution 40/33, 1985, paragraph 16.1



6.3 Renewal of designation

Timeline: A certificate authorising a State-employed social worker to act as a probation officer must be submitted to the Minister for renewal every five years.

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

S	M	T	W	T		S
1	2	3	4	5	6	7
8	9	10	11		13	14
15	16	17	18	19	20	21
22	23	24		26	27	28
29	30					

Procedure for requesting renewal: A probation officer who intends to renew his or her certificate must submit the certificate of authorisation to the Minister for renewal at least three months before its expiry date, along with the following documents:

- (1) **proof of continued registration as a social worker** in terms of the Social Work and Psychology Act 6 of 2004.
- (2) a new **police clearance certificate** issued not more than one year prior to the date of submission of the certificate for renewal.

Request for authorisation to work with additional categories of offenders: The probation officer who is applying for renewal may at the same time request designation to work with additional categories of offenders. If this request is approved, then the Minister must amend the certificate accordingly.

Although not specified explicitly in the regulations, it seems clear that a probation officer seeking authority to work with children for the first time would have to show compliance with the additional criteria for working with children in conjunction with this request.

The regulations are silent on the possibility of requesting amendment of the certificate to specify authority to work with *fewer* or *different* categories of offenders. A probation officer might want this kind of amendment to his or her certificate in order to specialise in work with adults or children (instead of working with both), or to switch from working with adults to working with children (or vice versa). However, the fact that a probation officer is authorised to work with multiple categories of offenders does not mean that this probation officer has a legal duty to engage in work with *all* such offenders. The duties of an individual probation officer would depend on issues such as his or her job description, case load and availability.

Reasons for refusing to renew certificate: The Minister may refuse to renew the certificate for any of the following reasons:

- (1) The probation officer **performed functions or exercised powers which were not covered by the certificate of authorisation.**
- (2) The probation officer **contravened or failed to comply with the Child Care and Protection Act or the Social Work and Psychology Act.**
- (3) The probation officer **repeatedly failed to submit reports on time** as required under the Child Care and Protection Act.
- (4) The probation officer **did not act in the best interests of children, or lacks the ability to act in the best interests of children.**
- (5) The probation officer was **arrested for, or convicted of, a crime listed in the Act** (see the box on page 6).

Procedure where there are possible grounds not to renew: The Minister must **notify the probation officer** of an intention not to renew the certificate by hand, courier, fax or e-mail at least **seven days** before the final decision is to be made. The Minister must give the probation officer an **opportunity to make representations** on the matter, and take into consideration any representations made before making the final decision.

Procedure where renewal is refused: The regulations do not specifically require that **written reasons** be given to the probation officer if the application for renewal is denied, or if the request for authorisation in respect of additional functions is refused, but this would be required as a basic principle of administrative law.

There is no right of appeal against the Minister's decision, but any administrative decision can be taken on **review** to the High Court. The Court would consider whether the Minister followed the correct process and came to a reasonable conclusion on the basis of the information available.

The Minister must **inform the Social Work and Psychology Council** of any refusal to renew a certificate.

- ◇ Child Care and Protection Act, section 33(3) and (5)
- ◇ Child Care and Protection Regulations, regulations 5(7)-(8)

6.4 Altering or revoking designation

Reasons for altering or revoking certificate: The Minister may alter or revoke a certificate designating a social worker as a probation officer at any time, if the Minister is satisfied that there is a sufficient reason for this.

Alteration in this context would refer to changing the categories of offenders whom the probation officer is authorised to work with, such as removing authority to work with children.

The regulations list the following reasons:

- (1) The probation officer **performed functions or exercised powers which were not covered by the certificate** (such as working with child offenders without authority to do this).
- (2) The probation officer **contravened or failed to comply with the Child Care and Protection Act or the Social Work and Psychology Act**.
- (3) The probation officer **repeatedly failed to submit reports on time** as required under the Child Care and Protection Act.
- (4) A probation officer who works with children **did not act in the best interests of children, or lacks the ability to act in the best interests of children**.
- (5) A probation officer who works with children was **arrested for, or convicted of, a crime listed in the Act** (see the box on page 6).

Procedure where there are possible grounds to alter or revoke: Before a final decision is made, the probation officer in question must have a chance to make oral or written representations on the problematic conduct or circumstances. The Minister must **notify the probation officer** of an intention to alter or revoke the certificate of authorisation by hand, courier, fax or e-mail at least **seven days** before the final decision is to be made. The Minister must give the probation officer an **opportunity to make representations** on the matter, and take into consideration any representations made before making the final decision.

Procedure where certificate is altered or revoked: The regulations do not specifically require that **written reasons** be given to the probation officer if the certificate of authorisation is altered or revoked, but this would be required as a basic principle of administrative law.

There is no right of appeal against the Minister's decision, but any administrative decision can be taken on **review** to the High Court. The Court would consider whether the Minister followed the correct process and came to a reasonable conclusion on the basis of the information available.

The Minister must **inform the Social Work and Psychology Council** if a certificate of authorisation is altered or revoked.

- ◆ Child Care and Protection Act, section 33(4)-(5)
- ◆ Child Care and Protection Regulations, regulation 6



7. Channelling of social worker reports

Purpose of channelling: The Act and regulations contain rules on advance approval of reports by State and private social workers before they are submitted to court, as a means of quality control. This procedure is also intended to avoid wasting court time in postponements due to reports which are of unsatisfactory quality.

Submission of reports to Ministry official for approval: Any social worker who produces certain types of reports for submission to court must submit them to a particular staff member in the Ministry designated by the Minister. This official is informally referred to as the “**channelling officer**”.

The person who fulfils this role may change from time to time. The Ministry must make sure that a channelling officer is available at all times. For example, if the staff member who usually carries out this function is on leave, the Ministry must identify another staff member to serve this function during that leave period.

The channelling officer has a duty to examine the report to make sure that it complies with the provisions of the Act, or with the court’s request, before the report is submitted to the court.

This vetting of draft reports applies to –

- (1) **reports requested by the children’s court on further investigation of the circumstances of a child** (under section 47(2)(g))
- (2) **reports compiled for submission to the court assessing whether or not a child is in need of protective services** (under section 139(1))
- (3) **any other reports requested by the children’s court.**

Any report that falls into one of these categories must be submitted to the channelling officer identified by the Ministry by hand, fax or e-mail well in advance of the date on which it is due. The channelling officer will examine the report, and may ask the responsible social worker to fix shortcomings in the report before it is submitted to the court. The social worker who produced the report may be asked to do any of the following:

- (1) correct any **error** in the report
- (2) collect **additional information** to supplement the content of the report
- (3) **consult with any person or institution** identified by the channelling officer
- (4) **re-interview** a person or institution already consulted by the social worker
- (5) **re-write the report** in accordance with guidelines provided by the channelling officer.

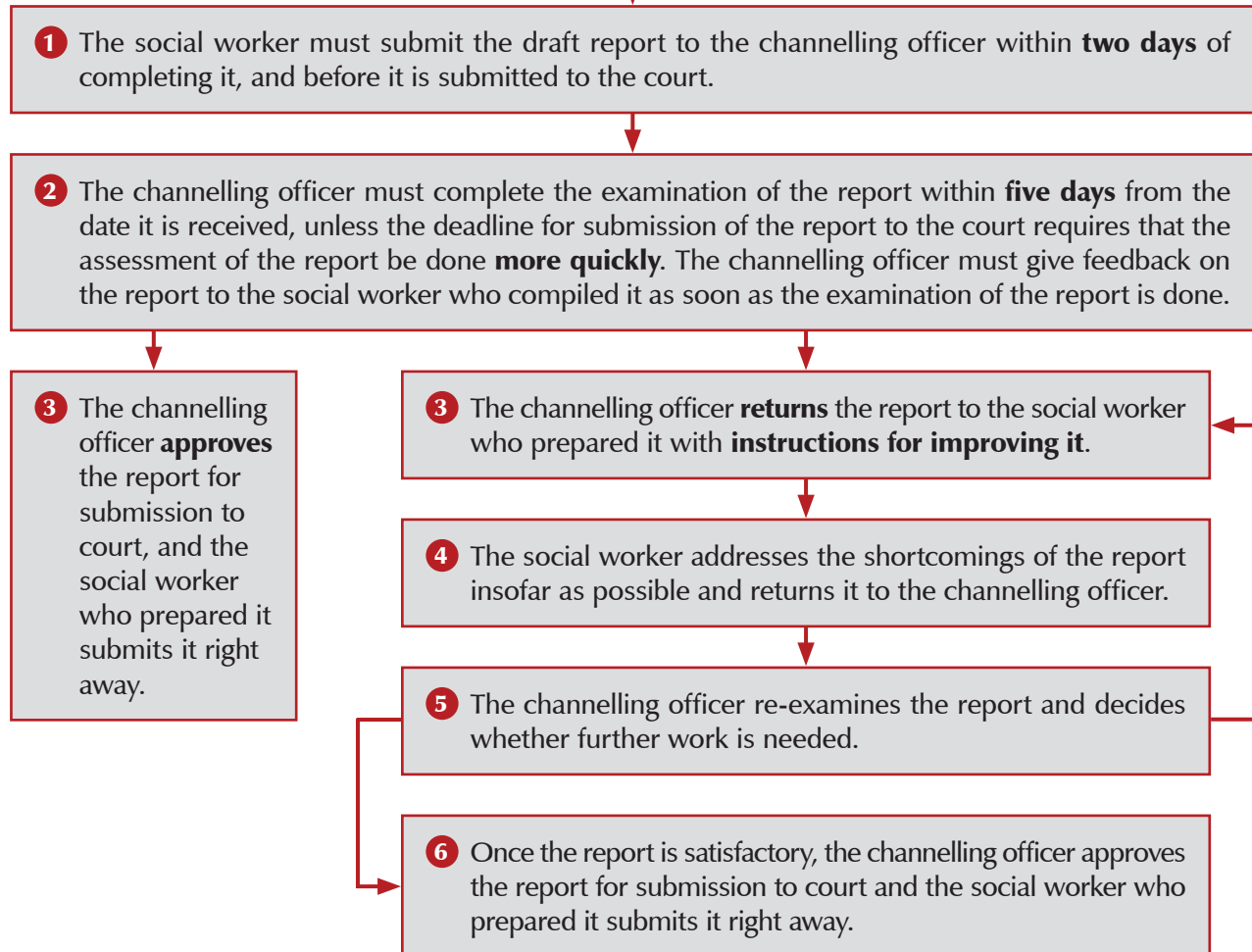
The channelling officer will set an internal **deadline** for the additional work on the report. The social worker must **re-submit** the report to the channelling officer for re-examination before that deadline passes.

After the report is **re-examined and approved** by the staff member, the social worker who prepared it must **submit the report to the children’s court** without delay.

Timeline: The social worker who is responsible for compiling the report must be mindful of the channelling procedure so as to leave time for the examination by the channelling officer and possible further work on the report before the ultimate due date.

It may be necessary for the social worker to ask the court for extra time to prepare the report for submission if the channelling officer identifies shortcomings that will be time-consuming to rectify.

Procedure for channelling social work reports



- ◇ Child Care and Protection Act, section 33(7)-(8)
- ◇ Child Care and Protection Regulations, regulation 8

Global Definition of the Social Work Profession

“ Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing. The above definition may be amplified at national and/or regional levels. ”

◇ International Federation of Social Workers, 2014

8. Offences related to social work personnel

Any person with a direct interest in social work functions which are being carried out can request a social worker or a child protection organisation to produce a certificate of authorisation. If the **social worker or the child protection organisation is unable or unwilling to produce a valid certificate**, this is a crime punishable by a fine of up to N\$20 000 or imprisonment for up to five years, or both.

For example, a person who is being interviewed by a social worker for a court report might ask to see the social worker's certificate. A ministry official who holds a supervisory position might also ask to see the certificates of social workers who are engaged in social work tasks that require designation.

A social worker or a child protection organisation **who acts on the authority of an expired certificate** commits a crime this is a crime punishable by a fine of up to N\$20 000 or imprisonment for up to five years, or both.

It is a crime for anyone to **interfere with a probation officer's exercise of his or her powers or functions**. This crime is punishable by a fine of up to N\$4 000 or imprisonment for up to one year, or both.

There is no similar offence for interfering with a designated social worker's exercise of his or her powers or functions.

◆ Child Care and Protection Act, section 33(6), 36(2)

FORM 1B
Section 33 of Child Care and Protection Act, 2015
Regulation 3 and 4

CERTIFICATE OF AUTHORISATION: FUNCTIONS WHICH SOCIAL WORKER OR CHILD PROTECTION ORGANISATION IS AUTHORISED TO PERFORM

(name and surname of social worker or name of child protection organisation)

(registration number, if applicable)

It is hereby certified that the above-named social worker or child protection organisation is authorised to perform the following functions in terms of the Child Care and Protection Act, 2015:

- ☐ **All functions** assigned to a ***designated social worker / *child protection organisation** under the Child Care and Protection Act, 3 of 2015, with the exception of probation officer services, inter-country adoption and any other prohibitions listed in paragraph 3.
- ☐ The following functions assigned to a ***designated social worker / *child protection organisation** under the Child Care and Protection Act, 2015, with the exception of probation officer services, inter-country adoption and any other prohibitions listed in paragraph 3.
***PERMITTED FUNCTIONS:**

<input type="checkbox"/> Preparing reports for the Minister	<input type="checkbox"/> Facilitation of foster care and supervision of children in foster care
<input type="checkbox"/> Preparing reports for the children's court	<input type="checkbox"/> Assessment of prospective adoptive parents
<input type="checkbox"/> Facilitating mediation	<input type="checkbox"/> Facilitation of domestic adoptions
<input type="checkbox"/> Inspecting residential child care facilities	<input type="checkbox"/> Providing support services for child victims of trafficking
<input type="checkbox"/> Reports in respect of custody, guardianship or custody issues	<input type="checkbox"/> Monitoring child-headed households
<input type="checkbox"/> Facilitating parenting plans	<input type="checkbox"/> Reunification of children with their families and associated supervision
<input type="checkbox"/> Providing prevention and early intervention services	<input type="checkbox"/> Facilitating placement of children in alternative care and supervision of children in alternative care
<input type="checkbox"/> Investigation of children in need of protective services	<input type="checkbox"/> Facilitating kinship care kinship care
<input type="checkbox"/> Removing children or alleged offenders	<input type="checkbox"/> Assessment of child disability grants
<input type="checkbox"/> Assessment of prospective foster parents	
- PROHIBITIONS:** The above-mentioned social worker or child protection organisation is prohibited from performing the following functions (specify):

ISSUED BY MINISTER on _____ (date)

This certificate is valid for two years from the date of issue.

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* Delete whichever is not applicable

9. Fees

The Act gives the Minister authority to set the fees payable to designated social workers in private practice, or to child protection organisations. The regulations have set maximum fees payable to private social workers or child protection organisations for certain services. These are contained in Annexure 2 of the regulations.

The purpose of this is to prevent exploitation of the public, and to help stamp out abuses in connection with particular issues such as adoption since the payment of excessive amounts by desperate prospective parents could encourage unscrupulous practices.

- ◆ Child Care and Protection Act, section 37(1)(d)
- ◆ Child Care and Protection Regulations, regulation 8, Annexure 2

10. Training

It should be noted that resources from the Children's Fund can be used for the training of persons who implement this Act or any other law relating to children – including social workers, social auxiliary workers and community child care workers.

- ◆ Child Care and Protection Act, section 27(d)

