

ACT

To provide for the appointment of commissioners of child welfare and for the establishment of children's courts; for the protection and welfare of certain children, for their supervision and for the establishment or recognition of certain institutions for the reception of children and juveniles; for the treatment of children and juveniles after their reception in such institutions; for contribution by certain persons towards the maintenance of certain children and juveniles; for the adoption of children; to amend the Welfare Organizations Act, 1947, the Work Colonies Act, 1949, the Criminal Procedure Act, 1955, the General Law Amendment Act, 1957, and the Prisons Act, 1959; and to provide for other incidental matters.

ARRANGEMENT OF SECTIONS

DEFINITIONS	Section
CHAPTER I. Commissioner of child welfare and children's courts	1
CHAPTER II. Protection of infants	2-9
CHAPTER III. Prevention of neglect, ill-treatment and exploitation of children	10-17
CHAPTER IV. Manner in which children in need of care and certain other children may be dealt with	18-25
CHAPTER V. Places of safety, places of detention, schools of industries, reform schools, children's homes, places of care, observation centres and placing of children	26-37
CHAPTER VI. Contribution orders	38-61
CHAPTER VII. Adoption of children	62-69
CHAPTER VIII. General and supplementary provisions	70-82
	83-106

1 Definitions

(1) In this Act, unless the context otherwise indicates—

'Administrator', in relation to any province, means the Administrator of that province acting on the advice of the Executive Committee thereof, and, in relation to the territory, means the Administrator of the territory acting on the advice of the Executive Committee thereof;

[Definition of 'Administrator' substituted by s 1(a) of Act 74 of 1973.]

'adopted child' means a child adopted under the provisions of Chapter VII of this Act, or of the Children's Act, 1937 (Act 31 of 1937), or of the Adoption of Children Act, 1923 (Act 25 of 1923), or of the Children's Ordinance, 1961 (Ordinance 31 of 1961), of the territory, or of the Adoption of Children Ordinance, 1927 (Ordinance 10 of 1927), of the territory;

[Definition of 'adopted child' substituted by s 1(b) of Act 74 of 1973.]

'adoptive parent' means a person who adopts or has adopted a child under the provisions of Chapter VII of this Act or of the Children's Act, 1937, or of the Adoption of Children Act, 1923, or of the Children's Ordinance, 1961, of the territory, or of the Adoption of Children Ordinance, 1927, of the territory;

[Definition of 'adoptive parent' substituted by s 1(c) of Act 74 of 1973.]

'approved agency' means an association of persons to which a certificate has been granted under section forty-eight;

'assistant commissioner of child welfare' or **'assistant commissioner'** means an assistant commissioner of child welfare mentioned in section two;

'attendance centre' means any building or place which a child has to attend on the order of a commissioner to receive guidance and to undergo treatment in order that he may be disciplined, educated and rehabilitated;

'authorized officer', in relation to any act, means any person authorized in writing by a magistrate, commissioner of child welfare, justice of the peace or probation officer to perform that act;

'Black' means a person who is or is to be classified as a Black under the Population Registration Act, 1950 (Act 30 of 1950), and includes a native within the

meaning of section 25 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), of the territory;

[Definition of 'Black' inserted by s 1(d) of Act 74 of 1973.]

'Black children's court' . . .

[Definition of 'Black children's court' inserted by s 1(f) of Act 74 of 1973 and deleted by s 2 of Act 34 of 1986.]

'board', in relation to a school of industries or a reform school, or a children's home established under section thirty-nine, means the board of management appointed in respect of that school of industries, reform school or children's home under sub-section (4) of that section;

'child' means any person, whether an infant or not, who is under the age of eighteen years, and for the purposes—

(a) of section thirty-six and Chapter V, in so far as they relate to an order made under paragraph (a), (b) or (c) of sub-section (1) or sub-section (2) of section thirty-one of this Act or paragraph (a) or (b) of sub-section (1) or sub-section (2), read with paragraph (a) or (b) of sub-section (1), or paragraph (a) of sub-section (3) of section three hundred and forty-two of the Criminal Procedure Act, 1955 (Act 56 of 1955); and

(b) of section 60 and Chapter VII,

[Para (b) substituted by s 16 of Act 102 of 1967.]

includes a person who is over the age of eighteen years but under the age of twenty-one years;

'child in need of care' means a child who—

- has been abandoned or is without visible means of support; or
- has no parent or guardian or has parents or a parent or guardian who do or does not or are or is unfit to exercise proper control over that child; or
- is in the custody of a person who has been convicted of committing upon or in connection with that child any offence mentioned in the First Schedule to this Act; or
- cannot be controlled by his parents or guardian or the person in whose custody he is; or
- is an habitual truant; or
- frequents the company of any immoral or vicious person, or is otherwise living in circumstances

calculated to cause or conduce to his seduction, corruption or prostitution; or

- (g) (i) begs; or
 (ii) being under the age of twelve years engages in any form of street trading within the area of jurisdiction of a local authority unless that local authority has by means of bye-laws made under section *twenty-two* or any other law, prescribed that such a child may engage in that form of street trading and unless he does so in accordance with bye-laws made under section *twenty-two*; or
 (iii) being not under the age of twelve years but under the age of sixteen years engages in any form of street trading within the area of jurisdiction of a local authority in contravention of bye-laws made by that local authority under section *twenty-two*; or
 (h) is being maintained apart from his parents or guardian in domestic circumstances which are detrimental to his interests and whose parents or guardian cannot be found or have failed to make suitable provision for the care and custody of the child although they have been called upon to do so; or
 (i) is in a state of physical or mental neglect;

'**children's court**' means a children's court mentioned in section 4;

[Definition of 'children's court' substituted by s 2 of Act 34 of 1986.]

'**children's home**' means any residence or home maintained for the reception, protection, care and bringing-up of more than six children or pupils apart from their parents but does not include any school of industries or any reform school;

'**Commissioner**', '**Additional Commissioner**' and '**Assistant Commissioner**' . . .

[Definitions of 'Commissioner', 'Additional Commissioner' and 'Assistant Commissioner' inserted by s 1(d) of Act 74 of 1973 and deleted by s 2 of Act 34 of 1986.]

'**commissioner's court**' . . .

[Definition of 'Commissioner's court' substituted by s 1(e) of Act 74 of 1973 and deleted by s 2 of Act 34 of 1986.]

'**commissioner of child welfare**' or '**commissioner**' means a commissioner of child welfare mentioned in section *two* and includes an assistant commissioner of child welfare;

'**contribution order**' means an order for the payment or recurrent payment of a sum of money as a contribution towards the maintenance of a child in a place of safety or in any custody wherein he was placed under this Act or the Criminal Procedure Act, 1955, or towards the maintenance of a pupil;

'**district**' means the area subject to the jurisdiction of the court of any magistrate or Commissioner and includes a sub-district and any area comprising two or more districts or portions of districts for which a commissioner of child welfare has been appointed;

'**foster parent**' means any person who, whether for reward or otherwise, undertakes the temporary care of any child who has been placed in his custody in terms of paragraph (b) of sub-section (1) of section *thirty-one* or sub-section (2) of section *forty-eight* or sub-section (1) of section *fifty* of this Act or paragraph (b) of sub-section (1) of section *three hundred and forty-two* of the Criminal Procedure Act, 1955;

'**guardian**' means a tutor testamentary, tutor dative or assumed tutor to whom letters of confirmation have been granted under the law relating to the administration of estates;

'**infant**' means a person under the age of seven years;

'**institution**' means a reform school, a school of industries or a children's home established in terms of section *thirty-nine* or a children's home registered in terms of section *forty-two*;

'**justice of the peace**' means a justice of the peace appointed under section 2 or 4 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963);

[Definition of 'justice of the peace' substituted by s 1(g) of Act 74 of 1973.]

'**local authority**' means an urban local authority within the meaning of section *seven* of the Public Health Act, 1919 (Act 36 of 1919);

'**magistrate**' includes an additional magistrate and an assistant magistrate and any Commissioner, Additional Commissioner or Assistant Commissioner;

'**magistrate's court**' . . .

[Definition of 'magistrate's court' deleted by s 2 of Act 34 of 1986.]

'**management**', in relation to an institution means the board of management of that institution;

'**managers**', in relation to a children's home, place of care, maternity home, convalescent home, hospital, training institution or place where the care of children is undertaken, means the persons who have the management and control thereof;

'**Minister**', in any provision of this Act, means the Minister to whom, or the Ministers to whom acting in consultation with one another, the administration of that provision has been assigned by proclamation issued under section *ninety-three*;

'**observation centre**' means an observation centre mentioned in sub-section (4) of section *thirty-eight*;

'**parent**' means the father or the mother of a child borne of or legitimated by a lawful marriage, or the mother of an illegitimate child, and save in Chapter VII includes an adoptive parent;

'**period of protection**', in relation to a pupil of an institution, means the period during which that pupil shall, in terms of sub-section (3) of section *thirty-six* of this Act or sub-section (2) of section *three hundred and forty-three* of the Criminal Procedure Act, 1955, remain under the protection of the management of that institution;

'**period of retention**' means the period prescribed in sub-section (1) of section *thirty-six* of this Act or in sub-section (1) of section *three hundred and forty-three* of the Criminal Procedure Act, 1955, during which a child or person shall remain in an institution to which he was sent or in any custody or under any supervision or control in or under which he was placed;

'**place of care**' means any building or premises maintained or used, whether for profit or otherwise, for the reception, protection and temporary or partial care of more than six children apart from their parents, but does not include any boarding school, any school hostel or any establishment which is maintained or used mainly for the tuition or training of children and which is controlled by or which has been registered or approved by the Government, a provincial education department or the Administration of the territory;

[Definition of 'place of care' substituted by s 1(h) of Act 74 of 1973.]

'place of detention' means a place established or approved under section *thirty-eight*;

'place of safety' means any place established under section *thirty-eight* and includes any police station, hospital, or any place suitable for the reception of a child, into which the occupier thereof is willing to receive a child;

'policeman' means a policeman as defined in section *one* of the Criminal Procedure Act, 1955;

'prescribed' means prescribed by regulation or rule made under this Act;

'probation officer' means a probation officer appointed under section *fifty-eight*;

'protected infant' means an infant mentioned in sub-section (1) of section *ten*;

'public place' means any street, road, square, lane, park or any railway premises, sports-ground or recreation-ground or any vacant town lands to which the public has access, whether free or on payment of a fee;

'pupil' means any person who, under any law was sent to or received in or is cared for in an institution or any person who has been released on licence or who has been granted leave of absence or who has absconded from an institution and who is still under the control or protection of the management of that institution, or is liable to be brought back thereto;

'reform school' means a reform school mentioned in sub-section (2) of section *thirty-nine*;

'Republic' includes the territory;

[Definition of 'Republic' inserted by s 1(i) of Act 74 of 1973.]

'respondent' means any person legally liable to maintain or to contribute towards the maintenance of a child or of a pupil for whose maintenance a contribution order is sought or was made;

'school of industries' means a school of industries mentioned in sub-section (1) of section *thirty-nine*;

'Secretary' and 'other senior officer' in any provision of this Act mean, respectively, the head and other senior officer of the Department of State administered by the Minister to whom the administration of that provision has been assigned by proclamation issued under section *ninety-three*;

'social worker' means a person registered as a social worker under section 33 of the National Welfare Act, 1965 (Act 79 of 1965), and who is in the employ of the State or a welfare organization registered under section 19 of the said Act;

[Definition of 'social worker' inserted by s 1 of Act 15 of 1977.]

'territory' means the territory of South West Africa;

[Definition of 'territory' inserted by s 1(j) of Act 74 of 1973.]

'street trading' includes—

(a) the hawking of any article and the distribution of handbills or advertisements; and

(b) playing, singing or performing for profit, shoe-cleaning, motor-car tending and any other like occupation carried on in a public place;

'training institution' means any railway college, police college, school of mines, training school for nurses or similar establishment maintained for the training of employees, or any air force, army or naval gymnasium, or any special school or a vocational school erected or established in terms of—

(i) the Educational Services Act, 1967 (Act 41 of 1967);

(ii) the Education Ordinance, 1962 (Ordinance 27 of 1962), of the territory;

(iii) the Coloured Persons Education Act, 1963 (Act 47 of 1963);

(iv) the Indians Education Act, 1965 (Act 61 of 1965);

(v) the Coloured Persons in South-West Africa Education Act, 1972 (Act 63 of 1972);

(vi) the Basters of Rehoboth Education Act, 1972 (Act 85 of 1972); or

(vii) the Namas in South-West Africa Education Act, 1972 (Act 86 of 1972),

and includes a State-aided school as defined in any law referred to in paragraph (iii), (iv), (v), (vi) or (vii) which is a special school as so defined.

[Definition of 'training institution' substituted by s 1 of Act 50 of 1965, by s 15 of Act 62 of 1966 and by s 1(k) of Act 74 of 1973.]

(2) For the purposes of this Act, except sections 98 to 102 inclusive, any reference to the Criminal Procedure Act, 1955 (Act 56 of 1955), or to any provision thereof shall be deemed to include a reference to the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963), of the territory or to the corresponding provision thereof, as the case may be.

[Sub-s (2) added by s 1(l) of Act 74 of 1973.]

CHAPTER 1

COMMISSIONERS OF CHILD WELFARE AND CHILDREN'S COURTS (ss 2-9)

2 Commissioners of child welfare

(1) Every magistrate shall be a commissioner of child welfare and every additional magistrate and assistant magistrate shall be an assistant commissioner of child welfare for the district or sub-district of which he is magistrate, additional magistrate or assistant magistrate.

(2) The Minister of Justice, or, if the area affected is under the administrative control of the Minister of Plural Relations and Development, the Minister of Plural Relations and Development may appoint a magistrate or additional magistrate to be a commissioner and one or more additional or assistant magistrates to be an assistant commissioner or assistant commissioners for any district or for an area comprising two or more districts or portions of districts.

(3) The Minister of Justice or, if the area affected is under the administrative control of the Minister of Plural Relations and Development, the Minister of Plural Relations and Development may appoint any competent officer in the public service to act, either generally, but during a specified period, or in a particular matter, as commissioner or assistant commissioner of child welfare for any district or sub-district or for any area for which a commissioner has been appointed as provided in sub-section (2) and such an officer may be appointed either in the stead of or in addition to any commissioner or assistant commissioner holding office in that district, sub-district or area.

(4) The Minister of Plural Relations and Development may, in respect of any area for which a Commissioner's court has been constituted, exercise any of the powers which he or the Minister of Justice may exercise in terms of sub-sections (2) and (3).

3 Functions of commissioners of child welfare

(1) A commissioner of child welfare shall perform such functions as may be entrusted to him by this Act or any regulation made thereunder or by any other law.

(2) An assistant commissioner of child welfare shall perform such of the functions of a commissioner as he is not generally or in any particular case prohibited from performing either by the Minister or by the magistrate of

the district of which he is additional or assistant magistrate.

(3) A magistrate, additional magistrate or assistant magistrate of any district or sub-district for which a commissioner has been appointed under sub-section (2) or sub-section (4), read with sub-section (2), of section two, or of any district or sub-district wholly or partly included within an area for which a commissioner had been so appointed, shall not, in his capacity as commissioner or assistant commissioner *ex officio*, perform within that district or area any function which has been specially reserved by the Minister to be performed by the commissioner and an assistant commissioner appointed for the area.

(4) Every additional magistrate and every assistant magistrate holding office as commissioner or assistant commissioner whether *ex officio* or by appointment under sub-section (2) or sub-section (4), read with sub-section (2), of section two, shall in his capacity as commissioner or assistant commissioner be subject to the administrative control of the magistrate of the district of which he is additional or assistant magistrate; or if he is additional or assistant magistrate of more than one district wholly or partly comprised within the area for which he holds office, he shall be subject in such capacity as aforesaid to the administrative control of the magistrate of such one of those districts as the Minister of Justice or the Minister of Plural Relations and Development may direct.

(5) A Commissioner, Additional Commissioner or Assistant Commissioner holding office as commissioner or assistant commissioner of child welfare *ex officio*, and any person appointed in terms of subsection (4), read with subsections (2) and (3), of section 2 as commissioner or assistant commissioner of child welfare shall not perform the functions of that office in proceedings under this Act other than those relating to children who are Blacks.

[Sub-s (5) substituted by s 2 of Act 74 of 1973.]

4 Children's courts

(1) The Minister of Justice may establish a children's court for any district or for any area comprising two or more districts or portions of districts.

[Sub-s (1) substituted by s 2 of Act 34 of 1986.]

(2) Every magistrate's court shall be a children's court for any part of the area of its jurisdiction for which no children's court has been established under sub-section (1).

5 ...

[S 5 substituted by s 3 of Act 74 of 1973 and repealed by s 2 of Act 34 of 1986.]

6 ...

[S 6 amended by s 4 of Act 74 of 1973 and repealed by s 2 of Act 34 of 1986.]

7 Officers of a children's court

(1) A commissioner or assistant commissioner of child welfare shall preside over a children's court and such a court shall have such jurisdiction and powers as may be conferred upon it by this Act or any other law.

(2) A commissioner of child welfare may, for the purpose of advising him at any enquiry under section thirty or at the hearing of any application for an order of adoption under section seventy-one, summon to his aid to sit with him as assessor or assessors, any person who has, or any two persons who have, in his opinion, experience

in any matter which may arise for decision at the said enquiry or hearing.

(3) Such an assessor may be so summoned to sit with the commissioner for the holding of a particular enquiry or for the hearing of a particular application or for the holding of any enquiry or for the hearing of any application during a period specified in the summons.

(4) Such assessors shall advise the commissioner on all questions, except questions of law, arising during the enquiry or hearing but the finding, decision or order of the children's court in question shall be determined by the commissioner.

(5) Such assessors shall be entitled to such allowances for their services as may be prescribed in consultation with the Minister of Finance.

(6) Subject to the laws governing the public service the Minister of Justice may for every children's court appoint an officer to be styled a children's court assistant (or two or more such officers), who shall at any proceedings of the children's court to which he is attached adduce any available evidence relevant to those proceedings and who may at such proceedings cross-examine any witness giving evidence thereat whom he did not call, and who shall generally assist the said court in performing its functions.

[Sub-s (6) substituted by s 2 of Act 34 of 1986.]

(7) Any officer delegated by an Attorney-General to conduct prosecutions at the public instance before the magistrate's court of any district shall be *ex officio* a children's court assistant of any children's court held within that district.

8 Procedure in children's courts

(1) A children's court shall sit in a room other than that in which any other court ordinarily sits, unless no such other room is available and suitable.

(2) No person shall publish by radio or in any document produced by printing or any other method of multiplication the name, address, school or any other information likely to reveal the identity of any child who is or was concerned in any proceedings in a children's court: Provided that if the Minister or if the commissioner who presides or presided at such proceedings is of the opinion that such publication would be just and equitable and in the interest of any particular person, he may by order dispense with the prohibition of this sub-section to such an extent as may be specified in the order.

(3) At any sitting of a children's court no person shall be present unless his presence is necessary in connection with the proceedings of that court, or unless he is a parent or the guardian or a person *in loco parentis* of a child whose presence is necessary as aforesaid (or the attorney or counsel of such a child, parent, guardian or person *in loco parentis*) and he is present with that child, or unless the commissioner presiding at that sitting has granted him permission to be present.

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

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

(6) Any such subpoena shall be served upon the witness concerned *mutatis mutandis* as if it were a subpoena to give evidence or to produce a book or document at a criminal trial in a magistrate's court.

(7) The provisions of sections *two hundred and eleven, two hundred and twelve and two hundred and nineteen* of the Criminal Procedure Act, 1955 (Act 56 of 1955), shall *mutatis mutandis* apply in connection with a person subpoenaed under sub-section (4) or (5) of this section or required by a commissioner of child welfare to give evidence at any proceedings in a children's court.

(8) A parent or the guardian or custodian of a child concerned in any proceedings in a children's court, who has attended those proceedings, and any person who has attended any such proceedings to give evidence or to produce a book or document shall be entitled to such an allowance as would be due to him if he had attended to give evidence or to produce a book or document at a criminal trial in a magistrate's court: Provided that all allowances payable to witnesses who were subpoenaed to attend or who were called at proceedings in connection with an application for an order for the adoption of a child and all expenses incurred in securing the attendance of such witnesses shall be paid by the applicant for that order: Provided further that such a parent or guardian or custodian, or a witness who was subpoenaed to attend on the application of any person other than the children's court assistant (or on the application of the representative of such a person) or who was called as a witness by such a person or his representative, shall not be entitled to any such allowances from public funds unless the commissioner who presided at those proceedings has directed that he be paid such an allowance as aforesaid or any part of such an allowance as the commissioner may have determined.

9 Certain provisions of Act 32 of 1944 to apply to children's courts

(1) Save as is expressly provided in this Act or in any other law, the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and of the rules made thereunder shall apply *mutatis mutandis* to children's courts in so far as such provisions relate to—

- (i) the appointment and functions of officers;
- (ii) the issue and service of process;
- (iii) the appearance in court of advocates, attorneys and law agents;
- (iv) the conduct of proceedings;
- (v) the execution of judgments; and
- (vi) the imposition of penalties for non-compliance with orders of court, for obstruction of execution of judgments, and for contempt of court,

and in so far as no other provision has been made under section 92(1)(i) for any matter mentioned in this subsection other than in subparagraph (iii).

(2) Such records of the proceedings of a children's court shall be kept and shall be accessible to such persons upon such conditions as to payment of fees and otherwise as may be prescribed.

(3) The contents of a statement or a report of a probation officer or of an officer of an approved agency which has been lodged with a children's court, shall not be disclosed for the purposes of any civil action except by order of any court to a court where such disclosure would be in the interest of any particular person.

[S 9 amended by s 5 of Act 74 of 1973 and substituted by s 2 of Act 34 of 1986.]

CHAPTER II

PROTECTION OF INFANTS (ss 10–17)

10 Notices in connection with or consent to receive certain infants

(1) Save as provided in sub-section (3) any person who receives an infant and maintains him apart from his parents for a longer period than thirty days shall as soon as he has maintained that infant for a period of thirty days, without delay transmit a notice in writing in the prescribed form of the receipt of that infant to the commissioner of child welfare of the district in which is situate the place where that infant is being maintained and shall furnish the said commissioner with such information in connection with that infant as the commissioner may require.

[Sub-s (1) substituted by s 2(a) of Act 50 of 1965.]

(2) Save as provided in sub-section (3) any parent or person having the custody of an infant and who has delivered that infant to any person for the purpose of being maintained apart from his parents for a longer period than thirty days or for an unspecified period shall, within seven days after delivering that infant, transmit a notice in writing in the prescribed form of the delivery of that infant to the commissioner of child welfare of the district in which is situate the place where that infant is to be maintained.

[Sub-s (2) substituted by s 2(a) of Act 50 of 1965.]

(3) The provisions of sub-sections (1) and (2) shall not apply to—

- (a) the receipt of an infant by a grandfather, grandmother, brother, sister, uncle or aunt of the infant or the husband or wife or widower or widow of any such relative of the infant: Provided that if the infant is an illegitimate child the foregoing terms shall not include any person who is not so related to the infant through his mother; or
- (b) the receipt of an infant by a maternity home, a hospital, a convalescent home, a place of safety or a children's home; or
- (c) the delivery of an infant to any such person or place as is mentioned in paragraph (a) or (b).

(4)(a) No person other than the managers of a place mentioned in paragraph (b) of sub-section (3), may receive any infant, who is an illegitimate child, and maintain him apart from his mother for a longer period than fourteen days, unless the consent in writing of the commissioner of the district in which the child was born or was residing immediately before he was received, has been obtained.

[Para (a) substituted by s 2(b) of Act 50 of 1965.]

(b) The commissioner shall, in considering any application for such consent, have regard to all the matters mentioned in sub-section (2) of section *thirty-five*.

(c) For the purposes of this sub-section no adopted child shall be regarded as an illegitimate child.

(5) Any person who at the commencement of this Act is maintaining any infant who is an illegitimate child and whom he received before the commencement of this Act, shall be deemed to have obtained the consent of a commissioner in terms of sub-section (4).

(6)(a) If a protected infant has been removed from the custody of the person who previously maintained him, or if a person maintaining a protected infant has changed his residence, that person shall forthwith give notice in writing in the prescribed form of such removal or change

of residence to the commissioner of child welfare of the district in which the protected infant was resident immediately before the removal or change of residence.

(b) If the person to whose custody the protected infant has been removed is resident, or if the residence to which the person maintaining the protected infant has moved is situate, in a district other than that of the commissioner to whom the said notice was given, the commissioner who received the notice shall forthwith transmit to the commissioner of that other district a copy of the notice and of any notice previously transmitted to him under sub-section (1) in respect of the infant in question.

(7) If a protected infant has died, the person in whose custody the protected infant was at the time of his death shall forthwith give notice of the death in the prescribed form to the commissioner of child welfare of the district in which the death occurred, and that notice shall state specially whether any other infant who was a protected infant in terms of this Act or in terms of any law repealed by this Act died at any time before the date of the said notice, while in the custody of the person giving the notice.

11 Steps to be taken by commissioner in connection with protected infants

(1) If a commissioner of child welfare has ascertained, whether by notice transmitted to him under this Chapter or otherwise, that within his district—

- (a) a protected infant, other than an infant who has been received with the consent of a commissioner in terms of sub-section (4) of section *ten*, is being kept; or
 - (b) any infant is being kept apart from his parents in circumstances believed on reasonable grounds to be prejudicial to his interests,
- he shall cause enquiry to be made into the conditions in which that infant is kept.

(2) If upon enquiry the commissioner is satisfied that it is not in the interest of the infant to remain with the person in whose custody he is, he may by notice in writing call upon the parents of the infant to make suitable provision for the care and custody of the infant within a time to be fixed by him in the notice (which shall not be less than three days as from the date of the receipt by the parents of that notice).

(3) If the address or place of residence of the parents is unknown, or if, notice having been given as provided in sub-section (2), the parents have failed within the time specified in the notice to make suitable provision for the care and custody of the infant, he shall be dealt with in manner provided in section *thirty*.

12 Visiting and examination of certain infants

(1) A commissioner of child welfare may by writing under his hand appoint any person to be an infant protection visitor to assist him in carrying out the provisions of this Chapter, and may authorize either generally or specially any such visitor to visit and inspect any protected infant resident in his district.

(2) Any infant protection visitor appointed and authorized as aforesaid and any justice of the peace, any probation officer and any policeman may from time to time visit and inspect any protected infant and the premises in which the infant is kept in order to ensure the proper care and maintenance of the infant.

(3) A commissioner of child welfare may authorize in writing any infant protection visitor, probation officer or policeman to visit and inspect at any place within the commissioner's district any such infant as is mentioned in

paragraph (b) of sub-section (1) of section *eleven* and the premises in which that infant is kept.

(4) A commissioner of child welfare may at any time direct that a protected infant or any such infant as is mentioned in paragraph (b) of sub-section (1) of section *eleven* who is kept within his district, be medically examined by the district surgeon or by any other qualified medical practitioner.

(5) Any person having the custody of an infant who refuses to allow the examination or inspection authorized under this section of that infant or of the premises in which that infant is kept, and any person who hinders any person authorized to carry out any such examination or inspection, shall be guilty of an offence.

13 Limitation of number and age of protected infants in particular dwelling

A commissioner of child welfare may by an order in writing addressed to the occupant of any dwelling in which any protected infant is kept, fix the number of infants who may be kept in that dwelling and may in that order prohibit the keeping in that dwelling of any protected infant of an age less than that specified in the order, and any person who keeps in a dwelling to which such an order relates, any infant in excess of the number so fixed or any infant of less than the age so specified shall be guilty of an offence.

14 Certain persons may not keep protected infants

If any person—

- (a) from whose custody any infant has been removed in terms of an order made under this Act or under the Children's Act, 1937 (Act 31 of 1937), or under the Children's Protection Act, 1913 (Act 25 of 1913), or under the Children's Ordinance, 1961 (Ordinance 31 of 1961), of the territory, or under the Wives and Children Protection and Maintenance Ordinance, 1927 (Ordinance 16 of 1927), of the territory; or
- (b) who has been convicted of an offence under Chapter III of this Act or under Chapter III of the Children's Act, 1937, or under Chapter I of the Children's Protection Act, 1913, or under Chapter III of the Children's Ordinance, 1961, of the territory, or under Chapter I of the Wives and Children Protection and Maintenance Ordinance, 1927, of the territory,

keeps a protected infant without the authority in writing of a commissioner of child welfare, or if any person knowingly causes a protected infant to be kept by any such person as aforesaid, without such authority, he shall be guilty of an offence.

[S 14 substituted by s 6 of Act 74 of 1973.]

15 Duties of persons in charge of maternity homes

(1) If any infant is removed from a maternity home by any person other than a parent or such a relative as is mentioned in paragraph (a) of sub-section (3) of section *ten* the person in charge of that maternity home shall forthwith give notice in writing in the prescribed form of the removal to the commissioner of child welfare for the district in which the maternity home is situated.

(2)(a) Every person in charge of a maternity home shall keep a register in the prescribed form in which he shall record forthwith the birth or death of every infant who was born or who died in that home and the removal of every infant who was removed therefrom.

(b) The register mentioned in paragraph (a) shall be open to inspection by a commissioner of child welfare, probation officer, infant protection visitor appointed

under section *twelve* and any other person authorized in writing by a commissioner of child welfare.

(3) Any person in charge of a maternity home who fails to comply with the requirements of sub-section (2) or who fails to produce the register mentioned in sub-section (2) for inspection by any person entitled to inspect it who demands its inspection, shall be guilty of an offence.

(4) In this section the expression 'maternity home' includes any hospital or convalescent home or building used for the accommodation of any woman during her confinement or lying-in.

16 Penalties for failure to give prescribed notice or to obtain consent of commissioner

(1) Any person who is in terms of this Chapter required to obtain the consent of a commissioner for the receipt of an infant or to give notice of the receipt or delivery of an infant and who fails to obtain such consent or who fails to give that notice within the time specified therefor, or who knowingly or recklessly makes or causes the making of any false or misleading statement when obtaining any such consent or in any such notice, shall be guilty of an offence.

(2) If any person convicted under sub-section (1) has received any sum of money for the maintenance of the infant in respect of whom the offence was committed, the court by which the offender is convicted may in addition to imposing any punishment to which the offender is liable under this Act, order the offender to pay the said sum, or such portion thereof as to the court may seem just, into court, and if the infant in question survives, that sum shall be paid out to the commissioner of child welfare concerned, to be applied by him for the benefit of the infant in such manner as he may deem fit, or if the infant has died the money shall be paid into the Consolidated Revenue Fund.

(3) An order mentioned in sub-section (2) shall have the effect of and shall be executable as a civil judgment of the court given in favour of the Minister.

17 Certificates of exemption relating to protected infants

(1) If the commissioner of child welfare of any district is satisfied that the character and circumstances of any person resident within that district who has undertaken the custody of a protected infant, are such or that any place situated within that district in which infants are received and maintained is of such a character and is so conducted, that it is improbable that any infant while in the custody of that person or in that place will be ill-treated or neglected, the commissioner may grant to that person or to the managers of that place a certificate in the form prescribed exempting the said person and every infant in his custody and the premises wherein any such infant is kept, or exempting the managers and the place and all infants in that place and the premises wherein they are kept, from the operation of the provisions of sections *ten* and *twelve*.

(2) The commissioner may at any time in his discretion by notice in writing addressed to the person to whom or to the managers of a place to whom a certificate has been granted under sub-section (1), cancel that certificate.

CHAPTER III

PREVENTION OF NEGLECT, ILL-TREATMENT AND EXPLOITATION OF CHILDREN (ss 18-25)

18 Ill-treatment or neglect of children

(1) Any parent or guardian of a child or any person having the custody of a child who ill-treats, neglects

(otherwise than by such failure as is mentioned in sub-section (2)) or abandons that child or allows it to be ill-treated, shall be guilty of an offence if as a result of the ill-treatment, neglect or abandonment the child is likely to suffer unnecessarily or any part or function of its mind or body is likely to be injured or detrimentally affected, even though no such suffering, injury or detriment has in fact been caused or even though the likelihood of such suffering, injury or detriment has been averted by the action of another person.

(2) Any person legally liable to maintain a child who, while able to do so, fails to provide that child with adequate food, clothing, lodging and medical aid, shall be guilty of an offence.

(3) On the trial of any person charged with an offence under sub-section (2), his ability to provide the child in question with adequate food, clothing, lodging or medical aid shall be presumed, but he may rebut that presumption by proving that the failure alleged was due to lack of means and that such lack of means was not attributable to his default or negligence.

(4) Omission by the person charged to take reasonable steps to obtain for the child from any other person legally liable to maintain him or from any available authority, association or establishment whose object is the relief of indigency, such food, clothing, housing or medical aid as he is himself unable to provide, shall for the purposes of sub-section (3) be deemed to be a default on his part.

(5) Any person convicted of an offence under this section shall be liable to a fine not exceeding two hundred pounds or in default of payment of such fine to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment; or if it was proved that the said person would, to his knowledge, directly or indirectly acquire any property or an interest in any property or indirectly derive any benefit from any such acquisition by any other person in the event of the death of the child in respect of whom that offence was committed, he shall be liable to a fine not exceeding five hundred pounds or in default of payment of such fine to imprisonment for a period not exceeding five years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

19 Corruption of children

(1) Any parent or guardian or any person having the custody of a child who allows that child to reside in or to frequent a brothel as defined in section *one* of the Immorality Act, 1957 (Act 23 of 1957), shall be guilty of an offence.

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

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

(4) Any person convicted of an offence under this section shall be liable to a fine not exceeding two hundred pounds or in default of payment of such fine to imprisonment for a period not exceeding two years or to

such imprisonment without the option of a fine or to both such fine and such imprisonment.

20 Medical examination and treatment of children and certain other persons

(1) If a medical officer of a local authority or of a divisional council has reason to suspect that a child within the area of jurisdiction of that authority or council, or if any medical officer in the service of the Government or of a provincial administration or of the Administration of the territory has reason to suspect that a child within the area for which that officer was appointed, is suffering from any disease or any curable physical defect or is infested with vermin or that the clothing of that child is verminous or filthy, or if any medical officer in the service of the Government or of the Administration of the territory has been ordered by any children's court in terms of section 30(3) to examine any child, he may examine or authorize any other medical practitioner to examine the person and clothing of that child.

[Sub-s (1) substituted by s 7 of Act 74 of 1973.]

(2) Any medical officer mentioned in sub-section (1) may, if he deems it necessary for the proper examination of such a child, in writing direct the person in whose custody the child is to remove the child within a period specified in the direction, to a hospital or other place similarly specified for such examination.

(3) If at that examination it appears that the child is suffering from any disease or any curable physical defect, the said officer may—

- (a) in writing direct the person in whose custody the child is to remove him, within a reasonable period specified in the direction, to a hospital or any other place similarly specified for medical treatment; or
- (b) if the examination was made at a hospital or place to which the child was removed in pursuance of a direction under sub-section (2), direct that he remain in that hospital or place for such treatment; or
- (c) in writing direct the person in whose custody the child is, to provide within a reasonable period specified in the direction such medical treatment for the child as may be likewise specified.

(4) If at the said examination it appears that the child is infested with vermin or that his clothing is verminous or filthy, the said officer may direct, in writing, the person in whose custody the child is to cleanse the person and clothing of the child in a manner and within a period specified in the direction: Provided that the period so specified shall not be shorter than twenty-four hours as from the receipt by the said person of the direction.

(5) If the person to whom such a direction was given, has failed to comply therewith within the period specified therein, the officer who gave the direction may remove the child or cause him to be removed to a suitable locality and there examine him or cause him to be examined or submit him or cause him to be submitted to proper medical treatment or cleanse his person or clothing or cause his person or clothing to be cleansed, as the case may be.

(6) If any medical officer mentioned in subsection (1) is of the opinion that it is necessary to perform an operation upon a child or to submit him to any treatment which may not be applied without the consent of the parent or guardian of such child, and the parent or guardian refuses his consent to the operation or treatment, or cannot be found, or is by reason of mental illness unable to give such consent, or is deceased, that

officer shall report the matter to the Minister, who may, if satisfied after due enquiry that the operation or treatment is necessary, consent thereto in lieu of the parents or guardian of the said child.

[Sub-s (6) substituted by s 16 of Act 62 of 1966 and by s 1(a) of Act 43 of 1976.]

(7) If the medical superintendent of a hospital is of the opinion that an operation or medical treatment is necessary to preserve the life of a child or to save him from serious and lasting physical injury or disability and that the need for the operation or medical treatment is so urgent that it ought not to be deferred for the purpose of consulting the person who is legally competent to consent to the operation or medical treatment, that superintendent may, after obtaining the views of another medical practitioner, give the necessary consent.

[Sub-s (7) substituted by s 1(a) of Act 43 of 1976.]

(8) The person whose duty it is to maintain the child in question shall be liable for the cost of any treatment of, or operation upon, the child under subsection (5), (6) or (7) as if the treatment had been given or the operation had been performed on his instructions.

[Sub-s (8) substituted by s 1(a) of Act 43 of 1976.]

(8A) Notwithstanding any rule of law to the contrary, any person over the age of eighteen years shall be competent to consent, without the assistance of his parent or guardian, to the performance of any operation upon, or any medical treatment of, himself.

[Sub-s (8A) inserted by s 1(b) of Act 43 of 1976.]

(9) If a person to whom a direction was given under sub-section (4) has failed to comply therewith within the period specified therein, or if, after that person has complied therewith or after the child or his clothing has been cleansed in terms of sub-section (5), the child in question again becomes infested with vermin or his clothing again becomes verminous or filthy, that person shall be guilty of an offence.

(10) Any medical officer or medical practitioner who is entitled under sub-section (1) to examine a child may, at any time during the day and at any reasonable hour during the night, demand admittance into any premises or room in which he has reason to believe that child to be, and may call upon the person in whose custody the child is to produce the child to him at that person's residence and if any person, on being made aware of the purpose for which admittance is demanded, refuses such admittance or makes any unreasonable delay in granting it or in any way obstructs such medical officer or medical practitioner in examining the person and clothing of the child or fails to produce the child as aforesaid when called upon to do so, he shall be guilty of an offence.

21 Begging, unauthorized street trading or unauthorized performance by children

(1) Any person who causes any child, or any parent or guardian of a child or any person having the custody of a child, who allows that child—

- (a) to beg or to induce or to endeavour to induce the giving of alms, or to solicit donations or contributions towards any object; or
- (b) to accompany any person while he acts in the manner described in paragraph (a); or
- (c) (i) if the child is under the age of twelve years, to engage in any form of street trading within the area of jurisdiction of a local authority unless that local authority has by means of bye-laws made under section *twenty-two* or any other

law, prescribed that such a child may engage in that form of street trading and unless he does so in accordance with bye-laws made by that local authority under section *twenty-two*; or

- (ii) if the child is not under the age of twelve years but under the age of sixteen years, to engage in any form of street trading within the area of jurisdiction of a local authority in contravention of bye-laws made by that local authority under section *twenty-two*; or
- (d) if the child is under the age of fourteen years to perform or to be exhibited in any way for public entertainment except under a licence issued under section *twenty-three*,

shall be guilty of an offence: Provided that the provisions of paragraph (a) shall not apply in connection with the solicitation, by a child of the age of twelve years or more, of donations or contributions from which neither the child himself nor any of his relatives nor his guardian or custodian, nor the owner or person in charge of the establishment or place where that child is housed or fed, is likely to derive any material benefit: Provided further that the provisions of paragraph (d) shall not apply in connection with any performance by or exhibition of a child for which no consideration has been or is to be given to the child or to any relative, guardian or custodian of the child, or to the owner or person in charge of the establishment or place where the child is housed or fed.

(2) If a child has acted in a manner described in sub-section (1), the person who had the custody of the child when the said action took place, shall be deemed to have allowed the child to act as aforesaid, unless it is proved that he did not allow the child so to act and that he could not have prevented him from doing so.

22 Regulations of street trading

(1) A local authority may, apart from any bye-laws relating to street trading which it may make under any other law, make bye-laws to licence, regulate, restrict or prohibit street trading by children under the age of sixteen years within its area of jurisdiction and different provisions may be made in such bye-laws for children of different ages, races and sexes and in respect of different localities.

(2) No bye-law framed under sub-section (1) shall have any force or effect unless it has been approved by the Minister and by the Administrator concerned and has been published in the manner prescribed for the publication of bye-laws under the laws governing such local authority.

23 Licences for performance by children at public entertainments

(1)(a) A commissioner of child welfare may upon the application of any person who intends to give a public entertainment in the district of that commissioner, issue to him a licence authorizing a child under the age of fourteen years to perform or to be exhibited at that entertainment in a role specified in the licence over such a period and during such hours and on such conditions and subject to such restrictions as the commissioner may think fit to determine: Provided that a commissioner shall not issue such a licence unless he is satisfied—

- (i) that the child is physically and mentally fit to perform or be exhibited in the role so specified at the entertainment in question; and
- (ii) that the performance or exhibition involves no risk of physical, mental or moral injury or detriment to the child; and

(iii) that the applicant for the licence is making proper provision for securing the health, education and kind treatment of all the children who are to take part in the said entertainment.

(b) The commissioner may in his discretion vary, add to or rescind any such licence.

(2) A commissioner for any district may upon the application of the holder of a licence issued under sub-section (1) by a commissioner for any other district endorse that licence and make any alteration in or addition to the licence, and upon that endorsement, and subject to any such alteration or addition, the licence shall become valid in the firstmentioned district.

(3) Any policeman or any person authorized in writing by a commissioner for child welfare may at all reasonable times enter and inspect any premises in which a child under fourteen years of age performs or is exhibited for any consideration at a public entertainment, and may attend any such entertainment free of charge.

(4) Any person who obstructs or hinders any such policeman or other person in the exercise of his powers under sub-section (3) shall be guilty of an offence.

24 Safeguarding of child audiences at public entertainments

(1) Any occupier of any premises in which is given a public entertainment for children or a public entertainment at which the majority of persons who are expected to attend are likely to be children, who fails to provide and keep stationed wherever necessary upon the premises a sufficient number of adult attendants properly instructed as to their duties, to prevent more children or other persons entering any part of the premises than that part can properly accommodate and to control the children and other persons admitted to any such part, whilst entering and leaving and to take all other reasonable precautions for the safety of the children, shall be guilty of an offence.

(2) A policeman may enter any premises in which he has reason to believe that a public entertainment is being or is about to be provided for children or at which the majority of persons attending are or will be children and may inspect such premises for the purpose of ascertaining whether the provisions of this section are being carried out.

(3) If the occupier of any premises is convicted under subsection (1) of an offence committed in connection with those premises and he was, within the period of five years immediately preceding that conviction, in connection with the same premises convicted under that subsection or under section 22(1) of the Children's Ordinance, 1961 (Ordinance 31 of 1961), of the territory, the court convicting the said occupier may, apart from any penalty which it may impose for the said offence, cancel any licence which the said occupier may hold for public entertainments in the premises in question, and thereupon he shall be disqualified from obtaining another licence for those premises.

[Sub-s (3) substituted by s 8 of Act 74 of 1973.]

25 Conducing to commission of an offence by a child

(1) If any parent or guardian of a child or any person having the custody of a child has conduced to the commission of an offence by that child, he shall be guilty of an offence.

(2) If a child has committed an offence which it would probably not have committed if the parent or guardian of the child or the person having the custody of the child

had taken proper care of the child, the parent or guardian or that person shall for the purposes of sub-section (1) be deemed to have conduced to the commission of that offence.

CHAPTER IV

MANNER IN WHICH CHILDREN IN NEED OF CARE AND CERTAIN OTHER CHILDREN MAY BE DEALT WITH (ss 26-37)

26 Removal of certain children to a place of safety pending enquiry

(1) Any policeman, probation officer or authorized officer may remove a child from any place to a place of safety—

- (a) if he is, in the opinion of that policeman, probation officer or authorized officer, a child in need of care; or
- (b) if there are reasonable grounds for believing that any offence mentioned in the First Schedule to this Act is being or has been committed upon or in connection with that child:

Provided that if the child is in a public place accompanied by the person having the custody of the child, he shall not be so removed against the will of the person in whose custody he is, unless there is reason to believe that an offence aforesaid has been committed or is being committed by that person upon or in connection with the child.

[Sub-s (1) amended by s 3 of Act 50 of 1965.]

(2) The policeman, probation officer or authorized officer who has removed a child to a place of safety shall as soon thereafter as may be, subject to the provisions of sub-section (4) of section *thirty* bring the child or cause him to be brought before the children's court of the district in which is situate the place from where the child was removed.

(3) Any person who hinders or obstructs any policeman, probation officer or authorized officer in the exercise of his powers under sub-section (1) shall be guilty of an offence.

27 Removal of infant to place of safety

If it appears to any magistrate, commissioner of child welfare or justice of the peace that an infant within the area of his jurisdiction—

- (a) has been received by any person in contravention of the provisions of sub-section (4) of section *ten*; or
- (b) is a protected infant and is being maintained in circumstances detrimental to his welfare and that it is necessary that the infant be removed forthwith from the place where he is kept,

he may, by order in writing, direct any person to remove the infant to a place of safety pending the making of other suitable provision for the custody of the infant.

28 Removal of child to place of safety because of an offence disclosed during legal proceedings

If it appears to any court in the course of any proceedings before that court or to a magistrate in the course of a preparatory examination that an offence mentioned in the First Schedule to this Act has been or is being committed upon or in connection with any child or if the person having the custody of a child is by any such court or magistrate convicted of or committed for trial for any such offence, that court or magistrate may, if it or he deems it expedient, order that the child be

taken to a place of safety and be brought as soon as may be thereafter before a children's court.

29 Removal of child to place of safety on sworn information of an offence

(1) If it appears to any magistrate, commissioner of child welfare or justice of the peace on information on oath given by any person that there is reasonable ground for suspecting that any offence mentioned in the First Schedule to this Act is being or has been committed upon or in connection with a child who is then within the area of his jurisdiction and that it is expedient that the child be taken to a place of safety, that magistrate, commissioner or justice of the peace may issue a warrant authorizing any policeman to search for the child and to take him to a place of safety to be there kept until he can be brought before a children's court.

(2) Any policeman authorized by warrant issued under this section to search for and remove a child may enter (by force if need be) any house or other premises mentioned in the warrant and may remove the child therefrom.

(3) A magistrate, commissioner or justice of the peace issuing a warrant under this section may authorize any person indicated in the direction to accompany the policeman who is to execute the warrant.

(4) It shall not be necessary in any warrant issued under the provisions of this section to state the name of the child whose removal is thereby ordered.

30 Bringing children before children's court and holding of enquiries

(1) Any child alleged to be a child in need of care, may be brought before the children's court of the district in which the child resides or happens to be by any policeman, probation officer or authorized officer or by a parent, guardian or other person having the custody of the child.

(2) The court before which a child is brought under sub-section (1) shall hold an enquiry and determine whether the child is in need of care: Provided that if the child ordinarily resides in a district of another children's court the firstmentioned court may refer the enquiry to the court of that other district.

(3) Any children's court holding an enquiry as to whether any child is in need of care, may, at any time during the enquiry, order any medical officer in the service of the Government or of the Administration of the territory to examine that child.

[Sub-s (3) substituted by s 9 of Act 74 of 1973.]

(4) If it appears to a children's court that a child who is alleged to be a child in need of care, and who is subject to the court's jurisdiction, should by reason of his infancy, ill-health or other sufficient cause not be brought before the court, the court may hold the enquiry in the absence of the child.

31 Powers of children's courts

(1) A children's court which, after holding an enquiry as provided in section *thirty*, is satisfied that a child is a child in need of care may—

- (a) order that the child be returned to or remain in the custody of his parent or guardian or of the person in whose custody he was immediately before the commencement of the proceedings; or
- (b) order that the child be placed in the custody of any suitable foster parent; or
- (c) order that the child be placed under the control of an approved agency; or

- (d) order that the child be sent to a children's home; or
 (e) order that the child be sent to a school of industries.

(2) A children's court which has made an order under subsection (1)(a) or (b), may also order that the child be placed on probation or under the supervision of a social worker.

[Sub-s (2) substituted by s 2(a) of Act 15 of 1977.]

(3) Any commissioner of a district in which a child resides who has, in terms of sub-section (2), been placed on probation by a children's court or who has, as a result of a transfer by the Minister in terms of section fifty been placed on probation may, at any time, by order in writing, direct any person to bring that child before a children's court in that district.

(4) When a children's court has, in terms of sub-section (2), placed a child on probation or when a child has, in terms of sub-section (3), been brought before a children's court, that children's court may order the child or his parent or guardian to comply, until such time as that children's court or any other children's court otherwise orders, with such of the prescribed requirements as the court may determine.

(5) Any social worker may during the period during which a child is on probation, and shall, on the termination of such period at the request of the commissioner of the district in which the child resides, furnish a report on the behaviour, progress and welfare of the child.

[Sub-s (5) substituted by s 2(b) of Act 15 of 1977.]

(6)(a) The commissioner of any district in which there is a child of fourteen years or older who is on probation may, at any time, order that child in writing to attend an attendance centre mentioned in the order on such days and during such hours as may be stated in the order: Provided that no child may be ordered to attend such a centre for longer than two hours per week or forty-eight hours in all.

(b) If such order is not complied with—

- (i) the child shall be guilty of an offence; and
- (ii) the parent or guardian of the child shall be guilty of an offence, unless he proves that he has taken all reasonable steps to ensure that the order is complied with,

and they shall on conviction be liable to the respective penalties prescribed in respect of an offence mentioned in section thirty-two.

(7) A children's court which is satisfied that a child is a child in need of care may order that the child be kept in a place of safety or be kept in an observation centre for observation or be returned to the custody of its parent or guardian or of the person in whose custody the child was immediately before the commencement of the proceedings in question until the court has made an order under sub-section (1) in respect of that child or until such time as effect can be given to any order which such court has made.

(8) A children's court which is satisfied that a child is a child in need of care because his parent has been convicted under section 18(1) of this Act or under section 16(1) of the Children's Ordinance, 1961 (Ordinance 31 of 1961), of the territory, of ill-treating or neglecting him or because he was in a state of physical or mental neglect for which his parent was responsible, and has made in respect of such child an order under paragraph (b), (c), (d) or (e) of subsection (1), shall, if such parent is present, draw the attention of the parent to the provisions of section 73 and record on the record of the proceedings the fact that it has been done.

[Sub-s (8) substituted by s 10 of Act 74 of 1973.]

32 Failure to observe certain requirements an offence

Any person who fails to comply with a requirement referred to in sub-section (4) of section thirty-one, with which it is his duty to comply, shall be guilty of an offence and liable on conviction—

- (a) if the person convicted is the child concerned, to—
 - (i) a caution or reprimand; or
 - (ii) a fine not exceeding twenty-five pounds; or
 - (iii) a moderate whipping as provided in section three hundred and forty-five of the Criminal Procedure Act, 1955 (Act 56 of 1955);
- (b) if the person convicted is the parent or guardian of the child, to a fine not exceeding one hundred pounds or, in default of payment of that fine, to imprisonment for a period not exceeding one year, or to such imprisonment without the option of a fine.

33 Safe custody or observation of child pending enquiry

The court holding an enquiry under section thirty may, if it deems it expedient, from time to time postpone or adjourn the enquiry for periods not exceeding fourteen days at a time, and may order that in the interim the child remain in a place of safety or be kept in an observation centre for observation or that the child be returned to the custody of his parents or guardian or the custody in which he was immediately before the commencement of the enquiry on such conditions as the court may prescribe.

34 Summoning of parent or guardian of child to attend enquiry

(1) Notice of the holding of an enquiry under section thirty in respect of any child and that the attendance thereat is required of the person to whom the notice is given shall, unless the commissioner of child welfare otherwise directs, be given in the prescribed manner to the parents or guardian or person having the custody of that child.

(2) Any parent or guardian or any person having the custody of a child who, having received notice as aforesaid of the holding of an enquiry in respect of that child and without the permission of the commissioner or other reasonable excuse (the proof whereof shall rest upon him), fails to attend and to remain in attendance during the enquiry may be dealt with *mutatis mutandis* as provided in sub-section (4) of section fifty-seven of the Criminal Procedure Act, 1955 (Act 56 of 1955).

35 Determination of school of industries, etc., to which a child is to be sent

(1) A children's court making an order under paragraph (d) or (e) of sub-section (1) of section thirty-one shall order that the child be sent to the school of industries or children's home (as the case may be) which shall in each case have been designated by the Secretary.

(2)(a) In selecting any person in whose custody a child is to be placed or any children's home, other than a children's home established in terms of sub-section (3) of section thirty-nine, to which a child is to be sent, regard shall be had to the religious and cultural background and ethnological grouping of the child and, in selecting such a person, also to the nationality of the child and the relationship between him and such person.

(b) Any illegitimate child whose classification in terms of the Population Registration Act, 1950 (Act 30 of 1950), is the same as that of his mother shall be deemed

to have the same religious and cultural background and nationality as his mother and only relatives of the mother of any such child shall be regarded as being related to such child.

[Para (b) added by s 4 of Act 50 of 1965.]

(c) A child shall not be placed in the custody of any person whose classification in terms of the Population Registration Act, 1950, is not the same as that of the child except where such person is the parent or guardian of the child.

[Para (c) added by s 4 of Act 50 of 1965.]

(3) In the application of subsection (2), or of that subsection as applied by any other provision of this Act, in respect of any child in the territory, the provisions of paragraphs (b) and (c) of the said subsection shall be disregarded.

[Sub-s (3) added by s 11 of Act 74 of 1973.]

36 Period of retention, supervision and treatment

(1) A child who has under section *thirty-one* been placed in any custody or under any supervision or any control or sent to any children's home or school of industries and also any such child who is, as a result of any transfer by the Minister in terms of section *fifty*, in any custody or under any supervision or any control or in any children's home or school of industries shall, subject to the provisions of section *fifty*, remain in that custody or under that supervision or control or in that children's home or school of industries—

(a) if at the time of the making of the order of the children's court he was under the age of sixteen years, until he attains the age of eighteen years; or
(b) if at the time of the making of the order of the children's court he was not under the age of sixteen years, until he attains the age of twenty-one years, or, in either case, until he is discharged or released on licence in accordance with the provisions of this Act, before having attained the said age.

(2) A child who has, in terms of sub-section (2) of section *thirty-one*, been placed on probation by a children's court or who has as a result of a transfer by the Minister in terms of section *fifty* been placed on probation shall remain on probation for such a period, not exceeding one year, as the children's court or the Minister, as the case may be, may determine in its or his order: Provided that where a period of less than one year has been determined in respect of any child, any commissioner to whom a report has been furnished in terms of sub-section (5) of section *thirty-one* may order that that child shall remain on probation for such further period or periods as he may determine but which shall, together with the original period, not exceed one year.

(3) After expiration of the period of retention of a pupil in a children's home or school of industries, whether by effluxion of time or release on licence, that pupil shall remain under the protection of the management of the children's home or school of industries until he attains the age of twenty-one years or until he is discharged from that protection in accordance with the provisions of this Act, before having attained the said age.

(4) The Minister may, if he deems it necessary, order that any former pupil of or pupil in a children's home or school of industries or any child who is in any custody, whose period of retention has expired or is about to expire, return to or remain in that children's home, school of industries or custody, as the case may be, for any further period which he may fix, and may from time

to time extend that period: Provided that no such order or extension shall extend the period of retention of any pupil beyond the expiration of the period of protection of that pupil or extend the period of retention of any child in any custody beyond the end of the year in which that child attains the age of eighteen years.

37 Person attaining age of eighteen years during enquiry in children's court

A children's court may make an order under section *thirty-one* in respect of any person who at the commencement of the enquiry in the course of which the order is made, was under the age of eighteen years, notwithstanding that before the date of the order that person has attained the age of eighteen years.

CHAPTER V

PLACES OF SAFETY, PLACES OF DETENTION, SCHOOLS OF INDUSTRIES, REFORM SCHOOLS, CHILDREN'S HOMES, PLACES OF CARE, OBSERVATION CENTRES AND PLACING OF CHILDREN (ss 38–61)

38 Places of safety, places of detention and observation centres

(1) The Minister may in consultation with the Minister of Finance out of moneys appropriated by Parliament for the purpose, establish and maintain places of safety for the reception of children under this Act.

(2) The Minister may in consultation with the Minister of Finance out of moneys appropriated by Parliament for the purpose, establish and maintain places of detention for the reception and detention of children awaiting trial or sentence, or awaiting removal to a reform school.

(3) The Minister may approve of the use as a place of detention for the purposes mentioned in sub-section (2), of any reform school or children's home.

(4) The Minister may approve of the use of any place of safety or any place of detention established under sub-section (1) or (2) as an observation centre where a child may be kept under observation for the purposes of this Act.

39 Schools of industries, reform schools and government children's homes

(1)(a) The Minister may in consultation with the Minister of Finance out of moneys appropriated by Parliament for the purpose, establish and maintain schools of industries for the reception, care, education and training of children sent thereto by order of a children's court under section *thirty-one* or transferred thereto by order of the Minister under sub-section (1) of section *fifty*.

(b) Every industrial school established under the Children's Act, 1937 (Act 31 of 1937), or which is deemed to be an industrial school which was so established and which is in existence at the commencement of this Act, shall, as from that commencement be deemed to be a school of industries established under this Act; and any reference in any law or document to a Government industrial school shall be construed as a reference to a school of industries established under this Act.

(2)(a) The Minister may in consultation with the Minister of Finance out of moneys appropriated by Parliament for the purpose, establish and maintain reform schools (in which term shall be included training ships in territorial waters) for the reception, care and

training of children and persons committed thereto under this Act or any other law.

(b) Every reformatory established under the Children's Act, 1937, or which is deemed to be a reformatory which was so established and which is in existence at the commencement of this Act, shall, as from that commencement be deemed to be a reform school established under this Act and any reference in any law or document to a reformatory shall be construed as a reference to a reform school established under this Act.

(3)(a) The Minister may in consultation with the Minister of Finance out of moneys appropriated by Parliament for the purpose establish and maintain children's homes for the reception, care and bringing-up of children in need of care.

(b) Every institution or hostel established under sub-section (2)*bis* of section *thirty-eight* of the Children's Act, 1937, and which is in existence at the commencement of this Act, shall, as from that commencement, be deemed to be a children's home established under this Act.

(4)(a) The Minister shall appoint for every school of industries, reform school or children's home established by him under this Act, a board of management which shall consist of not less than three and not more than nine members who shall hold office during a prescribed period.

(b) The Minister may at any time withdraw any such appointment and may appoint a member in the place of any member who has died or has resigned his appointment or whose appointment has been withdrawn.

(5) A board shall be vested with the powers and shall perform the duties conferred and imposed upon a board by this Act or by regulation made thereunder.

(6) Whenever a board is unable to function by reason of a lack of sufficient members, the Minister shall exercise the said powers and perform the said duties of the board.

(7) The head of a school of industries, a reform school or children's home established under sub-section (3) shall be styled the 'principal'.

40 and 41 . . .

[Ss 40 and 41 repealed by s 45(1) of Act 41 of 1967.]

42 Registration and classification of children's homes and places of care

(1) No child may be received in any children's home (other than a children's home maintained and controlled by the State) unless that children's home is managed by an association of persons consisting of not less than seven members and has been registered under this section, or otherwise than in accordance with the conditions on which that children's home has been so registered.

(2) No child may be received in any place of care (other than a place of care maintained and controlled by the State) unless that place of care has been registered under this section, or otherwise than in accordance with the conditions on which that place of care has been so registered.

(3) Application for the registration of a children's home or a place of care shall be made to the Minister in accordance with the prescribed procedure, and the Minister may—

(a) before considering any such application, require the applicant to prove that there is reasonable need for such children's home or place of care;

(b) before considering any such application, require that he be furnished with any information in connection

with the applicant concerned or the proposed children's home or place of care which he may desire to obtain;

(c) reject any such application, or, if he is satisfied that the children's home or place of care will be so managed and conducted that it will be suitable for the reception, protection, care and bringing-up or for the reception, protection and temporary or partial care of children, grant the application either unconditionally or on such conditions as he may deem fit and issue to the applicant a certificate of registration in the form prescribed.

(4) The Minister may, at the time of registration of any children's home or place of care, or at any time thereafter, classify any such children's home or place of care or may amend any earlier classification, and any such classification may differ according to the race, sex or age or to the physical or spiritual needs of the children in respect of whom the children's home or place of care is being maintained and according to whether it is children who were dealt with under this Act or under the Criminal Procedure Act, 1955 (Act 56 of 1955): Provided that any institution registered under section *thirty-nine bis* of the Children's Act, 1937 (Act 31 of 1937), shall be deemed to be classified for the reception of that class of child for which a certificate of registration was granted to the managers thereof.

(5)(a) A certificate of registration issued under sub-section (3) may at any time be cancelled by the Minister or may at any time be surrendered to the Minister, but no such certificate shall be so cancelled except after not less than one month's written notice of the intention to cancel that certificate has been given to the person in whose name it was issued, and after consideration by the Minister of any representations which may be submitted in pursuance of such notice.

(b) Written notice shall be given of any cancellation or surrender of a registration certificate.

(6)(a) The cancellation or surrender of a registration certificate shall take effect on the date specified in the document whereby notice is given of the cancellation or surrender.

(b) Unless the Minister and the person in whose name the registration certificate was issued agree on the date, the date may not be earlier than a date three months after the date upon which notice of the cancellation or surrender was given.

(7) Upon the cancellation or surrender of a certificate granted to the managers of a children's home, the power of supervision in respect of any pupil released from the children's home which those managers have under any law, and any powers conferred upon the said managers by section *forty-four* shall devolve upon the Minister.

(8)(a) Save as is otherwise provided in this Act, the managers of a children's home shall, within three months after written notice has been given of the cancellation or surrender of the registration certificate of that children's home in terms of sub-section (5), transfer to his parents or guardian, or to any children's home or other suitable place approved by the Minister, every child in such first-mentioned children's home other than a child placed in the custody of that children's home under this Act.

(b) After the cancellation or surrender of the registration certificate of any children's home in terms of this section the Minister shall act under section *forty-nine*, or under sub-section (1) of section *fifty*, in respect of every pupil who was placed in the custody of that children's home under this Act and who was in that children's home

at the time of the cancellation or surrender of the certificate.

(9)(a) Every institution or hostel which, immediately before the commencement of this Act, was deemed in terms of sub-section (5) of section *thirty-nine* of the Children's Act, 1937, to be a certified institution or hostel, and every institution which, immediately before the commencement of this Act, was registered under section *thirty-nine bis* of the Children's Act, 1937, shall as from such commencement be deemed to be registered under this Act as a children's home or place of care, as the case may be.

(b) If any children's home which is in terms of paragraph (a) deemed to be registered under this Act, is not managed by such an association of persons as is mentioned in sub-section (1), the Minister shall, on the expiration of a period of twelve months after the commencement of this Act, cancel such registration as provided in sub-section (5) unless that children's home is placed under the management of such an association of persons before the expiration of such period.

(10) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence.

(11) The head of a children's home registered under sub-section (1) shall be styled the 'principal'.

43 Liability for maintenance of a child received under this Act

(1) No person, association of persons or children's home shall be obliged to receive or assume the custody of any child, but any person who has, or association of persons or the managers of any children's home who have received or admitted any child placed in the custody of that person or association or sent to that children's home under any law shall be deemed to have the custody of that child and shall be bound to maintain and care for that child until the expiration of his period of retention: Provided that such a person or association of persons or the managers of such a children's home may at any time after having given to the Minister not less than three months' written notice, disclaim further responsibility for the maintenance and custody of any child: Provided further that a person who or an association of persons or a children's home which has received or assumed the custody of a child under this Act upon condition of payment by the Minister or by any other person of a grant or contribution towards the maintenance of the child, shall not be obliged to maintain the child or retain him in his or its custody if that grant or contribution is not paid.

(2) The provisions of sub-section (1) shall not affect any obligation imposed by any law other than this Act on any person to care for or maintain any child.

44 Pupil of institution may be released on licence

(1)(a) The management of an institution may by licence in writing permit any pupil of that institution to live in the custody of a suitable person or in any training institution on such conditions and for such period as may be agreed upon between that person or the managers of the training institution and the management of the institution or for any longer period which may from time to time be so agreed upon: Provided—

- (i) that the original period agreed upon for any licence shall not exceed two years; and
- (ii) that the period for which a licence has been granted shall not, without the consent of the

Minister, be so extended that it will exceed two years; and

- (iii) that the period for which a licence has been granted, shall not expire later than at the end of the period for which the pupil is under the protection of the institution.

(b) In granting such licence the management of the institution shall, in so far as they are appropriate, have regard to the matters mentioned in sub-section (2) of section *thirty-five*.

(2) The management of an institution may stipulate in any such licence that the pupil shall, while in the custody of the person or in the training institution named in the licence, be subject to the supervision of any probation officer or of any person or body prescribed by regulation.

(3) The management of an institution by whom a licence has been granted may, after consultation with the supervisor, at any time, by notice in writing addressed to the person in whose custody the pupil concerned is or the managers of the training institution in which the pupil concerned is, cancel the licence and direct the said person or managers to return the pupil or to send the pupil back to the institution from which he was released: Provided that any interested person may within one month from the date of that notice appeal to the Minister against the cancellation of the licence and that the Minister may after reference to the management of the institution and after proper enquiry, either confirm cancellation or restore the licence: Provided further that any licence which has been extended with the consent of the Minister, shall not be cancelled without the consent of the Minister.

(4) If the period for which a licence has been granted to a pupil expires before the expiration of the period of protection of the pupil, the management of the institution shall, after consultation with the supervisor—

- (a) require the pupil to return to the institution from which he was released; or
- (b) extend the licence for a further period; or
- (c) grant a licence permitting the pupil to live in the custody of some other person or in some other training institution; or
- (d) recommend to the Minister—
 - (i) that the pupil be transferred under sub-section (1) of section *fifty*; or
 - (ii) that the pupil be discharged under section *forty-nine*:

Provided that where a licence has been extended with the consent of the Minister the pupil concerned shall not be required, without the consent of the Minister, to return to the institution and a licence shall not be granted to the pupil concerned, without the consent of the Minister, to live in the custody of another person or in another training institution.

(5) If at the time of the return of a pupil to an institution in consequence of the cancellation of his licence, he has reached such an age that he can no longer be retained in that institution, he shall, as soon as possible, and not later than a date three months after his return, be again placed out on licence by the management concerned.

(6) A management which has cancelled a licence under sub-section (3) shall forthwith report the cancellation and the reason therefor to the Minister and when any pupil whose licence has been so cancelled, is again placed out on licence, as provided in sub-section (5), the management shall forthwith report that fact to the Minister.

(7)(a) The Minister may at any time by order in writing cancel a licence granted to a pupil if he deems it

necessary in the interests of that pupil and may direct the pupil to return to the institution the management of which granted the licence, or to enter any other institution mentioned in the order.

(b) If a pupil has been directed to enter an institution other than that from which he was released on licence, he shall as from the date of the Minister's order cease to be a pupil of the last-mentioned institution and shall become a pupil of the institution which he was directed to enter.

(8) If the licence of any pupil is cancelled or if at the expiration of the period for which a licence has been granted to a pupil he is directed to return to the institution from which he was released or if any pupil is directed by the Minister to enter an institution other than that from which he was released, he may for the purposes of this section, but subject to the provisions of sub-sections (5) and (6), be dealt with as if he were admitted to an institution for the first time.

(9) Any policeman, probation officer or authorized officer who has reason to believe that any licence which has been granted to a pupil will be cancelled, may take the pupil to a place of safety or a place of detention to be detained therein until such time as a decision has been taken in connection with such pupil and any commissioner may order that any pupil whose licence has been cancelled be detained in a place of safety or a place of detention until he can enter the institution to which he is to be admitted or until effect can be given to any order which may be made in respect of him under section *forty-nine or fifty*.

45 Licence may be varied

The management of an institution which has granted to a pupil a licence to live in the custody of any person or in any training institution may, at any time, with the consent of the said person or of the managers of that training institution, vary the terms of the licence or substitute therein for the name of the said person or training institution the name of any other suitable person or training institution.

46 Reports on pupils to Minister

(1) The board of a school of industries or the managers of a children's home shall on the completion by any pupil of the first two years of his period of retention therein and on the completion of every succeeding year of his period of retention, report to the Minister the reasons why the pupil has not been placed out on licence or recommended for discharge and, if in the opinion of the board or managers the further retention of the pupil is advisable, the grounds on which that opinion is based.

(2) Whenever the Minister so directs, the management of an institution shall submit to the Minister a report similar to the report mentioned in sub-section (1) on any pupil or group of pupils in that institution indicated by the Minister, who has or who have not completed two years of his or their period of retention.

46bis Reports on certain children

(1)(a) While any child is in any custody (other than the custody of his parent or guardian) in which he has lawfully been placed by any authority, the Secretary shall ensure that a report in connection with that child is furnished to the Minister by a social worker on the expiration of the first two years of such custody and on the expiration of every succeeding year of such custody.

(b) The social worker concerned shall in any such report deal fully with the desirability or otherwise of transferring the child concerned to the custody of his parent or guardian.

[Sub-s (1) substituted by s 3 of Act 15 of 1977.]

(2) Whenever the Minister so directs, the Secretary shall, before the expiration of the said period of two years, obtain for the Minister a report similar to the report mentioned in sub-section (1).

[S 46bis inserted by s 5 of Act 50 of 1965.]

47 Leave of absence from an institution or custody

(1) Leave of absence may be granted—

- (a) by the management of an institution to any pupil in that institution;
- (b) by an approved agency to any child under the control of that agency;
- (c) with the approval of any social worker, by any person to any child lawfully placed in his custody by any authority other than an approved agency,

[Para (c) substituted by s 4 of Act 15 of 1977.]

for such period and on such conditions as may be prescribed.

(2) The management, agency or person concerned may at any time cancel such leave and direct the pupil or child to return to the institution or custody from which he was granted leave.

[S 47 substituted by s 6 of Act 50 of 1965.]

48 Recognition and functions of approved agencies

(1) On the application of any association of persons, which is, in the opinion of the Minister, so constituted and controlled that it can satisfactorily exercise the powers conferred upon an approved agency by this Act and any regulation made thereunder, he may, on the prescribed conditions, grant to that association a certificate of his approval as such an agency.

(2)(a) When a child has been placed under the control of an approved agency or has been transferred to such control in terms of sub-section (1) of section *fifty*, the approved agency may—

- (i) allow the child to remain with the person in whose custody he is; or
- (ii) remove the child from that custody and place him in the custody of a suitable other person; or
- (iii) after having dealt with the child under subparagraph (ii) return the child to the custody from which he was removed,

and it shall at all times supervise the moral, physical and material welfare of every such child and, where the child has been placed in the custody of a parent or guardian, also the social welfare of the family as a whole.

(b) In exercising its powers under paragraph (a) the agency shall have regard to all the matters mentioned in sub-section (2) of section *thirty-five*.

(3) An authorized officer of an approved agency under whose control any child has been lawfully placed shall have the right of access at all reasonable times to that child and to the premises of the person having the custody of the child in which the child is living and any person who obstructs any such officer in exercising his powers under this sub-section shall be guilty of an offence.

(4) A certificate granted to an approved agency may at any time be surrendered by the association or be withdrawn by the Minister: Provided that any such surrender shall not, without the consent of the Minister, take effect earlier than three months after notice thereof in writing has been given by the agency to the Minister.

(5) Upon a withdrawal or surrender of such a certificate the Minister shall deal under sub-section (1) of

section *fifty* or under section *forty-nine* with every child who was at the time of such withdrawal or surrender, under the control of the agency concerned.

48bis Removal of pupil or child from institution, custody or control

(1) The Minister may, if he considers it desirable, by order in writing direct that any pupil or child who is in any institution to which he has lawfully been sent or in any custody or under any control in or under which he has lawfully been placed, be taken to an observation centre and be kept therein for observation.

(2)(a) The commissioner of any district may, if he is of the opinion that it is desirable that any child referred to in sub-section (1) should without delay be removed from the institution, custody or control mentioned therein, by order in writing direct that the child be taken to a place of safety and be kept therein pending any action by the Minister under sub-section (3).

(b) When a commissioner has made an order under paragraph (a) he shall forthwith furnish the Minister with a full report in connection with the child concerned.

(3) The Minister shall within six months from the date on which a pupil or child has been taken to an observation centre in terms of an order made under sub-section (1) or a child has been taken to a place of safety in terms of an order made under sub-section (2)—

(a) by order in writing direct that the pupil or child concerned be returned to the institution, custody or control in or under which he was when the order was made under sub-section (1) or (2), as the case may be; or

(b) deal with the pupil or child concerned under section *forty-nine* or sub-section (1) of section *fifty* as if he had not been taken from the institution, custody or control referred to in paragraph (a).

[S 48bis inserted by s 7 of Act 50 of 1965.]

49 Discharge from institution or custody, control, supervision or probation

The Minister may at any time, by order in writing, discharge any pupil or child from the effect of any order made by any court under section *thirty-one* of this Act or section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955), or of any variation of such an order: Provided that before discharging a pupil from an institution or from the protection of the management of an institution or a child from the supervision or control of an approved agency, the Minister shall consult the management or approved agency concerned.

50 Transfer of child or pupil from one institution, control, etc. to another

(1) The Minister may, subject to the provisions of sub-section (3), by order in writing transfer any pupil or child from any institution to which he has lawfully been sent by any authority or from any custody in which or control or supervision under which or probation on which he has lawfully been placed by any authority, to any institution, custody, control, supervision or probation mentioned in section *thirty-one* of this Act or section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(2) When the Minister has under this section dealt with a pupil or child to whom an order made by any court applies, that order shall be deemed to have been varied by the Minister's order.

(3) No order shall be made by the Minister for the transfer to a reform school of any pupil or child from any school of industries or children's home or from any custody, control, supervision or probation in or under or on which he has been placed by order made under section *thirty-one* of this Act or section *three hundred and forty-two* of the Criminal Procedure Act, 1955, save after consideration by him of a report upon the reasons for the proposed transfer made by a commissioner either *mero motu* or by direction of the Minister.

(4) If the Minister is of the opinion that it is desirable in the interests of a pupil in a reform school to transfer him to a school of industries or to a children's home, the Minister may, after consultation with the board of any school of industries or with the managers of any children's home and after having satisfied himself that the intended transfer will not be prejudicial to the pupils in that school of industries or children's home by order in writing transfer the pupil to that school of industries or children's home and as from the date of the order the pupil shall be deemed to have been sent to that school of industries or children's home under section *thirty-one*.

(5)(a) The Minister of Justice may after consultation with the Minister by order in writing transfer any person under the age of twenty-one years who is undergoing in any prison or gaol a sentence of imprisonment, the unexpired term of which is not less than four months, to a reform school and as from the date of that order that person shall be deemed to have been sent to that reform school under section *three hundred and forty-two* of the Criminal Procedure Act, 1955.

(b) Where an order has been issued in terms of paragraph (a) in respect of any person in connection with whose age insufficient evidence is available, the order shall not come into operation unless an estimate of his age has been made under sub-section (2) of section *eighty-five* and his age has been estimated as being less than twenty-one years.

51 Admission of children from other territories to certain establishments

(1) The Minister may authorize the admission to a children's home or a school of industries, of any child sent thereto by a competent court or officer of any self-governing territory in the Republic or of any other territory in Africa outside the Republic.

[Sub-s (1) amended by s 69(a) of Act 69 of 1962 and substituted by s 12(a) of Act 74 of 1973.]

(2) Such authority may be granted on such conditions as may be agreed upon between the Minister and the Government of the territory concerned.

[Sub-s (2) amended by s 69(b) of Act 69 of 1962 and substituted by s 12(b) of Act 74 of 1973.]

(3) A child admitted under sub-section (1) shall, as from the date of the Minister's authority for his admission to the children's home or school of industries, be deemed to have been sent thereto under this Act.

(4) The managers of a children's home or the board of a school of industries to which a child has been sent under sub-section (1) shall not without the consent of the Minister deal with that child under section *forty-four*.

52 Transfer of pupils from certain state-aided schools to industrial schools

(1) The Minister may authorize the admission to a school of industries of any pupil of a school established, maintained or receiving a grant-in-aid under the provisions of the Educational Services Act, 1967 (Act 41 of

1967), or the Education Ordinance, 1962 (Ordinance 27 of 1962), of the territory.

[Sub-s (1) substituted by s 13 of Act 74 of 1973.]

(2) A person admitted to a school of industries under this section shall be subject to the disciplinary provisions in force in that school, but the provisions of this Act relating to pupils of that school shall not apply to him.

53 Reception in Republic reform schools of juveniles from other territories

(1)(a) The State President may enter into an agreement with the head of the government of any territory in Africa for the reception into and retention in any reform school in the Republic of any person under the age of twenty-one years whose detention in a reform school has been ordered by a competent court or officer of the said territory according to the law in force therein.

[Para (a) amended by s 70 of Act 69 of 1962.]

(b) When such an agreement has been entered into, the Minister shall publish in the *Gazette* a notice of that fact and a summary of the terms of the agreement.

(2) The Minister may direct the reception and detention in a reform school of any person under the age of twenty-one years whose detention in a reform school has been ordered by a competent court or officer of a territory with the head of whose government the State President has entered into an agreement mentioned in subsection (1).

[Sub-s (2) substituted by s 14(a) of Act 74 of 1973.]

(3) Any person who was received into a reform school by direction of the Minister under sub-section (2) may be retained therein until the expiry of the period fixed by the court or officer which or who ordered the said person's detention in a reform school, but not for a longer period than the period for which he could have been retained therein in accordance with the provisions of section *three hundred and forty-three* of the Criminal Procedure Act, 1955 (Act 56 of 1955), if he had been sent to a reform school by order of a competent court in the Republic.

(4) The relevant provisions of this Act and of the regulations made thereunder and of the Criminal Procedure Act, 1955, shall apply to a person received into or detained in a reform school under the provisions of this section as if he had been sent to that reform school under sub-section (1) of section *three hundred and forty-two* of the last-mentioned Act: Provided that in connection with any such person the application of those provisions shall be subject to the following qualifications—

- (a) the Minister shall not transfer such a person under section *fifty* except to another reform school;
- (b) subject to the provisions of the agreement (if any) by virtue whereof such a person was received into a reform school, the Minister need not consult the board of that reform school in terms of the proviso to section *forty-nine* before discharging that person therefrom;
- (c) the board of the reform school in which such a person is detained, shall not release him on licence under sub-section (1) of section *forty-four*;
- (d) the provisions of sub-section (2) of section *three hundred and forty-three* of the Criminal Procedure Act, 1955, shall not apply to such a person.

[Sub-s (4) amended by s 14(b) of Act 74 of 1973.]

54 Abscondment of children or pupils from institutions or custody

(1) Any pupil who has absconded from any institution or any person who has absconded from any place of

safety or from the custody of any person in which he was placed under this Act, or the Criminal Procedure Act, 1955 (Act 56 of 1955), may be apprehended without warrant by any policeman or probation officer and shall be brought as soon as may be before a commissioner of child welfare of the district in which he was apprehended and may, until he can be brought before a commissioner, be kept in any place of safety or place of detention.

(2) Any child or pupil who has been granted leave of absence from any institution or from any custody in which he has lawfully been placed or who has been released on licence from an institution and who on the revocation or expiration of his leave of absence fails to return to the institution or custody from which he was granted leave of absence, or who, on the cancellation of his licence, fails to return to, or to enter the institution to which he was directed to return or which he was directed to enter as a result of the cancellation of his licence, shall be deemed to have absconded from the institution or custody from which he was granted leave of absence or from the institution to which he was so directed to return or which he was so directed to enter.

(3)(a) When any child or pupil is brought before a commissioner of child welfare under the provisions of sub-section (1) the commissioner may, after having interrogated the child or pupil as to the reasons why he absconded—

- (i) order that he be returned to the institution or to the custody or to the place of safety from which he absconded; or
- (ii) if the commissioner is of the opinion that there are good reasons why the child or pupil should not be returned to the institution or to the custody or to the place of safety from which he absconded, order that he be removed to a place of safety or place of detention and be kept therein pending any action by the Minister under sub-section (4).

(b) The Commissioner shall in each case report to the Minister the result of his interrogation of the child or pupil and notify the Minister of any order made under sub-paragraph (i) or (ii) of paragraph (a).

[Sub-s (3) substituted by s 8(a) of Act 50 of 1965.]

(4) Where an order has been made under sub-paragraph (ii) of paragraph (a) of sub-section (3), the Minister may, after consideration of the commissioner's report and after such enquiry as he may deem necessary—

- (a) deal with the child or pupil concerned under sub-section (1) of section *forty-eight bis* as if he were a child or pupil referred to therein;
- (b) order that the child or pupil concerned be returned to the institution or to the custody or to the place of safety from which he absconded; or
- (c) deal with the child or pupil concerned under section *forty-nine* or sub-section (1) of section *fifty* as if he were still in the institution or the custody or the place of safety from which he absconded.

[Sub-s (4) added by s 8(b) of Act 50 of 1965.]

(5) Any commissioner may order that any child or pupil be kept in a place of safety or a place of detention until effect can be given to any order made in respect of such child or pupil under sub-paragraph (i) of paragraph (a) of sub-section (3) or paragraph (b) of sub-section (4) or in pursuance of the provisions of paragraph (c) of sub-section (4).

[Sub-s (5) added by s 8(b) of Act 50 of 1965.]

55 Unlawful removal of juveniles or inciting them to abscond

Any person who abducts or removes any child or pupil, or directly or indirectly counsels, induces or aids any child or pupil to abscond from any institution, place of safety, place of detention or custody in which the child or pupil was lawfully placed or knowingly harbours, or conceals a child or pupil who has been abducted or removed or has absconded as aforesaid or prevents him from returning to the institution, place of safety, place of detention or custody from which he was abducted or removed or absconded shall be guilty of an offence.

56 Imprisonment of absconding pupils

(1) Any pupil over the age of eighteen years who absconds from any reform school shall be guilty of an offence and he may, with the consent of the Minister, be charged with that offence before any competent court within whose area of jurisdiction the pupil was apprehended or the reform school from which the pupil absconded, is situated, and he shall on conviction be liable to imprisonment for a period not exceeding six months.

(2) When the pupil has undergone any sentence imposed upon him under sub-section (1) he may be returned to the reform school from which he absconded or be transferred to any other reform school, or may be discharged.

57 Inspection of children maintained apart from their parents, and of the places where they are maintained

(1) Subject to the laws governing the public service, the Minister may from time to time appoint so many officers in the public service as he shall deem necessary for the inspection of children's homes, places of care and children under this Act.

(2) Any inspector appointed under this section may, subject to any directions given by the Minister, enter any children's home or place of care or the dwelling of any person in whose custody a child has been placed under this Act or under section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955), and may inspect any such children's home, place of care or dwelling, and the books and documents appertaining thereto and any pupil or child therein.

(3) The powers conferred by this section upon an inspector may also be exercised by any commissioner of child welfare within his district and by any probation officer who has generally or in any case specially been authorized thereto by the Minister.

(4) The Minister may by order in writing authorize and direct any inspector appointed under this section or any commissioner or any probation officer to visit and inspect any children's home, place of care or dwelling specified in the order in which any child or pupil is being maintained apart from his parents, in circumstances which are believed upon reasonable grounds to be detrimental to the child, and to inspect any such child or pupil.

(5) Any person who obstructs any commissioner or any inspector appointed or probation officer authorized under this section in the exercise of the powers conferred upon him by this section or who fails to produce any child, pupil, book or document in his custody whose production a commissioner or such an inspector or probation officer has demanded shall be guilty of an offence; and a refusal by the managers of any such children's home or place of care or by the occupier of any

such dwelling as aforesaid to allow a commissioner, inspector, or probation officer to enter and inspect that children's home, place of care or dwelling, or to have access to any such child or pupil, shall be a reasonable ground within the meaning of section *twenty-nine*, for suspecting that an offence mentioned in the First Schedule to this Act is being or has been committed upon or in connection with a child or pupil in that children's home, place of care or dwelling.

58 Probation officers

(1) Subject to the laws governing the public service the Minister may appoint persons of either sex to be probation officers, whose functions shall be—

- (a) to enquire into and report to the court or magistrate upon the character and environment of children or persons under the age of twenty-one years on trial before that court or undergoing preparatory examination before that magistrate and into and upon the causes and circumstances contributing to the delinquency of such children or persons: Provided that nothing contained in this paragraph shall be construed as varying the provisions of any law governing the admissibility of evidence in criminal cases;
- (b) to devise and carry out measures for the observation and correction of tendencies to delinquency in children and for the discovery and removal of conditions causing or contributing to juvenile delinquency;
- (c) to supervise or control any child or person convicted of an offence and placed under the supervision of the probation officer;
- (d) to perform such other duties as may be imposed upon them by this Act or any other law or by the Minister.

(2) A probation officer shall be an officer of every children's court and every magistrate's court.

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

59 Transfer of certain parental powers

(1)(a) Subject to the provisions of sub-section (3), a parent or guardian of any pupil of an institution or of any child who has under this Act or under section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955), been placed in any custody other than the custody of the parent or guardian, shall be divested of his right of control over and of his right to the custody of that pupil or child and those rights, including the right to punish and to exercise discipline, shall be vested—

- (i) in the management of the institution to which the pupil was sent; or
- (ii) in the person in whose custody the child was placed; or
- (iii) in the case of any pupil to whom a licence was granted under section *forty-four* to live in the custody of any person or in any training institution, in such person or in the managers of such training institution.

(b) The management of any such institution or the managers of any such training institution may authorize the principal of the institution or the head of the training institution to exercise on their behalf any powers in connection with punishment and discipline which are conferred upon them in terms of this sub-section.

(2) If a minor living with his parent or guardian has, by virtue of an order made or licence granted under this Act, or the Criminal Procedure Act, 1955, been placed on probation or under the supervision or control of a probation officer, person or association of persons the parent or guardian shall exercise his right of control over the minor in accordance with any directions which he may have received from the said probation officer, person, or association.

(3) The rights transferred by sub-section (1) from a parent or guardian to the management of any institution or the managers of any training institution or to any other person shall not include the power to deal with any property of a pupil or child or the power to consent to the marriage of a pupil or child or to the performance upon or the provision to a pupil or child of an operation or medical treatment which is attended with serious danger to life.

(4) If the Minister, after due enquiry, is satisfied that it is in the interest of a pupil or child mentioned in paragraph (a) of sub-section (1) to contract a marriage and that a parent or the guardian of the pupil or child unreasonably refuses to consent to that marriage, or that a parent who has not consented to the marriage or both parents or the guardian cannot be found, or that a parent or the guardian is deceased or is because of any mental disorder, incompetent to give consent, the Minister may himself grant consent to the marriage and his consent shall for the purposes of any law relating to the solemnization of marriages have the same effect as the consent of the parent or guardian.

(5) If the Minister is satisfied, after due enquiry, that the performance upon or the provision to any such pupil or child of an operation or medical treatment which is attended with serious danger to life, is necessary, and that a parent or the guardian of the pupil or child unreasonably refuses his consent to the performance or provision of the operation or medical treatment, or that a parent who has not consented to the operation or medical treatment or both parents or the guardian cannot be found or that a parent or the guardian is deceased or is, because of any mental disorder, incompetent to give consent, the Minister may himself authorize the performance of the operation upon or the provision of the medical treatment to the pupil or child.

(6) If the principal of the institution in question or the head of the training institution in question or the person in whose custody the pupil or child is, has reasonable grounds for believing that the performance of any operation upon or the provision of medical treatment to the pupil or child is necessary to preserve his life or to save him from a serious and lasting physical injury or disability and that the need for the operation or medical treatment is so urgent that it ought not to be deferred for the purpose of consulting the parents or guardian of the pupil or child, or the Minister, the principal or the head or the person concerned may himself authorize its performance upon or provision to the pupil or child.

(7) Notwithstanding anything to the contrary in any law contained, a marriage of any pupil or child mentioned in subsection (1)(a), whether contracted with or without the consent of the parent or guardian of such pupil or child, may at any time within six months after the date of the marriage, on application by the Minister to a competent Division of the Supreme Court or, where both parties to the marriage are Blacks, to the Divorce Court (if any) having jurisdiction in the area in which the pupil or child resides, be annulled by such Court if in the

opinion of the Court the annulment is in the interests of the pupil or child.

[Sub-s (7) substituted by s 15 of Act 74 of 1973.]

60 Deprivation of father or mother of parental power

(1) If a children's court is satisfied that a child is living with his mother apart from his father because his father deserted or habitually ill-treated the child or his mother or refused to maintain either of them or that a child is living with his father apart from his mother, the court may notwithstanding anything to the contrary in any law contained, on the application of the mother or of the father, as the case may be, deprive the father or the mother of the right to exercise in regard to that child any parental powers and confer upon the mother or the father of the child the exclusive right to exercise those powers (including the power to grant consent to the marriage or adoption of the child): Provided that if the place of residence or address of the father or the mother is known the court shall not deprive him or her of his or her parental powers unless reasonable notice has been given to him or her to show cause why he or she should not be deprived of his or her parental powers, and he or she has failed to do so.

(2)(a) On the application of a father or a mother who has been deprived of his or her parental powers in regard to his or her child, as aforesaid, the court which so deprived him or her may at any time rescind the order whereby he or she was so deprived and reinvest him or her with the said powers, if the court is satisfied (after having given to the mother or the father of the child concerned, as the case may be, an opportunity to oppose the application and to adduce reasons for her or his opposition) that he or she will exercise those powers satisfactorily and that the rescission of the order will not be to the detriment of the child.

(b) The rescission of any order mentioned in paragraph (a) shall not affect the validity of anything done before the rescission of such order.

(3) Any person who has under sub-section (1) been deprived of his or her parental powers over his or her child or whose application under sub-section (1) or (2) was refused, may appeal against the order whereby he or she was so deprived, or against the said refusal to the division of the Supreme Court having jurisdiction to hear appeals from the magistrate's court of the district in which the order was made, or the application was refused, and that Division may thereupon make such an order as the children's court could have made, or disallow the appeal.

(4) An appeal under sub-section (3) shall be noted and prosecuted *mutatis mutandis* as if it were an appeal against a civil judgment of a magistrate's court.

(5) In any such appeal the Minister shall be cited as respondent and no costs of any such appeal shall be recoverable by either party thereto from the other party.

61 Unlawful removal of child or pupil from Republic

Any person who, without the consent in writing of the Minister, removes from the Republic a pupil of an institution or a protected infant or a child who is by virtue of any provision of this Act or by virtue of any order made under such a provision or under section three hundred and forty-two of the Criminal Procedure Act, 1955 (Act 56 of 1955), in the custody or under the control or supervision of any person, institution or association, shall be guilty of an offence.

CHAPTER VI

CONTRIBUTION ORDERS (ss 62-69)

62 Children's court or magistrate's court may make contribution orders or provisional contribution orders

- (1) A contribution order may be made—
- (a) by a children's court against a respondent residing, carrying on business or employed within the jurisdiction of that court, for the maintenance of a child brought before that court for the purpose of an enquiry under section *thirty*;
- (b) by a magistrate's court against a respondent residing, carrying on business or employed within the jurisdiction of that court for the maintenance of any child or any pupil of an institution,

and any such order shall have effect from the date on which it is made unless the court orders that it shall have effect from an earlier or later date.

(2) A provisional contribution order may be made against a respondent resident in any country which is a 'proclaimed country' within the meaning of section *one* of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act 80 of 1963), by a children's court for the maintenance of any child brought before that court for the purpose of an enquiry under section *thirty* or by a magistrate's court for the maintenance of any person under the age of twenty-one years whom that court or a superior court sitting in the area of the said magistrate's court's jurisdiction has ordered to be sent to a reform school or placed in the custody of any person in terms of section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955).

[Sub-s (2) amended by s 16 of Act 74 of 1973.]

63 Effect of contribution orders

(1) A contribution order and a provisional contribution order made under this Chapter shall have the effect respectively of a maintenance order and of a provisional maintenance order in terms of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act 80 of 1963).

(2) A contribution order shall have the effect of a civil judgment of a magistrate's court against the respondent in favour of the Government of the Republic, and the clerk of the magistrate's court of the district in which such an order has been made shall take such steps for enforcing the order as may be prescribed, and the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), or the Black Administration Act, 1927 (Act 38 of 1927), or the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), of the territory, as the case may be, and of the rules made under the relevant Act or the said Proclamation shall apply to any proceedings for the enforcement of such an order.

[S 63 amended by s 18 of Act 101 of 1969 and substituted by s 17 of Act 74 of 1973.]

64 Provisions of contribution order

(1) A contribution order shall direct the respondent to pay the sum stated therein to an officer of the court making or confirming the order or to such other officer as that court may determine.

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

65 Court may order attachment of wages in payment of contribution order

(1)(a) Any court which has made a contribution order under this Chapter may at any time by order in writing

require any employer of the respondent to deduct from any wages which are payable or which may become payable to the respondent an amount sufficient to pay any amount payable in terms of the contribution order.

(b) An employer shall forthwith pay any amount which he has so deducted to any officer indicated in the order.

(2) A court which has made an order in terms of sub-section (1) may at any time vary, suspend or rescind any such order.

66 Variation, suspension or rescission of contribution order

(1) A court which has made a contribution order may at any time vary, suspend or rescind the order or revive the order after it has been rescinded.

(2) Any order made under sub-section (1) shall have effect from the date on which it is made, unless the court directs that it shall have effect from some specified earlier or later date: Provided that no rescission or variation of a contribution order with effect from an antecedent date shall entitle the respondent to recover or set off any money already paid by him in accordance with the terms of the contribution order.

67 Appeal against contribution order, etc.

(1) An appeal shall lie against any contribution order or against the variation, suspension, rescission or revivor of a contribution order or against the refusal of an application for a contribution order or for the variation, suspension, rescission or revivor of a contribution order, to the competent Division of the Supreme Court, and if brought, shall be noted and prosecuted, as if it were an appeal against a civil judgment of a magistrate's court.

(2) If such an appeal is brought by a respondent, the Minister shall be cited as respondent in the appeal.

68 Change of place of residence or place of work of respondent

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

(b) Any person who fails to give notice as required by this sub-section shall be guilty of an offence.

(2) When a respondent against whom a contribution order is in force, removes to and becomes resident or takes up employment in a district other than that of the court which made the order, that court may, if it deems it desirable, without prior notice to the respondent, vary the order by designating as the officer to whom payment shall be made, an officer of the corresponding court of the district to which respondent has removed or where he has taken up employment, and when a court has so varied an order it shall transmit a certified copy of the order to the court to which the officer designated as aforesaid is attached and inform the respondent by notice in writing of the variation of the order and thereupon the order shall have effect and be enforceable as if it were an order of such last mentioned court.

69 Service of process, execution of contribution orders and costs

(1) Any summons, rule, subpoena or notice in connection with any proceeding under this Chapter may

be served without fee by any policeman in the manner prescribed by the rules framed under the Magistrates' Courts Act, 1944 (Act 32 of 1944), or the regulations made under the Black Administration Act, 1927 (Act 38 of 1927), or the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), of the territory, as the case may be, for the service of similar documents in civil proceedings in magistrates' courts or Commissioners' courts, unless any other manner of service has been prescribed under section 92(1)(o) of this Act.

[Sub-s (1) substituted by s 18 of Act 74 of 1973.]

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

(3) Save as provided in sub-section (2) no costs of any proceedings under this Chapter (including an appeal mentioned in section *sixty-seven*) shall be recoverable by any party thereto from any other party, and no court fee shall be payable in connection with the issue or lodgment of any document in any such proceeding.

CHAPTER VII

ADOPTION OF CHILDREN (ss 70–82A)

70 Qualifications for adoption of children

(1) Subject to the provisions of sub-sections (2) and (3) the following persons may adopt any child—

- (a) a husband and his wife jointly;
- (b) a widower or widow or unmarried or divorced person;
- (c) a married person whose spouse is at the time of the adoption, and has been for a continuous period of not less than seven years immediately preceding that time mentally disordered or defective, within the meaning of section *two* of the Mental Disorders Act, 1916 (Act 38 of 1916);
- (d) a married person who is separated from his or her spouse by judicial decree.

(2) No person under the age of twenty-five years shall adopt any child unless—

- (a) he or she is a widower or widow or an unmarried or divorced person and the child is a child born of him or her; or
- (b) he or she is married and the child is a child born of one of the spouses and is adopted by the spouses jointly and is at least fifteen years younger than the husband, if born of the wife, or at least ten years younger than the wife, if born of the husband.

[Sub-s (2) substituted by s 9(a) of Act 50 of 1965.]

(2)*bis* No person shall adopt a child of the age of sixteen years or more unless—

- (a) he or she is a widower or widow or an unmarried or divorced person and the child is a child born of him or her; or
- (b) he or she is married and the child is a child born of one of the spouses and is adopted by the spouses jointly and is at least fifteen years younger than the husband, if born of the wife, or at least ten years younger than the wife, if born of the husband; or
- (c) he or she is a widower or widow or an unmarried or divorced person and, if not of the same sex as the child, is at least twenty-five years older than the

child, or, if of the same sex as the child, is at least eighteen years older than the child; or

- (d) he or she is married and the child, if not of the same sex as the husband, is at least twenty-five years younger than he is and at least eighteen years younger than the wife, or, if of the same sex as the husband, is at least eighteen years younger than he is and at least twenty-five years younger than the wife.

[Sub-s (2)*bis* added by s 9(a) of Act 50 of 1965.]

(3) No person shall adopt a child who is under the age of sixteen years and less than twenty-five years younger than the said person, unless—

- (a) the child is of the same sex as that person; or
- (b) that person is a widower or widow or an unmarried or divorced person and is a natural parent of the child; or
- (c) that person is married and adopts the child jointly with his or her spouse.

[Sub-s (3) substituted by s 9(b) of Act 50 of 1965.]

71 Adoption orders

(1)(a) The adoption of a child shall be effected by the order of the children's court of the district in which the adopted child resides, granted on the application of the adoptive parent or parents.

(b) In considering any such application the children's court shall have regard to all the matters mentioned in sub-section (2) of section *thirty-five*.

(2) Save as provided in section *seventy-two*, a children's court to which application for an order of adoption of a child is made shall not grant the application unless the court is satisfied—

- (a) that the applicant is or that both applicants are qualified to adopt the child; and
- (b) that the applicant is or that both applicants are of good repute and a person or persons fit and proper to be entrusted with the custody of the child and possessed of adequate means to maintain and educate the child; and
- (c) that the proposed adoption will serve the interests and conduce to the welfare of the child; and
- (d) that consent to the adoption has been given—

(i) by both parents of the child, or, if the child is illegitimate, by the mother of the child, whether or not such mother is a minor or married woman and whether or not she is assisted by her parent, guardian or husband, as the case may be; or

(ii) if both parents are dead, or, in the case of an illegitimate child, if the mother is dead, by the guardian of the child; or

(iii) if one parent is dead, by the surviving parent and by any guardian of the child who may have been appointed by the deceased parent; or

(iv) if one parent has deserted the child, by the other parent; or

(v) if one parent is as a result of mental disorder or defect incompetent to give consent to the adoption of the child or has in terms of section *three hundred and thirty-five* of the Criminal Procedure Act, 1955 (Act 56 of 1955), been declared an habitual criminal, by the other parent; or

(vi) if one parent is dead and the surviving parent has deserted the child or is as a result of mental disorder or defect incompetent to give consent to the adoption of the child or has in terms of

section *three hundred and thirty-five* of the Criminal Procedure Act, 1955, been declared an habitual criminal, by any guardian of the child who may have been appointed by the deceased parent; and

- (e) that the child, if over the age of ten years, consents to the adoption; and
- (f) in the case of a child born of any person who is a South African citizen, that the applicant or one of the applicants is a South African citizen resident in the Republic: Provided that the provisions of this paragraph shall not apply—
 - (i) where the applicant or one of the applicants is a South African citizen or a relative of the child and is resident outside the Republic; or
 - (ii) where the applicant is not a South African citizen or both applicants are not South African citizens but the applicant has or the applicants have the necessary residential qualifications for the grant to him or them under the South African Citizenship Act, 1949 (Act 44 of 1949), of a certificate or certificates of naturalization as a South African citizen or South African citizens and has or have made application for such a certificate or certificates,

and the Minister has approved of the adoption.

[Para (f) substituted by s 10 of Act 50 of 1965.]

(3) The consent mentioned in paragraphs (d) and (e) of sub-section (2) shall be in writing and shall, if given within the Republic, be signed by the person or persons giving the consent in the presence of a commissioner of child welfare, who shall attest the consent, or, if given outside the Republic, shall be signed and attested in the manner prescribed and any such consent shall be filed with the records of the application and shall further set out the names of the proposed adoptive parents: Provided that the court on application by them and on proof to its satisfaction that the parents or guardian of the child consents to the non-disclosure to them or him of the identity of the applicants and that the interests of the child will be served thereby may with the approval of the Minister admit as satisfying the requirements of paragraph (d) of sub-section (2) a consent which does not set out the names or any other particulars of the proposed adoptive parents: Provided further that the court shall admit as satisfying the requirements of paragraphs (d) and (e) of sub-section (2), a consent given outside the Republic which has not been signed or attested in the manner prescribed or which does not set out the names or any other particulars of the proposed adoptive parents, if that consent has been approved of in writing by the Minister for the purposes of this section.

(4) For the purposes of sub-paragraphs (v) and (vi) of paragraph (d) of sub-section (2) a parent shall not be regarded as being incompetent as a result of mental disorder or defect unless the court is satisfied that the condition of mental disorder or defect is likely to be permanent.

(5) If the applicant for an order of adoption of a child is such a person as is described in paragraph (c) or (d) of sub-section (1) of section *seventy*, the court shall not grant the order unless it is satisfied that the condition of mental disorder or defect of the applicant's spouse or the separation between the applicant and his spouse, as the case may be, is likely to be permanent.

(6) The court may take evidence on oath either by affidavit or *viva voce* concerning any matter as to which

it is required by this section to satisfy itself, or concerning any other matter which may appear to it to be relevant.

(7) Before dealing with an application for an adoption order, the court to which the application was made, may direct that the applicant deposit with the clerk of the court a sum of money sufficient to cover all the expenses and allowances which the applicant may have to pay under sub-section (8) of section *eight*.

(8) A court may, on the application of the adoptive parent or adoptive parents of an adopted child, correct any obvious error in an adoption order made under sub-section (1).

72 Circumstances under which consent may be dispensed with

(1) If application is made for an order of adoption of a child—

- (a) whose parents are dead, or, in the case of an illegitimate child, whose mother is dead; or
- (b) whose parents, or, if one parent is dead, whose surviving parent, or, if the child is an illegitimate child, whose mother—
 - (i) have or has deserted the child;
 - (ii) are or is as a result of mental disorder or defect incompetent to give consent to the adoption of the child;
- (iii) have or has in terms of section *three hundred and thirty-five* of the Criminal Procedure Act, 1955 (Act 56 of 1955), been declared habitual criminals or an habitual criminal; or
- (c) one of whose parents has deserted him and whose other parent—
 - (i) is as a result of mental disorder or defect incompetent to give consent to the adoption of the child;
 - (ii) has in terms of section *three hundred and thirty-five* of the Criminal Procedure Act, 1955, been declared an habitual criminal,

and for whom no guardian has been appointed, the children's court may, notwithstanding the provisions of paragraph (d) of sub-section (2) of section *seventy-one*, grant such application.

(2) Where application is made for an order of adoption of a child of a parent who has deserted such child the court shall not grant the application under sub-section (1) unless—

- (a) if the place of residence or address of the parent is known to the court, such parent has been given a reasonable opportunity to oppose the application; and
- (b) if the parent is a parent who is in terms of paragraph (a) of sub-section (1) of section *seventy-three* deemed to have deserted the child, a report has been obtained from a probation officer or an authorized officer and the court is satisfied that there is no likelihood that the child will in the near future be returned to the custody of the parent if no order for the adoption of the child is made.

(3) For the purposes of sub-section (1) a parent shall not be regarded as being incompetent as a result of mental disorder or defect unless the court is satisfied that the condition of mental disorder or defect is likely to be permanent.

73 Circumstances under which a parent shall be deemed to have deserted a child

(1) For the purposes of this Chapter a parent of a child shall be deemed to have deserted that child also—

- (a) if the child has at any time been found to be a child in need of care because his parent has been convicted under section 18(1) of this Act or under section 16(1) of the Children's Ordinance, 1961 (Ordinance 31 of 1961), of the territory, of ill-treating or neglecting him or because he was in a state of physical or mental neglect for which his parent was responsible according to the opinion of the children's court which found the child to be a child in need of care, and has in terms of this Act been placed in any custody other than the custody of the said parent or sent to a children's home or school of industries and has for a period of not less than two years not been returned to the custody of his parent: Provided that in calculating such period no period before the commencement of this Act shall be taken into account; or

[Para (a) amended by s 19 of Act 74 of 1973.]

- (b) if he is legally liable to maintain such child and has, while able to do so, failed to provide him with adequate food, clothing, lodging and medical aid; or
- (c) if a contribution order has been made against such parent in terms of section *sixty-two* and he has, while able to do so, continuously neglected or refused to pay the amount due in terms of the contribution order.

(2) Until such time as the contrary has been proved, a parent shall be deemed to have been able to provide such child with adequate food, clothing, lodging and medical aid or to pay the amount due by him in terms of a contribution order.

74 Effect of adoption

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

(2) Subject to the provisions of section *eighty-two*, an adopted child shall for all purposes whatsoever be deemed in law to be the legitimate child of the adoptive parent: Provided that an adopted child shall not by virtue of the adoption—

- (a) become entitled to any property devolving on any child of his adoptive parent by virtue of any instrument executed prior to the date of the order of adoption (whether the instrument takes effect *inter vivos* or *mortis causa*), unless the instrument clearly conveys the intention that that property shall devolve upon the adopted child;
- (b) inherit any property *ab intestato* from any relative of his adoptive parent.

(3) An order of adoption shall terminate all the rights and legal responsibilities existing between the child and his natural parents and their relatives, except the right of the child to inherit from them *ab intestato*.

(4) When an order is made for the adoption of any child, any order made in respect of that child under section *thirty-one* of this Act or section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955), and any amendment of any such order, shall lapse.

75 Court may permit certain persons to visit adopted child during two years after adoption

The court may at the time of making an order of adoption or at any time thereafter direct that a parent or the guardian of the child (other than a parent or guardian whose consent to the non-disclosure to him of the identity of the adoptive parents has been accepted as provided in sub-section (3) of section *seventy-one*) or any probation officer or any officer of an approved agency

shall during a period not exceeding two years as from the date of adoption have access to the child at such times and places and on such conditions as the court may determine and may at any time on the application either of the parent or guardian or of the adoptive parents or parent of the child after due notice to any other party affected by the direction, rescind it or vary it in regard to the times, places and conditions of access: Provided that the court shall not make such a direction if it will probably be to the detriment of the child.

76 Rescission of order of adoption

(1) A parent of a child for whose adoption an order has been made under this Chapter, or the person who was at the time of the making of the order the guardian of the child or the adoptive parent or parents of such a child, or the Minister may apply to the court by which the order was made for the rescission thereof on one or more of the following grounds, namely—

- (a) if the applicant is the parent of the child, that he did not consent to the adoption and that the order of adoption should not have been made without his consent; or
- (b) if the applicant is an adoptive parent, that his adoption of the child was induced by fraud, misrepresentation or *justus error*, or that the child is a mentally disordered or defective person as described in one or other of the Classes III, IV, V and VII mentioned in section *three* of the Mental Disorders Act, 1916 (Act 38 of 1916), and that the mental disorder or defect existed at the time of the making of the order of adoption; or
- (c) that for reasons set out in the application the adoption is to the detriment of the child.

(2)(a) If the application is made on the grounds mentioned in paragraph (a) of sub-section (1) it shall be made within a period of six months as from the date upon which the applicant became aware of the fact that an order for the adoption of his child had been made but not later than two years as from the date upon which that order was made.

(b) If the application is made upon the ground mentioned in paragraph (b) of sub-section (1) it shall be made within six months as from the date upon which the applicant became aware of that ground.

(c) If the application is made on the ground mentioned in paragraph (c) of sub-section (1) it shall be made within a period of two years as from the date upon which the order of adoption was made.

(3) An application on the ground that the child is a mentally disordered or defective person may only be made if the applicant was, or if husband and wife jointly adopted the child in question, they both were, at the time of the making of the order of adoption ignorant of the mental disorder or defect of the child and this ignorance was not due to failure of the adoptive parent or parents to exercise reasonable care in examining the child or causing it to be examined.

(4) If the application is made by a parent of the child, he shall give due notice of the application to the adoptive parent or parents.

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

(6) If the application is made by the Minister, he shall give due notice to the parent or parents, to the adoptive parent or parents, and to the said guardian, if he or they can be found.

(7) The court to which the application is made shall, after having satisfied itself that the applicant has complied with sub-section (4), (5) or (6) and after having afforded any person interested in the application, an opportunity to be heard and after having considered any relevant evidence, whether oral or in the form of an affidavit, which was tendered in support of or in opposition to the application, rescind or confirm the order of adoption: Provided that it shall not rescind an order of adoption on the application of a parent of the adopted child if the court is satisfied that the applicant is unfit to have the custody of the child and that it is in the interest of the child that the order of adoption be confirmed.

(8) On the rescission of an order of adoption the child shall for all purposes be restored to the position in which it would have been if no order of adoption had been made: Provided that the rescission shall not affect anything lawfully done while the order of adoption was in force.

77 Appeal from order of adoption or from rescission of adoption or from refusal to rescind

(1) An order of adoption and a rescission of an order of adoption and the refusal of an application for the rescission of an order of adoption shall be subject to an appeal to the competent Division of the Supreme Court as if the order, rescission or refusal were a judgment of a magistrate's court.

(2) An appeal against an order of adoption may be brought by the parent or guardian of the adopted child.

(3) An appeal against the rescission of an order of adoption may be brought by a parent, guardian or adoptive parent of the child in question, who did not apply for the rescission.

(4) An appeal against a refusal of an application for the rescission of an order of adoption may be brought by the applicant concerned.

(5)(a) In such an appeal brought by a parent or guardian, the adoptive parent of the child in question shall be cited as respondent, and in such an appeal brought by an adoptive parent, the parent or guardian (if any) of the child in question shall be cited as respondent, unless, in either case, the appeal is brought against a rescission granted upon the application of the Minister, in which event the Minister shall be cited as respondent.

(b) In an appeal brought by the Minister against the refusal of an application made by him for the rescission of an order of adoption, the persons mentioned in sub-section (6) of section *seventy-six* shall be cited as respondents.

(6) In this section 'guardian' means the person who was at the time of making of the order of adoption the guardian of the child in question.

78 Adoption of adopted child

(1) An adopted child shall be capable of adoption, and upon the making of an order for the adoption of a previously adopted child all the legal consequences of the earlier adoption shall determine, save in so far as the adopted child has acquired any property by virtue of the earlier adoption.

(2) For the purposes of any proceedings for the adoption of a child who has been previously adopted the parents who previously adopted the child shall have the rights and be subject to the obligations conferred and imposed upon parents by any provision of this Chapter, and the terms 'parent' and 'parents' shall in any such provision be construed accordingly.

79 No consideration in connection with adoption permissible

If—

- (a) any person who has obtained an order of adoption of a child or who has applied for such an order or who intends to apply for such an order, gives or undertakes to give any consideration in respect of the adoption;
- (b) any person who has obtained an order of adoption of a child or who has applied for such an order, save with the consent of the court which made the order or to which application for the order is made, receives or contracts to receive any consideration in respect of the adoption;
- (c) any parent or guardian of a child receives or contracts to receive any consideration in respect of the adoption of the child or, save with the consent of the court which made the order or to which application for the order is made, gives or undertakes to give any consideration;
- (d) any other person receives or contracts to receive or gives or undertakes to give any consideration in respect of the adoption of any child,

he shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred pounds or in default of payment of such fine to imprisonment for a period not exceeding five years or to such imprisonment without the option of a fine.

80 Alteration of births register as a result of adoption

(1) When an order has been made for the adoption of a child whose birth has been registered in the Republic, the Secretary for the Interior, if the child is not a Black, or if the child is a Black, the Secretary for Plural Relations and Development shall on the application of the adoptive parent and on production of the order of adoption or of a certified copy thereof and on payment of the prescribed fee (if any), cause the fact of adoption and a statement whether the name of the adoptive parent was or was not conferred upon the child by virtue of the adoption, to be recorded on the birth register of the child, as defined in the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963), filed in his office.

[Sub-s (1) substituted by s 50 of Act 58 of 1970.]

(2) If the name of an adoptive parent has been conferred upon an adopted child and that fact has been recorded on the original birth information form, a birth certificate in the name of the adoptive parent may be issued in respect of the child.

81 Registration of birth of adopted child born outside Republic

When an order has been made whether before or after the commencement of this Act for the adoption of a child born outside the Republic the Secretary for the Interior, if the child is not a Black, or if the child is a Black, the Secretary for Plural Relations and Development shall on the application of the adoptive parent and on production of—

- (a) the order of adoption or a certified copy thereof; and
- (b) the birth or baptismal certificate of the child or a certified copy thereof or if no such certificate is available, such documentary evidence relating to the date of birth of the child as such Secretary may deem sufficient or, if the age of the child has been estimated in terms of section 85, a certificate signed

- by a commissioner of child welfare specifying the age of the child as so estimated; and
- (c) the form prescribed under the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963), for use in connection with the registration of a birth, completed as far as may be possible and signed by the adoptive parent,
- and on payment of the prescribed fee (if any), cause the birth of that child to be recorded in his registers and shall cause the fact of adoption and a statement whether the name of the adoptive parent was or was not conferred upon the child by virtue of the adoption, to be recorded on the birth register of the child, as defined in the said Act, filed in his office.

[S 81 substituted by s 51 of Act 58 of 1970.]

82 Effect of adoption on marriage

An adoption (whether under this Act or under a law repealed by this Act) shall not have the effect of permitting or prohibiting any marriage or carnal intercourse (other than a marriage or carnal intercourse between the adoptive parent and the adopted child) which, but for the adoption, would have been prohibited or permitted.

82A Application of provisions of Chapter VII in connection with Blacks

In the application of the provisions of this Chapter in respect of a person who is a Black, any customary union as defined in section 35 of the Black Administration Act, 1927 (Act 38 of 1927), or in section 25 of the Native Administration Proclamation, 1928 (Proclamation 15 of 1928), of the territory, as the case may be, shall be deemed to be a marriage between the parties concerned, and any reference to a husband, wife, widower, widow, divorced person, married person or spouse shall be construed accordingly.

[S 82bis inserted by s 11 of Act 50 of 1965 and substituted by s 82A by s 20 of Act 74 of 1973.]

CHAPTER VIII

GENERAL AND SUPPLEMENTARY PROVISIONS (ss 83–106)

83 Temporary custody of children of parents who are living apart

(1) Where the parents of a child in respect of whose custody no order of a competent court is in force are living apart, the children's court of the district in which the child resides or happens to be may, on the application of either parent, if it is proved that it would be in the interests of the child to do so, order that the child be placed in the temporary custody of either parent or of any other suitable person.

(2) A children's court shall not make an order under sub-section (1) unless—

- (a) the parent making the application has given due notice of the application to the other parent and the court has given both parents an opportunity of submitting any relevant evidence to the court; and
- (b) a report of a probation officer or an authorized officer in connection with the matter has been submitted to the court.

(3) A child who has, in terms of sub-section (1), been placed in the temporary custody of any person shall remain in that custody for such a period, not exceeding one year, as the children's court may determine in its order: Provided that where a period of less than one year

has been determined the children's court which made the order may, on the application of either parent and after due notice to the other parent, order that the child shall remain in the custody in question for such further period or periods as the court may determine but which shall, together with the original period, not exceed one year.

(4) An order under sub-section (1) for the temporary custody of a child shall lapse—

- (a) when the parents have ceased to live apart and have lived together again for a continuous period of not less than three months; or
- (b) when any other competent court makes an order in regard to the custody of the child.

(5) A children's court may at any time, on the application of either parent and after due notice to the other parent, rescind or vary any order made by the court in terms of this section.

(6) A children's court may at the time of making an order for the temporary custody of a child or at any time thereafter direct that a parent of the child or any probation officer or any officer of an approved agency shall during the period during which the child is in the temporary custody of any person have access to the child at such times and places and on such conditions as the court may determine.

84 Commissioner may order parent to produce his child before children's court

(1) If it appears to any commissioner of child welfare from information on oath that there is within his district any child in the custody of his parent or guardian who is in need of care, protection or control or who has absconded from any place to which he was sent or from the custody of any person in which he was placed under this Act, or the Criminal Procedure Act, 1955 (Act 56 of 1955), the commissioner may by notice, in writing, served in a manner prescribed, order that parent or guardian to produce the child before the children's court on a day and at a time stated in the notice.

(2) Any parent or guardian who fails without reasonable excuse (the burden of proof whereof shall rest upon him) to comply with the requirements of a notice served upon him in terms of sub-section (1) shall be guilty of an offence.

85 Estimating age of person

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

(2) When an order has been issued under sub-section (5) of section fifty in respect of any person in regard to whose age insufficient evidence is available, he shall without delay be brought before the commissioner of child welfare of the district in which the prison or gaol in which he is detained, is situated, and the said commissioner shall estimate his age in accordance with the provisions of sub-section (1) of this section.

(3)(a) If, after the age of any person has been estimated in terms of sub-section (1) or (2), information is submitted to the Minister which satisfies him that the age so estimated is not the true age of the person concerned the Minister may determine that any age, other than the estimated age, was the true age of that person on the date when the estimate was made and

thereupon the person concerned shall be dealt with as if the age so determined were the true age.

(b) Such determination of the age shall not affect the validity of anything done before the determination and which could lawfully have been done if the estimated age had been the true age.

(3)*bis* (a) If, after the Minister has made a determination in terms of paragraph (a) of sub-section (3), further information is submitted to him which satisfies him that the determination made was not correct, he may make a fresh determination of the age of the person concerned in terms of the said paragraph as if the first determination had not been made.

(b) Such fresh determination of the age shall not affect the validity of anything done before such determination and which could lawfully have been done if the estimated age or the age first determined had been the true age.

[Sub-s (3)*bis* inserted by s 12 of Act 50 of 1965.]

(4) The age of a person estimated as provided in sub-section (1) or (2) shall be deemed to have been attained on the day on which the estimate is made.

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

(b) If at any time the Minister finds on information submitted to him that the person in question was in fact not of such age or under or above such age any order made in respect of that person in accordance with such provision shall lapse.

86 Certain advertisements relating to the adoption or custody of children prohibited

(1) If in any newspaper as defined in section 1 of the Newspaper and Imprint Registration Act, 1971 (Act 63 of 1971), which has been registered in terms of that Act, there is published any intimation that any person desires any other person to adopt a child or to take a child into his custody or that any person is willing to adopt or to undertake the custody of any child, the publisher and the editor of that newspaper shall be guilty of an offence, unless the commissioner of child welfare of the district in which the newspaper was printed, has authorized the publication of the said intimation.

[Sub-s (1) amended by s 21 of Act 74 of 1973.]

(2) The court before which a person is or was charged with an offence under sub-section (1), may direct the accused to reveal the name and address of every person concerned in the publication of the intimation which is the subject of the prosecution and, on failure to comply with that direction the court may, apart from any punishment for the said offence, commit the accused to a prison or gaol for a period not exceeding one month or until he complies with that direction before the expiration of that period.

87 Conviction no disqualification for employment

The conviction of any child, whether before or after the commencement of this Act, shall not have the effect of disqualifying such child from being employed in the service of the State or of any local authority or from being employed in or from carrying on any profession, trade or business.

88 Offences

Any person who is convicted of an offence under any provision of this Act for which no punishment is specially provided shall be liable to a fine not exceeding one hundred pounds, or, in default of payment of such fine, to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine.

89 Financial support from public funds to certain persons, associations or children's homes

(1) The Minister may, out of moneys appropriated by Parliament for the purpose, and subject to such conditions as may be prescribed—

(a) make grants to any person or association of persons working in the Republic for the protection, care and control of children;

(b) contribute towards the maintenance in any children's home of any child or pupil sent thereto or placed therein under this Act;

(c) contribute towards the maintenance—

(i) of any child by his parent, step-parent or guardian or the person in whose custody the child has been placed under this Act or under section *three hundred and forty-two* of the Criminal Procedure Act, 1955 (Act 56 of 1955); or

(ii) of a parent, step-parent or guardian of any child.

(2) For the purposes of subsection (1)(c), 'child' includes any person of or above the age of eighteen years who satisfies such requirements or conditions as the Minister in consultation with the Minister of Finance may determine.

[Sub-s (2) substituted by s 11 of Act 92 of 1970.]

(3) A local authority may out of its funds make grants to any association of persons working in its area for the protection, care or control of children.

90 Repayment of sums irregularly received

(1) If any person has received by way of a grant, any sum to which he was not entitled, he, or in the case of his death, his estate shall be liable to repay such sum to the Minister, unless the Minister is satisfied that he received it without knowledge that he was not entitled thereto.

(2) Without prejudice to any other remedy, any such sum may be recovered by means of deductions from any grant payable to the person who is liable to make the repayment.

(3) The provisions of this section shall apply with the necessary modifications in the case of any person to whom such a sum was paid for or for the benefit of any other person.

[Sub-s (3) added by s 2 of Act 91 of 1967.]

(4) The Treasury or any other person authorized thereto by the Treasury may in its or his discretion write off the whole or any portion of any sum repayable in terms of this section if it or he is satisfied that it would be uneconomical to recover such sum or that recovery thereof would cause undue hardship.

[Sub-s (4) added by s 2 of Act 91 of 1967.]

91 Delegation of powers

(1) The Minister may delegate to the Secretary or to any other senior officer and, with the consent of any other Minister, to any senior officer of any department of State administered by such other Minister, all or any of the powers conferred upon him by this Act or the

regulations made thereunder, save the power under section 92 to make regulations.

(2) The Secretary may, with the consent of the Minister, assign to any other senior officer and, with such consent and the consent of any other Minister, to any senior officer of any department of State administered by such other Minister, all or any of the functions entrusted to him by this Act or the regulations made thereunder. [S 91 amended by s 13 of Act 50 of 1965 and substituted by s 19 of Act 101 of 1969.]

92 Regulations

- (1) The Minister may make regulations—
- (a) prescribing the form of any application, authority, certificate, consent, licence, notice, order, process, register or summons to be made, given, issued or kept under this Act and any other form required in carrying out the provisions of this Act and any regulations made thereunder;
 - (b) as to the organization and maintenance of places of safety, places of detention and observation centres established or approved in terms of section *thirty-eight*, the care, control and bringing-up of children in those places and centres, and the maintenance there of discipline, *inter alia* also by the infliction of corporal punishment;
 - (c) as to the organization and maintenance of schools of industries and reform schools and of children's homes established under sub-section (3) of section *thirty-nine*, the constitution of their boards of management, the appointment, resignation and discharge of members of such boards, the powers and duties of such boards, and the manner in which they shall function and the care, control, bringing-up and training of pupils in institutions, the maintenance there of discipline, *inter alia* also by the infliction of corporal punishment and the manner in which persons who have absconded or are deemed to have absconded from any institution are to be dealt with;
 - (d) prohibiting or restricting communication with or access to pupils in institutions or entry in or upon, or the introduction of intoxicating liquor, drugs or other articles into institutions and providing for the imposition of a fine not exceeding twenty-five pounds for any breach of such a regulation;
 - (e) as to the procedure relating to the registration of children's homes and places of care under section *forty-two*, the cancellation and surrender of certificates of registration issued under that section, the conditions of registration of children's homes and places of care under section *forty-two* or of associations under section *forty-eight*, the powers and duties of the managers of children's homes, places of care and approved agencies, the books, accounts and records to be kept by the managers of such children's homes, places of care or agencies and the returns and reports to be rendered by them;
 - (f) prescribing the conditions and terms of licences which may be granted under section *forty-four*, the methods of supervision of pupils released on licence, the persons and bodies referred to in sub-section (2) of section *forty-four*, and the procedure on cancellation of such licences;
 - (g) prescribing the conditions on which leave of absence may be granted to pupils in institutions and to children under the control of approved agencies, the period for which leave may be granted or extended,

and the procedure on cancellation of such leave of absence;

- (h) prescribing the manner in which infant protection visitors appointed under section *twelve*, inspectors appointed under section *fifty-seven* and probation officers appointed under section *fifty-eight* shall perform their duties under this Act;
- (i) prescribing rules of procedure for any proceedings in children's courts and for any proceedings in magistrates' courts under Chapter VI;
- (j) prescribing the method of registration of orders of adoption and the fees to be paid for an order of adoption or for a certified copy thereof;
- (k) prescribing the circumstances in which and the conditions on which the grants or contributions mentioned in section *eighty-nine* will be made, the amounts or rates of such grants or contributions and methods of accounting therefor;
- (l) prescribing the conditions of appointment and the functions and powers of committees appointed under section *forty-one* and the procedure at meetings of such committees;
- (m) prescribing the requirements referred to in sub-section (4) of section *thirty-one* with which a child placed on probation or the parent or guardian of such a child may be ordered to comply;
- (n) as to the organization and maintenance of attendance centres;
- (o) as to any other matter which in terms of any provision of this Act, is required to be or may be prescribed or which the Minister may deem necessary or expedient to prescribe in order that the purposes of this Act may be achieved:

[Para (o) substituted by s 14 of Act 50 of 1965.]

Provided that any regulations under paragraph (j) prescribing the fees referred to therein and any regulations under paragraph (k) shall be made in consultation with the Minister of Finance and that any regulations under paragraph (k) may be made with retrospective effect from a date determined in consultation with the said Minister.

[Sub-s (1) amended by s 34(1) of Act 92 of 1962.]

(2) Different regulations may be made under sub-section (1) in respect of different areas or in respect of persons belonging to different classes or races or in respect of different places of safety, places of detention, observation and attendance centres, schools of industries and reform schools, children's homes, institutions, places of care and approved agencies.

(3) Regulations made under section *eighty-six* of the Children's Act, 1937 (Act 31 of 1937), and in force at the commencement of this Act, shall be deemed to have been made by the Minister under this section.

93 Administration of Act

(1) The State President may by proclamation in the *Gazette* assign the administration of the provisions of this Act either generally or in respect of persons belonging to any specified class or race as defined in the said proclamation, to any Minister or partly to one Minister and partly to another Minister or other Ministers; and may in such proclamation prescribe the powers and functions which shall be exercised and performed by the several Ministers; and may further prescribe that any power or duty conferred or imposed by this Act upon the Minister shall be exercised or performed by one Minister acting in consultation with another Minister.

(2) The State President may from time to time vary or amend any such proclamation

93A Application of Act in South West Africa

This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.

[S 93A inserted by s 22 of Act 74 of 1973.]

94 to 96 inclusive

[Ss 94 to 96 inclusive repealed by s 43(1) of Act 79 of 1965.]

97

[S 97 repealed by s 43(1) of Act 86 of 1963.]

98 to 102 inclusive

[Ss 98 to 102 inclusive repealed by s 344(1) of Act 51 of 1977.]

103 Amends section 5 of the General Law Amendment Act 68 of 1957.

104 Amends section 29 of the Prisons Act 8 of 1959.

105 Repeal of laws

(1) Subject to the provisions of sub-sections (2) and (3), the laws specified in the Second Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Any proclamation, regulation, bye-law, licence, notice, approval, authorization, order, direction, agreement, payment or certificate issued, made, published, granted, given or entered into and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, published, granted, given, entered into or taken under the corresponding provision of this Act.

(3) Any order lawfully made under section *twenty-nine* of the Children's Act, 1937 (Act 31 of 1937), shall be deemed to have been lawfully made under section *thirty-one* of this Act even if the person in respect of whom the order was made was not, at the time when the order was made, a child within the meaning of the last-mentioned section.

(4) Any proclamation which purports to have been issued under the Children's Act, 1937, and which could lawfully be issued under this Act, shall be deemed to have been lawfully issued.

106 Short title

This Act shall be called the Children's Act, 1960.

First Schedule

[First Schedule amended by s 23 of Act 74 of 1973.]

Abduction.

Child stealing.

Assault.

Any sexual offence.

Any offence involving bodily injury of a child.

Any offence under Chapter III of this Act or under Chapter III of the Children's Ordinance, 1961 (Ordinance 31 of 1961), of the territory.

Second Schedule

No. and year of Law	Title	Extent of repeal
Act 31 of 1937	Children's Act, 1937	The whole
Act 18 of 1939	Children's (Amendment) Act, 1939	The whole
Act 30 of 1943	Adoptions Validation Act, 1943	The whole
Act 25 of 1944	Children's (Amendment) Act, 1944	The whole
Act 11 of 1947	Children's (Amendment) Act, 1947	The whole
Act 36 of 1950	Finance Act, 1950	Section <i>twenty-eight</i>
Act 13 of 1951	Children's (Amendment) Act, 1951	The whole
Act 32 of 1952	General Law Amendment Act, 1952	Section <i>twenty</i>
Act 67 of 1955	Finance Act, 1955	Section <i>nineteen</i>