

NATIONAL REGISTER FOR SEX OFFENDERS

Definitions

43. For purposes of this Chapter, and unless the context indicates otherwise—
"certificate" means a certificate contemplated in section 46, not older than three months;

"employee" means –

- (a) any person who applies to work for or works for another person or for an organ of state, and who receives, or is entitled to receive, any remuneration;
- (b) any other person who in any manner applies to assist or assists in carrying on or conducting the business of an employer, including but not limited to any student, intern, volunteer, independent contractor, consultant, agent or person rendering services to a client while being employed by a temporary employment service, where such person will be or is placed in a position to work with a child or children or in a position of authority or supervision over or care of a child or children or of gaining access or coming into contact with a child or children;

"employer" means –

- (a) any organ of state¹, including the National Commissioner of the South African Police Service, the Commissioner of Correctional Services, the Director-General of Social Development or any Head of any Provincial Department of Social Development and the Director-General of Education or any Head of any Provincial Department of Education, the Director-General of Health¹???
- (b) person, organisation, institution, club, sports club, association or body, who or which, as the case may be –
 - (i) owns, has any business or economic interest in, manages, operates or is in any manner responsible for, or participates or assists in the management or operation of any entity or business concern;
 - (ii) is responsible for approving the ownership, management or operation of any entity or business concern,¹
 - (iii) employs or provides work to any employee and who remunerates or expressly or tacitly undertakes to remunerate such employee;
 - (iv) permits any employee in any manner to assist in the carrying on or conducting of his, her or its business,

which, in any manner whatsoever, provides any services to or for children or engages or uses employees who will be placed in a position to work with a child or children or in a position of authority or supervision over or care of a child or children or of gaining access to a child or children, and "employ", "employing", "employed", "employment relationship" have corresponding meanings;

"organ of state" means –

- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when –
 - (i) exercising a power or performing a duty in terms of the Constitution of the Republic of South Africa, 1996, or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation;

"Register" means the National Register for Sex Offenders established under section

¹ Need to revisit, as well as foster parents, etc.

44(1); and

"Registrar" means the Registrar of the National Register for Sex Offenders contemplated in section 44(2).

Establishment of National Register for Sex Offenders and designation of Registrar of Register

44. (1) A National Register for Sex Offenders containing particulars of persons who are

- (a) convicted of the commission of sexual offences against a child, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic;
- (b) alleged to have committed a sexual offence against a child in respect of whom a court, whether before or after the commencement of this Chapter—
 - (i) in the Republic has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
 - (ii) outside the Republic has made a finding and given a direction contemplated in subparagraph (i) in terms of the law in the country in question.

must, within six months after the commencement of this Chapter, and, in accordance with the provisions of this Chapter and the regulations made thereunder, be established and maintained by the Minister.

(2) The Minister must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, as the Registrar of the National Register for Sex Offenders.

(3) (a) The Registrar must exercise and perform his or her powers, duties and functions subject to the provisions of this Chapter and the regulations made thereunder.

(b) The Registrar and any other person who assists the Registrar in the exercise and performance of his or her powers, duties and functions may not disclose any information which he or she has acquired in the exercise of the powers, performance of the functions or carrying out of the duties conferred upon, assigned to or imposed upon him or her under this Chapter, except—

- (a) for the purpose of giving effect to the provisions of this Chapter; or
- (b) when required to do so by any competent court.

Object of Register

45. The object of the Register is to protect children against sexual abuse/offences by —

- (a) establishing and maintaining a record of persons who -
 - (i) have been convicted of a sexual offence against a child, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic; or
 - (ii) are alleged to have committed a sexual offence against a child in respect of whom a court, whether before or after the commencement of this Chapter—
 - (aa) in the Republic has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or
 - (bb) outside the Republic has made a finding and given a direction

contemplated in subparagraph (aa) in terms of the law in the country in question,

- (b) informing a person applying for a certificate as contemplated in this Chapter whether particulars of a person mentioned in the application are contained in the Register.

Obligations of employers in respect of employees who have been convicted of sexual offences against children

46. (1) Any employer who-
- (a) at the date of commencement of this Chapter, has in his or her employment any employee, must within 12/24/36 months from the commencement of this Chapter, in the prescribed manner, apply to the Registrar for a prescribed certificate, stating whether or not the particulars of the employee are recorded in the Register as having a conviction for a sexual offence against a child;
- (b) from the date of commencement of this Chapter, intends employing an employee, must, in the prescribed manner, apply to the Registrar for a prescribed certificate, stating whether or not the particulars of the potential employee are recorded in the Register as having a conviction for a sexual offence against a child.

(2) (a) The Minister may, from time to time, by regulation, prescribe any category of employers to whom this Chapter applies in the case of any uncertainty.

(b) The provisions of this Chapter apply with the necessary changes to the category of employers and employees in their employment from the date of publication of the regulations contemplated in paragraph (a). Provided that the employer of such employee or employees has 12/24/36 months from the date of the publication of the said regulations in order to determine whether the particulars of such employee or employees are recorded in the Register.

- (3) (a) An employer may, subject to paragraph (d)-
- (i) not continue to employ an employee contemplated in subsection (1)(a) whose particulars are recorded in the Register; or
- (ii) not employ an employee contemplated in subsection (1)(b) whose particulars are recorded in the Register.

(b) An employer who, during the course of an employment relationship, in any manner whatsoever, ascertains that an employee contemplated in subsection (1)(a) has a conviction for a sexual offence against a child, irrespective of whether such offence was committed during the course of his or her employment, must, subject to paragraph (d) immediately terminate the employment of an employee.

(c) An employer must immediately terminate the employment of an employee who fails to disclose a conviction of a sexual offence against a child as contemplated in section 47(2).

(d) An employer may, where practicable, transfer an employee whose particulars are recorded in the Register to a post or position where he or she will not gain access to or have contact with a child or children in the course of his or her employment.

- (4) An employer who fails² to comply with any provision of this section

² Implications??

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding seven years or to both a fine and such imprisonment.

Obligations of employees who are convicted of sexual offences against children

47. (1) An employee who has been convicted of a sexual offence against a child may, subject to the provisions of this Chapter, not be employed or continue to be employed.

(2) An employee who, during the course of his or her employment, is convicted of a sexual offence against a child, irrespective of whether such offence was committed during the course of his or her employment, must without delay disclose such conviction to his or her employer.

(3) An employee who, after the commencement of this Chapter, applies for employment, must, if he or she has been convicted of a sexual offence against a child, disclose such conviction when applying for employment.

(4) An employee who fails to comply with subsection (2) or (3) is guilty of an offence and is liable on conviction to a fine or to imprisonment not exceeding seven years or to both a fine and such imprisonment.

(5) An employee may apply for a prescribed certificate stating whether his or her particulars are recorded in the Register as having a conviction for a sexual offence for the purposes of complying with any obligation under this Chapter.

Contents of Register

48. The Register must –
- (a) be established and maintained in the prescribed manner and format;
 - (b) contain the following particulars of persons referred to in section 49:
 - (i) the title, full names and surname of the person, including any known alias or nickname and, where applicable and available, the profession of the person;
 - (ii) the last known physical address of the person, and any other contact details, including a postal address, where applicable;
 - (iii) the identity number, passport number and driver's licence number of the person, where applicable;
 - (iv) the sexual offence against a child in respect of which the person has been convicted, the sentence imposed, the date and place of conviction and sentence, as well as the relevant prisoner identification number, where applicable;
 - (v) the court in which the trial took place and the case number; and
 - (vi) any other particulars as may be prescribed by regulation; and
 - (c) if the conviction and sentence took place in a foreign jurisdiction, contain the equivalent information as is contemplated in paragraph (b), as obtained from the relevant country or any other legal source.

Persons whose names must be included in Register and related matters

49. (1) The particulars of the following persons must be included in the Register:

- (a) A person who, after the commencement of this Chapter, has been convicted of a sexual offence against a child;
- (b) a person who is alleged to have committed a sexual offence against a child in

respect of whom a court, whether before or after the commencement of this Chapter, has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

- (c) a person who, at the commencement of this Chapter, is serving a sentence of imprisonment or who has served a sentence of imprisonment as the result of a conviction for a sexual offence against a child;
- (d) a person who, at the commencement of this Chapter, has a previous conviction for a sexual offence against a child and who has not served a sentence of imprisonment; and
- (e) any person -
 - (i) who, in any foreign jurisdiction, has been convicted of any offence equivalent to the commission of a sexual offence against a child;
 - (ii) who, in any foreign jurisdiction, has been dealt with in a manner equivalent to that contemplated in paragraph (b); or
 - (iii) whose particulars appear on an official register in any foreign jurisdiction, pursuant to a conviction of a sexual offence against a child or as a result of an order equivalent to that contemplated in paragraph (b),

whether committed before or after the commencement of this Chapter.

(2) (a) A court that has —

- (i) convicted a person of a sexual offence against a child and, after sentence has been imposed by that court for such offence, in the presence of the convicted person; or
- (ii) made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, that the person is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence or was, by reason of mental illness or mental defect, not criminally responsible for the act which constituted a sexual offence against a child, in the presence of the person,

must make an order that the particulars of the person be included in the Register.

(b) When making an order contemplated in paragraph (a), the court must explain the contents and implications of such an order to the person in question.

(3) Where a court has made an order under subsection (2)(a), the Registrar of the High Court or clerk of the magistrate's court must, notify the employer and, where applicable, the regulating or professional body of which that person is a member, of the conviction and forthwith forward the order to the Registrar, together with all the particulars referred to in section 48 of the person in question, and the Registrar must immediately and provisionally, in the prescribed manner, enter the particulars of the person concerned in the Register, pending the outcome of any appeal or review and must, after —

- (a) the period for noting an appeal or taking the matter on review has expired; or
- (b) the appeal or review proceedings have been concluded in the case of an appeal or review,

either enter or remove such particulars from the Register, depending on the outcome of the appeal or review, if any.

(4) (a) The Commissioner of Correctional Services must, in the prescribed manner and within three months after the commencement of this Chapter, forward to the Registrar the particulars referred to in section 48 of every prisoner or former prisoner which he or she has on record, who, at the commencement of this Chapter, is serving a sentence of imprisonment or who has served a sentence of imprisonment as the result of a conviction for a sexual offence against a child and the

Registrar must forthwith enter those particulars in the Register.

(b) The Commissioner of Correctional Services must, in the prescribed manner and period, inform each prisoner whose particulars have been forwarded to the Registrar of the implications thereof.

(5) The National Commissioner of the South African Police Service must, in the prescribed manner and within three months after the commencement of this Chapter, forward to the Registrar all the particulars referred in his or her possession referred to in section 48 of every person, who, at the commencement of this Chapter, has a previous conviction for a sexual offence against a child, including, as far as is possible, a conviction for an offence against a child in terms of the Sexual Offences Act, 1957 (Act No. 23 of 1957), and the Registrar must forthwith enter those particulars in the Register.

(6) (a) The Director-General: Health must, in the prescribed manner and within three months after the commencement of this Chapter, forward to the Registrar the particulars referred to in section 48 of every person, who, at the commencement of this Chapter, is subject to a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, as the result of an act which constituted a sexual offence against a child and the Registrar must forthwith enter those particulars in the Register.

(b) The Director-General: Health must, in the prescribed manner and period, inform each person referred to in paragraph (a) whose particulars have been forwarded to the Registrar of the implications thereof.

(7) (a) A person whose particulars have been submitted to the Registrar in terms of this section and whose name or names, sex, identity number, physical or postal address or other contact details have changed, must notify the Registrar of any such change within 14 days after such change.

(b) Any person referred to in paragraph (a) who intentionally fails to notify the Registrar of any change contemplated in that paragraph, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding seven years.

Removal of particulars from Register

50. (1) Subject to subsections (2) and (3), the particulars of a person -
- (a) who -
- (i) has been sentenced for a conviction of a sexual offence against a child to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, without the option of a fine for a period of at least six months but not exceeding eighteen months, whether the sentence was suspended or not, may, on application as contemplated in subsection (3), be removed from the Register after a period of ten years has lapsed after that person has been released from prison or the period of suspension has lapsed;
 - (ii) has been sentenced for a conviction of a sexual offence against a child to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, without the option of a fine for a period of six months or less, whether the sentence was suspended or not, may, on application as contemplated in subsection (3), be removed from the Register after a period of seven years has lapsed after that person has

- (iii) been released from prison or the period of suspension has lapsed; or is alleged to have committed a sexual offence against a child in respect of whom a court, whether before or after the commencement of this Chapter, has made a finding and given a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, may, on application as contemplated in subsection (3), be removed from the Register after a period of five years has lapsed after such person has recovered from the mental illness or mental defect in question and is discharged in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), from any restrictions imposed on him or her;
 - (b) who has been sentenced for a conviction of a sexual offence against a child to any other form of lesser punishment or court order may, on application as contemplated in subsection (3), be removed from the Register after a period of five years has lapsed since the particulars of that person were included in the Register.
- (2) The particulars of a person who has—
- (a) been sentenced for a conviction of a sexual offence against a child to a term of imprisonment, periodical imprisonment, correctional supervision or to imprisonment as contemplated in section 276(1)(i) of the Criminal Procedure Act, 1977, without the option of a fine for a period exceeding eighteen months, whether the sentence was suspended or not;
 - (b) two or more convictions of a sexual offence against a child or children; or
 - (c) been convicted of the offence of failing to disclose that he or she has been convicted of a sexual offence against a child during the course of his or her employment as contemplated in section 47(2) or when applying for employment as contemplated in section 47(3),

may not be removed from the Register.

(3) (a) A person falling into the categories contemplated in subsection (1) may apply, in the prescribed manner, to the Registrar to have his or her particulars removed from the Register.

(b) The Registrar must, after considering the application, remove the particulars of the person contemplated in paragraph (a) from the Register, unless the person concerned has an investigation or a charge relating to a sexual offence against a child pending against him or her and the relevant investigation or case has not yet been finalised, in which event the finalisation of the application must be postponed until the Registrar has, in the prescribed manner, received information on the outcome of the investigation or case.

(c) The Registrar may, at the request of a person whose particulars are included in the Register, remove those particulars from the Register if the Registrar is satisfied that the entry of those particulars in the Register was clearly in error.

Confidentiality and disclosure of information

51. (1) Any person who discloses any information which he or she has acquired in the exercise of the powers, performance of the functions or carrying out of the duties conferred upon, assigned to or imposed upon him or her under this Chapter, except—

- (a) for the purpose of giving effect to the provisions of this Chapter; or
- (b) when required to do so by any competent court,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period

not exceeding three years or to both a fine and such imprisonment.

(2) Except in so far as it may be necessary for the purposes of this Chapter, any person who with malicious intent or in a grossly negligent manner discloses any information to any other person which he or she has acquired as a result of an application contemplated in section 46 or in any other manner in terms of this Chapter and which indicates that another person has a conviction for a sexual offence against a child, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.

Regulations pertaining to Register

51. (1) The Minister must, after consultation with the cabinet members responsible for safety and security, correctional services, social development and health, if applicable, make regulations relating to—

- (a) the manner and format in which the Register is to be established and maintained as contemplated in section 44(a);
- (b) any particulars to be included in the Register, in addition to those mentioned in section 48(b)(i) to (v);
- (c) the manner in which the Commissioner of Correctional Services must forward particulars of prisoners who are serving a sentence of imprisonment as the result of a conviction for a sexual offence against a child to the Registrar as contemplated in section 49(4)(a);
- (d) the manner and period within which the Commissioner of Correctional Services must inform each prisoner whose particulars have been forwarded to the Registrar as contemplated in section 49(4)(b);
- (e) the manner in which the National Commissioner of the South African Police Service must forward particulars of persons with a previous conviction for a sexual offence against a child to the Registrar as contemplated in section 49(5);
- (f) the manner in which the Director-General: Health must forward particulars of persons who are subject to a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, as the result of an act which constituted a sexual offence against a child to the Registrar as contemplated in section 49(6)(a);
- (g) the manner and period within which the Director-General: Health must inform each person whose particulars have been forwarded to the Registrar as contemplated in section 49(6)(b);
- (h) the manner in which persons mentioned in section 46 must apply to the Registrar for a certificate;
- (i) the format of the certificate contemplated in section 46;
- (j) persons who may apply for a certificate in terms of section 47(5);
- (k) the period within which a certificate contemplated in section 46 must be provided to any person by the Registrar;
- (l) access to the Register;
- (m) the safe-keeping and disposal of records; and
- (n) any aspect in this Chapter in respect of which regulations may be required or are necessary.

(2) Regulations made in terms of subsection (1) may, in respect of any contravention thereof or failure to comply therewith, prescribe as a penalty a fine or imprisonment for a period not exceeding 12 months.

(3) Any regulation made in terms of this section must be submitted to Parliament at least thirty days before publication thereof in the *Gazette*.

