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CHILDREN'S AMENDMENT BILL, 2021

MEMORANDUM

The purpose of this Bill is to amend the Children's Act [*Chapter 5:06*] in the following respects.

Clause 1

This clause sets out the short title the Bill

Clause 2

Clause 2 will insert a preamble into the Children's Act [*Chapter 5:06*] which will embody the principle of section 19 of the Constitution for the State to comply when enacting laws and developing policies that affect children. The preamble also echoes the Universal Declaration of Human Rights among other International Conventions, which provides that children are entitled to special care and assistance.

Clause 3

Clause 3 will amend certain definitions in the Children's Act [*Chapter 5:06*]. Among other definitions, the definition of "child" will be amended so that a child is defined as a person under the age of 18 years; the definition of "child in need of care" will be changed to read "child in need of care or protection or both" and be widened to include children who are at risk of being unlawfully married, a child who is pregnant or who is sexually abused and the definition of "parent" will be amended so as to remove the discriminatory reference to the illegitimacy of children born out of wedlock.

Clause 4

This clause will insert two new Parts IA and IB into the principal Act. The new Part IA will provide for general principles relating to children in the new section 2B, provisions on children with a disability or chronic illness will be provided for in the new section 2C and the general duty of care for a child will be stated in the new section 2D.

The new Part IB will provide for parental responsibilities and rights. Parental responsibilities will be provided for in the new section 2E and the responsibilities and rights of biological parents are detailed in the new section 2F.

Clause 5

This clause will amend section 2A of the principal Act by changing the name of the Council from the Child Welfare Council to the Child Welfare and Protection Council. The clause will also make provision for additional representatives from organisations of parents of children with disabilities.

Clause 6

Section 2B of the principal Act will be amended so as to include a new provision which will insert an additional function of the Council to receive complaints from children so as to devise child protection measures and to promote children's rights.

Clause 7

This clause will amend section 7 of the principal Act by deleting the reference to an "infant" and to harmonise it the definition of child by substituting that word with "a child under the age of 7 years".

Clause 8

This clause provides for the creation of an offence when any person allows or causes a child to participate in child sexual abuse material or any person participates in child grooming.

Clause 9

This clause will amend section 9 of the principal Act by making it an offence for any parent or guardian to deny access to medical treatment to a child in their care without a reasonable cause for such denial of medical treatment.

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Clause 10

This clause places a duty on teachers, medical practitioners, legal practitioners and ministers of religion, who in their professional capacity are likely to interact with children, to report any case of abuse or suspected abuse on a child to a police officer or a child protection officer.

Clause 11

This clause will amend section 12 of the principal Act by deleting the reference to "a girl under the age of eighteen years" and substituting the phrase with "child".

Clause 12

This clause will replace section 13 of the principal Act to make provision for an offence where parents and guardians who conduce the commission of an offence by a child or fails to take reasonable steps to ensure that the child does not commit an offence where they could prevent such offence.

Clause 13

This clause replaces section 31 of the principal Act and makes provision for the institutions that receive children to accommodate them in a family type environment. This clause also makes provision for requirements of registrations of an institution and requirements that must be fulfilled when an institution is to be transferred to another owner or has any material changes to the particulars required when registration of an institution takes place.

Clause 14

This clause provides for a new Part for early intervention and family preservation programmes that may be provided either by the State or through private organisations. The Part provides for norms and standards for national and private early intervention and family preservation programmes as well as court orders for the participation in such programmes.

Clause 15

This clause will amend section 59 of the principal Act so as to allow a child who is to be adopted to be consulted on any issue pertinent to the child's adoption, taking into account the child's capacity in relation to the age and maturity of the child, to form his or her own views.

Clause 16

This clause inserts a new section 75O that allows a child protection officer to obtain a birth certificate for a child without parental care and is identified as a child in need of care and protection.

Clause 17

This clause will repeal section 84 of the principal Act that outlines the detention of juvenile. This section is repealed as the criminal justice system for children will be catered for in terms of an Act distinctly dealing with criminal child justice.

Clause 18

This clause provides for transitional provisions for institutions that are already in existence at the time the Act will come into force.

Clause 19

This clause provides for consequential amendments to the Maintenance Act [*Chapter 5:09*] concerning the definition of earnings.

Clause 20 and 21 and Schedule

These clauses provide for the repeal and substitution of the long title of the principal Act as well as incorporate a Schedule, in which Schedule certain minor amendments will be effected to various provisions of the principal Act.

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BILL

TO amend the Children's Act [*Chapter 5:06*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

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1 Short title

This Act may be cited as the Children's Amendment Bill, 2021.

2 Preamble inserted in Cap. 5:06

The Children's Act [*Chapter 5:06*] (hereinafter called "the principal Act") is amended by the substitution of the enactment formula by the following preamble—

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"WHEREAS the Constitution of Zimbabwe envisages an open and democratic society that is based on the values which include recognition of human dignity of every person, equality of all human beings, respect for the fundamental human rights and freedoms of every person including those of children;

AND WHEREAS the State must comply with section 19 of the Constitution when enacting laws and developing policies that affect children;

15

AND WHEREAS every child has the rights set out in section 81 of the Constitution;

AND WHEREAS the State must respect, protect, promote and fulfill those rights;

AND WHEREAS protection of children's rights leads to a corresponding improvement in the lives of other sections of the community because it is neither desirable nor possible to protect children's rights in isolation from their families and communities;

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AND WHEREAS the United Nations has in the Universal Declaration of Human Rights proclaimed that children are entitled to special care and assistance;

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AND WHEREAS the need to extend particular care to the child has been stated in the United Nations Convention on the Rights of the Child, and in the African Charter on the Rights and Welfare of the Child, and recognised in the Universal Declaration of Human Rights, and in the statutes and relevant instruments of specialized agencies and international organisations concerned with the welfare of children;

AND WHEREAS it is necessary to effect changes to existing laws relating to children in order to afford them the needful protection and assistance so that they can fully assume their responsibilities within the community;

AND WHEREAS it is necessary too that the child, for the full and harmonious development of his or her personality, should grow up in a family environment and in an atmosphere of happiness, love and understanding:

NOW, THEREFORE, be it enacted by the Parliament and the President of Zimbabwe as follows: —".

3 Amendment of section 2 of Cap. 5:06

Section 2 ("Interpretation") of the principal Act is amended—

(a) by the repeal of the definitions of "child" and "child in need of care" the substitution of—

""child" means a person under the age of eighteen years and includes an infant;

"child in need of care or protection or both" means a child or young person—

(a) who is destitute or has been abandoned; or

(b) both of whose parents are dead or cannot be traced and who has no legal guardian; or

(c) whose legal guardian or parents do not exercise proper control and care over him or her; or

(d) whose legal guardian or parents are unfit to have or exercise control over him or her; or

(e) who is in the custody of a person who has been convicted of committing upon or in connection with that child any offence specified in the First Schedule; or

(f) who cannot be controlled by his or her parents or guardian; or

(g) who is a habitual truant; or

(h) who frequents the company of any immoral or vicious person or is otherwise living in circumstances calculated to cause or conduce to his or her seduction, corruption or prostitution; or

(i) who begs or, being a child, engages in street trading contrary to this Act or any other enactment; or

(j) who is being maintained in circumstances which are detrimental to his or her welfare or interests; or

(k) who is found in possession, without reasonable excuse, of any drug to which the Dangerous Drugs Act [*Chapter 15:02*] applies or of any specified drug as defined in the Drugs and Allied Substances Control Act [*Chapter 15:03*]; or

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(l) who suffers from a mental or physical disability and requires treatment, training or facilities which his or her parents or guardian are unable to provide; or

(m) whose parent or guardian has given him or her up to another person in settlement of a dispute in accordance with custom; or

(n) whose parent or guardian makes him or her perform work that is likely to be hazardous or to interfere with his or her education or to be harmful to his or her health or to his or her physical or mental development; or

(o) whose parent or guardian has unlawfully removed him or her from lawful custody; or

(p) is an unaccompanied child; or

(q) is pregnant; or

(r) is purported to be married or pledged in marriage or is at risk of being unlawfully married or pledged in marriage; ";

(b) in the definition of "council" by the insertion after "Welfare" of "and Protection";

(c) by the repeal of the definitions of "Director" the substitution of —

""Director" means a person holding the office of Director responsible for social welfare or any person lawfully acting in that capacity;";

(d) in the definition of "earnings", by the repeal of (b), and the substitution of—

"(b) by way of pensions or remittances, or by way of income generated through informal trade or subletting;";

(e) in the definition of "legal guardian" by the deletion of "and includes a husband of a girl who is under eighteen years of age";

(f) by the repeal of the definition of "parent" and the substitution of —

""parent" means the biological father or mother of a child, or an adopter or step parent of a child;"

(g) by the repeal of the definition of "probation officer";

(h) in the definition of "pupil" by the deletion of "or South African institution";

(i) by the insertion of the following definitions—

""child grooming" means when someone builds an emotional connection with a child to gain their trust for the purposes of sexual abuse, child sexual abuse material, exploitation of the child, or trafficking the child in contravention of the Trafficking in Persons Act [*Chapter 9:25*];

"child protection officer" means a child protection officer appointed in terms of section 46;";

"child sexual abuse material" includes any representation through publication, exhibition, cinematography, electronic means or any other means whatsoever, of a child engaged in real or simulated explicit sexual activities, or any representation of sexual parts or of a child for primarily sexual purposes;

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"evolving capacity" in relation to a child means the capacity of a child to form his or her own views in accordance with his or her age and maturity;

"hazardous child labour" means work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;

"social worker" means a person registered in terms of the Social Workers Act [*Chapter 27:21*];

"unaccompanied child" means—

(a) a child who is lacking or apparently lacking parental oversight; or

(b) a child who is travelling within or outside Zimbabwe without a parent, guardian or anyone who has parental responsibility over him or her;

in circumstances that would lead a reasonable person to believe that the child is not under adult supervision;".

4 Amendment of section 2A of Cap. 5:06

Section 2A ("Establishment of Child Welfare Council") of the principal Act is amended—

(a) in subsection (1) —

(i) by the insertion after "Child "of "Protection and";

(ii) by the insertion after paragraph (f) of —

"and

(g) two representatives from organisations which in the opinion of the Minister represent parents of children with disabilities;";

(b) by the insertion after subsection (2) of the following subsection—

"(2a) In appointing members to the Council, the Minister shall—

(a) ensure that both genders are equally represented and for the avoidance of doubt that women constitute half the membership of the Council; and

(b) ensure that there's fair regional representation." .

5 Amendment of section 2B of Cap. 5:06

Section 2B ("Functions of Council") of the principal Act is amended—

(a) by the insertion after paragraph (c) of the following paragraphs—

"(c1) to receive representations from civil society organisations helping or representing children for the purpose of devising child protection measures and for the promotion of children's rights;

(c2) to develop and monitor not later than every five years one or more National Action Plans for adoption by the Minister and implementation by the Ministry together with other Ministries and donor agencies designated by the Minister dealing with either or both of the following—

(i) the protection of orphans and vulnerable children;

(ii) the realisation generally of the rights of the child;

(c3) to recommend to the Minister child protection strategies and the realisation of children's rights;";

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(b) by the insertion of the following subsection, the existing section becoming subsection (1)—

"(2) In carrying out any of its functions under subsection (1), the Council must ensure that they seek the views of children and that there is full participation of children through already existing child participation structures or where necessary other appropriate methods.".

6 Amendment of section 7 of Cap. 5:06

Section 7 ("Ill-treatment or neglect of children and young persons") the principal Act is amended by the deletion of "an infant" wherever it occurs and the substitution of "a child under the age of seven years".

7 Amendment of section 8 of Cap. 5:06

Section 8 ("Corruption of Children and young persons") of the principal Act is repealed and the following is substituted—

"8 Corruption of children

(1) Any person who—

(a) allows a child to reside in or to frequent a brothel shall be guilty of an offence and liable to fine not exceeding level 12 or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment;

(b) causes or conduces to the seduction, abduction or commercial sexual exploitation of a child or the commission by a child of immoral acts shall be guilty of an offence and be liable to an a fine not exceeding level 13 and imprisonment not exceeding fifteen years or to both such fine and such imprisonment;

(c) causes a child to participate in child sexual abuse material or produces such material shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment;

(d) participates in child grooming shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment.".

8 Amendment of section 9 of Cap. 5:06

Section 9 ("Medical examination and treatment of children and young persons") of the principal Act is amended by the insertion after subsection (12) of the following subsection—

"(13) Any parent or guardian who, without reasonable cause, denies medical treatment or access to medical treatment to a child in their care who is in need of such treatment, shall be guilty of an offence and liable to a fine not exceeding level 5 or imprisonment for period not exceeding six months or to both such fine or such imprisonment.".

9 New section inserted in Cap. 5:06

The principal Act is amended by the insertion of a new section after section 9 as follows—

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"9A Duty to report abuse of child

(1) In this section—

"abuse", in relation to a child means, any action for which under this Act a child would be treated as a child in need of care or protection or both, or in respect of whom there is a reasonable suspicion that any person having custody of the child is committing or has committed any offence specified in the First Schedule.

(2) Any person who is required or likely to interact with children in his or her professional or vocational capacity, such as a medical practitioner, a teacher, a legal practitioner, or a minister of religion, and who becomes aware or suspects on reasonable grounds that a child has been, is being, or is likely to be abused, shall have a duty to report such abuse or suspected abuse to a police officer or child protection officer as soon as reasonably possible after becoming aware of such abuse or suspected abuse.

(3) Any person who fails in his or her duty under subsection (2) shall be liable to be sanctioned by the professional or vocational body of which he or she is a member (or in the case of an employee of the State, by the Public Service Commission or other commission, Ministry or body of which that person is an employee) upon a complaint to that effect made at the instance of a child protection officer or any other complainant.

(4) If no express provision is made by or under any enactment for the institution of disciplinary proceedings against a person in the circumstances referred to in subsection (3), such person shall nevertheless be liable to be disciplined and sanctioned by the professional or vocational body of which he or she is a member by virtue of this section as if it was part of the code of conduct or ethics or other instrument by whose terms his or her professional or vocational conduct is governed, and the sanction therefor shall, according to the gravity of the complaint, include a reprimand, a fine, suspension from practice or employment in the profession or vocation concerned for a specified period, or expulsion from the professional or vocational body concerned.".

11 Amendment of section 12 of Cap. 5:06

Section 12 ("Power to bind over person having custody of young girl, child or young person to exercise proper care") (1) of the principal Act is amended—

(a) in paragraph (a) by the deletion of "a girl under the age of eighteen years" and substitution of "a child";

(b) in paragraph (b) —

(i) by the deletion of "or young person";

(ii) by the insertion after "neglected" of "ill-treated, abused or exploited";

(c) by the deletion of "girl, child or young person", wherever it occurs, and the substitution of "child".

12 Amendment of section 13 of Cap. 5:06

Section 13 ("Conducing to commission of offence by child or young person") of the principal Act is repealed and the following is substituted—

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"13 Conducing to commission of offence by child

(1) Any person including a parent or guardian of a child who—

(a) encourages a child to commit an offence; or

(b) trains a child in the commission of an offence; or

(c) knowingly provides a child with facilities to commit an offence; or

(d) being a parent or guardian of a child fails to take reasonable steps to ensure that the child does not commit an offence where the parent or guardian of the child was in a position to take such steps;

shall be guilty of an offence and liable to the penalties that could have been imposed on him or her had he been guilty of the offence that the child committed.

(2) If a person is convicted under subsection (1) the court may, on its own motion or at the request of the injured party communicated through the prosecutor, order (in addition to imposing the penalty provided under subsection (1)), order the convicted person to pay any damages for personal injury or patrimonial loss proved in the course of the trial to have been caused to the injured party by the child.".

13 Amendment of section 31 of cap.5:06

Section 31 ("Registration of institutions") of the principal Act is repealed and substituted by—

"31 Registration of institutions

(1) In this section—

"family type accommodation" in relation to an institution, means a housing unit consisting of—

(a) not less than two or more than eight bedrooms for the accommodation of not more than eight children; and

(b) at least one bathroom and one toilet; and

(c) at least one kitchen and one dining room; and

(d) where the care giver or care givers are in residence, at least one bedroom for the caregiver in residence and additional bedrooms for the accommodation of additional care givers; and

(e) unless such facility is provided in a separate building, a room or rooms for use by the management and staff of the institution for administrative purposes that is clearly separated or distinct from the part of the housing unit used for the accommodation of the children; and

(f) ventilation that is satisfactory to the Chief Health Officer or other person mentioned in subsection 5(b);

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"dormitory type accommodation" in relation to an institution, bears the same meaning as that for family type accommodation except that instead of paragraph (a) of that definition the place where the children sleep consists of a hall (or 2 halls in the case where children of both sexes are accommodated) such that each child in the dormitory shall have a sleeping space of not less than 3 metres by 2 metres, or where bunks are provided, each bunk shall occupy a space of 3metres by 2 metres and not have more than 2 levels;

"material change" in relation to the amendment of the particulars of the original application for registration means—

(a) any change in the constitution governing the institution for what happens upon the termination for any reason of the institution with respect to the disposal of its assets on the date of its termination; or

(b) any institutional or personnel change in the management of the institution; or

(c) any variation of the capacity of the institution to accommodate children;

"operator" in relation to an institution means the holder of the certificate of registration of that institution;

"receive, maintain and supervise any child" in relation to an institution means—

(a) that the institution is open within the limits of its capacity to receiving children in need of care or protection or both, or children removed in terms of section 14 to a place of safety;

(b) that the institution is able to provide for the basic needs of the children in its care, that is to say food, shelter (whether full board or overnight accommodation), clothing and access to basic health and basic education;

(c) that the institution has in residence at least one full time care giver able to act in *loco parentis*.

(2) Subject to subsection (3), no person shall receive, maintain, and supervise any child in an institution unless that institution has been registered in terms of this section in the name of that person or otherwise than in accordance with the conditions on which that institution has been so registered.

(3) Application for the registration of an institution in terms of this section shall be made in two stages to the Minister in writing in the prescribed form consisting of a preliminary and a final application.

(4) In the preliminary application, the applicant must satisfy the Minister that—

(a) he or she is registered as a private voluntary organisation in terms of the Private Voluntary Organisation Act [*Chapter 17:05*] (for which purpose the appropriate certificate of registration shall be attached to the application); and

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(b) adequate provision is made in the constitution governing the institution for what happens upon the termination for any reason of the institution with respect to the disposal of its assets on the date of its termination; and

(c) all the prescribed particulars in the application form have been adequately completed by the applicant (for which purpose the Minster may request additional written information in support of the application);

and if the Minister is so satisfied, the Minister shall direct a child protection officer to prepare the report referred to in subsection (5)(c).

(5) In the final application, the applicant must satisfy the Minister that—

(a) the applicant has published in one or more newspapers named by the Minister a notice in a form to be fixed by the Minister to the effect that he or she has applied for the registration of the institution in question; and

(b) from the report of the Chief Health Officer (or any medical officer of health of a local authority or any person authorised thereto in writing by either of them) attached to the application, the Chief Health Officer has visited and inspected the proposed institution and approved it as a safe and healthy environment for the children; and

(c) from the report of a child protection officer attached to the application, that—

(i) with respect to the accommodation provided at the proposed institution, the accommodation is family type accommodation or if it is dormitory type accommodation that it meets the following conditions—

A. that the part of the premises consisting of the dormitory does not offend against the by-laws of the locality on overcrowding; and

B. that there is are separate dormitories for the sexes if the institution caters for both sexes; and

C. that suitable arrangements are proposed in or together with the application for the dormitories to be phased out in favour of family type accommodation within a period not exceeding 2 years from the date of the initial registration of the institution;

(ii) that the management of the proposed institution, the transport or other facilities provided for, or the treatment of, the children therein is such as not to endanger the welfare of the children, for which purpose the applicant must produce a police clearance certificate for himself or herself and the members of the management and staff of the proposed institution on the date of its commencement;

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(iii) that at least one member of the management or staff is registered in terms of the Social Workers Act [*Chapter 27:21*] as a social worker;

and the Minister may reject any such final application or grant it either unconditionally or on such conditions as he or she may think fit and issue to the applicant a certificate of registration in the prescribed form.

(6) A certificate of registration issued in terms of subsection (5) may at any time be cancelled by the Minister or surrendered to the Minister by the person in whose name it was issued:

Provided that no such certificate shall be cancelled unless at least one month's written notice of intention to cancel that certificate has been given to the person in whose name it was issued and the Minister has considered any representations submitted by such person in pursuance of such notice.

(7) The Minister shall cause notice of the registration of any institution and of the cancellation or surrender of any certificate of registration issued in terms of this section to be published in the *Gazette*.

(8) If there is any material change in the particulars furnished together with the application for the registration of an institution, the operator of the institution must make application to the Minister in the prescribed form to amend the particulars of registration in relation to the institution, for which purpose the operator must submit to the Minister an amendment application in the prescribed form no later than one month from the date when the material change occurred.

(9) Upon receiving an amendment application in terms of subsection (8) the Minister may—

(a) approve the application and cause the appropriate entry in the register of institutions to be made and notify the operator accordingly; or

(b) reject the application and order the reversal of the material change that prompted the application within a specified period; or

(c) before approving the application require all or any combination of the following—

(i) the applicant has published in one or more newspapers named by the Minister a notice in a form to be fixed by the Minister to the effect that he or she has applied for the registration of the institution in question;

(ii) a Chief Medical Officer's report referred to in subsection (5)(b);

(iii) a child protection officer report referred to in subsection (5)(c).

(10) A certificate of registration may subject to subsections (11) and (12) be transferred to another person in the following circumstances—

(a) to another operator of an institution; or

(b) to another person who is not an operator of an institution.

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(11) An operator of an institution referred to in subsection (10)(a) must before the proposed transfer is completed make application to the Minister in the prescribed form for approval of the transfer, and the Minister shall thereafter treat the application as if it is an application for the approval of a material change to which the provisions of subsection (8) and (9) shall apply:

Provided that in approving the transfer, the Minister may cancel the certificate of registration of the institution being transferred or permit the applicant operator to hold it as a separate certificate, and in doing so may take into account the express wishes of the applicant operator.

(12) An operator of an institution referred to in subsection (10)(b) must before the proposed transfer takes place apply for the cancellation of the certificate of registration of the institution and make a new application for the registration of the institution in terms of subsections (4) and (5).

(13) The Chief Health Officer or any medical officer of health of a local authority or any person authorised thereto in writing by either of them may at any time visit and inspect any proposed or existing institution, and no person shall obstruct him or her in the exercise of his or her powers in terms of this subsection.

(14) Any person who —

(a) contravenes subsection (2) (and a person who contravenes subsections (11) and (12) shall be taken to have contravened subsection (2));

(b) wilfully makes a false statement pursuant to an application under subsection (4), (5) or (8);

(c) contravenes subsection (6) or (8);

(d) obstructs a chief health officer or any other person in the exercise of his or her duties under subsection (13);

shall be guilty of an offence and liable—

(e) in circumstances described in paragraph (a) and (b) to a fine not exceeding level 11 or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment; or

(f) in circumstances described in paragraphs (b) and (d) to a fine not exceeding level 4 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.".

15 Insertion of new Part in Cap. 5:06

The principal Act is amended by the insertion after Part V of the following Part—

"PART VA

EARLY INTERVENTION AND FAMILY PRESERVATION

49A. Early intervention and family preservation programmes

(1) In this Part—

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"early childhood development" means an integrated concept that cuts across multiple sectors including health and nutrition, education, and social protection and refers to the physical, cognitive, linguistic and socio-emotional development of young children. The five stages of child development being cognitive development, social and emotional development, speech and language development, fine motor skill development and gross motor skill development;

"family environment" means the environment within a family structure descriptive of the interpersonal relationships within that structure;

"family structure" describes a household containing at least one child whose members are linked by marriage, adoption or consanguinity;

"early intervention and family preservation programme" or "programme" means a programme —

(a) designed the serve the purposes mentioned in section 49B for the benefit of families where there are children identified as being vulnerable or at risk of harm or removal into alternative care in order to strengthen and build the family's capacity and self-reliance; and

(b) implemented by the social welfare department, a designated child protection organisation, any other relevant organ of state or any other person or organisation;

"private programme" means the private intervention and family preservation programme referred to in section 49D;

49B Purposes of early intervention and family preservation programme

(1) Every programme must make provision for all or any combination of the following—

(a) preserving to the extent possible a child's family structure and promoting a conducive family environment;

(b) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of any child in their care, including the promotion of positive and non-violent forms of discipline;

(c) developing appropriate parenting skills and the capacity of parents and care-givers to safeguard the well-being and best interests of children with disabilities and chronic illnesses;

(d) providing for psychological, rehabilitation and therapeutic programmes for children in the context of the children's family structure;

(e) preventing the neglect, exploitation, abuse or inadequate supervision of children and preventing other failures in the family environment to meet children's needs;

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(f) preventing the recurrence of problems in the family environment that may harm children or adversely affect their development;

(g) diverting children away from the child care system and the criminal justice system;

(h) avoiding the removal of a child from the family environment.

(2) In expansion of the foregoing, a programme may include all or any combination of the following—

(a) assisting families to obtain the basic necessities of life;

(b) empowering families to obtain such necessities for themselves;

(c) providing families with information to enable them to access services;

(d) supporting and assisting families with a chronically ill or terminally ill family member;

(e) early childhood development and generally promoting the well-being of children and the realisation of their full potential.

49C National early intervention and family preservation programme

(1) The Minister, shall after consultation with the Ministers responsible for Primary and Secondary Education, Finance, Health, Local Government, and any other relevant Minister or organ of State, develop a national policy for early intervention and family preservation programmes to families, parents, care-givers and children.

(2) The Director shall in consultation within the Ministry and with other interested Ministries and interested stakeholders frame a draft national programme consistent with the national policy referred to in subsection (3), which the Director shall submit to the Minister for his or her Minister comment or approval.

(3) If the Minister approves a draft national programme, he or she shall give notice of the programme in the *Gazette* and shall invite all interested stakeholders to make representations thereof at a public hearing on the programme convened in each of the Provinces of Zimbabwe.

(4) No later than six months after the conclusion of the last public hearing referred to in subsection (3), the Director shall in consultation within the Ministry and with other interested Ministries frame a final national programme, which the Director shall submit to the Minister for his or her Minister approval.

(5) If the Minister approves the final national programme, he or she shall give notice of such programme in the *Gazette* and thereafter the applicable provisions of this Part shall apply to that programme.

(6) The national programme shall be administered in the form of one or more annual courses of instruction at a specified venue or venues for fixed periods of time for attendance by groups of families presided over or moderated over by a child protection officer with the assistance of one or more facilitators or institutions on a voluntary or other basis.

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(7) A national programme qualifies for financial assistance from the Fund in the form of an administration grant (to pay for training materials, subsistence during training, transport to and from the venue and a communication allowance for the facilitators) and *per capita* grants for the families participating in the programme. 5

(8) Where a court orders a person who is subject to and principally responsible (whether as the custodian, parent or guardian or otherwise) for participating in a programme, the Director shall assign a child protection officer to ensure that the person participates in the programme.

49D Private early intervention and family preservation programme 10

(1) any registered institution or other private voluntary organisation, may subject to this section formulate and implement a private early intervention and family preservation programme, that is to say a programme other than the national one, which however conforms to section 49B.

(2) an institution or other private voluntary organisation proposing 15 to implement a private programme using its own resources must submit a draft thereof together with an application for approval to the Minister.

(3) The Minister shall refer an application for the private programme to the Director for assessment and comment.

(4) Upon receiving the input of the Director the Minister may— 20

(a) approve the application conditionally or unconditionally; or

(b) reject the application giving reasons therefor; or

(5) Private programmes must comply with such norms and standards as maybe prescribed from time to time. 25

49E Norms and standards for national and private early intervention and family preservation programme

(l) The Minister must determine norms and standards for national and private early intervention and family preservation programmes by regulation after consultation the Ministers responsible for Education, 30 Finance, Health, Local Government, and any other relevant Minister or organ of State.

(2) The national norms and standards contemplated in subsection (1) may relate to—

(a) outreach services; 35

(b) education, information and promotion;

(c) therapeutic programmes;

(d) family preservation;

(e) skills development programmes;

(f) temporary safe care; and 40

(g) assessment of programmes.

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49F Court may order participation in national or private early intervention and family preservation programme

(1) A child protection officer, instead of seeking an order concerning the temporary or permanent removal of a child from that child's family or environment (but without prejudice to the power of the child protection officer to bring such an order later), may apply to the court for the family of the child or parent or caregiver of the child to partake in a national or private early intervention and family preservation programme.

(2) If the court is satisfied in the circumstances of the case that the programme will enable the child concerned to stay with its family, the court shall (after taking into consideration the representations, if any, made by any party interested in the application) order the child's family and the child to participate in the programme.

(3) An order made in terms of subsection (2) must be for a period not exceeding six months, at the end of which period, and in any case no later than six months after the end such period, a child protection officer shall present a report setting out the outcome or progress of the programme provided to the child and the family, parent or care-giver of the child, upon consideration of which (and the representations, if any, made by any party interested in the application) the court may—

(a) decide whether the child should be removed; or

(b) order the continuation of the programme for a further specified period not exceeding six months; or

(c) discharge the order.

(4) A child protection officer or a person who is subject to and principally responsible (whether as the custodian, parent or guardian or otherwise) for participating in a programme, may at any time apply to the court that granted the order for participation in the programme, to vary the order so as to permit the child in question to be taken to a place of residence outside the jurisdiction of the court, or to vary the order in any other way sought by the applicant, and the court may upon consideration of the representations , if any, made by any party interested in the application, grant the application with or without conditions or reject it.

(5) Any person who, being subject to and principally responsible (whether as the custodian, parent or guardian or otherwise) for participating in a programme, removes the child in question to a place of residence outside the jurisdiction of the court that ordered the programme without seeking a variation of the order under subsection (4), shall be guilty of contempt of court.

(6) Subsection (1) does not apply where the safety or well-being of the child is seriously or imminently at risk.

49G Report to include summary of early intervention and family preservation programme

When a report of a child protection officer is produced before a court in order to assist a court in determining a matter concerning a child, the report must contain a summary of any early intervention and family preservation programmes provided in respect of that child and the family, parent or care-giver of the child.".

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15 Amendment of section 59 of Cap. 5:06

Section 59 ("Restrictions on making adoption order") of the principal Act is amended by the insertion after subsection (4) of the following subsection—

"(4a) An adoption order shall not be made unless the court is satisfied that the child to be adopted has, to the extent possible given the evolving capacity of the child, been consulted through a child protection officer on any issue pertinent to the child relating to the adoption.". 5

16 Insertion of new section in Cap. 5:06

The principal Act is amended by the insertion in Part VIII after section 75N of the following section— 10

"75O. Child Protection Officer may obtain birth certificate for child without parental care

Subject to the Births and Deaths Registrations Act [*Chapter 5:02*], a [*Chapter 5:02*], a child protection officer may obtain a birth certificate for a child without parental care and is identified as a child in need of care and protection or both in terms of this Act.". 15

17 Repeal of section 84 of Cap 5:09

Section 84 of the principal Act is repealed.

18 New section inserted in Cap 5:09

The principal Act is amended by the insertion after section 88 of a new section as follows— 20

"89 Transitional provisions

(1) Subject to subsection (2), all registered institutions on the date of commencement of this Act shall continue in operation.

(2) Where an institution— 25

(a) is transferred; or

(b) has a material change in the particulars furnished together with the application for the registration; or

(c) ceases to operate;

it must comply with section 14 (6), (8), (11) and (12) as the case may be.". 30

19 Amendment of section 2 of Cap 5:09

The Maintenance Act [*Chapter 5:09*], is amended in section 2 by the insertion in the definition of "earnings" of the following paragraph after paragraph (b)—

"(c) by way of remittances or by way of any income generated through informal trade, including subletting.". 35

20 Amendments to Cap. 5:06

The provisions of the principal Act set out in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

21 Amendment of long title to Cap. 5:06

The long title to the principal Act is the substitution of— 40

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"To amend the Children's Act, to give effect to the fundamental rights of children as enshrined in the Constitution, to set out principles relating to the care and protection of children, to define parental responsibilities and rights; to provide for early intervention and family preservation programmes and to provide for matters incidental to or connected with the foregoing.".

SCHEDULE OF MINOR AMENDMENTS (*Section 20*)

Provision	*Extent of amendment*
Section 2	by the deletion of the definitions of "minor" and "young person"
Section 2, in the definitions of "attendance centre", "child in need of care", "guardian", "maintain", "maintenance", "place of safety", "contribution order", "period of retention", "respondent", "institution",	by the deletion of "young person" or "young persons" wherever it occurs
Sections 5 (5)(6)(b) and (c), 7(1)(2)(a) and (c), 8(1),(2) and (3), 9(1), (2), (3), (4), (5), (6), (7), (8), (9) and (10), 10(1), (2) and (3), 11(1) and (2), 13(1) and (2),14, 15(1), (2) and (3), 16,17, 18, 19, 20(1), (2) (3), (4), (5) and(6), 21, 22(1) and (2), 23, 24(3), 25(1), 27(3) and (4), 28(1) and (2), 29(1), 31(4), 32, 37, 38(1), (2), (3), (4) and (5), 39, 42(3)(b), 43 45(1), (2) and (5), 46(1)(b) 47(1), (2),(4) and (5), 48, 49(1), (5),(6) 50(1), 51(3)(b), 81(1), 82(5), 84(1), 86(1) (a) (b) and (c), 87(1), (4), (5) and (6).	
Section 26, 76(4)	by the deletion of "young person's" the substitution of "child's".
Section 46(1)(b)	by the deletion of "juvenile" and substitution of "child in conflict with the law"
Section 76(4)(b)	by the deletion of "young person's" the substitution of "child's
Section 78(1)	by the deletion of "Drugs" and the substitution of "Medicines".
Section 4, 10, 11, 14, 17, 18, 20, 33, 41, 42 45, 46, 47, 57, 79, 87 and 88.	by the deletion of "probation officer" and the substitution of child protection officer"
First Schedule	by the deletion of "Child-stealing and substitution of "Child-kidnapping".

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