

Entry into Force of Parts of the Children's Act in South Africa

1) Age of majority now 18 in South African law

The entry into force of certain sections of the Children's Act No 38 of 2005 on 1 July 2007 has changed the age of majority in South African law. It is now 18, while it was 21 before (Sec 17 of the Act). This is relevant for the many young South Africans living abroad, but still domiciled in South Africa or still South African citizens. If the conflict of law rule of the country in which they live points to domicile or nationality for the determination of personal status, these people above 18 will now have full contractual capacity in accordance with South African law.

2) Standard for "best interests of a child"

The Children's Act also contains a (lengthy) provision on the standard for "best interests of the child", a concept frequently used in international protection of children, specifically adoption. Such definition is of particular importance in a region which has a growing number of Aids orphans, and where international adoption might increase in future.

Section 7 of the Act states:

(1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely-

(a) the nature of the personal relationship between-

(i) the child and the parents, or any specific parent; and

(ii) the child and any other care-giver or person relevant in those circumstances;

(b) the attitude of the parents, or any specific parent, towards-

(i) the child; and

(ii) the exercise of parental responsibilities and rights in respect of the child;

(c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;

(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from-

(i) both or either of the parents; or

(ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child-

(i) to remain in the care of his or her parent, family and extended family; and

(ii) to maintain a connection with his or her family, extended family, culture or tradition;

(g) the child's-

(i) age, maturity and stage of development;

(ii) gender;

(iii) background; and

(iv) any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) any disability that a child may have;

(j) any chronic illness from which a child may suffer;

(k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;

(l) the need to protect the child from any physical or psychological harm that may be caused by-

(i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or

(ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;

(m) any family violence involving the child or a family member of the child; and

(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.

(2) In this section 'parent' includes any person who has parental responsibilities and rights in respect of a child.