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## GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. R. 561

22 May 2008

#### CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT, 2007 (ACT NO. 32 OF 2007)

#### CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) REGULATIONS

The Minister for Justice and Constitutional Development has under—

- (a) section 39 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), after consultation with the Minister for Safety and Security and the Minister of Health, and, in respect of the matter referred to in section 35 of the Act, in consultation with the Minister for Safety and Security; and
- (b) section 53 of the Act, and after consultation with the Minister for Safety and Security, the Minister of Correctional Services, the Minister of Social Development and the Minister of Health,
- made the Regulations in the Schedule.

#### SCHEDULE

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**Definitions**

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned and, unless the context otherwise indicates—

“**alleged offender**” means any person who, for purposes of—

- (a) regulations 2 to 5, 7, 8, 10 and 11, is accused of having committed a sexual offence in terms of the Act in which the victim may have been exposed to the body fluids of that person; or
- (b) regulations 6 to 8, 10 and 11, is accused of having committed any offence, including a sexual offence in terms of the Act, in which the HIV status of that person may be relevant for purposes of investigation or prosecution;

“**case number**” means the Crime Administration System number;

“**clerk of the court**” means a clerk of the court appointed in terms of section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), including any assistant clerk of the court so appointed, who, for purposes of Chapter 5 of the Act, has specifically been designated by the relevant head of the administrative region to deal with matters relating to that Chapter;

“**data base**” means, for purposes of regulations 12, 13 and 20, any recorded information in possession of the Registrar of the National Register for Sex Offenders whether such information is in electronic format or not;

“**health establishment**” means a public health establishment designated by the cabinet member responsible for health as contemplated in section 29(1) of the Act;

“**magistrate**” means a magistrate or an additional magistrate appointed for a district in terms of section 9 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), who, for purposes of Chapter 5 of the Act, has specifically been designated by the relevant head of the administrative region to deal with matters relating to that Chapter;

“**the Act**” means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); and

"working day" means any day other than a Saturday, Sunday or public holiday, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

## PART I

### REGULATIONS ON SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY HIV TESTING OF ALLEGED SEX OFFENDERS UNDER SECTION 39 OF THE ACT

#### Reporting of an alleged sexual offence and services for victims

2. (1) A medical practitioner or nurse to whom a sexual offence, where the victim may have been exposed to the risk of being infected with HIV as a result of that offence, is reported by a victim or an interested person must complete the J88 form ("Report by the authorised medical practitioner on the completion of a medico-legal examination").

(2) (a) The police official to whom the charge is made or the medical practitioner or nurse to whom the incident is reported, must inform the victim or interested person verbally and by way of a notice, which must correspond substantially with Form 1 in Annexure A—

- (i) of the importance of obtaining PEP for HIV infection without any delay, but in any event within 72 hours after the alleged sexual offence has taken place;
- (ii) that PEP will be administered at State expense at health establishments in accordance with the State's prevailing norms and standards;
- (iii) that the victim will receive free medical advice surrounding the administering of PEP prior to the administering thereof;
- (iv) of the need to obtain medical advice and assistance regarding the possibility of other sexually transmitted infections; and
- (v) that the victim or interested person may apply to a magistrate for an order that the alleged offender be tested for HIV, at State expense.

(b) (i) A list containing the names, addresses and contact particulars of accessible health establishments must be attached to the notice referred to in paragraph (a) above.

(ii) The list contemplated in subparagraph (i) may be restricted to accessible health establishments within reasonable distance from the police station where the charge is laid or from the health establishment where the incident is reported.

(c) If the victim or interested person is not able to read the notice referred to in paragraph (a), the contents thereof must be explained to him or her by the police official or another person who is able to assist the police official in this regard, medical practitioner or nurse, as the case may be, in a language that he or she understands.

(3) The medical practitioner or nurse to whom the incident is reported, as contemplated in subregulation (1), must, after having provided the services contemplated in section 28(1)(a) of the Act, inform the victim or interested person, as the case may be, to lay a charge without delay at the police station nearest to the place where the incident occurred.

**Application by victim or interested person for HIV testing of alleged offender**

3. (1) An application by a victim or interested person contemplated in section 30 of the Act must correspond substantially with Form 2 in Annexure A.

(2) The investigating officer must—

(a) place the application referred to in subregulation (1) in a sealed envelope marked "Confidential/Vertroulik", reflecting—

(i) the words "Application by victim or interested person for HIV testing of alleged offender" or "Application by victim or interested person to access HIV test result already obtained by investigating officer", as the case may be; and

(ii) the case number, name, rank and force number of the investigating officer; and

(b) lodge it with the clerk of the court as soon as is reasonably practicable, but not later than two working days, after the application has been handed to the investigating officer.

(3) (a) The clerk of the court must keep a register for applications contemplated in sections 30 and 32 of the Act in which the case number, name, rank and force number of the investigating officer, whether oral evidence has been led or further affidavits have been filed, and the date of the order by the magistrate must be reflected.

(b) The clerk of the court must put the sealed application in a file, marked "Confidential/Vertroulik", reflecting—

(i) the words "Application by victim or interested person for HIV testing of alleged offender" or "Application by victim or interested person to access HIV test result already obtained by investigating officer", as the case may be; and

(ii) the case number, name, rank and force number of the investigating officer, and submit it forthwith to a magistrate for consideration.

(4) The head of the office must put administrative measures in place to ensure the safekeeping of the register and the files referred to in subregulation (3).

**Consideration of application and evidence**

4. (1) When the magistrate who considers the application requires additional evidence as contemplated in section 31(1) of the Act, the clerk of the court must—

(a) where oral evidence is to be led confirm the date and time, as determined by the magistrate, with the investigating officer personally, both telephonically and confirmed in writing; and

(b) where further affidavits are to be filed, telephonically and confirmed in writing, require the investigating officer to obtain the affidavits as identified by the magistrate.

(2) (a) Where oral evidence is to be led, the investigating officer must—

(i) inform the victim, interested person or other witness of the arranged date and time to appear before the magistrate; and

(ii) if the alleged offender is required to testify—

- (aa) bring him or her on the arranged date and time to appear before the magistrate, if he or she is in custody; or
- (bb) inform him or her of the arranged date and time to appear before the magistrate, if he or she is not in custody.

(b) Where further evidence is required by affidavit, the investigating officer must—

- (i) obtain the required affidavit or affidavits from the person or persons as identified by the magistrate as soon as is reasonably practicable or within the period determined by the magistrate; and
- (ii) place the affidavit or affidavits in a sealed envelope marked "Confidential/Vertroulik", reflecting the case number, name, rank and force number of the investigating officer,

and hand it to the clerk of the court, who must forthwith submit it together with the file containing the application referred to in regulation 3 to the magistrate.

#### **Order by magistrate for HIV testing in terms of section 31 of the Act**

5. (1) The order by the magistrate contemplated in section 31(3) of the Act must correspond substantially with Form 3 in Annexure A.

(2) The magistrate must—

- (a) place the signed order referred to in subregulation (1) in a sealed envelope, marked "Confidential/Vertroulik", reflecting the case number, name, rank and force number of the investigating officer; and
- (b) hand the order together with the file referred to in regulation 3(3)(b) to the clerk of the court.

(3) The clerk of the court must hand the sealed order to the investigating officer who must acknowledge receipt thereof on the file referred to in regulation 3(3)(b).

(4) If an order is granted—

- (a) for the compulsory HIV testing of the alleged offender, as contemplated in section 31(3)(i) of the Act, the investigating officer must as soon as is reasonably practicable or within the period determined by the magistrate—
  - (i) hand a notice to the alleged offender which must correspond substantially with Form 4 in Annexure A, and follow the procedure referred to in section 33(1)(a) to (c) of the Act;
  - (ii) acknowledge receipt of the duplicate sealed records of the test results referred to in section 33(1)(d)(iii) of the Act; and
  - (iii) hand one of the sealed records of the test results, together with a notice containing information on the confidentiality of and how to deal with the test results in a form which must correspond substantially with Form 8 in Annexure A, to the victim or interested person, as the case may be, and to the alleged offender each; or
- (b) for the HIV test results in respect of the alleged offender, already obtained on application by an investigating officer as contemplated in section 32 of the Act, to be disclosed to the victim or interested person, as the case may be, the investigating officer must as soon as is reasonably practicable or within the period determined by the magistrate—

- (i) hand the order to the head of the health establishment or person contemplated in section 33(1)(d) of the Act, who must hand the sealed record of the test results contemplated in section 33(1)(d)(iv) of the Act to the investigating officer;
- (ii) acknowledge receipt of the sealed record of the test results handed to him or her; and
- (iii) hand the sealed record of the test results together with a notice containing information on the confidentiality of and how to deal with the test results in a form which must correspond substantially with Form 8 in Annexure A, to the victim or interested person, as the case may.

(5) The victim or interested person, as the case may be, and the alleged offender must acknowledge receipt of the test results handed to him or her in terms of subregulation (4).

**Application by investigating officer for HIV testing of alleged offender and order by magistrate for HIV testing in terms of section 32 of the Act**

6. (1) An application by an investigating officer contemplated in section 32 of the Act must correspond substantially with Form 5 in Annexure A.

(2) The investigating officer must place the application referred to in subregulation (1) in a sealed envelope, marked "Confidential/Vertroulik", reflecting—

(a) the words "Application by investigating officer for HIV testing of alleged offender" or "Application by investigating officer to access HIV test result already obtained by victim or interested person", as the case may be; and

(b) the case number, name, rank and force number of the investigating officer,

and must lodge it with the clerk of the court as soon as is reasonably practicable after a charge has been laid in respect of an alleged sexual offence or offence as defined in section 27 of the Act.

(3) (a) The clerk of the court must record the case number and name, rank and force number of the investigating officer in the register referred to in regulation 3(3)(a) of the Regulations.

(b) The clerk of the court must put the sealed application in a file, marked "Confidential/Vertroulik", reflecting—

(i) the words "Application by investigating officer for HIV testing of alleged offender" or "Application by investigating officer to access HIV test result already obtained by victim or interested person", as the case may be; and

(ii) the case number, name, rank and force number of the investigating officer,

and submit it forthwith to a magistrate for consideration.

(4) The head of the office must put administrative measures in place to ensure the safekeeping of the register and files referred to in subregulation (3).

(5) The order by the magistrate contemplated in section 32(3) of the Act must correspond substantially with Form 6 in Annexure A.

(6) The magistrate must—

(a) place the signed order referred to in subregulation (5) in a sealed envelope, marked "Confidential/Vertroulik", reflecting the case number, name, rank and force number of the investigating officer; and

- (b) hand the order together with the file referred to in subregulation (3)(b), to the clerk of the court.
- (7) The clerk of the court must hand the sealed order to the investigating officer who must acknowledge receipt thereof on the file referred to in subregulation (3)(b).
- (8) If an order is granted—
- (a) for the compulsory HIV testing of the alleged offender, as contemplated in section 32(3) of the Act, the investigating officer must—
- (i) as soon as is reasonably practicable or within the period determined by the magistrate hand a notice to the alleged offender which must correspond substantially with Form 4 in Annexure A, and follow the procedure referred to in section 33(1)(a) to (c) of the Act;
  - (ii) acknowledge receipt of the duplicate sealed records of the test results referred to in section 33(1)(d)(iii) of the Act and ensure the safekeeping of one record of the test results, as contemplated in regulation 9; and
  - (iii) hand the second sealed record of the test results, as contemplated in section 33(1)(e)(ii) of the Act, to the alleged offender together with a notice which must correspond substantially with Form 8 in Annexure A; or
- (b) for the HIV test results in respect of an alleged offender, already obtained on application by the victim or interested person, as the case may, as contemplated in section 32(3) of the Act, to be disclosed to the investigating officer, he or she must—
- (i) as soon as is reasonably practicable or within the period determined by the magistrate hand the order to the head of the health establishment or person contemplated in section 33(1)(d) of the Act, who must hand the sealed record of the test results contemplated in section 33(1)(d)(iv) of the Act to the investigating officer; and
  - (ii) acknowledge receipt of the sealed record of the test results and ensure the safekeeping of that test result, as contemplated in regulation 9.

#### **Taking of prescribed specimens**

7. If an order, contemplated in section 31(3)(i) or 32(3) of the Act, has been granted by a magistrate any medical practitioner or nurse contemplated in section 33(1)(a) of the Act must—

- (a) take two blood specimens on the same occasion from the alleged offender;
- (b) mark the blood specimens with the case number, full names and surname of the alleged offender; and
- (c) seal the blood specimens in an envelope which is marked "Confidential/Vertroulik" and reflecting the case number, the name, rank and force number of the investigating officer and hand it to the investigating officer.

#### **Recording, retaining and confidentiality of test results**

8. (1) The head of a health establishment or a person designated in writing by him or her performing one or more HIV tests on the blood specimens contemplated in regulation 7 of the Regulations must—

- (a) record the HIV result of the test in triplicate in a form which must correspond substantially with Form 7 in Annexure A;



- (b) place the test results in three separate envelopes to be sealed and marked "Confidential/Vertroulik", reflecting—
  - (i) the case number;
  - (ii) the name, rank and force number of the investigating officer;
  - (iii) the name of the victim; and
  - (iv) the name of the alleged offender; and
- (c) hand two of the sealed test results to the investigating officer.

(2) The head of a health establishment or a person designated in writing by him or her must retain the sealed record of the test results in a manner and at a place that prevents any unauthorised access to such test results.

#### **Retaining of test results by investigating officer**

9. The National Commissioner of the South African Police Service must ensure—
- (a) that investigating officers treat the record of the test results as confidential;
  - (b) the safekeeping of the record of the test results; and
  - (c) the prevention of unauthorised access to the record of the test results.

#### **Warrant of Arrest**

10. (1) The investigating officer may, if the alleged offender is not being detained, and—
- (a) there is reason to believe that he or she may avoid compliance with an order contemplated in section 31(3) or 32(3) of the Act, at the same time an application referred to in regulation 3 or 6 is brought, apply to the magistrate who considers the application; or
  - (b) has avoided compliance with an order referred to in regulation 3 or 6, apply to the magistrate who issued the said order,

to issue a warrant for the arrest of the alleged offender to collect blood specimens from him or her for HIV tests.

(2) If the magistrate who issued the order for the compulsory HIV testing of an alleged offender is not available or able to consider such application, the application may be considered by any other magistrate.

(3) The application must correspond substantially with Form 9 in Annexure A.

(4) The warrant of arrest contemplated in section 33(3) of the Act must correspond substantially with Form 10 in Annexure A.

- (5) The investigating officer must—
- (a) when arresting the alleged offender, take reasonable steps to verify the identity of the alleged offender;
  - (b) take the alleged offender without any delay after arresting him or her to a medical practitioner or nurse contemplated in section 33(1)(a) of the Act for the taking of blood specimens; and
  - (c) release the alleged offender, if he or she was arrested in terms of a warrant referred to in section 33(3) of the Act, as soon as the specimens have been taken.

**Register of applications and orders**

11. (1) The National Commissioner of the South African Police Service must designate a person who will be responsible to maintain the register contemplated in section 35 of the Act.

(2) The register contemplated in section 35 of the Act must contain the following information regarding applications contemplated in sections 31 and 32 of the Act:

- (a) The case number;
- (b) the name, rank and force number of the investigating officer;
- (c) the date of the application;
- (d) the full names, date of birth, identity number, address and contact details of the victim, if applicable;
- (e) if the application is brought by an interested person contemplated in section 30 of the Act, the full names, date of birth, identity number, address and contact details of that interested person and the relationship between the victim and the interested person;
- (f) the full names, date of birth, identity number, address and contact details of the alleged offender;
- (g) full particulars of the alleged sexual offence or offence as defined in section 27 of the Act;
- (h) the date the order for HIV testing was made;
- (i) whether the application contemplated in section 31 or 32 of the Act was granted or dismissed;
- (j) whether a warrant of arrest was issued;
- (k) the magistrate's court and the magistrate who considered the application;
- (l) if granted, when and at which health establishment the order was executed; and
- (m) where the sealed record of the test results, contemplated in section 33(1)(e) of the Act, is kept.

(3) Only the following persons have access to the register contemplated subregulation (1):

- (a) The person responsible for maintaining register; and
- (b) an investigating officer.

**PART II****REGULATIONS ON NATIONAL REGISTER FOR SEX OFFENDERS UNDER SECTION 53 OF THE ACT****Establishment of National Register for Sex Offenders and designation or appointment of personnel of Registrar**

12. (1) The National Register for Sex Offenders, contemplated in section 42(1) of the Act, must, subject to regulations 15 and 16, be kept in electronic format as part of the electronic infrastructure of the Department of Justice and Constitutional Development and the courts in a manner that—

- (a) facilitates information to be forwarded from the Registrars of the High Courts and the clerks of the court, contemplated in section 50(3) of the Act, to the Register; and
- (b) ensures that only the Registrar and the personnel of the Registrar contemplated in subregulation (2) have access to the data base of the Register.

(2) (a) The Director-General: Justice and Constitutional Development may, after consultation with the Registrar and subject to legislation governing the employment of personnel in the public service,

designate the number of fit and proper officials of the Department or appoint the number of fit and proper persons that is necessary to assist the Registrar in the exercise and performance of his or her powers, duties and functions as contemplated in Chapter 6 of the Act and these regulations.

(b) The officials contemplated in paragraph (a) must perform the duties and functions, referred to in regulation 13—

- (i) that are assigned to them by; and
- (ii) subject to the directions of,  
the Registrar.

#### **Powers, duties and functions of Registrar**

13. The powers, duties and functions of the Registrar shall include—

- (a) receiving the particulars of persons contemplated in section 50(1)(a) of the Act from the Registrar of the High Court, the clerk of the court, the National Commissioner of Correctional Services, the National Commissioner of the South African Police Service and the Director-General: Health and, subject to section 50(3) of the Act, entering such particulars in the Register;
- (b) receiving and processing applications for certificates contemplated in section 44 of the Act;
- (c) issuing certificates;
- (d) introducing security measures, including electronic security measures, to ensure the confidentiality of information contained in the data base of the Register and protecting such information from unauthorised access by any person;
- (e) reporting, without delay, any unauthorised access to or tampering with any information contained in the data base of the Register to the South African Police Service;
- (f) taking the necessary steps, with the assistance of the Directors-General: Justice and Constitutional Development, Foreign Affairs and Home Affairs and the National Commissioner of the South African Police Service, where necessary, to establish procedures in terms of which—
  - (i) the particulars of persons contemplated in section 50(1)(b) of the Act should be forwarded to the Registrar;
  - (ii) the Register must be regularly updated with regard to the particulars of persons contemplated in section 50(1)(b) of the Act; and
  - (iii) where necessary, the removal of particulars of persons contemplated in section 50(1)(b) of the Act, with the view to advising the Minister accordingly for purposes of making regulations that give effect to such procedures;
- (g) receiving and processing applications for the removal of the particulars of certain persons from the Register; and
- (h) after consideration of the applications contemplated in paragraph (g), removing the particulars of certain persons from the Register.

**Contents of Register**

14. The Register must—
- (a) contain the particulars referred to in section 49(b)(i) to (vi) of every person contemplated in section 50(1)(a);
  - (b) subject to the establishment of the procedures contemplated in regulation 13(f), contain the information referred to in section 49(c) of every person contemplated in section 50(1)(b); and
  - (c) contain a set of fingerprints, if available, of every person contemplated in section 50(1),
- of the Act.

**Manner in which particulars must be forwarded to Registrar: Establishment of Register and related matters**

15. (1) The National Commissioner of Correctional Services must, within three months after the commencement of Chapter 6 of the Act, forward to the Registrar the particulars referred to in regulation 14 of every prisoner or former prisoner contemplated in section 50(5) of the Act in separate forms that must correspond substantially with Form 1 in Annexure B.

(2) The forms contemplated in subregulation (1) must be forwarded electronically to the Registrar and the originals thereof must, as soon as reasonably possible, be submitted to the Registrar for safe-keeping.

(3) (a) The Registrar must forthwith enter those particulars in the Register and must, after he or she has entered the particulars of every prisoner or former prisoner contemplated in subregulation (1), inform the National Commissioner of Correctional Services of those prisoners whose particulars have been entered into the Register and request the Commissioner to inform such prisoners of the implications thereof.

(b) The National Commissioner of Correctional Services must ensure that a form that must correspond substantially with Form 2 in Annexure B is handed to every prisoner whose particulars have been entered in the Register within three months after having received the notification contemplated in paragraph (a) and that the contents thereof are explained to every such prisoner.

(4) The Director-General: Health must, within three months after the commencement of Chapter 6 of the Act, forward to the Registrar the particulars referred to in regulation 14 of every person contemplated in section 50(7) of the Act in separate forms that must correspond substantially with Form 3 in Annexure B.

(5) The forms contemplated in subregulation (4) must be forwarded electronically to the Registrar and the originals thereof must, as soon as reasonably possible, be submitted to the Registrar for safe-keeping.

(6) (a) The Registrar must forthwith enter those particulars in the Register and must, after he or she has entered the particulars of every person contemplated in subregulation (4), inform the Director-General: Health of those persons whose particulars have been entered into the Register and request the Director-General to inform such persons of the implications thereof.

(b) The Director-General: Health must ensure that a form that must correspond substantially with Form 4 in Annexure B is handed to every person whose particulars have been included in the Register within three months after having received the notification contemplated in paragraph (a) and that the contents thereof are explained to such persons.

(7) The National Commissioner of the South African Police Service must, within three months after the commencement of Chapter 6 of the Act gather the available particulars referred to in regulation 14 and submit the available particulars of every person contemplated in section 50(6) of the Act to the Registrar.

**Manner in which particulars must be forwarded to Registrar and related matters**

16. (1) When a court makes an order contemplated in section 50(2)(a) of the Act, which order must correspond substantially with Form 5 in Annexure B, the Registrar of the High Court or clerk of the court must forthwith—

- (a) where possible, notify the convicted person's employer, as defined in section 40 of the Act, by means of a notification that must correspond substantially with Form 6 in Annexure B; and
- (b) forward the order together with all the particulars referred to in regulation 14 to the Registrar.

(2) The Registrar must, upon receipt of the order contemplated in subregulation (1) and subject to subregulation (3), provisionally enter the particulars of the person concerned in the Register together with a note that such particulars are entered into the Register pending the—

- (a) expiry of the period for noting an appeal or taking the matter on review; or
- (b) conclusion of any appeal or review proceedings that may have been instituted.

(3) The Registrar must, after expiry of the period for noting an appeal or taking the matter on review, without delay enquire from the Registrar of the High Court or clerk of the court regarding the outcome of the appeal or review, if any.

**Persons entitled to apply for certificate**

17. (1) Any person who, before or after the commencement of Chapter 6 of the Act, has been convicted of or who has a previous conviction for a sexual offence against a child or a person who is mentally disabled and who—

- (a) is in the employ of an employer;
- (b) intends to apply for work that, in any manner and during the course of such employment, will place him or her in a position of authority, supervision or care of a child or a person who is mentally disabled or who will gain access to a child or a person who is mentally disabled or places where children or persons who are mentally disabled are present or congregate;
- (c) intends to apply for a licence or approval to manage or operate an entity, business concern or trade in relation to the supervision over or care of children or persons who are mentally disabled;
- (d) intends to apply to become a foster parent, kinship care-giver, temporary safe care-giver, adoptive parent or curator; or
- (e) wishes to establish whether his or her own particulars appear in the Register,

must apply to the Registrar, by means of an application form that must correspond substantially with Form 7 in Annexure B, for a certificate stating whether or not his or her own particulars appear in the Register.

(2) Any—

- (a) employer who, at the commencement of these regulations, employs an employee or intends employing an employee;
- (b) licensing authority who, at the commencement of these regulations, considers an application contemplated in subregulation (1)(c); or
- (c) relevant authority who, at the commencement of these regulations, considers an application contemplated in subregulation (1)(d),

must apply to the Registrar, by means of an application form that must correspond substantially with Form 8 in Annexure B, for a certificate stating whether or not the particulars of such person appear in the Register.

### Processing of applications

18. The Registrar must, on receipt of an application form referred to in regulation 17(1) or (2), as soon as is reasonably practicable but in any event within 10 working days after receipt of such application issue a certificate that corresponds substantially with Form 9 in Annexure B.

### Removal of particulars from Register

19. (1) Any person falling in any category contemplated in section 51(1) of the Act, may apply for the removal of his or her particulars from the Register by submitting an application form that must correspond substantially with Form 10 in Annexure B.

(2) The Registrar may only take steps to remove the particulars of a person from the Register on receipt of an application referred to in subregulation (1).

(3) The Registrar may only remove the particulars of a person from the Register if—

- (a) the period referred to in section 51(1)(a)(i) to (iii) or 51(1)(b) of the Act has lapsed; and
- (b) the National Commissioner of the South African Police Service has confirmed in writing that the person concerned—
  - (i) is not the subject of an investigation or that there is not a charge relating to a sexual offence against a child or a person who is mentally disabled pending against him or her; or
  - (ii) was the subject of an investigation or a charge relating to a sexual offence against a child or a person who is mentally disabled and that such investigation or charge has been concluded without the person concerned having been convicted of the offence concerned,

and must provide the person with a form that must correspond substantially with Form 11 in Annexure B.

(4) Any record, whether in electronic or other format, must immediately be destroyed once the particulars of a person have been removed from the Register.

### Offences and penalties

20. (1) Subject to section 52(2) and (3) of the Act, any person who, without authorisation—

- (a) gains or attempts to gain access to the data base of the Register;
- (b) tampers with or attempts to tamper with any information contained in the data base of the Register; or

(c) distributes, publishes or in any other manner makes any information contained in the data base of the Register available to any other person,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(2) Any person who applies for the removal of his or her particulars from the Register who falsely declares that there are no criminal proceedings, for allegedly having committed a sexual offence against a child or a person who is mentally disabled, pending against him or her, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

### PART III

### GENERAL

#### Short title and commencement

21. (1) These Regulations are called the Criminal Law (Sexual Offences and Related Matters) Regulations.

(2) Regulation 1, Part I and Part III of these Regulations take effect on 22 May 2008, and Part II thereof takes effect on 16 June 2008.

**ANNEXURE A**

**FORMS**

**REGULATIONS ON SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY HIV TESTING OF ALLEGED SEX OFFENDERS AND NATIONAL REGISTER FOR SEX OFFENDERS**

**CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT, 2007  
(ACT NO. 32 OF 2007)**

**PART I OF REGULATIONS: SERVICES FOR VICTIMS OF SEXUAL OFFENCES AND COMPULSORY HIV TESTING OF ALLEGED OFFENDERS**

- |                |  |
|----------------|--|
| <b>Form 1</b>  | <b>Notice of services available to victim</b>  |
| <b>Form 2</b>  | <b>Application for HIV testing of alleged offender by victim or interested person</b>                        |
| <b>Form 3</b>  | <b>Order by magistrate for HIV testing of alleged offender on application by victim or interested person</b> |
| <b>Form 4</b>  | <b>Notice to offender regarding order for HIV testing</b>  |
| <b>Form 5</b>  | <b>Application for HIV testing of alleged offender by investigating officer</b>                              |
| <b>Form 6</b>  | <b>Order by magistrate for HIV testing of alleged offender on application by investigating officer</b>       |
| <b>Form 7</b>  | <b>Recording of HIV tests results obtained in terms of an order by magistrate</b>                            |
| <b>Form 8</b>  | <b>Notice containing information on confidentiality of and how to deal with HIV test results</b>             |
| <b>Form 9</b>  | <b>Application for warrant of arrest</b>   |
| <b>Form 10</b> | <b>Warrant of arrest</b>   |



## FORM 1

## [Regulation 2(2)]

## NOTICE OF SERVICES AVAILABLE TO VICTIM

**Section 28(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)**

*(To be handed to a victim of an alleged sexual offence or an interested person by the police official to whom the charge is made or by the medical practitioner or nurse to whom the incident is reported)*

This information sheet will provide you with information, and give you details on the services available to a victim of an alleged sexual offence regarding the receiving of Post Exposure Prophylaxis (PEP) for possible HIV infection (Part 1 of this sheet) and for the testing of the alleged sex offender for HIV (Part 2 of this sheet).

**PLEASE NOTE THE FOLLOWING:****Note:** Who is an interested person?

*In terms of section 27 of the Act, an interested person is any person who has a material interest in the well-being of a victim, including*

- a spouse;
  - a parent;
  - a family member;
  - a curator;
  - a medical practitioner;
  - a social worker;
  - a same sex or heterosexual permanent life partner;
  - a guardian;
  - a care giver;
  - a counsellor;
  - a health service provider;
  - a teacher,
- of such victim.*

**PART 1: ACCESS TO POST EXPOSURE PROPHYLAXIS****What is HIV infection?**

HIV refers to infection with the human immuno-deficiency virus. HIV destroys important cells which control and support the immune system. As a result the body's natural defence mechanisms cannot offer any resistance against illnesses. Most people infected with HIV ultimately develop AIDS and die as their bodies can no longer offer any resistance to illnesses such as TB, pneumonia and meningitis. Infection with HIV therefore has serious consequences for you as an individual. There is currently no cure for HIV/AIDS.

**How is HIV transmitted?**

HIV is transmitted in three ways: via sexual intercourse; when HIV infected blood is passed directly into the body; and from mother to child during pregnancy, childbirth or whilst breast feeding.

**Can I be exposed to HIV during a sexual offence?**

Yes you can if the alleged offender's blood, semen or vaginal fluid entered your body through a cut or abrasion on your skin, or for example, if you have been raped vaginally or anally and the alleged offender's semen entered your body and he or she is infected with HIV.

**What is PEP?**

PEP is an anti-viral therapy designed to reduce the possibility of an individual becoming infected with HIV after a known exposure to the virus. The treatment usually involves the administration of a group of drugs (or certain medicine on its own) which act against HIV.

It is therefore important that PEP be administered to you as soon as possible after the sexual offence has taken place, but at the latest within 72 hours after the alleged sexual offence has taken place. PEP does not work anymore if started more than 72 hours after exposure to the HIV virus. It will therefore only be given to you within this time frame. PEP is administered at a public health establishment which has been designated by the Minister of Health. It is also done at State expense. A list of the designated health establishments within reasonable distance from the police station where the complaint is laid or from the public health establishment where the incident is reported, is attached to this notice. You will be given free medical advice surrounding the administering of PEP, prior to the administering thereof. It is important to remember that PEP will not be given to you without your consent.

#### **Can I put other people at risk of HIV infection because of my possible exposure to HIV?**

You cannot transmit HIV through daily contact with other people. HIV is not transmitted through hugging, shaking hands, and sharing food, water or utensils. However, because HIV is, among others, transmitted through sexual intercourse, you may have become infected through the alleged sexual offence and may in turn infect your sexual partner with whom you have sex after the sexual offence has been committed against you. You should practice safe sex until you have established with certainty that you have not been infected. If you are pregnant, there is a possibility that you could transmit HIV to your unborn child. If you are breast feeding there is also a possibility that your child may be at risk of contracting HIV infection. ***You must obtain expert advice (which may include advice from one of the service providers mentioned on the last page of this sheet) to deal with the implications of the risk of infection for yourself, your sexual partner and others.***

#### **What about other sexually transmitted infections?**

If there is a possibility that you may have been exposed to the blood, semen or vaginal fluids of the alleged offender, you may also be at risk of infection with other sexually transmitted infections. It is in your own interest to obtain medical advice and, where necessary, medical assistance regarding your possible exposure to other sexually transmitted infections.

### **PART 2: COMPULSORY HIV TESTING OF ALLEGED SEX OFFENDER**

#### **How could I deal with my possible exposure to HIV during the alleged sexual offence?**

You can apply to a magistrate to have the alleged offender tested for HIV, and the results disclosed to you.

Knowing the HIV status of the alleged sex offender may place you in a better position to—

- determine whether you were exposed to the risk of HIV infection when the alleged sexual offence was committed against you; and
- make decisions regarding the protection of your sexual partner and others against HIV infection.

***However, you must obtain expert advice to deal with the implications of the risk of infection for yourself, your sexual partner and others. The test result from a compulsory HIV test may not be reliable because the alleged***

*sexual offender may be in the window period while he or she is tested for HIV. This means that the test result may show that the alleged sexual offender is negative although he or she is, in fact, HIV positive. You must therefore talk to an expert before you make any medical or lifestyle decisions based on the test result. Furthermore, please take into account that an HIV positive test result does not mean that the virus was necessarily transmitted to you during the sexual offence.*

*It is in your own best interest to have yourself tested for HIV when you feel ready to do so. In the meanwhile, make sure that you practice safer sex.*

#### **How can I apply for HIV testing of the alleged sex offender?**

- Lay a charge at the police station nearest to where the offence took place.
- The charge will be investigated by the police, but you may immediately apply for the HIV testing of the alleged sex offender.
- Inform the investigating officer that you wish to apply for HIV testing of the alleged offender.
- Complete an application form obtainable from the investigating officer for an order for HIV testing with the assistance of the investigating officer.
- Hand the completed and signed application to the investigating officer.

#### **Who will consider my application?**

The investigating officer will submit your completed application to a magistrate who will consider the application during court hours in his or her office. The magistrate may, however, request further evidence, either orally or by affidavit and may also question the alleged offender. The Act requires that the investigating officer must inform you of the decision of the magistrate who considered your application.

#### **What will happen if the magistrate has ordered that the alleged offender must be tested for HIV?**

The investigating officer will ensure that two blood specimens are on the same occasion taken from the alleged offender and tested for HIV.

#### **Who will pay for the HIV testing?**

The State.

#### **How will I be informed about the HIV test result?**

The investigating officer will as soon as possible ensure that you receive a sealed envelope containing the HIV test result, as well as information on where you can get help in dealing with the test results and the implications thereof.

#### **May I disclose the alleged offender's HIV test result to other people?**

In terms of the Act the HIV test results may only be disclosed to the victim or the interested person who initiated the application for the compulsory HIV testing of the alleged offender, the alleged offender, the investigating officer, and

where applicable a prosecutor or any other person who needs to know the test results for purposes of any civil proceedings or an order of a court.

#### **Cut-off period for bringing an application**

A limited period of time is allowed for HIV testing of an alleged sex offender. You must apply for such testing within 90 days after the alleged sexual offence has taken place (the 90 days is called a window period, namely, the period within which the test result from a compulsory HIV test may not be reliable because the alleged sexual offender may be in the window period while he or she is tested for HIV. This means that the test result may show that the alleged sexual offender is negative although he or she is, in fact, HIV positive). It is therefore advised that if you decide to apply for having the alleged sex offender tested for HIV, you do it as soon as possible after the alleged offence. However, it is in your own best interest to have yourself tested for HIV.

#### **Service organisations which can provide counselling and support**

Expert assistance in dealing with the implications of HIV test results is available at a number of different service providers. These include:

- Private medical and social facilities (eg a general medical practitioner or psychologist).
- Public medical and social facilities, including—
  - Life Line
  - Child Line
  - Child protection organizations
  - Local State Hospitals and Clinics
  - Rape Crisis
  - FAMSA
  - Regional Departments of Social Welfare
  - Local AIDS Service Organisations

Contact details of the above service providers are available in the telephone directory and from the investigating officer.

### **FORM 2**

**[Regulation 3(1)]**

#### **APPLICATION FOR HIV TESTING OF ALLEGED OFFENDER BY VICTIM OR INTERESTED PERSON**

**Section 30 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)(the Act)**

#### **PLEASE READ THE NOTES BEFORE COMPLETING THE APPLICATION FORM**

**Note 1:** *The investigating officer must assist the victim or interested person with the completion of the Form.*

**Note 2:** *If the application is brought by an interested person, this application must be brought with the written consent of the victim, unless the victim is—*

- *under the age of 14 years;*