



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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## THE PRESIDENCY

No. 129

11 February 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 38 of 2004: Choice on Termination of Pregnancy Amendment Act, 2004.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**Act No. 38,2004** CHOICE ON TERMINATION OF PREGNANCY  
AMENDMENT ACT. 2004

GENERAL EXPLANATORY NOTE:

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)*  
*(Assented to 4 February 2005.)*

## ACT

To amend the Choice on Termination of Pregnancy Act, 1996, so as to amend a definition and to insert others; to empower a Member of the Executive Council to approve facilities where a termination of pregnancy may take place; to exempt a facility offering a 24-hour maternity service from having to obtain approval for termination of pregnancy services under certain circumstances; to provide for the recording of information and the submission of statistics; to enable a Member of the Executive Council to make regulations; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 92 of 1996

1. Section 1 of the Choice on Termination of Pregnancy Act, 1996 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the insertion after the definition of “gestation period” of the following definition: 5  
“‘Head of Department’ means the head of a provincial health department;”;
- (b) by the insertion after the definition of “medical practitioner” of the following definition: 10  
“‘Member of the Executive Council’ means the member of the Executive Council of a province who is responsible for health in that province;”;
- (c) by the substitution for the definition of “registered midwife” of the following definition: 15  
“‘registered midwife’ means a person registered as such under the Nursing Act, 1978 (Act No. 50 of 1978), and who has in addition undergone prescribed training in terms of this Act;” and
- (d) by the insertion after the definition of “registered midwife” of the following definition: 20  
“‘registered nurse’ means a person registered as such under the Nursing Act, 1978 (Act No. 50 of 1978), and who has in addition undergone prescribed training in terms of this Act;”.

**Substitution of section 3 of Act 92 of 1996**

2. The following section is hereby substituted for section 3 of the principal Act:

**“Place where termination of pregnancy may take place**

**3.** (1) Termination of a pregnancy may take place only at a facility which— 5

(a) gives access to medical and nursing staff;

(b) gives access to an operating theatre;

(c) has appropriate surgical equipment;

(d) supplies drugs for intravenous and intramuscular injection;

(e) has emergency resuscitation equipment and access to an emergency referral centre or facility; 10

(f) gives access to appropriate transport should the need arise for emergency transfer;

(g) has facilities and equipment for clinical observation and access to in-patient facilities; 15

(h) has appropriate infection control measures;

(i) gives access to safe waste disposal infrastructure;

(j) has telephonic means of communication; and

(k) has been approved by the Member of the Executive Council by notice in the *Gazette*. 20

(2) The Member of the Executive Council may withdraw any approval granted in terms of subsection (1)(k).

(3) (a) Any health facility that has a 24-hour maternity service, and which complies with the requirements referred to in subsection (1)(a) to (j), may terminate pregnancies of up to and including 12 weeks without having to obtain the approval of the Member of the Executive Council. 25

(b) The person in charge of a health facility contemplated in paragraph (a) must notify the relevant Member of the Executive Council that the health facility has a 24-hour maternity service which complies with the requirements referred to in subsection (1)(a) to (j). 30

(4) The Member of the Executive Council shall once a year submit statistics of any approved facilities for that year to the Minister.

(5) Notwithstanding anything to the contrary in this Act, the Minister may perform any of the functions that the Member of the Executive Council may or must perform, if it is necessary to perform such function in order to achieve any of the objects of this Act.”. 35

**Amendment of section 7 of Act 92 of 1996**

3. Section 7 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for the words preceding the proviso of the following words: 40

“The person in charge of a facility referred to in section 3 shall, within one month of the termination of a pregnancy at such facility, collate the prescribed information and forward it by registered post confidentially to the **[Director-General]** relevant Head of Department”; and

(b) by the substitution for subsection (4) of the following subsection: 45

“(4) The **[Director-General]** Head of Department shall—

~~(a)~~ keep record of the prescribed information which he or she receives in terms of subsection (3); and

(b) submit to the Director-General the information contemplated in paragraph (a) every six months.”. 50

**Substitution of section 8 of Act 92 of 1996**

4. The following section is hereby substituted for section 8 of the principal Act:

**“Delegation**

8. (1) The [Minister] Member of the Executive Council may, on such conditions as he or she may determine, in writing delegate to the [Director-General] Head of Department or any other officer in the service of the State, any power conferred upon the [Minister] Member of the Executive Council by or under this Act. except the power referred to in section 9. 5

(2) The [Director-General] Head of Department may, on such conditions as he or she may determine, in writing delegate to an officer in the service of the State, any power conferred upon the [Director-General] Head of Department by or under this Act **[or delegated to him or her under subsection (1)]**. 10

(3) The [Minister or Director-General] Member of the Executive Council or Head of Department shall not be divested of any power delegated by him or her, and may amend or set aside any decision taken by a person in the exercise of any such power delegated to **[him or her] that person.**” 15

**Substitution of section 9 of Act 92 of 1996**

5. The following section is hereby substituted for section 9 of the principal Act:

**“Regulations**

9. The [Minister] Member of the Executive Council may, in consultation with the Minister, make regulations relating to any matter which **[he or she may consider] it is necessary or expedient to prescribe for [achieving the objects] the proper implementation or administration of this Act.**” 25

**Amendment of section 10 of Act 92 of 1996**

6. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who— 30

- (a) is not a medical practitioner, or a registered midwife or registered nurse who has completed the prescribed training course, and who performs the termination of a pregnancy referred to in section 2(1)(a); 30
- (b) is not a medical practitioner and who performs the termination of a pregnancy referred to in section 2(1)(b) or (c); **[or]** 35
- (c) prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy; or
- (d) terminates a pregnancy or allows the termination of a pregnancy at a facility not approved in terms of section 3(1) or not contemplated in section 3(3)(a), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.” 40

**Substitution of certain expression in Act 92 of 1996**

7. The principal Act is hereby amended by the substitution for the expression “registered midwife”, wherever it appears, of the expression “registered midwife or registered nurse”. 45

Act No. 38,2004

CHOICE ON TERMINATION OF PREGNANCY  
AMENDMENT ACT, 2004

**Transitional provision**

8. Any facility designated in terms of section 3(1) of the principal Act prior to the commencement of this Act must be regarded as having been approved by the Member of the Executive Council in terms of section 3(1)(k) of the principal Act as amended by this Act.

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**Short title**

9. This Act is called the Choice on Termination of Pregnancy Amendment Act, 2004.