

CHILD PROTECTION (ALTERNATIVE CARE) ACT



MINISTRY FOR THE FAMILY,
CHILDREN'S RIGHTS AND SOCIAL SOLIDARITY

STREAMLINED TIMEFRAMES

Timeframes have been streamlined throughout the Act to ensure uniformity.

INVESTIGATIVE COMMITTEE (ARTICLE 5)

The Head of Department (Child Protection Services) is duly bound to hold regular meetings with stakeholders to set policies and protocols. This will give rise to an Investigative Committee, which is an innovative concept in the field of child protection as it is now mandatory and regulated by law

MANDATORY REPORTING (ARTICLE 8): PROFESSIONALS ARE LEGALLY BOUND TO REPORT ABUSE.

The law creates a balance between general Mandatory Reporting and the professionals' responsibility to report. The general public will have a moral duty to report child abuse, whereas professionals will be bound to report any act which constitutes a criminal offence causing significant harm to minors. If the report is lodged in good faith and the abuse does not subsist, there are no legal consequences. To this effect, and for the sake of uniformity, the law envisages a National Children's Policy. This conveys a very clear message, i.e. that child protection is everyone's responsibility and professionals are not only bound to refer cases, but also to be trained, to share information and to work hand in hand with child protection services throughout.

INVESTIGATIVE POWERS OF THE HEAD OF DEPARTMENT (ARTICLE 10)

By virtue of this law, the Head of Department will have executive powers similar to those vested in the disciplinary forces (e.g. Armed Forces of Malta and Prison Wardens). There is no need for the Head of Department to obtain any Court authorisation to initiate an investigation and start gathering evidence, pertinent to the case in issue.

CHILDREN'S RIGHTS AND NEEDS COME FIRST (ARTICLE 11 (g) AND ARTICLE 12 (5))

This law is pragmatic and primarily intended to safeguard the interest of children. As the law stands, in certain instances children suffer due to bureaucratic procedures and owing to the withholding of parental consent by the parent/s vested with care and custody of the minor. Parental consent is sometimes unreasonably withheld by the 'legally' responsible parent at the expense of the child's education and well-being. Some situations require immediate action, and as it stands the Agency has to obtain Court authorisation before it can act.

CHILDREN'S RIGHTS AND NEEDS COME FIRST (ARTICLE 11 (g) AND ARTICLE 12 (5))

This may be prejudicial to the minor as legal proceedings may take time. To resolve this matter, under this Act the Agency will be authorized to amend a social contract and can, in exceptional circumstances, act without the consent of the parents, if the minor would otherwise lose on education or health benefits. The parents will have the right to challenge the Agencies' actions before the Court.

CHILDREN'S HOUSE (ARTICLE 14)

The Children's House model, also known as Barnhus, is introduced in this law in a mandatory fashion. This will ensure that minors will benefit from this child friendly justice system which is being successfully adopted across Europe. This will put Malta in line with its international obligations enshrined in the Lanzarote Convention

THE BEST INTEREST OF THE CHILD IS THE LEITMOTIV PRINCIPLE OF THE LAW (ARTICLE 16)

Throughout the Act, children are placed at the centre. The child will be listened to and represented by a lawyer and protected at all times.

CARE AND CUSTODY

(HEAD OF RESIDENTIAL HOMES, THE AGENCY,
FOSTER CARERS AND NEXT OF KIN) (ARTICLE 17)

Instead of the Minister, care and custody of children in out of home care will now be entrusted to Head of Homes, the Agency, Foster Carers, or to a next of kin. This means that the day to day decisions on Children in out of home care may be placed primarily in hands of the responsible person/s taking care of that particular minor. In this way, the needs of the child will be met in a more timely manner. This is in the Court's discretion however, and according to the care plan that is agreed upon, always in the best interest of the child. Care and custody may indeed be shared and delegated in multiple ways, including to alternative carers. The next of kin principle, according to this law, shall be given priority.

MULTIPLE REMEDIES AND ORDERS (ARTICLE 18 AND 19)

Nowadays, the only judicial remedy to safeguard abused or neglected children is to resort to a care order, or a court order. This law contemplates a number of remedies, including measures which will ensure that minors will remain in their own family environment without being further abused. These protection orders are:

- Emergency Order
- Care Order
- Supervision order
- Treatment Order
- Removal Order

MULTIPLE REMEDIES AND ORDERS (ARTICLE 18 AND 19)

Apart from these orders, the Head of Department may also resort to social contracts when necessary and these orders are intended as a last resort. The social contract is intended to ensure that parents/guardians take responsibility and seek the necessary help to stop any form of abuse affecting the minor. It also ensures that abused minors are safeguarded, especially in their own home.

SECURE AND THERAPEUTIC UNIT (ARTICLE 26)

This law introduces for the first time in our legal history a secure and therapeutic centre. It will allow the Head of Department to detain minors with deviant behaviour and order that they are placed in this therapeutic centre, in order to undergo therapy for a period that will be determined by the court. All actions will be subject to the Court's scrutiny and approval.

THE PERMANENCY ASPECT OF CHILD PROTECTION HAS BEEN AMPLIFIED TO SAFEGUARD CHILDREN IN NEED OF CARE AND PROTECTION (ARTICLE 23)

Minors can benefit from permanency from the moment they are placed in care, or at a later stage, always in the best interest of the minor concerned and according to the circumstances of the case.

FREEING FOR ADOPTION / OPEN ADOPTION (ARTICLE 24)

Children in out of home care can be freed for adoption, upon a request by the Agency, or any other interested party. The Court can dispense with the parents' consent, but it is bound to hear and consider the parents' views before passing judgement. The concept of Open Adoption, which currently applies only to children over 11 years of age, will be extended to all ages. This will ensure that children in out of home care can be freed for adoption at any age and can benefit from a family environment, as well as adoption, without losing contact with the birth family and siblings.

REVIEW BOARD (ARTICLE 31)

The Review Board, as opposed to the current Children and Young Persons Advisory Board, will be tantamount to a quasi-judicial Tribunal. Its operational procedures are meticulously regulated in order to ensure transparency, accountability and, more importantly, to avoid the mishaps and controversy at times inadvertently generated by the previous board.

PROFESSIONALS WHO WILL SIT ON THE CARE REVIEW BOARD (ARTICLE 31)

This Board will now be composed of professionals specialized in the field of child protection, and thus its members will be in a better position to decide on matters dealing with child protection.

FOSTER CARERS (ARTICLE 38 (12))

Foster carers will now have access to all acts and documents of the Fostering Board

FOSTER CARERS (ARTICLE 53 (n))

Foster Carers can now open a bank account on behalf of the fostered child, which they have to administer as *bonus pater familias*

THE REMOVAL OF AGE RESTRICTION IN THE CASE OF ADOPTION FOLLOWING 10 YEARS OF FOSTERING

ADOPTION (ARTICLE 54 (1))

After 10 years of fostering, foster carers can file an application and request to adopt the fostered child/ren. The two age restrictions in this regard (the 45 years gap between the prospective adoptive parent/s and the minor, and the age limit of the prospective adoptive parent, i.e. of 61) have been removed.

BOARD REVIEWS (ARTICLE 68)

NO DISCRIMINATION BETWEEN CHILDREN IN OUT OF HOME CARE AFTER VOLUNTARY ADMISSIONS AND THOSE PROTECTED BY A CARE ORDER

Board reviews will take place with respect to children placed in care voluntarily, as well as those protected by one of the orders contemplated by the Act. In other words, the Care Review Board is bound to review all type of 'out-of-home' cases.

FOSTERING ARRANGEMENTS (ARTICLE 70 AND 72 (1))

The law makes it unlawful for any person to offer fostering arrangements, unless through the Agency.

FOSTERING AGENCIES (ARTICLE 44 (1))

There can be more than one fostering agency to attract and carry out the necessary training for foster carers.

PASSPORT FOR MINORS (ARTICLE 6g)

The Key Social Worker is now bound to apply for a passport as soon as he comes in contact with a minor placed in out-of-home care

OBSTRUCTING ENTITIES NOW AMOUNTS TO A CRIMINAL OFFENCE (ARTICLE 75)

In order for any of the entities established by this Act to act, as much as possible, in a harmonious manner and without any interference, this Act makes it a criminal offence for any person who hinders or obstructs the work of any of such entities.

PROTECTION FOR SOCIAL WORKERS, FOSTER CARERS OR ANY OTHER PERSON WHO IS IN ANY WAY INVOLVED UNDER THIS ACT (ARTICLE 76)

Any person who acts aggressively against all those who are involved in any decision, responsibility or measure according to this Act, shall be guilty of an offence (up to 2 years imprisonment and/or to a fine of up to 10,000 euro).

PROTECTION OF MINORS IN CASE OF ABSCONDING (ARTICLE 77)

This Act authorizes the Police to apprehend any minor who has absconded, without the need of a judicial warrant.

WHOSOEVER SHALL INCITE, ASSIST OR COMPELS A MINOR TO ABSCOND SHALL BE GUILTY OF AN OFFENCE (ARTICLE 77)

Any person who incites, assists or compels a minor to abscond, shall be guilty of an offence punishable by not more than one year imprisonment, or to a fine not exceeding 2, 500 euro, or to both such fine and imprisonment. This will act as a deterrence for adults who prey on vulnerable minors.

CROSS BORDER FOSTERING (ARTICLE 42 (d))

The law makes it clear that cross border fostering will now be handled solely by the department responsible for Looked After Children. This will lay to rest the dilemma as to which is the competent agency responsible to deal with such matters.

CHILDREN'S ADVOCATE (ARTICLE 25 (1))

The law delineates the duties and responsibilities of the Children's Advocate. It also makes it mandatory on the Advocate to receive training so he can effectively represent and safeguard the views and wishes of the minor.

UNACCOMPANIED MINORS – THE APPOINTMENT OF A SPECIAL GUARDIAN AS AN ADDED SAFEGUARD (ARTICLE 20 AND 21)

It is not the first time that criticism has been levelled with regards to the rights of unaccompanied minors. Articles 20 and 21 of the Act regulate rigorously the procedure to be adopted when any person comes in contact with an unaccompanied minor. Not only unaccompanied minors enjoy the same rights as any other minor under this Act, but as an added protection, the relatives of a minor, any of the professionals assisting the minor, the alternative carer, or any other person related to the minor, or having an interest in him, may file an application in Court requesting the appointment of a Special Guardian to safeguard the interest of the unaccompanied minor.

THE CENTRAL AUTHORITY IS NOW TANTAMOUNT TO A REGULATORY BODY, WITH CHECKS AND BALANCES IN PLACE AND THE RIGHT TO REVOKE AND SUSPEND ACCREDITATIONS (ARTICLE 41 & 48)

According to this law, the Central Authority can now be considered as the regulatory body in the field of child protection, thereby introducing for the first time the concept of checks and balances. The Central Authority shall have the right not only to grant accreditation but also to refuse, suspend or revoke the accreditation of an organization, if it does not comply with strict conditions imposed by the law and / or the Central Authority itself.

RIGHT OF APPEAL FROM ANY DECISION MADE UNDER THIS ACT (ARTICLE 66)

This Act affords a right of appeal from any decision made under this Act, provided all remedies are first exhausted. Malta has been heavily criticized for not having a law in place allowing for a right of appeal to an independent and impartial tribunal. Judgements to this effect have been handed down by the ECHR and the Maltese Constitutional Court. By virtue of this Act, Malta will now be in line with its international obligations vis-à-vis the European Convention on Human Rights and Fundamental Freedoms.

CHILDREN'S RIGHTS (TITLE VII - ARTICLE 63)

The law dedicates a 'Title' on the rights of minors in alternative care. Apart from all the other rights included in the European Convention on Human Rights and the Maltese Constitution, Article 63 of this Act delineates and makes particular emphasis on various innovative rights, such as the right to be consulted and informed on various matters. Most notably, this Act makes it clear that over and above all the existing rights enjoyed by minors on Maltese soil, they will also be protected by the rights enshrined in the United Nations Convention on the Rights of the Child. This is quite innovative in nature.

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