

I assent.

(L.S.)

GEORGE VELLA
President

16th July, 2019

ACT No. XXIII of 2019

AN ACT to substitute the Child Protection (Alternative Care) Act, Cap. 569, to provide for protection orders for minors, for alternative care and for suitable protection for those minors deprived of parental care or in the risk of being so deprived, and for matters that are ancillary or incidental thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

ARRANGEMENT OF THE ACT

		Articles
	Preliminary Provisions	1 - 3
PART I	Of the Protection of Minors	4 - 35
PART II	Of Alternative Care	36 - 63
PART III	Of Appeals	64 - 66
PART IV	Of Social Work with Minors	67 - 68
PART V	Miscellaneous	69 - 73
PART VI	Of Offences	74 - 82
PART VII	Of Regulations	83
PART VIII	Transitory Provisions	84 - 88

A 1172

PRELIMINARY PROVISIONS

Short title, scope
and
commencement.

1. (1) The short title of this Act is the Minor Protection (Alternative Care) Act, 2019.

(2) The scope of this Act is to safeguard, protect and give priority to the best interest of minors and to ensure, in the least possible time, the permanence of the care given to minors.

(3) The provisions of this Act shall come into force on such date as the Minister for the Family, Children's Rights and Social Solidarity may, by notice in the Gazette, establish, and different dates may be so established for different provisions and for different purposes of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

"accredited agency" means any agency, as accredited by the Central Authority in accordance with this Act and so accredited for the organisation of training and for the certification of persons deemed adequate to act as foster carers;

"Agency" means the national agency which is amongst other things responsible for the well-being of minors, also known as *Aġenzija Appoġġ*;

"alternative care" means the placement of a minor under the care of a person or entity, not being a parent of the minor, as ordered by the Court or as a result of an administrative decision, and the expression "alternative carer" shall be construed in like manner;

"alternative permanency plan" means a concrete, timely and systematic plan for any minor living in alternative care and, or is protected by a care order, with the aim of promoting stability and continuity in the care and alternative care of the minor;

"Board of Appeal" means the Board of Appeal established under article 64;

"care and protection" means such care and protection which is reasonably expected from a parent towards his minor for the purpose of promoting the full potential of that minor, while taking into consideration the capabilities, natural inclinations and the aspirations of that minor;

"care order" means an order issued in accordance with article 19(1)(a);

"care plan" means a plan drawn up in accordance with article 13 to promote the development and well-being of the minor;

"Central Authority" means that entity which on the day of coming into force of this Act was responsible for fulfilling the functions mentioned in article 41;

"Children's Advocate" means a lawyer appointed in terms of regulation 3 of the Civil Court (Family Section), the First Hall of the Civil Court and the Court of Magistrates (Gozo) (Superior Jurisdiction) (Family Section) Regulations, who shall exercise the functions given to him in accordance with article 25; S.L. 12.20.

"concurrent plan" means an alternative care plan which includes the care plan drawn up according to article 13 and an alternative permanency plan drawn up according to article 23, which shall have the aim of promoting the development and well-being of the minor as well as determining the parameters for and the time in which a care plan is changed into an alternative permanency plan;

"Court" means the Juvenile Court established under the Juvenile Court Act; Cap. 287.

"cross-border foster care" means:

(a) the care provided by a foster carer who is a Maltese citizen, to a minor who is not a Maltese citizen and who is resident in Malta; or

(b) the care provided by a foster carer who is not a Maltese citizen and whose approval by a foreign authority is recognised by the Central Authority, through the Agency, to a minor who is resident in Malta;

"emergency order" means an order issued in accordance with article 20;

"foster care" means the placement of a minor under the care of a person, not being a parent of the minor, and which is chosen, qualified, approved and supervised to provide care for a period and in accordance with a care plan;

"foster carer" means one or more persons approved by the Fostering Board to foster a minor;

"foster care agreement" means the agreement reached in

A 1174

accordance with article 51;

"Fostering Board" means the board established by article 38;

"key social worker" means the social worker appointed by the Agency to follow the development and well-being of a minor in alternative care and to co-ordinate and follow up the progress of a care plan in relation to that minor;

"Minister" means the Minister responsible for the rights of minors;

"minor" means a child under eighteen years of age;

"parent" means the biological mother or the father of the minor or any other person who, by an express provision of the law, has parental responsibility for such minor;

"permanency which is relational, physical and legal" includes that the minor feels loved, protected, safe and supported by the persons with whom he lives, that there be stability in the physical surroundings in which he lives and in his connections with the community, as well as those legal arrangements related to his permanency and especially those relating to his care and custody;

"protection order" means one or more orders issued in accordance with article 19;

Cap. 468.

"registered social worker" or "social worker" shall have the same meaning given to it by article 2 of the Social Work Profession Act;

"removal order" means an order issued in accordance with article 19(1)(d);

"Review Board " means the Minors Care Review Board, established in accordance with article 31;

Cap. 582

"Social Care Standards Authority" means the authority established by the Social Care Standards Authority Act;

"social contract" means the written agreement reached in accordance with article 12, between the Director or any other entity which the Minister may order by notice in the Gazette, and the parents of a minor or any other person interested in the well-being of the minor;

"supervision order" means an order issued in accordance with article 19(1)(b);

"Therapeutic and Secure Centre" means the centre established in accordance with article 26;

"treatment order" means an order issued in accordance with article 19(1)(c);

"unaccompanied minor" means a minor who arrives in Malta unaccompanied by an adult who by law or custom is responsible for him, and for as long as the minor is not effectively taken into the care of such an adult and includes any minor who is left unaccompanied after he has entered Malta.

3. By virtue of this article, whenever according to this Act it is to be determined whether a minor has sufficient understanding or not, or whenever in a procedure according to this Act anyone is to consider and determine whether such sufficient understanding is present or is not, and notwithstanding any wording used for such a discretionary exercise, those determining whether there is or there is not said sufficient understanding shall presume that the minor has such a sufficient understanding unless the contrary becomes evident.

Minor to be held as having sufficient understanding unless the contrary becomes evident.

PART I

OF THE PROTECTION OF MINORS

TITLE I

Sub-title I

OF THE DIRECTOR RESPONSIBLE FOR THE PROTECTION OF MINORS

4. (1) There shall be a Director responsible for protecting minors at risk, who shall be known as Director (Protection of Minors) and who shall be appointed following a public call from amongst persons having at least five years experience in services related to minors and competence in management.

Director responsible for the protection of minors.

(2) The Director (Protection of Minors) shall be an officer of the Foundation for Social Welfare Services and shall exercise his functions through it:

Provided that the Director (Protection of Minors) shall at all times act in an impartial manner in the exercise of his functions.

A 1176

(3) There shall also be other officers of the Director (Protection of Minors) who shall exercise and perform all such powers, functions and responsibilities as may be delegated or assigned to them by the Director (Protection of Minors).

(4) In the exercise and performance of the powers, functions and responsibilities delegated or assigned to them as aforesaid, the officers of the Director (Protection of Minors) shall, save as otherwise apparent, have the same powers, functions and responsibilities as are by law imposed on or given to the Director (Protection of Minors).

Cap. 164.

(5) In the exercise and performance of their powers, functions and responsibilities, the Director (Protection of Minors) and the officers referred to in sub-article (3) may request the assistance of the Executive Police in accordance with the Police Act, whenever they deem it required.

(6) When the circumstances of a specific case require it, all powers given to the Director (Protection of Minors) under this Act may be exercised by the Chief Executive Officer of the Foundation for Social Welfare Services and the Chief Executive Officer may also limit the exercise of those powers by the Director (Protection of Minors) and by officers delegated according to sub-article (3).

Functions of the
Director
(Protection of
Minors).

5. (1) Without prejudice to the functions as may be given to him by this Act, or by another law, the function of the Director (Protection of Minors) is that of *ex officio* investigating any harm or risk thereof in relation to a minor, on which he holds a reasonable suspicion or on which he was informed, and of taking any action as may be deemed appropriate for the protection of the minor:

Provided that the Director (Protection of Minors) may intervene according to this article and this Act after having received a report from a medical professional that a pregnant woman has a dependency on an illicit drug or has another type of dependency which in the opinion of said medical professional causes serious prejudice to the health of that woman.

(2) In the exercise of his functions, the Director (Protection of Minors) shall:

- (a) act in the best interests of the minor at risk, even if such minor is not a citizen of Malta;
- (b) ascertain the views and wishes of the minor at risk;
- (c) collaborate with all those involved in the protection of the minor at risk;

(d) investigate whether any action taken in relation to the minor at risk is appropriate;

(e) provide guidance to the parents and family of the minor at risk; and

(f) from time to time issue guidelines as to what may be deemed as significant harm or a risk of significant harm.

6. (1) The Director (Protection of Minors) shall hold regular meetings at suitable intervals with representatives of the Education Department, the Department of Health, the Police, and with any such other person or entity which the Director (Protection of Minors) deems as having responsibility for the protection of minors, or of a minor in particular, for the purpose of discussing any matter which falls within such responsibility and to set policies and protocols which are to be adopted, as well as serving as a committee for joint investigations amongst all entities having responsibility for the protection of minors or of a minor in particular.

Liaison with the Education Department and other entities.

(2) Minutes of the meetings mentioned in sub-article (1) shall be kept and the progress made between one meeting and another shall be monitored by the Director (Protection of Minors).

(3) Where a meeting is held to discuss the case of a particular minor the Director (Protection of Minors) may require any person or entity attending the meeting to report on the progress of the minor and a copy of such report shall be attached to the records held by the Director (Protection of Minors) in relation to that minor.

(4) Every person or entity attending a meeting shall be bound by confidentiality and may not disclose to third parties any information or provide documents or extracts thereof which may have come to their knowledge or in their possession during such meeting or as a result thereof:

Provided that such disclosure or provision may be made following an authorisation, request or order by a court.

(5) The heads of department or entities mentioned or identified by the Director (Protection of Minors) according to sub-article (1) shall ensure that they appoint a representative to attend each and every meeting of the committee for joint investigations.

(6) The committee for joint investigations shall regulate its own proceedings.

(7) From time to time the Minister responsible for the well-being of

A 1178

minors shall launch a national strategy on the protection and rights of children together with the Director (Protection of Minors) and those entities or departments having responsibility for the protection, safeguarding and care of minors.

Conducts of the
affairs of the
office.

7. The performance of the functions of the Director (Protection of Minors), inclusive of anything that may be required for their execution and for administrative control, shall be the responsibility of the Director (Protection of Minors).

Legal and
judicial
representation.

8. The legal and judicial representation of the office of the Director (Protection of Minors) shall vest in the Director (Protection of Minors):

Provided that the Director (Protection of Minors) may delegate the exercise of said representation to other officers.

Sub-Title II

OF THE PROTECTION OF MINORS

Reports.

9. (1) Any person who has reason to believe that a minor is suffering, or is at risk of suffering, significant harm, may report the circumstances according to which it holds such reason to the Director (Protection of Minors) or the Executive Police:

Provided that any reports received by the Executive Police shall be forwarded to the Director (Protection of Minors) without delay.

(2) Without prejudice to any other provision of any law and to his professional obligations which hold true notwithstanding this article, any professional who has knowledge of an act which constitutes a criminal offence causing significant harm as defined in sub-article (4) on a minor, shall immediately report to the Director (Protection of Minors) or the Executive Police and no such reporting made *in bona fide* may constitute a criminal offence or give rise to any right of action under any law whatsoever:

Provided that if a report is made to an entity or institution other than the Director (Protection of Minors) or the Executive Police, such entity or institution shall register such report in writing and shall, without delay, and in any case not later than twenty-four hours from the receipt of the report, refer the report to the Director (Protection of Minors) or the Executive Police.

(3) Any professional who omits to submit a report as mentioned in sub-article (2) shall be guilty of an offence and upon being found guilty shall be subject to imprisonment for a period of not less than three months and not more than nine months, or a to a fine (*multa*) of not more

than five thousand euro (€5,000), or to both such fine and imprisonment.

(4) For the purposes of this article and other provisions of this Act, "significant harm" includes abuse, neglect, harassment, ill treatment, exploitation, abandonment, exposure, and trafficking of any of the persons as mentioned in Sub-title VIII Bis of Title VIII of Part II of Book First of the Criminal Code.

Cap. 9.

(5) All reports made according to this article and to whomever they might have been made, shall be deemed as if protected by professional secrecy, if not already so protected by any law, and notwithstanding any other provision of any law said reports shall not be made accessible to the public, whether in their entirety or in part.

10. (1) The Director (Protection of Minors) shall keep a register recording therein all reports which he receives in terms of article 9.

Reports register.

(2) The Director (Protection of Minors) shall, as soon as possible and not later than five (5) days from the receipt of a report, determine, on the basis of the information provided, whether there are or are not sufficient reasons to believe that the minor is suffering, or is at risk of suffering, significant harm.

Action on reports.

(3) If the Director (Protection of Minors) believes that there are sufficient reasons as referred in sub-article (2), he shall proceed to such investigations and evaluations as he considers necessary to determine whether the minor is in need of care and protection, and if he decides that there are no such reasons he shall close the report and provide detailed reasons for his decision.

(4) The Director (Protection of Minors) shall conclude the investigations and evaluations referred to in sub-article (3) within sixty working days and such period shall start running from the date of the decision of the Director (Protection of Minors) that the minor is suffering, or is at risk of suffering, significant harm:

Provided that said period may, for good reason, be extended by the Director (Protection of Minors) for an additional thirty working days.

(5) When the Director (Protection of Minors) decides that the minor needs care and protection he shall take all necessary measures to protect that minor, which, without prejudice to any other action which the Director (Protection of Minors) deems appropriate to take, may include one or more of the hereunder:

- (a) recommending the provision of support services for the minor while considering the particular needs of the same and ensuring that such recommendations are applied;

A 1180

(b) recommending the provision of support services for the parents of the minor or for any other person which seems to have responsibility for that minor, and ensuring that such recommendations are applied;

(c) issuing of parental responsibility guidelines;

(d) applying to the Court for it to decree an emergency order;

(e) applying to the Court so that it may decree an appropriate protection order for the minor;

(f) inform the Executive Police of a report so that further investigations are undertaken in any case involving the abuse or abandonment of a minor; or

(g) inform the Executive Police of any criminal offence for which the Executive Police may *ex officio* initiate criminal proceedings according to law.

Investigative powers of the Director (Protection of Minors).

11. In the exercise of his functions according to article 10, the Director (Protection of Minors) may:

(a) enter and inspect the premises where the minor is being kept;

(b) speak with the minor;

(c) require any information as may be reasonably required for the investigation;

(d) enquire with any person who appears to him to be involved in the care of the minor on any matter relating to the investigation;

(e) obtain photographs, films and any other sort of recording as evidence; and

(f) obtain any other sort of document, as defined in the Interpretation Act, as evidence.

Cap. 249.

Social contract on the responsibility of parents.

12. (1) When considering what action to take the Director (Protection of Minors) shall have regard to the possibility of agreeing to a social contract to resolve a matter concerning a minor's need for care and protection without having to make an application to the Court to make a protection order.

(2) The social contract mentioned in the foregoing sub-article shall

be signed by the parties and shall take effect upon their signature.

(3) The Director (Protection of Minors) may agree to those terms and conditions as he may think fit and, in particular, the Director (Protection of Minors) may agree to terms and conditions on:

(a) treatment for substance abuse and other vices during the operative period of the social contract;

(b) treatment for a person with problems of abusive behaviour;

(c) therapeutic interventions or treatment of a psychological nature or any other form of medical treatment;

(d) substance abuse testing;

(e) courses aimed at improving the parental skills of the parents of the minor;

(f) the provision of support and therapeutic interventions for the minor;

(g) the provision of medical and educational assistance to the minor;

(h) the method of monitoring compliance with the social contract;

(i) the involvement and obligation of professionals in preparing the care plan, as would be in the best interest of the minor; and

(j) the involvement of the extended family, and of other important persons in the life of the family, in the planning and implementation of the care plan, as in the best interest of the minor:

Provided that the social contract shall specify the period during which it will be in force and also the circumstances in which the Director (Protection of Minors) may file an application for any one or more of the orders mentioned in article 19:

Provided further that the social contract shall not provide for the assignment of parental responsibilities for a minor.

(4) Upon signature, the Director (Protection of Minors) shall notify the Director (Alternative Care) so that the latter appoints a key social

A 1182

worker to follow the development and interests of the minor in accordance with the social contract and for such purpose the key social worker shall monitor the compliance of the parties with the social contract.

(5) The Director (Protection of Minors) may also notify other entities so that these provide the parents with support according to the social contract.

(6) The social contract shall remain in force for the period specified therein unless the Director (Protection of Minors) terminates it before the expiry of such period by notifying the other parties accordingly.

(7) When the Director (Protection of Minors) seeks to amend the social contract, the Director (Protection of Minors) may change any condition of the social contract by agreement in writing with all the parties.

(8) The Director (Protection of Minors) shall always consider the views of the minor if considered to have sufficient understanding.

(9) The Director (Protection of Minors) may authorise, in writing, any entity which the Minister may indicate by notice in the Gazette, to change the social contract according to the best interests of the minor and such changes shall be approved in writing by all the parties so that they may be given effect:

Provided that for the purposes of this article the Director (Protection of Minors) may opt to remain a party to the social contract when he considers this to be in the best interests of the minor.

Care plan.

13. (1) For the purpose of drawing up a care plan according to the provisions of this Act the Director (Protection of Minors) shall hold a conference among those involved in the case so as to establish a care plan.

(2) The care plan may include the following:

- (a) the relevant identification particulars of the minor;
- (b) the reasons for requesting a protection order;
- (c) the aims of the care plan, and, if applicable, those of the placement of the minor in alternative care;
- (d) the treatment and assistance that the parents should receive with a view to mitigate or revoke the effects of the minor's protection order;

(e) the place and frequency of contact of the minor with his family;

(f) if applicable, the place where the minor will reside;

(g) matters relating to the education, health, maintenance and well-being of the minor; and

(h) a copy of any relevant decision given by the Court.

(3) A care plan shall in all cases be drawn up with the participation of the minor, if considered to have sufficient understanding, and with the participation of any other person or entity as the Director (Protection of Minors) may deem appropriate in the circumstances of the case:

Provided that the officers and professionals who shall draw up the care plan shall, if the minor is considered as having sufficient understanding, indicate the methodology used to establish the views and wishes of the minor and their recommendations thereon.

(4) A care plan shall be filed by a note in the acts of the proceedings for the case relating to a protection order.

(5) Where a care plan is in effect and the consent of a parent is required for something necessary to avoid significant harm to the health or education of the minor, and such parent withholds said consent without good reason, the Director (Protection of Minors) or any other entity which the Minister may order by notice in the Gazette may act without such parental consent and take any decision in the best interest of the minor.

(6) Any interested party may, by application to the Court, request that any decision taken in accordance with sub-article (5) be cancelled, revoked or changed and the Court shall hear and decide the application without delay.

(7) The care plan shall be subject to reviews by the Review Board in accordance with the provisions of this Act.

TITLE II
OF THE JUVENILE COURT

Sub-title I

OF PROCEEDINGS BEFORE THE JUVENILE COURT

Juvenile Court.
Cap. 287.

14. Without prejudice to any provision of the Juvenile Court Act or any other law, the Court shall have competence to hear and decide all cases which according to this Act are not within the competence of any other organ established under it:

Provided that in any case heard by the Court, the Director (Protection of Minors) shall have the right to file notes on matters relevant to a given proceeding, which notes may also include notes of submissions or for the filing of relevant evidence.

Court sittings,
hearings and
decisions.

15. (1) The Court shall hear all cases brought before it by virtue of this Act in those premises as are prescribed by the Minister, through regulations, to serve as *Children's House*.

(2) Without prejudice to the provisions of this Act, the Minister may also by regulations prescribe the procedure to be adopted in all cases heard in a *Children's House*.

Access to the
acts.

16. Save for the Director (Protection of Minors), parties to Court proceedings as well as their advocates or legal procurators who shall have free and full access to the acts and documents of the proceedings, the acts of the proceedings and documents thereof shall not be accessible to third parties without the permission of the Court, which may provide such relevant parts of the acts of the proceedings according to the circumstances of the case and if in the best interest of the minor.

Hearing of the
minor.

17. (1) Before taking a decision in proceedings affecting a minor and if the Court considers the minor to be of sufficient understanding, it shall, always acting according to his best interests, take into consideration the wishes and views of the minor, as well as all the circumstances of the case, so as to:

(a) ensure that the minor has received all relevant information, including but not limited to information in relation to procedures which have been, or may be, taken with respect to the minor and the reasons therefor;

(b) consult with the minor in a manner appropriate to his understanding, unless the Court deems it reasonably clear that this is contrary to the best interests of the minor;

(c) give the minor the opportunity to express his views and consider them:

Provided that the Court shall, if it did not do so on the day appointed for the hearing of the case, hear the minor by not later than the second sitting in the hearing of the case.

(2) Where the Court does not itself consult the minor it shall ensure that the person consulting the minor has received appropriate training to make such consultations, and in the case of unaccompanied minors the Court shall also ensure that the person consulting such minors has the appropriate linguistic and cultural sensitivity.

(3) The person performing the consultation in accordance with the foregoing sub-article shall prepare a report on the same consultation and shall file it in the acts of the proceedings in such manner and within such time as the Court may order.

(4) The views of the minor which can be determined or, when such views cannot be determined, the reasons therefor, shall be noted in the acts of the proceedings by the Court.

(5) The views of the minor shall be determined with sensitivity and in a manner which does not cause harm to the minor.

(6) In any proceedings before the Court, the Court shall consider:

(a) the views of the minor, if the minor is considered to have sufficient understanding;

(b) the physical, emotional and educational needs of the minor and the capability of the parents, or of other appropriate persons, to contribute towards those needs;

(c) the effect that any change in circumstances may have on the minor;

(d) the age, background and characteristics of the minor that the Court deems relevant;

(e) the harm that the minor has suffered or may suffer; and

(f) any other relevant matter.

(7) The Court shall appoint the time in which the minor shall give his evidence in accordance with sub-article (8) and for such purpose it shall hear the minor in premises prescribed in accordance with article 15.

A 1186

(8) Evidence from the minor shall be recorded by experts who shall be nominated by the Minister so as to form part of a list of experts to be appointed by the Court in cases of such a nature, and such evidence shall, as much as possible, be recorded in one sitting while also ensuring that the rights of all the parties involved are safeguarded.

(9) For the cross-examination of the minor by the lawyers of the parties, the questions to the minor shall be made to the experts mentioned in sub-article (8) in front of the Court and the Court shall ensure that the evidence required is gathered according to sub-article (8) and the law on evidence:

Provided that in exceptional cases only, a party to the proceedings may require that the Court hears the minor again for the purposes of an additional cross-examination and for such purposes the Court shall proceed to such hearing in the same manner as provided in this sub-article.

(10) The Minister may, by regulations, prescribe the procedure for the appointment of experts referred to in sub-article (8).

Sub-title II

OF PROTECTION ORDERS FOR MINORS

Procedure for
the issue of
protection order.

18. (1) The Director (Protection of Minors) may, by application, request that the Court issue a protection order for a minor in accordance with what is provided in article 19.

(2) The application referred to in sub-article (1) shall, besides the relevant particulars identifying the minor and, as applicable, the parents of the minor, include:

- (a) facts relevant to the case and requests as included in the application;
- (b) a report containing the conclusions of the relevant investigations and evaluations;
- (c) when possible, an indication of another available form of care;
- (d) those other documents necessary for sustaining the requests;
- (e) a request for the issuing of a protection order; and
- (f) when required, a request to the Court for the provision

of immediate care for the minor as he deems appropriate according to the circumstances of the case.

(3) The Court shall issue any provisional measure relevant to the application within twenty-four hours.

(4) Any decision, order or measure of the Court on an application as mentioned in this article shall be exclusively based on that same application.

(5) Upon receiving an application according to this article, the Court shall appoint a Children's Advocate and it shall immediately thereafter appoint the application to be heard within ten working days, while also ordering the immediate notification of the date of the hearing to the Director (Protection of Minors), to the parents of the minor, to the Children's Advocate as appointed by it, and, if applicable, to the tutor and, or curator.

(6) In the first sitting, the Court shall hear the requests of the Director (Protection of Minors), the evidence sustaining such requests, and if it deems it appropriate, the parents of the minor, the Children's Advocate and, if applicable, the tutor and, or curator.

(7) When the Court is satisfied that the requests are justified, the Court shall adjourn the case to another date which is not later than two months from the date of the first hearing, and the Director (Protection of Minors) shall prepare a care plan by such date:

Provided that when the application is for a care order, the Court shall, after having consulted the Director (Alternative Care), determine the premises in which the minor shall reside while the care plan is being prepared:

Provided further that when the parents believe that they may counter the allegations in their regard by bringing forward witnesses and providing submissions, they shall be allowed to summon such witnesses and submit any type of relevant proof or submission.

(8) When the Court is satisfied that the care plan is appropriate for the circumstances of the case, the Court shall give its final decision on the application referred to in sub-article (1) within two months by authorising and imposing the relevant orders, and this without prejudice to any other conditions which the Court deems appropriate to impose and this inclusive of entrusting the care and custody of the minor to third parties.

19. (1) In those cases in which the Director (Protection of Minors) acts for the issuing of a protection order for a minor, the Court

Protection
orders for
minors.

A 1188

may make any one or more of the following orders:

(a) a care order entrusting the care and custody of the minor to such person or entity that operates in social welfare which the Court deems appropriate;

(b) a supervision order placing the minor under the supervision of the entity identified by the Director (Protection of Minors) for a period specified by the order and according to those conditions which the Court deems appropriate to impose, including the granting of parental responsibility or aspects thereof to such person or persons as the Court deems appropriate;

(c) a treatment order by which the parents of the minor are ordered to receive treatment for the abuse of substances or for domestic violence, or receive psychiatric or psychological care or any other treatment or assistance which the Court deems appropriate after having heard experts in the fields;

(d) a removal order against the author of significant harm to the minor from the place of residence of the minor and, without prejudice to any other provision of any other law, such order may also provide for the protection of the minor.

(2) Before giving its decision, the Court shall consider, in so far as possible:

(a) the views of the minor, when deemed to have sufficient understanding;

(b) the views of the parents;

(c) the views of the tutor and, or curator;

(d) the capability of the parents to safeguard the well-being and harmonious development of the minor;

(e) the nature and quality of the attachment between the minor and his family;

(f) the harm that was suffered, that is being suffered or which may be suffered by the minor;

(g) the length of time during which the family of the minor has been receiving support and treatment services;

(h) the degree of vulnerability of the minor;

(i) the cultural, linguistic and religious background of the minor; and

(j) the relationships of the minor with his siblings.

(3) For the purposes of sub-article (1)(a), the Court shall consider:

(a) whether there are deficiencies in the everyday care of the minor or deficiencies in terms of the personal contact and security needed by a minor of his age and development;

(b) whether the minor who is ill, disabled or in need of special assistance is receiving the treatment or specialised care which he requires;

(c) whether the minor is at risk of being abandoned; and

(d) whether, generally, the minor is at risk of suffering significant harm.

(4) In all cases where provision is made for the assignment of any parental responsibilities to any person other than the parents of the minor, the Court shall give preference to the family of the minor, unless the Court holds that it is reasonably clear that it would be against the best interests of the minor.

20. (1) When the Director (Protection of Minors) has reasonable information which leads him to be convinced that the minor is suffering significant harm, the Director (Protection of Minors) may, with the assistance of the Executive Police, immediately proceed towards the removal of the minor from the place in which such significant harm is being occasioned, and this without any need of any form of authorisation. Emergency order.

(2) Within twenty-four hours of having taken action according to sub-article (1), the Director (Protection of Minors) shall file an application with the duty Magistrate for the provisional validation or revocation of the removal of the minor as therein referred:

Provided that the duty Magistrate shall appoint a Children's advocate upon receiving the application so that he may follow the proceedings thereof.

(3) The provisional decree given by the Magistrate according to this article shall be immediately notified to the Director (Protection of Minors), the Executive Police, the appointed Children's Advocate, the Director (Alternative Care), the parents of the minor and, if applicable, to the tutor and, or curator.

(4) The application referred to in sub-article (2) shall include a short but clear summary of the facts of the case and a request to the Court to confirm the decision of the Director (Protection of Minors).

(5) Following the provisional decree given in accordance with sub-article (2), the acts of the proceedings are to be immediately sent to the Court so that it may proceed with the case.

(6) The Court shall appoint the hearing of the application within ten working days from when it received the acts of the proceedings.

(7) The Court may order the Director (Protection of Minors) to make the required investigations so as to determine which action should be taken to safeguard the well-being of the minor.

(8) Immediately upon being informed by the Director (Protection of Minors) of the need to remove a minor from a location of risk in accordance with this article, the Director (Alternative Care) shall place the minor in alternative care for such period as other investigations in accordance with article 10 are pending.

(9) Any investigation according to this article shall be concluded within thirty working days from the date of the first hearing:

Provided that for a good reason and upon the filing of an application, such period may be extended by the Court for an additional period of ten working days.

(10) Upon concluding an investigation, the Director (Protection of Minors) shall file a report to the Court in which he explains which action he believes is necessary in relation to the minor and the reasons therefor.

(11) In addition to the report mentioned in sub-article (10), the Director (Protection of Minors) shall prepare and file a care plan which includes recommendations on which protection order he deems to be as being in the best interests of the minor.

(12) The Court shall, as soon as it receives the report and the care plan mentioned in sub-articles (10) and (11), set a date for the hearing of the Director (Protection of Minors), the parents of the minor, the minor, the Children's Advocate, the tutor and, or curator if applicable, and any other person or persons which the Court deems appropriate, which date shall not be later than ten working days from the filing of the report and the care plan.

(13) After having considered the report, the care plan and all the evidence, the Court shall authorize or reject the order or orders recommended by the Director (Protection of Minors) in the care plan,

and also decide on the allocation of parental responsibilities to any person as it may deem appropriate:

Provided that when the Court authorizes an order or orders recommended by the Director (Protection of Minors) in accordance with this article, the case shall be referred to the Review Board within five working days.

21. (1) Any person who comes in contact with an unaccompanied minor shall refer that minor to the Director (Protection of Minors) who shall thereupon notify the Principal Immigration Officer so that the latter registers such minor and issues an identification document for such minor: Unaccompanied minors.

Provided that, in the exercise of his functions in relation to unaccompanied minors according to this Act, the Director (Protection of Minors) shall require the co-operation of the Chief Executive Officer of the Agency for the Welfare of Asylum Seekers established according to regulation 3 of the Agency for the Welfare of Asylum Seekers Regulations:

Provided further that such co-operation shall take place in accordance with an agreement which may be reached between the Director (Protection of Minors) and said Chief Executive Officer, which agreement may include a delegation of responsibilities and powers given to the Director (Protection of Minors) under this Act.

(2) Immediately after the registration of the minor and the issuing of appropriate identification documents, the Director (Protection of Minors) shall request the Court to provide for the tutorship and, or curatorship of the minor in accordance with the circumstances of the case and in the best interests of the minor.

(3) When the Court is of the opinion that there are competent persons who are relatives of the minor, the Court shall appoint one or more thereof and, among such persons and always in the best interests of the minor, preference should be given to the closest relative by consanguinity or, should there be none, by affinity.

(4) For the purposes of this article, the provisions of the Civil Code on tutorship and curatorship shall apply *mutatis mutandis* and without prejudice to the powers, functions and responsibilities which are given to the tutor and, or curator under those provisions or to the powers, functions and responsibilities which may be given to them according to any law, the tutor and, or curator shall be responsible for assisting and supporting the unaccompanied minor and in particular he shall: Cap. 16.

(a) identify the persons or entities which may be involved

A 1192

in the care, custody and protection of the minor;

(b) coordinate the efforts of such persons or entities as identified by him;

(c) ensure that the minor is offered care, accommodation, education and medical care, as appropriate and without delay;

(d) ensure that the minor has suitable legal and judicial representation with regards to his residence status, his request for asylum, or for other legal or administrative procedures, including those for the administration of his estate; and

(e) ensure that all decisions in relation to the minor are taken in his best interests.

(5) The Director (Protection of Minors) shall refer the unaccompanied minor to the competent authorities so that the latter may undertake those investigations and evaluations as they deem appropriate to determine whether the minor is in fact an unaccompanied minor and to trace his family in his country of origin or in other jurisdictions if that is in the best interests of the minor.

(6) Upon receiving the conclusions of the investigations and evaluations from the competent authorities and should these establish that the applicant is in fact an unaccompanied minor, the tutor and, or curator shall, by application, request the Court to issue a protection order according to this Act.

(7) Upon receiving a request as mentioned in sub-articles (2) and (6), the Court shall appoint a Children's Advocate for the unaccompanied minor and shall also appoint the hearing of the application within ten working days.

(8) Upon appointing the date of the hearing as mentioned in the foregoing sub-article, the Court shall immediately notify such date to the Agency or, as applicable, to the competent authorities or entities responsible for the well-being of persons seeking international protection.

(9) In the first hearing the Court shall hear the application, the evidence in support of such application, the unaccompanied minor, the tutor and, or curator and the Children's Advocate.

(10) If the Court is satisfied that the applicant is in fact an unaccompanied minor, the Court shall defer the case to another date which is not later than one month from the first hearing, and the Director (Protection of Minors), shall, during the intervening period, prepare a

care plan and for such purpose the provisions of article 13 shall apply *mutatis mutandis*.

(11) If the Court is satisfied that the care plan is appropriate in the circumstances of the case, the Court shall issue a protection order, without prejudice to those other conditions which the Court may deem appropriate to impose and which may include entrusting the minor in the care and custody of the Agency or such other competent authority or entity which the Court deems appropriate.

(12) Upon issuing a protection order as mentioned in the previous sub-article, the Court shall refer the case to the Review Board for revision according to the provisions of this Act.

22. (1) A protection order shall remain in force until the minor reaches the age of eighteen years or is revoked by the Court.

Validity of
protection
orders for
minors.

(2) The Court may revoke a protection order upon receiving a recommendation to do so, given by the Review Board in accordance with article 33(5).

(3) Before revoking an order in accordance with the foregoing sub-article, the Court shall consider, as applicable:

(a) the recommendation by the Review Board and the reasons given for it;

(b) the views of the minor if considered to have sufficient understanding;

(c) the views of the Children's Advocate;

(d) the views of the parents of the minor;

(e) the views of the key social worker;

(f) the views of the alternative carer;

(g) the views of the tutor and, or curator; and

(h) the views of any other person which the Court deems appropriate.

(4) When the Court determines that there are sufficient reasons to revoke a protection order, it shall refer the case to the Review Board in order to prepare a reintegration plan, and for such purpose the provisions of article 35 shall apply *mutatis mutandis*.

(5) When the Court determines that there are insufficient reasons to

A 1194

revoke a protection order, it shall order that the revisions by the Review Board shall continue and it shall give the reasons why.

(6) For the purposes of sub-articles (4) and (5), the Court shall consider:

(a) the age of the minor;

(b) the wishes of the minor and the consideration it should give to such wishes in accordance with the level of maturity of the minor;

(c) the length of time the minor has been under the care of his current alternative carers;

(d) the bond of the minor with his parents and his current alternative carers;

(e) the capability of the parents of the minor to provide for an adequate level of care for the minor; and

(f) the risk of psychological harm which the minor may suffer if his current care arrangements are changed or revoked.

Alternative
permanency
plan.

23. (1) The Court may, by decree and given the circumstances of the case, order that an alternative permanency plan is in the best interest of the minor.

(2) The alternative permanency plan shall be prepared by the Director (Protection of Minors) and it shall come into force in accordance with the progress made in relation to all that concerns article 13.

(3) The alternative permanency plan shall be aimed towards reducing or revoking the effects of the minor's protection order and it shall provide for a permanency which is relational, physical and legal.

(4) The Court may issue a decree as mentioned in sub-article (1) upon an application by the Director (Protection of Minors) which is made concurrently with a request for a protection order, and with such an application the Director (Protection of Minors) shall also file an alternative permanency plan for the consideration of the Court:

Provided that the Court may also issue a decree as mentioned in sub-article (1) upon a recommendation of the Review Board in accordance with article 33(7).

(5) Before issuing a decree according to this article the Court shall consider the views and wishes of the minor if he is deemed to have

sufficient understanding, as well as the views of any other person or entity which the Court deems relevant to safeguard the views and wishes of the minor.

(6) Upon issuing a decree according to this article, the Court may also give parental prerogatives to the alternative carers, particularly as regards matters involving education, health, religion and travelling:

Provided that the Court may also impose any other condition which it deems appropriate to impose given the circumstances of the case.

(7) Any revision of the alternative permanency plan shall be made at least once a year through a report by the key social worker that is to be filed with the Review Board.

(8) For the purposes of the foregoing sub-article, the Review Board shall, whenever it deems it appropriate to do so, call upon any person or entity to appear before it and to submit any document it may require:

Provided that the Review Board shall have the power to hear the minor at any time in which the alternative permanency plan is in force in order to verify the well-being of the minor.

24. (1) In accordance with the provisions of this article and upon an application by the Agency or any other person having an interest, the Court may issue a decree ordering that a minor subject to a protection order may be given up for adoption and it may do so even without the consent of his parents:

Decree allowing the adoption of a minor.

Provided that notwithstanding any other provision of any other law, an adoption following an order in accordance with this article may be open and without age restrictions.

(2) Together with the relevant particulars identifying the minor and, if applicable, the parents of the minor, the application mentioned in the foregoing sub-article shall also include the reasons for the request and, if the Agency has identified them, the particulars identifying the prospective adoptive parents:

Provided that if the alternative carers are amongst the persons identified as prospective adoptive parents, the Agency may, in its application, give preference to such carers if this is in accordance with the best interests of the minor.

(3) The application mentioned in this article shall be notified to the parents of the minor who shall have twenty days from such notification to file their reply.

A 1196

(4) Following the filing of the reply mentioned in sub-article (3) or the failure to file such reply within the term therein given, the parties shall be notified with the date of the hearing of the application.

(5) Before issuing a decree ordering that the minor under alternative care be given up for adoption, the Court shall:

(a) hear and ascertain the views and wishes of the minor if he is deemed to have sufficient understanding;

(b) hear every person entrusted with any form of care and custody of the minor to be given up for adoption;

(c) hear the parents of that minor;

(d) hear the Children's Advocate, the key social worker and any other person it deems relevant;

(e) consider whether the giving up for adoption is in the best interests of the minor;

(f) consider whether there are reasonable prospects for the parents to become capable of taking care of the minor; and

(g) consider the thoughts of the parents on whether the minor should be given up for adoption:

Provided that the fact that the consent of the parents is lacking shall not, by itself, constitute an obstacle for the minor to be given up for adoption.

(6) When the Court issues a decree ordering that a minor shall be given up for adoption it shall give its reasons for such a decision.

(7) In every case in which the Agency identifies the prospective adoptive parents in its application the Court shall refer the decree, together with the application, to that court having the power to issue decrees for adoption and for such purposes the provisions on adoption in the Civil Code shall apply *mutatis mutandis* and without prejudice to the provisions of this Act.

Sub-title III

OF THE CHILDREN'S ADVOCATE

25. (1) Without prejudice to the functions of the Children's Advocate under any other law, the Children's Advocate shall:

Children's Advocate.

- (a) provide legal assistance and advice to the minor;
- (b) submit the views of the minor in any court or with any administrative body as relayed to him by the key social worker or by an expert on minor protection as appointed by the Court for said purpose;
- (c) provide explanations to the minor on the possible consequences should they conform to his or her wishes; and
- (d) provide the minor with any relevant information:

Provided that the Children's Advocate shall provide the minor with all the relevant explanations and information as mentioned in paragraphs (b) and (c) only if the minor is deemed to have sufficient understanding.

(2) The Children's Advocate shall receive such relevant training so as to effectively represent and safeguard the views and wishes of the minor, as may be prescribed by regulations, from time to time, by the Minister responsible for justice:

Provided that when the Children's Advocate is to be engaged in relation to an unaccompanied minor the relevant Children's Advocate should also receive or have received training on the problems and issues affecting migrant children and migrant children seeking international protection.

TITLE III

OF THE THERAPEUTIC AND SECURE CENTRE

26. (1) There shall be established a Therapeutic and Secure Centre within that entity mentioned by the Minister by notice in the Gazette, having the purpose of holding minors with serious behavioural difficulties in a safe and adequate place so that they be given the required therapy and assistance in order to return to society and participate in it in an appropriate manner.

Therapeutic and Secure Centre.

(2) The prerequisites for a minor to be possibly placed under a programme within the Therapeutic and Secure Centre are that:

A 1198

(a) the minor absconded or it is probable that he will abscond again and, if the minor so absconds it is probable that his physical, psychological and moral well-being be put at risk; or

(b) it is probable that the minor behaves in such a manner as to possibly hurt himself; or

(c) it is probable that the minor may cause harm to another person.

Immediate placement.

27. (1) Without prejudice to any other law, when a social worker gains knowledge that a minor finds himself in the immediate risk of significant harm because of difficulties in his behaviour in accordance with one of the prerequisites mentioned in article 26(2), he shall refer the case to the Director of the entity mentioned in article 26(1) so that, in the best interests of the minor, the minor is immediately removed from such risk and placed under a programme within the Therapeutic and Secure Centre.

(2) The decision mentioned in sub-article (1) shall be approved by the Director (Protection of Minors) together with the Director of the entity mentioned in article 26(1) and two senior professionals within the Agency.

(3) The Director of the entity mentioned in article 26(1) shall ensure that the Therapeutic and Secure Centre performs a specialized evaluation on the risks for the minor within three days from his immediate placement in the centre, which specialized evaluation shall be filed together with the application mentioned in sub-article (4).

(4) When a minor is immediately placed under a programme within the Therapeutic and Secure Centre according to this article, the Director (Protection of Minors) shall file an application to the Court within three days from such placement and the Court shall validate or revoke the decision taken without delay.

Request for placement in the Therapeutic and Secure Centre.

28. When one of the circumstances mentioned in article 26(2) is present but the circumstances of the case do not require an immediate placement according to article 27, the Director (Protection of Minors) may also file an application so that the Court may authorize the placement of the minor in the Therapeutic and Secure Centre.

Request for removal from the Therapeutic and Secure Centre.

29. (1) Any interested person which disagrees with the decision to place a minor in the Therapeutic and Secure Centre may file an application to the Court and request the revocation of that decision.

(2) The application mentioned in sub-article (1) shall be notified to the Director (Protection of Minors) and to the Director of the entity

mentioned in article 26(1) who shall have five working days, or such period as the Court deems appropriate, to file their reply.

(3) The Court shall decide on the application mentioned in sub-article (1) without delay.

(4) The application mentioned in sub-article (1) shall not suspend the execution of the decision which is thereby being objected to.

30. (1) In any proceedings of a criminal nature heard before it, the Court may, in giving its judgement, request the Director (Protection of Minors) to consider the case as referred to him so as to consider and decide on whether the minor should be placed in the Therapeutic and Secure Centre or not: Power of the Court.

Provided that when the Director (Protection of Minors) considers the case as mentioned in this sub-article, the Director (Protection of Minors) shall consult and gain the approval of the Director of the entity mentioned in article 26(1) and of two senior professionals from the Agency.

(2) When it is determined that a case merits the placement of a minor within the Therapeutic and Secure Centre according to this article, and there shall also be one of the circumstances mentioned in sub-article 26(2), the Director (Protection of Minors) shall file an application in the acts of the proceedings by which he lays out the conditions for said placement, which conditions shall have to be authorized by the Court for the placement to take effect.

TITLE IV

OF THE MINORS CARE REVIEW BOARD

31. (1) There shall be established a board to be known as the Minors Care Review Board, which shall consist of seven persons appointed by the Minister, as follows: Minors Care Review Board.

(a) a Chairperson being a warranted advocate having at least five (5) years professional experience in family law or law as relating to minors, or being a warranted professional who is an expert in the social field and who worked in the same field for at least five (5) years, and whose appointment shall be communicated for discussion to the Standing Committee on Social Affairs or to any other committee which takes its place so that it may be discussed by such committee;

(b) one (1) member being a warranted psychiatrist, with preference being given to persons having at least five (5) years

A 1200

experience;

(c) one (1) member being a registered social worker and having at least five (5) years professional experience in social work;

(d) one (1) member qualified in family therapy, with preference being given to persons having at least five (5) years experience;

(e) one (1) member being a warranted psychologist;

(f) one (1) person with professional experience in a field related to the safeguarding of children which is to be nominated by the Commissioner for Children; and

Cap. 464.

(g) a person being registered in the specialist register for the pediatric field according to the Health Care Professions Act.

(2) The members of the Review Board shall hold their position for a period of four years from their appointment and a member may be re-appointed.

(3) A Member of the Review Board may be removed from his position by the Minister if said member is no longer fit to continue in such a position or is no longer capable of fulfilling or of adequately fulfilling his responsibilities as a member.

(4) The appointment of any person as a member of the Review Board as well as his resignation or the termination of said appointment, as well as any additional function given to the Review Board by the Minister, shall be notified in the Gazette and shall come into force immediately:

Provided that the failure to publish an appointment or termination, as applicable, will not adversely affect the validity of such appointment or termination.

(5) In every case, the number of members present required for a *quorum* shall be five and decisions shall be taken by simple majority.

Functions and powers of the Review Board.

32. (1) The Review Board shall have those functions and powers as given to it by this Act or by any other law, or as may be prescribed from time to time by the Minister by notice in the Gazette.

(2) Without prejudice to the powers and functions created under this Act or any other law, the powers and functions of the Review Board shall include:

- (a) the making of periodical revisions to the care plan;
- (b) examining written reports by the key social worker;
- (c) the making of recommendations to the Court on the situation of the minor and his family, inclusive of the actual and potential capability of the family to take care of the minor, so that the Court may decide, in the best interests of the minor, whether the re-integration of the minor with his family is possible or not;
- (d) the making of recommendations to the Court on the need for a protection order for a minor, as needed from time to time;
- (e) the making of recommendations for the modification of the care plan as and when it deems it necessary;
- (f) in the case of disagreement on the care of the minor in matters of particular importance, the taking of decisions it deems as being in the best interests of the minor, after having given its reasons therefor; and
- (g) ensuring that the best interests of the minor are being safeguarded by all the persons involved in his care.

(3) Without prejudice to the provisions of this Act, and to those regulations that may be made thereunder, the Review Board shall regulate its own proceedings:

Provided that when there is a need to hear the minor the board shall convene in the places established according to article 15.

(4) Without prejudice to any other law, so as to execute its functions according to this Act, the Review Board shall have the power to access any documentation relevant to a case and to request the assistance of any person, and it may do so whenever the Review Board deems it helpful in the exercise of its functions.

33. (1) The first revision of the care plan shall be made by the Review Board not later than four months from the date of the protection order for the minor, and subsequent revisions shall be made at least once every six months thereafter: Revisions.

Provided that the key social worker or the tutor and, or curator of the minor, as applicable, may file an urgent request with the Review Board so that the case is reviewed before the end of the six month term due to the minor suffering significant harm, or being in danger of suffering significant harm, should he be placed under care or as a result

A 1202

of the care plan:

Provided further that, in every case, the Review Board shall appoint the case for hearing not later than five working days from the filing of the request and it shall, after having heard the parties involved, give its decision on such an urgent request.

(2) The key social worker shall file a concurrent plan for the minor with the Review Board during the first revision. Said plan shall describe the requirements which the parents must meet so as to re-integrate or reunite the minor with said parents, and also establish an alternative permanency plan:

Provided that the key social worker shall make every reasonable effort so that the minor be re-integrated or re-united with his parents and he shall always do so in accordance with the best interests of the minor.

(3) On the day appointed for each revision of the case, the Review Board shall hear the parents of the minor, the key social worker, the alternative carer and, if applicable, the tutor and, or curator, so as to determine if progress is being made in accordance with the care plan:

Provided that the Review Board may hear the minor whenever it deems it in the best interests of the minor to do so, or whenever the minor expresses his wish to be heard by the Review Board to the key social worker or to any other person having contact with the minor, and for such a purpose the board may also decide on a day and time which is different from the day and time appointed for the revision.

(4) For the purpose of fulfilling its functions, the Review Board may also consult with those professionals or other persons which it deems appropriate and for such a purpose it may also invite those professionals, or other persons, to attend the meetings of the Review Board as may be indicated to them.

(5) The decision of the Review Board may be that there was sufficient progress justifying the revocation of a protection order or that there has not been such progress:

Provided that in case that there be such progress, the Review Board shall make a recommendation to the Court so that the latter may, after having heard the interested parties, order said revocation or not.

(6) When the Review Board determines that there has not been sufficient progress to justify the revocation of a protection order, and two years have passed since the date on which the key social worker had filed the concurrent plan with the Review Board, the Review Board shall

determine whether there are reasonable prospects for the re-integration or re-unification of the minor with his parents or not.

(7) If the Review Board determines that there are reasonable prospects as required by sub-article (6), it shall continue with its periodical reviews and this without prejudice to those variations to the care plan as it would deem necessary in the circumstances of the case:

Provided that if the Review Board determines that the prospects are not reasonable as required by sub-article (6), it may recommend to the Court that the alternative permanency plan is to come into effect:

Provided further that the Review Board may recommend the coming into effect of the alternative permanency plan at any time in which the minor is under a protection order, if this is deemed to be in the best interests of the minor:

Provided further that, if it is in the best interests of the minor that the alternative permanency plan is to come into effect immediately following the issuing of the orders mentioned in the immediately foregoing *proviso*, then such a recommendation should be made by the Director (Protection of Minors).

(8) Prior to pronouncing its final judgement the Court shall hear the views of every person it deems relevant, and in particular the views of the minor if he is deemed to have sufficient understanding.

(9) The key social worker, the parents of the minor, or if applicable the tutor and, or curator, may, within five working days, request the Court to review the decision of the board if the board had determined that there was not enough progress to recommend to the Court the revocation of an order:

Provided that, without prejudice to other measures as provided by other provisions of this law or of any other law, when it seems clear that a request for such a revision is frivolous or vexatious the Court may condemn the applicant to pay the expenses and a penalty of not less than two hundred and fifty euro (€250) and not more than two thousand and five hundred euro (€2,500):

Provided further that when the Court confirms that there are not enough reasons to revoke a protection order for a minor, any subsequent request for the revision of the decision of the Review Board shall be allowed only after twelve months following the decision:

Provided further that no request, or further requests, shall be acceded to by the Court following the issuing of a decree that an

A 1204

alternative permanency plan is in the best interests of the minor, save for when the Court deems the circumstances to be exceptional.

(10) All recommendations according to this article are to be made by a note to the Court.

Variations to the care plan.

34. (1) Without prejudice to the provisions of article 22, when the key social worker, the parents of the minor, the alternative carer or, if applicable, the tutor and, or curator, request a variation to the care plan, the Review Board shall decide on the need or otherwise of doing so.

(2) The Review Board shall decide on the manner in which a care plan is to be varied after hearing all the persons involved, and it shall order the key social worker to make those variations to the care plan as established by the board.

(3) When the Review Board decides that a variation to the care plan is necessary it shall give its reasons in a report which is to make part of that decision.

Re-integration.

35. (1) For the purposes of article 22(4), the Review Board shall, in agreement with the key social worker, the parents of the minor, the alternative carer and, if applicable, the tutor and, or curator, provide in writing the aims of the re-integration and the method in which the minor shall be re-integrated with his family.

(2) When the Review Board determines that the aims of the re-integration plan have been met it shall file a note to that effect in the acts of the case and send those acts to the Court so that the latter shall give its decision on the recommendations of the Review Board.

(3) The Court shall revoke the protection order if upon receiving the acts referred to in the preceding sub-article it is satisfied that the aims have been met, without prejudice to those conditions which it may deem fit to impose:

Provided that the Court may, before giving effect to such revocation, hear any person which it may deem appropriate in the circumstances of the case:

Provided further that the Court shall in all cases hear the minor if deemed to have sufficient understanding.

(4) In its decision, the Court may order the re-integration of the minor with his parents while keeping in force the protection order for that period which it deems appropriate.

PART II
OF ALTERNATIVE CARE

TITLE I

OF THE DIRECTOR RESPONSIBLE FOR THE WELFARE OF
MINORS IN ALTERNATIVE CARE

36. (1) There shall be a Director responsible for promoting the development and well-being of minors in alternative care, who shall be known as Director (Alternative Care) and who shall be appointed following a public call from amongst persons having at least five years experience in services related to minors and having competence in management.

Establishment
and functions of
the Agency.

(2) The Director (Alternative Care) shall be an officer of the Foundation for Social Welfare Services and shall exercise his functions through it:

Provided that the Director (Alternative Care) shall at all times act in an impartial manner in the exercise of his functions.

(3) There shall also be other officers who shall exercise and perform all such powers, functions and responsibilities as may be delegated or assigned to them by the Director (Alternative Care).

(4) In the exercise and performance of the powers, functions and responsibilities delegated or assigned to them as aforesaid, the officers of the Director shall, save as otherwise apparent, have the same powers, functions and responsibilities as are by law imposed on or given to the Director.

(5) In the exercise and performance of their powers, functions and responsibilities, the Director (Alternative Care) and the officers referred to in sub-article (3) may request the assistance of the Executive Police in accordance with the Police Act, whenever they deem it required.

(6) Without prejudice to any other function which may be assigned to the Director (Alternative Care) under this Act or any other law, the Director (Alternative Care) shall perform such functions and carry out such duties as the Minister may by regulations under this article assign to it from time to time.

(7) The legal and judicial representation of the Director (Alternative Care) shall vest in the Director (Alternative Care), who may delegate the exercise of said representation to other officers.

(8) When the circumstances of a specific case require it, all powers given to the Director (Alternative Care) under this Act may be exercised by the Chief Executive Officer of the Foundation for Social Welfare Services and the Chief Executive Officer may also limit the exercise of those powers by the Director (Alternative Care).

TITLE II

OF THE SOCIAL CARE STANDARDS AUTHORITY

Responsibilities
of the Social
Care Standards
Authority.
Cap. 582.

37. Without prejudice to any functions and responsibilities established in the Social Care Standards Authority Act, or in any other law, the Authority shall, for the purposes of this Act, have the responsibility:

(a) to receive and acknowledge applications for a licence to establish, operate and maintain a minor residential care service;

(b) to grant or refuse an application for a licence, or to revoke or suspend the licence of a minor residential care service provider;

(c) to receive, acknowledge, investigate and take any necessary action in relation to any complaints against the Agency or any agency purporting to act as such, or against any minor residential care service provider;

(d) to impose such conditions for licensing as it may, from time to time, by means of regulations, determine to be necessary;

(e) to take any measures deemed necessary in the circumstances if a placement, whether local or cross-border, is in breach of the provisions of this Act;

(f) to monitor and inspect the support services being offered by the Agency to the minor and the alternative carers;

(g) to inspect those premises where the minor is being accommodated, or any other premises proposed for the accommodation of the minor; and

(h) to monitor and inspect the services being offered by residential carers to the minors in their care.

TITLE III
OF THE FOSTERING BOARD

38. (1) There shall be a board, to be known as the Fostering Board, appointed by the Minister, which shall consist of seven members as follows: Establishment of the Fostering Board.

(a) one person shall be a Chairperson and shall have at least five years professional experience of practice in foster care;

(b) two persons who have at least four years professional experience in social work;

(c) one person who is, or was, a foster carer for a period of at least three years;

(d) one person who is a social worker with three years experience in foster care;

(e) one person being a warranted psychologist; and

(f) one adult person who had lived in foster care for at least three years.

(2) The members referred to in the foregoing sub-article may be appointed at any time during the term of office of the Fostering Board.

(3) The members of the Fostering Board shall be appointed by the Minister for a period of four (4) years and shall on the expiration of their term of office be eligible to be re-appointed as members.

(4) Any member of the Fostering Board may be removed by the Minister if such member is no longer fit to continue in his role or became incapable of fulfilling his duties as a member.

(5) In the event that any member of the Fostering Board vacates his office before completing his term, the member appointed in his stead shall be so appointed for the unexpired period of the original appointment.

(6) Without prejudice to the provisions of this Act and of any regulation made thereunder, the Fostering Board shall regulate its own procedure.

(7) In every case, the number of members present required for a *quorum* shall be five and decisions shall be taken by simple majority.

(8) The Chairperson shall have an original vote, and in case of

A 1208

equality of votes, a casting vote.

(9) The Minister shall designate a person to act as Secretary to the Fostering Board and such person shall, as part of his duties, be responsible for the keeping of the relevant records and shall carry out such other work related to the functions of the Fostering Board as may be instructed by the Chairperson:

Provided that the Secretary to the board shall have no vote.

(10) The Fostering Board shall meet as and when required, so however that it shall meet at least once a month:

Provided that upon a written request by the Minister or the Agency, which request shall be made to the Secretary of the board, the board shall meet not later than forty-eight hours after the request is made.

(11) In the exercise of its functions under this Act, the Fostering Board may consult with professionals or other persons as it may deem appropriate. For such purpose, the Fostering Board may invite any such professional or other person to attend meetings of the board.

(12) The acts and documents of the Fostering Board, and the contents thereof, shall not be viewable, are not to be accessed by anyone, and no copies thereof may be given save to the concerned parties or to their advocate or legal procurator as may be authorized by said parties.

(13) Twice a year, the Fostering Board shall send reports to the Minister on all its activities in the previous six calendar months, and it shall do so within the first fifteen days of the following calendar month.

Functions of the
Fostering Board.

39. (1) The functions of the Fostering Board shall include:

(a) determining whether prospective foster carers are adequate or not to be foster carers in accordance with the recommendations indicated in the report prepared by the social worker for such a purpose and in accordance with article 49(1)(c), hereinafter referred to as the Home Study Report;

(b) determining whether a foster carer is adequate to act as such;

(c) specifying which type of foster care each foster carer may provide;

(d) keeping an updated register of foster carers;

(e) providing foster carers with official documentation

which identifies them as such and an authentic letter identifying the minors in their care;

(f) reviewing reports compiled by the Agency, following a complaint against a foster carer, and taking any action as deemed fit in the circumstances; and

(g) the making of recommendations to the Minister on a more effective implementation of the provisions of this Act and any regulation made thereunder.

(2) The Fostering Board shall have access to all documentation deemed relevant for foster care procedures and no one may hinder the board in the performance of any of its functions.

40. (1) In exercising its functions under article 39(1)(a), (b), (c) and (f), the Fostering Board shall consider the Home Study Reports and the Review Reports made according to article 52 and referred to it by a social worker of the Agency as well as all other documentation which the board may deem appropriate.

Decisions of the
Fostering Board.

(2) The Fostering Board shall also hear the prospective foster carer, or the foster carer, as applicable, the minor if considered to have sufficient understanding, and any other person which the board deems appropriate given the circumstances of the case.

(3) For any decision or action taken in accordance with sub-articles (1) and (2), reasons shall be given in writing and notified to the prospective foster carer or the foster carer, as applicable, and to the Director (Alternative Care).

(4) The notification mentioned in the foregoing sub-article shall be made by registered mail within five working days from the date of the decision.

(5) The Fostering Board shall determine any requests made to it according to this Act not later than six weeks from the date the request was made, unless the board is of the opinion that a longer period is required for a valid reason which should be declared and recorded in the acts of the case.

(6) The foster carer or the prospective foster carer, as applicable, may appeal any decision given by the Fostering Board by filing an application with the Board of Appeal not later than five working days from the date of notification by registered mail.

A 1210

TITLE IV

OF THE CENTRAL AUTHORITY ON FOSTERING

Central
Authority on
fostering.

41. There shall be a Central Authority on fostering which shall be that entity which upon the entry into force of this Act was responsible for fulfilling the functions provided in article 42 and, or by regulation made under this Act:

Provided that, from time to time, the Minister may, by regulations, confirm that entity or identify another entity as the Central Authority, and by the same regulations he may assign other functions and responsibilities to it in addition to those already provided in this Act for the Central Authority.

Functions of the
Central
Authority on
fostering.

42. The functions of the Central Authority shall include:

(a) receiving and acknowledging applications for accreditation;

(b) granting, refusing, suspending and revoking the accreditation of agencies in accordance with established criteria;

(c) receiving, acknowledging, investigating and taking of any necessary action on any complaint against accredited agencies or agencies purporting to act as such;

(d) receiving requests from foreign persons who are approved as foster carers in another country or from accredited agencies, which requests shall be referred to the Agency and it is only the Agency which shall make the necessary checks once such references are made to it; and

(e) receiving applications from agencies which want to provide cross-border foster care and deciding on whether to allow such agencies to place minors under foster care.

Application for
the granting of
accreditation.

43. (1) Any agency may apply to the Central Authority for accreditation, in the form approved and provided for by such authority, in order to be able to carry out foster care services.

(2) The Central Authority may, at any time during the processing of an application, require an agency to provide any documents and information deemed necessary in order to ascertain whether accreditation should be granted.

Accreditation of
an agency.

44. (1) The Central Authority may accredit an agency if it is satisfied that the agency:

(a) has professionals with sufficient experience and expertise in dealing with matters related to minors and families;

(b) has an adequate number of staff trained to carry out foster care services; and

(c) has the administrative and legal competency to carry out the functions appertaining to foster care services.

(2) The provisions of articles 55(2) and 56 to 59 shall apply *mutatis mutandis* to every organisation accredited by the Central Authority in accordance with this article:

Provided that articles 56(c) and 58(1)(c) shall not apply to agencies accredited in accordance with this article.

(3) An accredited agency shall be obliged to provide the Agency with information in its possession, including information on foster carers and prospective foster carers, as requested by the Agency with the purpose of fulfilling one of its functions according to this Act.

(4) In addition to the requirements provided in the foregoing sub-article, the Minister may prescribe other requisites by regulations made for such purposes or as otherwise may be made under this Act.

45. (1) Upon granting accreditation to an agency the Central Authority shall issue an Accreditation Certificate which shall be valid for a period of two years from date of issue.

Accreditation Certificate.

(2) The certificate referred to in sub-article (1) may be renewed by the Central Authority if the accredited agency applies for renewal by not later than two months prior to the expiration of its accreditation and renewal shall only be granted if the accredited agency is still in compliance with articles 43 and 44.

(3) The decision of the Central Authority on the renewal of the accreditation certificate shall be served on the accredited agency, by registered mail, within three months from the application for renewal.

46. (1) The Central Authority shall have the right to refuse an application for accreditation, or for its renewal, if it deems the agency inadequate for the provision of foster care services.

Accreditation refusal.

(2) A refusal according to sub-article (1), together with the reasons therefor, shall be given in writing to the applicant agency within three months from the date of application.

(3) The agency or the accredited agency, as applicable, shall have

A 1212

the right to request a change in the decision of the Central Authority by filing an application to the Board of Appeal within twenty days from the date of notification in accordance with sub-article (2).

(4) If the reason for refusal is no longer present, the organisation or the accredited agency, as applicable, shall have the right to apply with the Central Authority for accreditation.

Revocation of
accreditation.

47. (1) The Central Authority shall have the right to revoke accreditation of an agency at any time, if the agency:

- (a) files a request in writing for revocation;
- (b) ceases to comply with the criteria of eligibility for accreditation;
- (c) is no longer deemed suitable to provide foster care services;
- (d) is in breach of the conditions for accreditation in accordance with the provisions of this Act or of any regulations made thereunder.

(2) The Central Authority shall notify the agency on the revocation, which notification shall be given together with the reasons therefor and such revocation shall have effect from the date of notification.

(3) If the accreditation is revoked on any of the grounds mentioned in sub-article (1)(b), (c) or (d), the agency may request the revocation of the decision of the Central Authority by filing an application to the Board of Appeal within ten days from notification in accordance with sub-article (2).

(4) If the accreditation of an agency is revoked, the Accreditation Certificate and all the documents related to foster care services become the property of the Central Authority:

Provided that the Central Authority may appoint another accredited agency to have custody of such documents, to follow up on the prospective foster carers and foster carers, to continue taking care and follow up on the placement of minors under foster care, and to perform all the functions of the agency which had its accreditation revoked in accordance with this article.

Publication in
the Gazette.

48. (1) During the month of January of each year, the Central Authority shall publish in the Gazette:

- (a) a list of all accredited organisations specifying their

full name, registered address and other relevant contact details; and

(b) a list of agencies whose accreditation has been revoked throughout the previous calendar year.

(2) The Central Authority shall publish in the Gazette any change to the conditions required for accreditation or the renewal thereof upon making such a change, and changes shall take effect from the date of publication.

TITLE V

Sub-title I

OF FOSTER CARE

49. (1) Upon receiving an application by a prospective foster carer, the Agency shall: Evaluation of prospective foster carers.

(a) train the prospective foster carer;

(b) evaluate the suitability of the prospective foster carer;

(c) draw up a report on the situation of the prospective foster carer which shall include any appropriate recommendation, which report shall be known as Home Study Report; and

(d) forward the Home Study Report to the Fostering Board.

(2) For the purposes of drawing up the Home Study Report, the social worker authorised by the Agency shall visit the ordinary residence of the prospective foster carer as necessary.

(3) The visits mentioned in the foregoing sub-article may be made without notice and the prospective foster carer shall co-operate with the social worker and he shall provide information which as far as he knows is correct, and he may not deny the entry of the social worker in his ordinary residence.

(4) Without prejudice to any other provision of this Act or of any other law, the Home Study Report shall include the following:

(a) a conduct certificate issued by the Commissioner of Police;

(b) a report made by a registered doctor on the state of health of the prospective foster carer;

A 1214

(c) a register of the meetings that the social worker had with the family;

(d) a recommendation by the social worker on whether the prospective foster carer is suitable or otherwise, and the reasons therefor; and

(e) any other information as the Fostering Board may reasonably require.

(5) When a social worker, in the early stages of his evaluation for the purpose of drawing up the Home Study Report, has enough reasons to think that a prospective foster carer is not suitable, he shall present a preliminary report to the Fostering Board and request direction on whether he should proceed with the Home Study Report or not.

(6) When the Fostering Board decides that a social worker should proceed with his Home Study Report it shall inform the social worker and the latter shall proceed with his evaluation:

Provided that when the Fostering Board agrees with the preliminary report it shall give its decision in accordance with this Act and it shall accordingly notify those mentioned in article 40(3).

Pairing of foster carers with minors.

50. For the purpose of pairing a foster carer with a minor, the Agency shall:

(a) consider the individual needs of the minor;

(b) consider the capabilities and experience of the foster carer to cater for the particular needs of the minor;

(c) without prejudice to paragraph (a), make any reasonable attempt to keep siblings at the same residence;

(d) without prejudice to paragraph (a), make any reasonable attempt to keep a parent under the age of eighteen years and his or her offspring at the same residence;

(e) consider the report made by the social worker; and

(f) consider whether relatives of the minor are capable of taking care of said minor.

Foster care agreement.

51. (1) Foster care shall take place following a written agreement between the Agency and the foster carer, which may be modified by written agreement between the Agency and the foster carer.

(2) The care order, the care plan and the voluntary placement order

in accordance with article 68, as well as any revision to them, shall be annexed to the agreement and shall be read and interpreted as part of the same agreement.

(3) The agreement shall be signed by the social worker and the foster carers, and a copy thereof together with the relevant parts of this Act which provide for the rights and responsibilities of foster carers and the rights of minors under foster care, shall be given to the foster carers.

(4) A copy of the agreement mentioned in this article may be given to the parents of the minor only if the Agency decides that it would be in the best interests of the minor.

(5) The foster care agreement shall be deemed to include the right of the foster carer to travel with the minor after having notified the Agency, and the Agency shall have three working days to object to said travelling so that the Review Board may give a direction according to sub-article (6):

Provided the notification by the foster carer shall be made within a reasonable time and the foster carer shall not have the right to any compensation or damages if he made any arrangements for that traveling before the lapse of the said three working days without any objection by the Agency, or before the Review Board has given its direction according to sub-article (6).

(6) In case of any disagreement as to the foster care agreement, any party may request a direction from the Review Board.

(7) The contents of the agreement between the foster carer and the Agency shall not be deemed as a permanent one unless it contains a clause which provides clearly to the contrary.

(8) The agreement may be terminated by the Agency or the foster carer, as applicable, for any one of the following reasons:

(a) the foster carer does not comply with the foster care agreement;

(b) the Fostering Board decided that a foster carer is no longer capable of providing foster care;

(c) the placement of a minor under foster care is no longer in the best interests of the minor;

(d) the circumstances make it difficult for the foster carer to continue taking care of the minor under his care:

A 1216

Provided that the agreement may only be terminated after the key social worker is informed of such an intent and an alternative care plan is drawn up and approved by the Review Board.

Monitoring of
the foster carer.

52. (1) During a placement under foster care, the Agency shall designate a social worker to monitor a foster carer registered with it.

(2) The social worker shall prepare a Review Report at least once every year for the first three (3) years in which the minor is in foster care and every two (2) years following said three (3) years, so that it may be determined whether the foster carer is fulfilling his obligations in accordance with this Act and the foster care agreement, with the purpose of deciding if such carer should be allowed to continue taking care of the minor:

Provided that the Review Report shall be made before the expiry of a two-year period if there is a need to evaluate the foster carer before such expiry.

(3) For the drawing up of the Review Report, the social worker shall make the necessary visits to the residence.

(4) The visits mentioned in the foregoing sub-article may be made without notice and the prospective foster carer shall co-operate with the social worker and he shall provide information which as far as he knows is correct, and he may not deny the social worker entry to his ordinary residence.

(5) The social worker making visits in accordance with this article shall have the right to be assisted by members of the Executive Police in case it is deemed that there is a risk of hindrance to the exercise of his responsibilities according to this article.

Rights and
responsibilities
of foster carers

53. By virtue of this article, with the rights and responsibilities of foster carers listed in a foster care agreement, the following shall be deemed to be added and included:

(a) the facilitation of contact between the minor and his family and any other person which the Review Board may deem necessary in the best interests of the minor;

(b) the receiving of any information, including medical information, about the minor being placed in their care and ensuring that any such information is kept confidential;

(c) the receiving of such financial assistance as may be required for the care and upbringing of the minor;

- (d) the receiving of adequate support services;
- (e) co-operation with all the entities and persons concerned and the furnishing to them of such information as they may deem required;
- (f) ensuring that the minor attends to any treatment which the Review Board may determine as needed for the well-being of the minor;
- (g) attendance together with the minor for reviews by the Review Board and updating that board on the progress being done by the minor and on any other significant event;
- (h) the giving of a notification to the Agency and the Review Board of any change in their ordinary residence, at least two months before such change;
- (i) ensuring that the minor is brought up in an environment which leads to his psychological security as well as his physical well-being, to the satisfaction of the Social Care Standards Authority;
- (j) respecting and facilitating of the right of the minor to practice a religion of his own choice;
- (k) the reporting to the Director (Alternative Care) or the Review Board of any incident, abscondment, truancy from school, injury, sickness or death as they occur;
- (l) the participation in on-going training as organized by the Agency;
- (m) the right to open a bank account in the name of the minor, which they shall administer as a *bonus paterfamilias*;
- (n) access to information on the biological parents of the minors, following an application to the Court which the Court may approve or refuse after having considered the case and the best interests of the minor; and
- (o) the observance of any other obligation as may be imposed upon them under this Act or any other law.

54. (1) When a minor has been under the care and custody of a foster carer for more than five years, the foster carer may request the adoption of that minor by filing an application to the Court of Voluntary Jurisdiction:

Adoption of minors under foster care.

A 1218

Provided that in extraordinary circumstances and only after three (3) positive Review Reports on the fostering of the minor, the Court of Voluntary Jurisdiction may accede to a request for adoption of the minor even if the minor had not been in the care and custody of the foster carer for more than five (5) years.

(2) Notwithstanding any other provision of the law, no restrictions based on age may apply for adoption in accordance with this article.

(3) Adoption in accordance with this article shall be granted on condition that the rights of access to the minor by the biological parents and siblings by consanguinity shall be as wide as possible, as long as this is in the best interest of the minor.

Sub-title II

OF THE AGENCY

Functions of the Agency.

55. (1) Without prejudice to any other function or responsibility given to the Agency in accordance with this Act or any other law, the Agency under this Act shall:

(a) pair foster carers with minors which are to be placed under foster care in accordance with article 50;

(b) make any reasonable attempt to place siblings with the same foster carer if this is in the best interest of the siblings;

(c) make any reasonable attempt to place a parent who is a minor and his offspring with the same foster carer;

(d) ascertain that every placement under foster care is in the best interest of the minor;

(e) follow up on all placements under foster care which have been occasioned through it and provide support to the foster carers throughout such placement under foster care;

(f) consider and propose changes, if needed, to any foster care agreement;

(g) investigate complaints against a foster carer in accordance with the manual or procedures mentioned in article 56 and make a report to be referred to the Fostering Board for any required action; and

(h) investigate any abuse allegations related to foster care placements in accordance with the manual or procedures referred

to in article 56 and make a report to the competent authority as may be required.

(2) The Agency shall also have the following functions:

(a) the provision of services in accordance with criteria, procedures and guidelines established by the Central Authority and in accordance with those standards of service therein established;

(b) the receipt and processing of applications by persons applying to be registered as foster carers;

(c) the provision of initial and on-going training to prospective foster carers and foster carers registered with it, as well as providing them with adequate and continuous support when the Agency places a minor under foster care with the foster carers;

(d) providing the Central Authority with access to any document relating to the foster care procedures of any minor, inclusive of reports on any foster carer or prospective foster carer;

(e) providing the Central Authority with access to its accounts and to accounts as audited by an auditor;

(f) sending of a report to the Central Authority on the exercise of its functions at the end of each calendar year;

(g) conforming with any other function as may be specified by the Central Authority.

(3) Without prejudice to any other function or responsibility given to them in accordance with this Act or any other law, every agency accredited in accordance with this Act shall also have the functions listed in sub-article (2).

56. The Agency shall develop, update and fulfil the written policies, procedures and manuals which are subject to approval by the Central Authority, and which shall *inter alia* provide for:

Policies and procedures of the Agency.

(a) procedures on training and evaluation;

(b) forms of support for foster carers and minors placed under foster care as applicable before, during and after such placement under foster care;

(c) investigation of complaints against any foster carer;
and

A 1220

(d) changes in the circumstances of foster carers.

Information to prospective foster carers.

57. Before commencing the fostering process, the Agency shall:

(a) inform prospective foster carers of its objectives, powers and activities;

(b) make available a copy of its Accreditation Certificate to prospective foster carers as proof of its accreditation; and

(c) inform prospective foster carers of any legal requirements.

Registers.

58. (1) The Agency shall maintain one or more registers which will at least have lists of:

(a) the prospective foster carers registered with it;

(b) the foster carers registered with it; and

(c) the professionals who are monitoring every foster care placement.

(2) In addition to what is provided in sub-article (1), the Central Authority may, by informing the Agency in writing, order it to add other information to be registered and kept in the registers mentioned in sub-article (1).

Training for social workers.

59. The Agency shall make all reasonable efforts to ensure that every social worker assigned to carry out duties with regard to foster care procedures is adequately trained in this regard and continues to receive ongoing training.

TITLE VI

OF RESIDENTIAL CARE

Residential care.

60. (1) Where the placement of a minor in foster care is not in the best interest of the minor, such minor shall be accommodated in a home for residential care.

(2) A home for residential care shall be responsible for promoting the development and well-being of a minor placed under its care.

Responsibilities of homes for residential care.

61. (1) Without prejudice to other responsibilities under this Act or any other law, and the rules made according to sub-article (2), a home for residential care shall be responsible for:

(a) ensuring that the placement into residential care is

effected in the most appropriate manner for the minor;

(b) ensuring that the minor under its care receives all those rights pertaining to all minors in the pursuit of his well-being, of his development and for the attainment of his aspirations;

(c) collaborating with the social worker assigned for the minor;

(d) reporting to the social worker and the Review Board on every fact which may affect the care plan of the minor;

(e) facilitating contact between the minor and his family in accordance with the care plan or decision of the Review Board;

(f) providing residential services in accordance with the standards, criteria and procedures established by the Social Care Standards Authority through regulations for such purpose;

(g) keeping of a register on minors placed under their care, which register shall include periodical reports relating to the development of the minor;

(h) providing initial and on-going training to their employees and service providers;

(i) notify the Agency of any requests made directly to it for the placement of a minor in its care; and

(j) develop, maintain, update and execute written policies, procedures and manuals.

(2) The Central Authority may, by notice in the Gazette, make rules providing for other responsibilities for homes for residential care, which responsibilities are not already provided under sub-article (1), in this Act or in any other law whatsoever, and it may also in the same manner make rules further specifying the responsibilities provided according to sub-article (1), and it shall at all times do so in the best interests of minors.

62. (1) A residential care placement shall only take place following an agreement entered into between the Agency and the head of the residential home. Residential care placement agreement.

(2) The termination of any residential care placement agreement may only be given effect by the Review Board following a request by an interested person.

TITLE VII

OF THE RIGHTS OF MINORS IN ALTERNATIVE CARE

Rights of the
minor in
alternative care.

63. (1) A minor in relation to whom the provisions of this Act apply shall be cared for, maintained, instructed and educated according to his abilities, aspirations and natural inclinations.

(2) The minor shall also, at any time, have regular access to the social worker who is taking care of his placement in alternative care.

(3) Without prejudice to the generality of the rights mentioned in sub-articles (1) and (2), and to any other right of the minor, said minor shall in particular have the following rights:

(a) to be consulted on any decision affecting him in a manner appropriate to his age and understanding;

(b) to have access to information on the situation of his family members in the absence of contact with them;

(c) to maintain personal relations and direct contact with his parents, and with any such other person close to him, unless it is contrary to the best interests of the minor;

(d) to receive nutrition in accordance with the relevant nutritional standards, as well as with his religious beliefs;

(e) to receive appropriate medical care and psychological support;

(f) to have access to education;

(g) to have his specific safety, health, nutritional, developmental and other needs catered for;

(h) to freely decide which religion to pursue and to have his religious and spiritual needs satisfied accordingly;

(i) to have his privacy respected;

(j) to have a positive, safe and nurturing relationship with his alternative carers; and

(k) the rights mentioned in the United Nations Convention on the Rights of the Child.

(4) From time to time the Minister may update the rights mentioned in this article by regulations.

PART III

OF APPEALS

TITLE I

OF THE BOARD OF APPEAL

64. (1) There shall be a Board of Appeal which shall consist of three members as follows: Establishment of Board of Appeal.

(a) a Chairperson who shall have a warrant to practise the profession of advocate in Malta for at least five years; and

(b) two persons who shall have at least five years of professional experience in the welfare of minors.

(2) The members of the Board of Appeal shall be appointed by the Minister for a period of three years and may be removed from office by the Minister on grounds of inability to perform the functions of their office or for misbehaviour.

(3) A member of the Board of Appeal may be challenged or may abstain for any of the reasons for which a judge may be challenged or may abstain in accordance with article 734 of the Code of Organization and Civil Procedure. Cap. 12.

(4) When a member of the Board of Appeal recuses himself or abstains in accordance with the foregoing sub-article, the Minister shall appoint another person to sit as a member on the Board of Appeal in substitution of the said member and for the appeal for which such member recused himself or abstained.

(5) A person shall not be qualified to be appointed or continue to hold office as a member of the Board of Appeal if that person is a Judge, a Magistrate, a member of the House of Representatives or of a Local Council, or a candidate for election to the House of Representatives or a Local Council.

A 1224

Competence and
powers of the
Board of
Appeal.

65. (1) The Board of Appeal shall be competent to, following a request by application:

(a) review a decision of the Fostering Board;

(b) review a decision of the Social Care Standards Authority to refuse, revoke or suspend a registration; and

(c) review decisions of the Central Authority with regards to accreditation, accreditation renewals, suspension or revocation of an accreditation.

(2) The Board of Appeal shall fulfil any other function which the Minister may prescribe by regulations made by virtue of this Act.

(3) To fulfil its functions, the Board of Appeal shall have access to all documentation related to a foster care procedure and no one may hinder it in the exercise of its functions.

Cap. 12.

(4) The Board of Appeal shall have such powers as are vested in the First Hall of the Civil Court by the Code of Organization and Civil Procedure.

(5) Without prejudice to the provisions of the foregoing sub-article, in the exercise of its functions the Board of Appeal may call upon any person to testify and to produce any necessary documents and for such purpose the Chairperson shall have the power to administer an oath.

(6) The Board of Appeal shall decide an appeal within six weeks from the filing of the application, unless it is the view of the Chairperson that a longer period is required due to a valid reason which shall be given and noted in the acts of the case.

(7) A decision given by the Fostering Board, by the Central Authority or by the Social Care Standards Authority, as applicable, shall have immediate effect unless the Board of Appeal decides to suspend it until a final decision is given.

(8) The decision of the Board of Appeal, and the reasons for it, shall be given in writing and shall be notified to the appellants, the Fostering Board, to the Central Authority and to the Social Care Standards Authority, as applicable, by registered mail within five working days from its pronouncement.

Cap. 12.

(9) In cases falling within the competence of the Board of Appeal in accordance with sub-article (1), there shall be a right of appeal on a point of law by application to the Court of Appeal constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure.

(10) The application mentioned in the foregoing sub-article shall be filed not later than fifteen working days from the date of the decision of the Board of Appeal.

TITLE II

OF THE COURT OF APPEAL

66. (1) Without prejudice to the provisions of this Act, any party in proceedings under this Act which feels aggrieved by a decision may appeal by filing an application to the Court of Appeal as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure: Appeals from decisions of the Court.
Cap. 12.

Provided that for the purposes of this article a minor shall always be deemed as an aggrieved party, as may be represented by the Children's Advocate assigned to him:

Provided further that the provisions of this article shall not apply when the methods of contestation or redress for any particular decision have not been exhausted in accordance with this Act.

(2) The appeal shall be brought in front of the Court Appeal by application filed within fifteen working days from the date in which a decision was given.

(3) The appealed party shall file its reply within fifteen working days from when it was notified with the appeal application.

(4) The Court of Appeal shall appoint the first hearing of the application not later than thirty days from the date in which the parties were notified with the application and it shall give a final decision within sixty days from the date of the first hearing.

(5) The Court of Appeal may confirm or revoke the decision of the Court, as well as impose other measures it deems fit, and upon final judgement it shall send the acts back to the Court so that it may consider the case in accordance with articles 22, 23 or 24, as applicable.

(6) An appeal made according to this article shall not stay the execution of the appealed decision.

A 1226

Cap. 12. (7) Save as otherwise provided in this Act, the provisions of the Code of Organization and Civil Procedure on the Court of Appeal and for appeals heard by it shall apply *mutatis mutandis*:

Provided that all cases shall, at all times, be heard behind closed doors.

PART IV

OF SOCIAL WORK WITH MINORS

Key social worker.

67. (1) Where the Court makes any of the orders mentioned in articles 19 and 20 in respect of a minor, it shall notify the Director (Protection of Minors) of such order and the Director (Protection of Minors) shall appoint a key social worker as soon as possible.

(2) Without prejudice to any other responsibilities under this Act, or under any other law, the responsibilities of a key social worker shall include:

- (a) maintaining an interpersonal relationship with the minor;
- (b) visiting the minor at regular intervals;
- (c) monitoring the placement of the minor and consider his well-being;
- (d) co-ordinating and following-up the progress of the care plan;
- (e) keeping of a detailed register of all minors under his care;
- (f) participation in a minor's case reviews and reporting to the Review Board on the welfare of the minor;
- (g) appearing, reporting and giving recommendations to the Review Board on matters related to the minor, including on the possibility of re-integrating the minor with his family or, if not, on whether the type of alternative care is appropriate for the minor, and on the progress and implementation of the care plan;
- (h) reporting to the Director (Protection of Minors), and to any other competent authority, on cases of alleged abuse and on

any other serious incident related to the well-being of the minor;

(i) the consideration of the situation, the capabilities, the difficulties and the other characteristics of the parents, with the purpose of offering them assistance in order to fulfill their duties and obligations as parents, and for them to do so to the best of their abilities and always in the best interests of the minor; and

(j) the fulfilment of the conditions of the care plan on the provision of support services to the minor and of any other service as provided in the care plan.

68. (1) When, due to a valid reason, the parents of a minor propose to make arrangements to place said minor under the care and custody of another person or entity, such other person or entity shall notify the Director (Alternative Care) of such a proposal. Voluntary placement.

(2) Upon being notified in accordance with sub-article (1), the Director (Alternative Care) shall appoint a social worker to visit and examine the place in which the minor is proposed to be kept, and to recommend on whether the person or entity proposed for receiving the minor is adequate to provide for his care and custody.

(3) The social worker appointed in accordance with sub-article (2) shall, in relation to the minor, have the same responsibilities as provided in article 67(2).

(4) For the purposes of sub-article (2) the social worker shall draw up a report and notify it, together with proposed arrangements, to the Review Board.

(5) When the Review Board is satisfied that the person or entity to be entrusted with the care and custody of the minor is adequate to give such care, and the place in which the minor shall be kept is appropriate to his needs, the board shall order the social worker to prepare a care plan and the provisions of article 13(1), (2) and (3) shall apply *mutatis mutandis*.

(6) In every case, the care plan shall be prepared with the participation of the minor, if deemed to have sufficient understanding, and with the participation of any other person or entity which the Director (Protection of Minors) deems appropriate in the circumstances of the case.

(7) The Review Board shall, at regular intervals, hear all the professionals involved in the case, the minor if deemed to have sufficient understanding, the parents of the minor, the person or entity having received the minor under its care, and any other person which the board

A 1228

may deem appropriate in the circumstances of the case.

(8) Without prejudice to sub-article (7) the Review Board shall review the care plan mentioned in this article at least once every six months.

(9) When the parents are no longer of the opinion that the agreement should remain in force, they may file an application to the Review Board and request the rescission of the agreement, and in such a case the board shall give any direction or order it deems appropriate:

Provided that up to the moment the Review Board gives its final decision, the care and custody of the minor shall remain entrusted to the person or entity to which it had been entrusted.

PART V

MISCELLANEOUS

Passport for the minor.

69. Upon a minor being removed from the care and custody of a person and at once when a case is assigned to a key social worker, the key social worker shall immediately do all that is necessary so that a passport is issued for that minor and such passport shall be kept by the Director (Alternative Care):

Provided that in those circumstances in which a passport may not be issued, the key social worker shall do what is necessary for the issue of valid travel document for that minor.

Copies of decisions.

70. Whenever a decision is taken according to this Act and upon the application, demand or request of any party, a copy of the decision, with reasons for such decision, shall be given to such party, without prejudice to the provision of such a copy to other persons as permitted by law.

Education and consent.

71. Notwithstanding any other provision of this Act or any other law, for matters related to the education of a minor subject to any provision of this Act, the consent of one person having the care and custody of the minor according to law shall be enough for all intents and purposes at law.

Testimony by social worker.

72. Any social worker that is to give his testimony in any proceedings under this Act, shall first be exempted from the obligation of professional secrecy and for such purposes, save if already empowered to do so by law, the presiding member of the body in front of which such testimony is to be given may so exempt said social worker according to this article.

Consultations on an unaccompanied minor.

73. (1) Any board called upon by this Act to consider the case of an unaccompanied minor shall consult with experts identified by the Chief Executive Officer of the Agency for the Welfare of Asylum

Seekers established according to regulation 3 of the Agency for the Welfare of Asylum Seekers Regulations and by the Commissioner for Children.

(2) Every consultation with experts as referred to in sub-article (1) shall be noted in writing in the decision of the board.

PART VI

OF OFFENCES

74. (1) Any unauthorised person or any unauthorised organisation that makes an arrangement for the placement of a minor in foster care shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than six months and not exceeding three years or to a fine (*multa*) of not less than two thousand euro (€2,000) but not more than five thousand euro (€5,000), or to both such fine and imprisonment.

Arrangements
for foster care.

(2) For the purposes of sub-article (1), a person or organisation shall be deemed to make arrangements for the placement of a minor in foster care if it enters into any agreement or makes any arrangements to facilitate the fostering of a minor.

75. Any person or organisation that establishes, operates or maintains a residential home, or provides, directly or indirectly, residential care without the written approval of the Social Care Standards Authority shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than twelve months and not exceeding four years or to a fine (*multa*) of not less than five thousand euro (€5,000) but not more than ten thousand euro (€10,000), or to both such fine and imprisonment.

Unauthorized
provision of
residential care.

76. (1) Any person who makes or gives, or agrees or offers to make or give, or receives or agrees to receive, or attempts to obtain any payment or other compensation for any arrangements for a foster care placement shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months and not more than six months or to a fine (*multa*) of not less than one thousand and two hundred euro (€1,200) but not more than two thousand and five hundred euro (€2,500), or to both such fine and imprisonment, and this without prejudice to any order the Court deems fit to impose in the circumstances in order to protect the minor in respect of whom the offence was committed.

Prohibition of
payment.

A 1230

(2) For the purposes of this article, the making of any arrangements for the placement of a minor in foster care shall not include any payments made for the maintenance of the minor or remuneration due to professionals for services rendered by them, being such professionals engaged within the Agency and involved in the care of the minor or in other professions and acting according to their profession.

Prohibition of publication.

77. (1) Without prejudice to regulations made under this Act, no one may publish or cause to be published in any newspaper, periodical or other printed matter or by means of broadcasting, television, public exhibition or by any other means, any advertisement, news item or other matter which indicates:

- (a) that a minor may be placed in alternative care;
- (b) that a person intends to care for a minor in alternative care;
- (c) that a person intends to make arrangements for the placement of a minor in alternative care;
- (d) the name of an alternative carer if by doing so any detail on the minor is revealed;
- (e) the name of the minor placed or to be placed in alternative care;
- (f) the name of a parent, curator or tutor of a minor which was placed or will be placed in alternative care; or
- (g) anything which may lead to the identification of one of the persons mentioned:

Provided that this article shall not apply to foster carers when they present themselves as such and without any minor being identified, directly or indirectly, by them.

(2) Any person who acts in breach of this article shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three months and not exceeding six months or to a fine (*multa*) of not less than one thousand and two hundred euro (€1,200) but not more than two thousand and five hundred euro (€2,500), or to both such fine and imprisonment, without prejudice to any order for the payment of damages that are deemed fit in the circumstances.

Use of force.

78. A person shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than three months and not exceeding six months or to a fine (*multa*) of not less than one thousand

and two hundred euro (€1,200) but not more than two thousand and five hundred euro (€2,500), or to both such fine and imprisonment, if such person:

- (a) threatens or forces any authorised or approved alternative carer to give up a minor placed in their care;
- (b) takes the minor away from any authorised or approved alternative care provider against the will of the minor, without the approval in writing of the Fostering Board, or the Court, or the Agency or any other relevant entity or authority, as the case may be;
- (c) threatens or forces any authorised or approved alternative carer to give up any order issued by any court or issued by virtue of this Act;
- (d) threatens or forces any authorised or approved alternative carer to act in breach of the provisions of this Act;
- (e) threatens or causes any type of damage to any authorised or approved alternative carer; or
- (f) forces entry into the premises of any authorised or approved alternative carer by violence or against the will of the alternative carer.

79. Any person who in any way hinders or obstructs any of the boards, authorities, agencies, entities, directors or officers mentioned, accredited, established or licensed under this Act, in the performance of any of their functions shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than six months and not exceeding one year or to a fine (*multa*) of not less than one thousand and five hundred euro (€1,500) but not more than two thousand and five hundred euro (€2,500), or to both such fine and imprisonment. Hindrance.

80. (1) Unless in the circumstances of a particular case no other offence is provided for in this Act or by another law, which offence would be liable to a higher penalty than that which is provided in this article, any person who acts aggressively against a social worker, a foster carer or any other person which is in any way involved in any decision, responsibility or measure according to this Act, which involvement includes the exercise of rights or the fulfilment of responsibilities or functions given to it by this Act or by any other law for the fulfilment of the provisions of this Act, shall be guilty of an offence: Other hindrances against the implementation of this Act.

Provided that in a case in which an offence is liable to a lighter penalty than that provided in this article and the circumstances of such

A 1232

offence are also in breach of this article, the penalties of this article shall apply to that offence.

(2) Any person found guilty in accordance with sub-article (1) shall be liable to imprisonment for not more than two years or to a fine (*multa*) not more than ten thousand euro (€10,000), or to both such imprisonment and fine.

Abscondment.

81. (1) If any minor in relation to whom any minor protection order is made absconds from the premises at which he is required to live or is absent from such premises at a time when he is not permitted to be so absent, he may be apprehended without warrant by any member of the Police and taken back to such premises.

(2) Any person who knowingly compels, incites or assists or in any way aids or abets any minor to abscond or to become or continue to be absent as mentioned in sub-article (1) shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term of not less than six months and not exceeding one year or to a fine (*multa*) of not less than one thousand and five hundred euro (€1,500) but not more than two thousand and five hundred euro (€2,500), or to both such fine and imprisonment.

Other offences.

82. When a person is found guilty of an offence under this Act or under any regulations made thereunder, and a specific penalty is not provided for the offence under this Act or any regulations made thereunder, such person shall, on conviction, be liable to a fine (*multa*) of not less than two hundred and fifty euro (€250) but not more than two thousand and five hundred euro (€2,500).

PART VII

OF REGULATIONS

Regulations.

83. (1) The Minister may make regulations for the better carrying into effect of the purposes of this Act.

(2) In particular and without prejudice to the generality of sub-article (1), such regulations may provide for:

(a) the protection, supervision and control of minors placed in alternative care;

(b) the registration, monitoring and control of alternative care services and for the refusal or revocation of that registration;

(c) the agreement for the placement of a minor in alternative care;

- (d) any right and obligation pertaining to alternative carers;
- (e) the rights of minors;
- (f) the services which homes for residential care shall provide;
- (g) the different types of alternative care;
- (h) offences and penalties for the breach of the provisions of this Act and regulations made thereunder;
- (i) the procedure that shall be followed by boards established under this Act and to establish rules on their powers;
- (j) the activities of entities established in this Act; and
- (k) any matter which is incidental to and supplementary for the effective implementation of this Act, as the Minister may deem expedient to provide.

PART VIII

TRANSITORY PROVISIONS

84. (1) If, prior to the date of coming into force of this Act, any report was lodged about a minor, which report would require investigation, said investigation shall be concluded by the Director (Protection of Minors), within six months from the date of entry into force of this Act. Pending investigations.

(2) The said term may be extended by the Director for an additional term of three months.

85. Without prejudice to the provisions of this Act, any action filed before the coming into force of this Act shall be decided according to the legal provisions in force on the date of filing. Applicable provisions.

86. Any request for revision made to the Court in accordance with article 4(5) of the Children and Young Persons (Care Orders) Act before the coming into force of this Act shall continue to be heard by the mentioned Court until it is decided upon: Appeals. Cap. 285.

Provided that in case of appeal according to article 66, from a decision by the Juvenile Court given under article 4(5) of the Children and Young Persons (Care Orders) Act, it shall be the Court of Appeal which is to hear the case, but it shall not do so before four months from the decision of the Juvenile Court. Cap. 285.

A 1234

Reviews
pending before
the Children and
Young Persons
Advisory Board.
Cap. 285.

87. All cases pending before the Children and Young Persons Advisory Board under the provisions of the Children and Young Persons (Care Orders) Act, before the coming into force of this Act, shall continue to be heard by the Review Board upon the coming into force of this Act.

Repeal of
legislation.
Cap. 285.
Cap. 491.
Cap. 569.
S.L. 16.01.

88. The Children and Young Persons (Care Orders) Act, the Foster Care Act, the Child Protection (Alternative Care) Act and the Placing of Minors Regulations are hereby repealed without prejudice to anything done or omitted to be done thereunder.

Passed by the House of Representatives at Sitting No. 248 of the 10th July, 2019.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives