

**A BILL
entitled**

AN ACT to make special provision for foster care and to make consequential and other amendments

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:

PART I

INTRODUCTION AND DEFINITIONS

1. (1) The short title of this Act is the Foster Care Act, 2007. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for social policy may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

2. (1) In this Act, unless the context otherwise requires: Definitions.

“accredited agency” means an organisation which is accredited by the Central Authority to carry out foster care placements;

“Board of Appeal” means the board established by virtue of article 14 or such other administrative board or tribunal which the Minister may from time to time designate to carry out all or any of the functions as specified in this Act;

“care plan” means a plan drawn up by a social worker of an accredited agency in collaboration with others involved in the best interests of the child;

“Central Authority” means the Authority established by virtue of article 6;

“child” means a person under eighteen years of age;

“cross-border foster care” means:

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

(ii) 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 an accredited agency, to a child who is resident in Malta;

“foster care” means a service whereby a child is placed in the care of a foster carer for a determinate period;

“foster care agreement” means the agreement entered into in accordance with article 24;

“foster carer” means one or more persons approved by the Fostering Board to foster a child;

“Fostering Board” means the board established by virtue of article 3;

“Minister” means the Minister responsible for social policy;

“natural father” means a child’s biological father;

“natural mother” means a child’s biological mother;

“natural parent” means a child’s biological father or a child’s biological mother;

“social worker” shall have the meaning assigned to it by article 2 of the Social Work Profession Act.

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PART II

FOSTERING BOARD

3. (1) There shall be a Board, known as the Fostering Board, which shall be composed of a Chairperson and a minimum of another four members. This Board shall be composed of the following:

Establishment
of the Fostering
Board.

- (a) professionals representing different disciplines; and
- (b) a person who, in the opinion of the Minister, has adequate knowledge and is proficient in the area of foster care.

(2) The Minister shall endeavour to have a person over the age of eighteen years who was placed in foster care and a person who is or was a foster carer as part of the Fostering Board and such persons 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 minimum period of two years.

(4) Any member of the Fostering Board may be removed from office by the Minister if, in his opinion, such member is unfit to continue in office or has become incapable of properly performing 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) 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.

(7) Subject to the provisions of this Act and to any regulations made thereunder, the Fostering Board shall regulate its own procedure:

Provided that any decision of the Fostering Board shall be taken by a majority of votes; however in the case of an equality of votes the Chairperson shall have and exercise a determining vote. The Secretary to the Board shall not vote.

(8) The Fostering Board shall meet as and when necessary, provided it meets at least once every month. In the case of a written request by the Minister or by an accredited agency, which request shall be transmitted through the Secretary of the Board, such Board shall meet by not later than forty eight hours following the request.

(9) The Fostering Board shall have the power to consult professionals or other persons having relevant knowledge and experience in the field of foster care.

(10) The members of the Fostering Board, the Secretary to such Board and any person involved in the proceedings before the Fostering Board shall be bound by confidentiality and shall not disclose to any third party any information which may come to their knowledge during the proceedings. These persons shall also not distribute to any third party any document pertaining to the Fostering Board or any copies thereof, unless requested or duly authorised to do so by the Minister or by any court of law.

(11) The Fostering Board shall submit to the Minister an annual report of all its activities during the preceding calendar year by not later than the fifteenth April of each year.

Functions
of the
Fostering
Board.

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

(a) reviewing Home Study Reports drawn up by a social worker of an accredited agency;

(b) determining suitability or otherwise of prospective foster carers;

(c) determining that a foster carer is no longer suitable to act as such;

(d) specifying what type of foster care is suitable to be provided by each foster carer;

(e) keeping an updated register of foster carers;

(f) providing foster carers with official documentation that identifies them as such and an official letter identifying the children in their care;

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

(h) making recommendations to the Minister on the parameters to be established for the organisation of training programmes, assessments, counselling sessions for prospective foster carers as well as monitoring of, and support structures for, foster carers;

(i) making recommendations to the Minister for the more effective implementation of the provisions of this Act and any regulations made thereunder.

(2) The Fostering Board shall have access to all documentation deemed relevant to the foster care procedure and it shall be unlawful for any person to hinder it in the carrying out of any of its functions.

5. (1) Any decision in terms of articles 4 (b), (c) and (d) shall be taken after the Fostering Board has reviewed the Home Study Report and, or any other relevant documentation, and after it has heard the prospective foster carer and any other persons the Board may deem fit in the circumstances. The decisions and the reasons therefor shall be communicated in writing, within five working days from the date of such decision, by registered mail to the foster carer or the prospective foster carer, as applicable, and to the accredited agency involved.

Decisions
of the
Fostering
Board.

(2) The foster carer or prospective foster carer, as applicable, may appeal from a decision delivered by the Fostering Board, by filing an application in front of the Board of Appeal by not later than eight working days from the date of service of the decision by registered mail.

PART III

CENTRAL AUTHORITY

6. There shall be a Central Authority designated by the Minister to perform and fulfil the functions, duties and responsibilities specified in articles 7 to 13 and any regulations which may be made in terms of this Act.

Establishment
of the Central
Authority.

Functions of
the Central
Authority.

7. The functions of the Central Authority shall include:

(a) receiving and acknowledging applications for accreditation;

(b) granting, refusing, or revoking accreditation to organisations in accordance with established criteria;

(c) receiving, acknowledging, investigating and taking any necessary action in relation to any complaints against accredited agencies or any organisations purporting to act as such;

(d) receiving requests from foreign persons who are approved as foster carers abroad and who, through an accredited agency, request to be recognised as foster carers in terms of this Act, and deciding whether to accept such request after consulting with the Fostering Board;

(e) receiving applications from agencies which would like to carry out cross-border foster care and deciding whether to allow such agencies to effect such placements;

(f) taking any measures deemed necessary in the circumstances, if a foster care placement, whether local or cross-border, is in breach of the provisions of this Act.

Application for
the granting of
accreditation.

8. (1) Any organisation 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 organisation to provide any documents and information deemed necessary in order to ascertain whether accreditation should be granted.

Accreditation
of an organisation.

9. The Central Authority may accredit an organisation if it is satisfied that the organisation:

(a) has sufficient experience and expertise in dealing with child and family matters; and

(b) has an adequate number of staff who are 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.

10. (1) Upon granting accreditation to an organisation 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 one month prior to the expiration of its accreditation and renewal shall only be granted if the accredited agency is still in compliance with articles 8 and 9.

11. (1) The Central Authority shall have the right to refuse an application for accreditation if it deems the organisation not fit to carry out foster care services. The refusal together with the reasons therefor shall be served in writing, by registered mail, to the organisation applying for accreditation within three months from the date of application. Refusal of an application.

(2) The organisation shall have the right to request a reversal of the decision of the Central Authority by filing an application in front of the Board of Appeal within twenty days from the date of service as specified in sub-article (1).

(3) The organisation shall have the right to re-apply to the Central Authority for accreditation if the reason for the refusal no longer subsists.

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

(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.

(2) The Central Authority shall serve the agency, by registered mail, with the written revocation together with the reasons therefor and such revocation shall have effect from date of service.

(3) If the accreditation is revoked on any of the grounds mentioned in paragraphs (b), (c) or (d) of sub-article (1), the agency shall have the right to file an application in front of the Board of Appeal,

requesting a reversal of the decision of the Central Authority, within ten days of the service specified in sub-article (2).

(4) If an appeal is filed in accordance with sub-article (3), the agency may request the Board of Appeal to suspend the decision of the Central Authority until the final decision.

(5) If the accreditation of an agency is revoked, the Accreditation Certificate and all the records and documentation relating to foster care services shall become the property of the Central Authority. The Central Authority may appoint another accredited agency to have custody of such records and documentation and to succeed the agency whose accreditation has been revoked for all intents and purposes at law.

Publication in
the Gazette.

13. During the month of January of every year, the Central Authority shall publish in the Gazette:

(a) a list of all accredited agencies specifying their full name, registered address and other relevant contact details;

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

(c) any changes in the conditions required for accreditation or renewal.

PART IV

BOARD OF APPEAL

Establishment
of Board of
Appeal.

14. (1) There shall be a Board of Appeal consisting of a Chairperson and two other members. One of these shall be a person who has held a warrant to practise the profession of advocate for at least seven years.

(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 proved inability to perform the functions of their office or of proved 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. In any such case, the Minister

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shall appoint another person to sit as a member on the Board of Appeal in substitution of the said member for the duration of the appeal in question.

(4) 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 or of a Local Council, or a candidate for election to the House or a Local Council.

15. (1) The Board of Appeal shall be competent to:

Jurisdiction
and powers of
Board of Appeal.

(a) review decisions of the Fostering Board upon an appeal filed in accordance with article 5(2);

(b) review decisions of the Central Authority upon an appeal filed in accordance with article 11(2);

(c) hear and decide an appeal filed in accordance with the provisions of this Act and any regulations made thereunder;

(d) undertake any other function as the Minister may designate by regulations made by virtue of this Act.

(2) In order to carry out its duties, the Board of Appeal shall have access to all documentation pertaining to the foster care procedure and it shall be unlawful for any person to hinder it in the carrying out of its functions.

(3) In the exercise of its functions, the Board of Appeal may summon any person to give evidence and produce the necessary documentation. For this purpose the Chairperson shall have the power to administer the oath.

(4) The Board of Appeal shall decide an application for appeal by not later than four months from the date of the filing of the application, unless in the opinion of the Chairperson a longer period is necessary for a valid reason which must be stated and registered in the proceedings of the case.

(5) A decision given by the Fostering Board or by the Central Authority shall have immediate effect unless the Board of Appeal decides to suspend it until it has given the final judgement.

(6) The decision of the Board of Appeal shall be final and shall not be subject to any further appeal. The decision of the Board of Appeal shall be communicated to the applicants, the Fostering Board

and the Central Authority by not later than three working days from the date of such decision.

PART V

ACCREDITED AGENCIES

Arrangements
for foster care.

16. An organisation shall be deemed to make arrangements for the fostering of a child if it enters into any agreement or makes any arrangements for facilitating the fostering of a child.

Functions
of accredited
agencies.

17. An accredited agency shall be responsible to:

(a) provide a service according to the standards, criteria and procedures established by the Central Authority;

(b) receive and process applications from persons who apply to be registered as foster carers;

(c) provide initial and continuous training to the foster carers registered with it, and provide them with adequate support while they are carrying out any foster care placement;

(d) match foster carers with children who are to be placed in foster care;

(e) make all reasonable attempts to place siblings with the same foster carer if this is in the best interest of the siblings;

(f) make all reasonable attempts to place a minor parent and his or her child with the same foster carer;

(g) ensure that any foster care placement will be in the best interest of the child;

(h) monitor all foster care placements arranged by it;

(i) review and propose amendments, if necessary, to foster care agreements;

(j) investigate complaints against any foster carer in accordance with the manual or procedures specified in article 18 and draw up a report and forward it to the Fostering Board for any necessary action;

(k) investigate any allegations of abuse in any foster care placement, in accordance with the manual or procedures mentioned in article 18, and report as necessary to the competent authority;

(l) grant the Central Authority access to any records and documentation dealing with the foster care procedure of any child and to reports on any foster carer or prospective foster carer;

(m) grant the Central Authority access to its financial accounts and audits;

(n) report to the Central Authority at the end of every calendar year on the performance of its functions;

(o) comply with any other duties and obligations as specified by the Central Authority.

18. An accredited agency shall develop, update and execute written policies, procedures and manuals which shall be subject to approval by the Central Authority. These written policies, procedures and manuals shall include:

Policies and procedures.

(a) training and assessment procedures;

(b) matching of foster carers with children;

(c) forms of support for foster carers;

(d) emergency placements of children in need of care;

(e) investigation of complaints against any foster carer;

(f) change in circumstances of foster carers;

(g) cases of abuse of children in foster care; and

(h) cases of death of children in foster care.

19. Before commencing the fostering process, the accredited agency shall:

Information to prospective foster carers.

(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.

Keeping of registers.

20. An accredited agency shall maintain one or more registers listing:

- (a) the foster care placements arranged by it;
- (b) the prospective foster carers registered with it; and
- (c) the foster carers registered with it.

Access to information.

21. Foster carers shall be entitled to have access to any information, including medical information, which would enable them to give the best possible care to the child and which may affect the best interest of the child they are fostering.

Training.

22. An accredited agency shall make all reasonable efforts to ensure that every social worker assigned to carry out duties with regard to the foster care procedure is adequately trained and receives ongoing training.

Assessment of prospective foster carers.

23. (1) After receiving an application from a prospective foster carer the accredited agency shall be responsible to:

- (a) provide training to the prospective foster carer;
- (b) assess the suitability or otherwise of the prospective foster carer;
- (c) draw up a report to be known as the “Home Study Report” on the situation of the prospective foster carer, including any recommendations and forward it to the Fostering Board, which shall decide whether the prospective foster carer is suitable to be approved as a foster carer. Such report shall be valid for one year.

(2) For the purposes of drawing up the Home Study Report, the social worker authorised by the accredited agency shall carry out the necessary home visits. The visits may be unannounced and the prospective foster carer shall not refuse entry, shall co-operate with the social worker and shall provide correct information to the best of his knowledge.

Foster care agreement.

24. (1) A foster carer shall have the rights and duties listed in the foster care agreement and failure to comply with such agreement

may lead to the termination of the foster care placement by the accredited agency.

(2) Any rights and duties pertaining to the foster carer in accordance with the foster care agreement shall not be perceived to be seen as a permanent right or duty.

(3) The foster care agreement in terms of sub-article (1) shall be in the best interest of the child and shall provide for detailed information related to the rights and duties of the foster carer and it shall specifically include:

(a) the extent to which the foster carer may make decisions with regard to the child in his care;

(b) the frequency of contact of the child with the natural parent or parents;

(c) the child's care plan;

(d) matters of education, health and maintenance of the child; and

(e) any other matter pertinent to the child in foster care.

(4) The Fostering Board, the accredited agency, the natural parent or parents, the foster carer and the Children and Young Persons Advisory Board, where applicable, shall be provided with a copy of the foster care agreement, and any amendments thereto shall be communicated in writing to all the parties having a copy of the original agreement.

(5) The foster care agreement, drawn up by the accredited agency, shall be signed by the accredited agency, the foster carer and the person having care and custody of the child. This agreement shall be drawn up after having heard the child to be fostered, according to his age and understanding, any person having parental authority and any person caring for the child.

25. A foster carer shall ensure that the child placed in his care shall be cared for, maintained, instructed and educated according to the child's abilities, aspirations and natural inclinations. The child shall also have access to the social worker who is taking care of the placement.

Rights of
children in
foster care.

Monitoring
of foster care
placement.

26. (1) During a foster care placement the accredited agency shall designate a social worker to monitor a foster carer registered with it by drawing up a Home Study Report by the end of every calendar year so that it may determine whether the foster carer is fulfilling the obligations in accordance with the provisions of this Act and the foster care agreement and whether such carer should be allowed to continue caring for the child.

(2) For the purposes of drawing up the Home Study Report, the social worker shall carry out the necessary home visits. The visits may be unannounced and the foster carer shall not refuse entry, shall co-operate with the social worker and shall provide correct information to the best of his knowledge. The social worker carrying out the visit shall be entitled to be assisted by a member of the Police Force in case of any hindrance or obstruction in the exercise of such duty.

PART VI

OFFENCES

Prohibition
of payment.

27. (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 reward for or in consideration of 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 exceeding six months or to a fine (*multa*) of not less than five hundred liri (Lm500) but not more than one thousand liri (Lm1,000) or to both such fine and imprisonment, in addition to any order deemed fit in the circumstances in order to protect the child in respect of whom the offence was committed.

(2) For the purposes of this article, the making of any arrangements for the placement of a child in foster care shall not include any payments made for the maintenance of the child or remuneration to professionals for services rendered by them.

Prohibition of
publication.

28. (1) Without prejudice to any regulations made under this Act, a person shall not publish or cause to be published in any newspaper, periodical or any other printed matter or by means of broadcasting, television, public exhibition or by any other means or medium, any advertisement, news item or other matter indicated, whether or not in relation to a particular child, born or unborn, that:

- (a) a child may be placed in foster care;

(b) a person intends to foster a child; or

(c) a person intends to make arrangements for the placement of a child in foster care.

(2) It shall be unlawful for a person to publish or cause to be published in any newspaper, periodical, any other printed matter or by means of broadcasting, television, public exhibition or by any other means or medium:

(a) the name of a foster carer;

(b) the name of a child who is or will be placed in foster care;

(c) the name of a natural parent, curator or tutor of the child who is or will be placed in foster care; or

(d) any matter likely to enable any of the persons mentioned in paragraphs (a), (b) and (c) of this sub-article to be identified.

(3) 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 five hundred liri (Lm500) but not more than one thousand liri (Lm1,000) or to both such fine and imprisonment.

29. 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 five hundred liri (Lm500) but not more than one thousand liri (Lm1,000) or to both such fine and imprisonment, if such person:

Use of force.

(a) induces or forces a foster carer to give up a child placed in his care;

(b) takes the child away from a foster carer;

(c) induces or forces a foster carer to act contrary to any order issued by any court of law or issued by virtue of the Children and Young Persons (Care Orders) Act;

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(d) induces or forces a foster carer to act in breach of the provisions of this Act;

- (e) causes any damage to a foster carer; or
- (f) forces entry into the residence of a foster carer.

Hindrance.

30. Any person who in any way hinders or obstructs the Fostering Board, the Board of Appeal, the Central Authority or an accredited agency 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 five hundred liri (Lm 500) but not more than one thousand liri (Lm 1,000) or to both such fine and imprisonment.

Fostering by unauthorised persons or organisations.

31. A person or organisation who makes arrangements to place a child in foster care without the authorisation of the Central Authority 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 five hundred liri (Lm500) but not more than one thousand liri (Lm1,000) or to both such fine and imprisonment.

Other offences.

32. Where any person acts in breach of any provision of this Act or 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 one hundred liri (Lm100) but not more than one thousand liri (Lm1,000).

PART VII

REGULATIONS

Regulations.

33. The Minister may make regulations:

- (a) for the protection, supervision and control of children placed in foster care;
- (b) for the accreditation, monitoring and control of agencies and for the refusal or revocation of such accreditation;
- (c) to provide for any rights and duties pertaining to a foster carer;
- (d) to regulate the different types of foster care;

(e) to establish penalties for breach of the provisions of this Act;

(f) to establish the procedure to be followed by the Fostering Board and the Central Authority;

(g) to lay down the rules on the powers of and the procedures to be followed by the Board of Appeal; and

(h) for any incidental and supplementary matter which the Minister considers expedient to provide for, for the effective implementation of the provisions of this Act.

PART VIII

TRANSITORY PROVISIONS

34. (1) All persons who, prior to the date of entry into force of this Act, were approved as foster carers by the Adoption and Fostering Panel, shall be temporarily approved as foster carers by the Fostering Board if they have communicated their approval in writing to such Board within three months of the date of entry into force of this Act. ^{Transition period.}

(2) Following the communication referred to in sub-article (1), the Fostering Board shall:

(a) direct an accredited agency to include the foster carer in its register of foster carers and such foster carer shall be assessed by the accredited agency in order to determine whether he should be allowed to continue acting as such; and

(b) issue the official documentation and official letter referred to in article 4 (f).

(3) Following the assessment specified in sub-article (2), the foster carer shall enter into a foster care agreement and continue to be monitored and assessed in accordance with article 26.

(4) All organisations which, prior to the coming into force of this Act were providing foster care services shall, within one month of the coming into force of this Act apply for accreditation in accordance with article 8 in order to be able to continue providing foster care services.

(5) All organisations as specified in sub-article (4) which do not apply for accreditation within the specified time limit and which continue providing foster care services shall be in breach of article 31.

Objects and Reasons

The objects of this Bill are to make special provision for foster care, to establish the Fostering Board and the Central Authority, to provide for the rights and responsibilities of foster carers and to protect the best interests of children in foster care.