

Abbozz ta' Liġi msejjah

ATT maħsub biex jieħu post l-Att dwar it-Tfal u Żgħażaġh (Ordinijiet għall-Ħarsien), biex jistabbilixxi servizzi ta' Qorti tat-Tfal, biex idahħal fis-seħħ ordinijiet ta' ħarsien tat-tfal, biex jipprovdi kura u ħarsien speċjali għal tfal mneħħija mill-kura jew mifruda mill-ġenituri tagħhom u mqegħda taħt ħarsien barra mid-dar.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2014 dwar il-Titolu fil-qosor. Ħarsien tat-Tfal (Ħarsien Barra mid-Dar).

2. F'dan l-Att, sakemm ir-rabta tal-kliem ma teħtieġ Tifsir. xort'oħra:

"Avukat tat-Tfal" tfisser avukat mahtur skont ir-regolament 3 tar-Regolamenti dwar Il-Qorti Ċivili (Sezzjoni tal-Familja), Il-L.S. 12.20 Prim'Awla tal-Qorti Ċivili u Il-Qorti tal-Maġistrati (Għawdex) (Gurisdizzjoni Superjuri) (Sezzjoni tal-Familja);

"Grupp Konsultattiv" tfisser il-Grupp Konsultattiv għall-Ħarsien tat-Tfal kif stabbilit bl-artikolu 14;

"ħarsien barra mid-dar" tfisser it-tqegħid tat-tifel taħt ħarsien, sew jekk ma' persuna xierqa (*foster care*), f'dar residenzjali jew kwalunkwe kura u allogġ ieħor deċiż mill-Qorti biex iġġib 'il quddiem l-ġid tat-tifel;

"Ħarsien u Protezzjoni Speċjali" tfisser dak il-ħarsien li jrid jingħata lil kull tifel li jinhareġ mill-familja u jitqieghed taħt ħarsien barra mid-dar;

"Harsien Speċjalizzat" tfisser kura professjonali li tindirizza l-bzonnijiet individwali tat-tifel għall-aħjar gid tiegħu;

"konferenza ta' harsien" tfisser il-laqgħa li fiha l-aspetti kollha li għandhom x'jaqsmu mal-gid tat-tifel ikunu mistharrġa bil-għan li jsiru rakkomandazzjonijiet għat-tfassil ta' pjan ta' harsien fl-aħjar interess tat-tifel;

"Kustodju tat-tfal" tfisser kustodju maħtur skont l-artikolu 20, u msejjah "il-Kustodju";

"medjazzjoni" tfisser proċess li fih il-medjatur għall-harsien tat-tfal jiffaċilita n-negozjati bejn il-partijiet biex jgħinjom jaslu għal ftehim bonarju fit-tilwima;

"MHT" tfisser Medjatur għall-Harsien tat-Tfal;

"Ministru" tfisser il-Ministru responsabbli għall-familja, it-tfal u l-harsien soċjali;

"Ordni ta' Emergenza" tfisser ordni maħruġa skont l-artikolu 5(1);

"Ordni ta' Harsien" tfisser ordni maħruġa skont l-artikolu 5(4);

"Ordni ta' Protezzjoni tat-Tfal" tfisser ordni wiehed jew iżjed maħruġa skont l-artikolu 5, u msejjah "Ordni ta' Protezzjoni";

"Ordni ta' Superviżjoni" tfisser ordni maħruġa skont l-artikolu 5(2);

"Ordni ta' Tneħħija" tfisser ordni maħruġa skont l-artikolu 5(5) ta' dan l-Att;

"Ordni ta' Trattament" tfisser ordni maħruġa skont l-artikolu 5(3);

"persuna interessata" tfisser persuna li l-Qorti tqis li għandha interess fil-proċeduri;

"pjan ta' harsien" tfisser pjan imfassal biex jipromwovi il-gid tat-tifel u fl-aħjar interess tat-tifel;

"Pulizija Eżekuttiva" tfisser il-Korp tal-Pulizija ta' Malta u kull notifika li tisemma f'dan l-Att għandha ssir lill-Kummissarju tal-Pulizija fil-kapaċità tiegħu ta' kap tal-korp tal-pulizija u responsabbli mill-uffiċċju ċentrali tal-immigrazzjoni, tal-iskwadra tal-vizzji u tal-iskwadra tar-reati ekonomiċi, tas-servizzi ta' protezzjoni, tad-

dipartiment tal-investigazzjoni kriminali u tal-iskwadra tad-drogi;

"Qorti" tfisser il-Qorti tal-Familja;

"responsabbiltà tal-ġenitur" tfisser dik ir-responsabbiltà li xi hadd mill-ġenituri jew it-tnejn jew kull persuna li għandha l-kura u l-kustodja tat-tifel għandu jkollha għall-ġid tat-tifel;

"responsabbiltà tal-ġenitur maqsuma" tfisser illi aktar minn persuna waħda tista' tinghata r-responsabbiltà tat-tifel fl-istess żmien;

"revizjoni tal-ħarsien" tfisser il-laqgħa li fiha l-aspetti kollha li għandhom x'jaqsmu mal-ġid tat-tifel, inkluż il-pjan ta' ħarsien, ikunu mistħarrġa mill-ġdid filwaqt li jitqies kull tibdil sinifikanti li jista' jseħħ b'konnessjoni mat-tifel bil-ħsieb li jkun rivedut il-pjan ta' ħarsien fl-aħjar interess tat-tifel;

"RHT" tfisser Regjistru għall-Ħarsien tat-Tfal;

"SHT" tfisser Servizzi għall-Ħarsien tat-Tfal;

"Servizzi tal-Qorti tat-Tfal" tfisser grupp imwaqqaf fi hdan il-Qorti tal-Familja magħmul minn Avukati tat-Tfal, Medjaturi għall-Ħarsien tat-Tfal, is-Servizzi ta' Ħarsien tat-Tfal u Kustodji għall-Ħarsien tat-Tfal;

"tifel" tfisser persuna, maskili jew femminili, li tkun taħt l-età ta' tmintax-il sena.

3. (1) Kull persuna li għandha raġuni taħseb li tifel, imwieled jew li jkun ser jitwieled, huwa f'periklu sinifikanti, attwali jew potenzjali, jew fil-bżonn ta' ħarsien u protezzjoni, għandha tirrapporta dawk iċ-ċirkostanzi li fuqhom it-twemmin jew is-suspett tagħha jkun ibbażat lis-SHT jew lill-Pulizija Eżekuttiva.

Rappurtar
obbligatorju.

(2) Meta persuna li fil-kors ta' hidmitha, sew jekk b'mod volontarju jew imħallsa, tiġi f'kuntatt ma' tifel, ikollha raġuni għaliex taħseb li t-tifel huwa f'periklu sinifikanti, attwali jew potenzjali, jew fil-bżonn ta' ħarsien u protezzjoni, dik il-persuna għandha tirrapporta, mingħajr dewmien u mhux aktar tard minn jumejn, lis-SHT jew lill-Pulizija Eżekuttiva.

(3) Meta persuna li fil-kors ta' hidmitha tiġi f'kuntatt ma' omm tqila u jkollha raġuni għaliex taħseb li l-tarbija fil-guf hija f'periklu sinifikanti, attwali jew potenzjali, dik il-persuna għandha, mingħajr dewmien u mhux aktar tard minn jumejn tirrapporta lis-SHT sabiex is-SHT tiegħu provvedimenti, jew tidhol f'arrangament għall-provvista ta' servizzi li jappoġġaw l-omm u t-tarbija. Għandu jsir kull

sforz biex l-omm u t-tarbija jinżammu flimkien wara t-twelid, sakemm dan ma jkunx manifestament kontra s-sigurtà u l-gid tat-tarbija.

(4) Kull persuna msemmija fl-artikolu 2 li tonqos milli taqdi id-dmir stabbilit fis-subartikolu (2) tkun soġġetta għall-prosekuzzjoni kriminali punibbli bi priġunerija ta' minn erba' xhur sa sena u, jew b'multa li ma tkunx iżjed minn hamest elef euro.

(5) Kull min jagħmel rapport falz ikun soġġett għal prosekuzzjoni kriminali punibbli bi priġunerija ta' minn erba' xhur sa sena u, jew b'multa li ma tkunx iżjed minn hamest elef euro, mingħajr preġudizzju għal kwalunkwe piena oħra li jista' jehel taht xi liġi oħra dwar rapport falz.

Azzjoni dwar
rapport.

4. (1) Kull entità jew organizzazzjoni li tirċievi kwalunkwe rapport għandha żzomm rendikont bil-miktub ta' kull każ.

(2) Meta r-rapport isir li xi entità li ma tkunx is-SHT, dik l-entità mingħajr dewmien, u fi kwalunkwe każ mhux aktar tard minn erbgha u għoxrin siegħa, għandha tirreferi l-każ lis-SHT.

(3) Is-SHT għandha żzomm Regjistru għall-Harsien tat-Tfal (RHT) tar-rapporti kollha. Il-Qorti għandha tiddetermina min għandu aċċess għal dan ir-Regjistru.

Iżda kull persuna interessata tista' tressaq rikors biex titlob aċċess għal dan ir-Regjistru.

(4) Is-SHT għandha tevalwa kull rapport fl-aqsar żmien possibbli u għandha tieġu azzjoni mingħajr dewmien u mhux aktar tard minn jumejn.

(5) Wara li tevalwa r-rapport, u mhux aktar tard minn tletin jum, is-SHT tista':

(i) tapplika lill-Qorti għal azzjoni ulterjuri;

(ii) tirreferi l-każ lill-Pulizija Eżekuttiva f'każ ta' rapport magħmul b'mala fidi; u, jew

(iii) tirreferi l-każ lill-Pulizija Eżekuttiva fejn tinhtieg aktar investigazzjoni kriminali; jew

(iv) tiċhad ir-rapport meta jkun deċiż li ma tezistix bazi għal azzjoni ulterjuri:

Iżda meta is-SHT tiddeċiedi li tiċhad ir-rapport, l-istess rapport għandu jibqa' registrat fir-RHT:

Iżda wkoll meta jkun jidher li hemm il-ħtieġa ta' aktar azzjoni mis-SHT tali azzjoni għandha tinkludi:

(a) is-smiġħ ta' x'għandu x'għid it-tifel sakemm dan ma jkunx manifestament kontra l-aħjar interess tat-tifel u jiġi dokumentat bħala tali;

(b) il-provvista, jew arrangament għall-provvista, ta' servizzi ta' appoġġ għat-tifel waqt li tingħata konsidearzzjoni għall-bżonnijiet individwali tat-tifel, inkluż is-servizzi ta' haddiem fil-qasam soċjali;

(ċ) il-provvista, jew arrangament għall-provvista, ta' servizzi ta' appoġġ għall-familja tat-tifel fejn applikabbli, inkluż il-ħatra ta' haddiem fil-qasam soċjali;

(d) il-preżentata ta' rikors lill-Qorti għall-ħruġ ta' ordni wiehed ta' protezzjoni jew iżjed, fejn xieraq;

(e) l-identifikazzjoni ta' harsien barra mid-dar inkluż l-alloġġ possibbli tat-tifel ma' xi qarib tiegħu, li l-aħwa jinżammu flimkien, li t-tifel u l-ġenitur jibqgħu flimkien, attenzjoni xierqa għall-bżonnijiet individwali tat-tifel u l-ħatra ta' haddiem fil-qasam soċjali, fejn xieraq;

Iżda wkoll kull persuna interessata tista' tappella quddiem il-Qorti minn kull evalwazzjoni magħmula jew deċiżjoni meħuda mis-SHT li tiċhad rapport.

(6) Fejn is-SHT tikkonkludi *prima facie* illi t-tifel jinsab f'periklu sinifikanti, attwali jew potenzjali, u, jew li jinħtieġ harsien u protezzjoni, hi għandha tipprezenta rikors quddiem il-Qorti skont il-formola preskritta għall-ħruġ ta' ordni ta' emerġenza:

Iżda meta s-SHT tiddermina li t-tifel hu f'periklu ta' ħsara sinifikanti, is-SHT għandha tipproċedi minnufih b'interventi xierqa mingħajr il-ħtieġa ta' ordni ta' emerġenza, b'dan li għandha mingħajr dewmien u mhux aktar tard minn erbgħa u għoxrin siegħa, tgħarraf lill-Qorti b'dawn il-fatti u titlobha toħroġ ordni ta' emerġenza rigward it-tifel.

(7) Fejn il-Qorti tkun sodisfatta li jeżistu raġunijiet biżżejjed, il-Qorti għandha toħroġ ordni ta' emerġenza. L-ordni ta' emerġenza għandha tibqa' valida għal żmien ta' mhux aktar minn hmistax-il jum, liema żmien jista' jiġgedded fuq rikors lill-Qorti.

(8) Il-Qorti għandha tordna n-notifika immedjata tal-ordni ta' emerġenza lis-SHT, lill-Pulizija Eżekuttiva, u lil kull persuna oħra li l-Qorti jidhrilha xierqa skont iċ-ċirkostanzi tal-każ bil-għan li tiżgura il-ħarsien tat-tifel.

Ordnijiet ta'
Harsien tat-Tfal.

5. Il-Qorti tista' tohroġ waħda jew iżjed, minn dawn li ġejjin:

(a) Ordni ta' Emerġenza li tinhareġ biex it-tifel jitneħħa minnufih mingħand il-persuna jew persuni li jkollhom il-kura legali jew attwali tiegħu fejn it-tifel ikun f'periklu ta' ħsara sinifikanti;

(b) Ordni ta' Superviżjoni li tqiegħed lit-tifel taħt is-superviżjoni ta' aġenzija nominata għal żmien speċifikat fl-Ordni u taħt dawk il-kundizzjonijiet li l-Qorti jidhrilha l-aħjar;

(c) Ordni ta' Trattament tal-Ġenitur jew Ġenituri li biha tordna li kwalunkwe persuna li għandha l-kura legali jew attwali tat-tifel, jissottomettu ruħhom għal trattament jew taħriġ taħt il-ħarsien ta' entità jew professjonist kompetenti, inkluż trattament għal abbuż minn droga jew alkoħol, trattament psikjatriku jew psikologiku u taħriġ fil-ħiliet tal-ġenituri, taħt dawk il-kundizzjonijiet li l-Qorti jidhrilha xierqa.;

(d) Ordni ta' Harsien li tinhareġ meta t-tifel ma jkunx qed jingħata dik il-kura u ħarsien raġonevolment mistennija minn ġenitur tajjeb, inkluż:

(i) fejn hemm nuqqasijiet serji fil-kura ta' kuljum tat-tifel, jew nuqqasijiet serji f'dak li hu kuntatt personali u sigurtà li t-tifel jinħtieġ fl-età u l-iżvilupp tiegħu;

(ii) fejn il-ġenituri jonqsu milli jiżguraw illi t-tifel li hu marid, diżabbli jew li għandu bżonn għajjnuna speċjali jingħata dak it-trattament u kura speċjalizzata li jinħtieġ;

(iii) fejn it-tifel hu maħqur jew soġġett għal abbużi serji, sew fid-dar kif ukoll barra mid-dar, u mhux jingħata protezzjoni adegwata;

(iv) fejn teżisti probabbiltà kbira li tista' ssir ħsara serja lis-saħħa u l-iżvilupp tat-tifel minħabba li l-ġenituri mhumiex kapaċi jew ma jridux jerfgħu ir-responsabbiltà meħtieġa rigward it-tifel;

(v) fejn it-tifel mhuwiex akkumpanjat u qed ifittex ažil skont l-Att dwar ir-Refuġjati;

Kap. 420.

(vi) fejn it-tifel juri mgħiba diffiċli li tista' tkun ta' ħsara għalih jew għal haddiehor jew fejn it-tifel ikun arrestat jew miżmum pendentu proċeduri jew instab ħati ta' reat;

(e) Ordni ta' Tneħħija, li tinhareg biex l-awtur ta' vjolenza fuq it-tifel jitneħħa mid-dar u li tipprovdi protezzjoni lit-tifel, u dan mingħajr ħsara għad-dispożizzjonijiet tal-Kodiċi Kriminali u d-dispożizzjonijiet tal-Kodiċi Ċivili:

Kap. 9.

Kap. 16.

Izda fil-ħruġ ta' din l-ordni ta' protezzjoni, għandha tingħata konsiderazzjoni għar-relazzjonijiet familjari u għall-possibbiltà li t-tifel jerga' jingħaqad mal-familja fejn dan jidher li hu fl-aħjar interess tat-tifel.

6. (1) Meta l-Qorti toħroġ Ordni ta' Harsien tat-Tfal għandu jsir kull sforz biex titnaqqas il-possibbiltà ta' trawma permezz ta' pjan xieraq u ko-ordinat. Il-Qorti għandha taddotta l-mudell ta' Dar tat-Tfal skont kif previst fl-artikolu 39(2)(m) fejn ix-xhieda kollha tat-tifel tingabar f'seduta waħda minn tim ta' esperti, filwaqt li jkunu żgurati li d-drittijiet tal-partijiet kollha involuti jkunu protetti.

Tnaqqas tal-possibbiltà ta' trawma fil-ħruġ ta' Ordni ta' Harsien tat-Tfal.

(2) F'kaz ta' tifel mhux akkumpanjat li jkun qed ifittex ažil, għandu jsir kull sforz biex titnaqqas trawma ulterjuri għat-tifel billi jkun żgurat illi t-tifel jingħata kura psiko-soċjali xierqa ukoll qabel il-ħruġ tal-Ordni izda dejjem minnufih mal-ħruġ tal-Ordni.

(3) Bħala parti mill-Ordni ta' Emergenza jew Ordni ta' Harsien, il-Qorti għandha tordna lis-SHT tagħmel evalwazzjoni tal-ħtiġiet tat-tifel f'ċentru ta' evalwazzjoni rezidenzjali (CER) biex jiddetermina l-alloġġ l-iżjed xieraq għat-tifel barra mid-dar. F'kaz ta' tifel mhux akkumpanjat li jkun qed ifittex ažil, dan iċ-CER għandu jqis materji relatati mas-saħħa, l-istat psiko-soċjali u proċeduri għall-evalwazzjoni tal-età li jistgħu japplikaw għat-tifel.

7. Kull persuna li bi hsieb iġġieghel, thegġeg jew tgħin jew xort'oħra tassisti persuna biex tikser kwalunkwe ordni maħruġa mill-Qorti tehel, meta tinsab hatja, prigunerija għal mhux aktar minn sitt xhur jew multa ta' mhux iżjed minn mitejn u tnejn u tletin euro u erbgħa u disghin ċenteżmu (€230.94) jew dik il-multu u prigunerija flimkien.

Reati u piena.

8. (1) Fil-każijiet kollha li għalihom hemm referenza fl-artikoli preċedenti ta' dan l-Att, l-aġenzija jew professjonisti xierqa li jkollhom ir-responsabbiltà tat-tifel jew li jkunu qed jaħdmu għall-

Referenza tal-każ lill-Qorti.

aħjar interess tat-tifel jistgħu f'kull żmien jirreferu l-każ lill-Qorti jekk il-persuna li jkollha l-kustodja legali jew attwali tat-tifel titqies li tkun kisret xi ftehim milhuq mas-SHT jew kwalunkwe ordni ta' harsien mogħti mill-Qorti jew meta jitqies li t-tifel jinsab f'riskju:

Iżda f'kull stadju u f'kull hin, inkluż meta l-każ ikun quddiem il-Qorti, għandu jsir kull sforz biex jingħarfu x-xewqat u l-fehmiet tat-tifel privatament u b'mod li jixraq l-maturità u l-ħila li jifhem ta' dak it-tifel u kull bżonn speċjali li jista' jkollu. It-tifel għandu jkun mistoqsi jekk iridx li xi hadd ikun preżenti waqt il-kors tal-intervista.

(2) Il-Qorti għandha tiżgura li l-intervisti kollha jsiru minn persuni li huma mħarrġa biex jintervistaw lit-tfal u fil-każ ta' tifel li jkun qed ifittex ažiż għandha tiżgura wkoll ir-rispett lejn is-sensittività lingwistika u kulturali. Għandu jinżamm rendikont formali li jindika kif il-fehmiet tat-tifel huma aċċertati u s-sustanza ewlenija ta' dawn il-fehmiet. Fejn biex wiehed jasal biex jaċċerta l-fehmiet tat-tifel tista' ssir hsara lill-benesseri tat-tifel jew ikunu pperikolati s-saħħa u l-iżvilupp tiegħu, dawn iċ-ċirkostanzi għandhom ukoll jitniżżlu fir-rendikont.

(3) Il-fehmiet tat-tifel għandhom jiġu stabbiliti b'sensittività u b'mod li ma jikkawża l-ebda hsara mhux meħtieġa fir-relazzjoni bejn it-tifel u l-ġenituri tiegħu jew persuni ohra qrib it-tifel:

Iżda għandu jsir kull sforz biex tkun imħarsa l-konfidenzjalità tal-fehmiet tat-tifel:

Iżda wkoll is-SHT, il-Qorti u kull parti li tkun qed taġixxi fl-aħjar interess tat-tifel għandhom jgħarrfu u jfissru lit-tifel skont il-grad ta' maturità u l-ħila tiegħu li jifhem, skont kwalunkwe bżonn partikolari tiegħu, dan li ġej:

- (a) il-proċeduri li ttieħdu dwar it-tifel u r-raġunijiet għal dawn il-proċeduri;
- (b) kull proċedura ulterjuri li tista' tittiehed dwar it-tifel;
- (c) id-dritt tat-tifel li jikkonsulta mal-Avukat tat-Tfal; u
- (d) kull tagħrif ieħor li jista' jkollu x'jaqsam mal-benesseri tat-tifel.

L-aħjar interessi tat-tifel.

9. Id-deċiżjonijiet kollha mehuda dwar il-ħruġ ta' ordnijiet ta' protezzjoni tat-tfal elenkati taħt dan l-Att għandhom ikunu motivati mill-prinċipju tal-aħjar interessi. Fl-evalwazzjoni tal-aħjar interessi tat-tifel għandu jitqies safejn il-miżuri u s-soluzzjonijiet

alternattivi u rakkomandati jissalvagwardjaw favur it-tifel dan li ġejj:

- (a) żvilupp u benesseri bilanċjati, kif ukoll il-kontinwità ta' relazzjonijiet umani mill-qrib;
- (b) l-opportunità li t-tifel ikun mifhum u jingħata affett, kif ukoll supervizjoni u ħarsien skont l-età u l-grad ta' żvilupp tiegħu;
- (ċ) edukazzjoni konsistenti mal-abbiltajiet u x-xewqat tat-tifel;
- (d) ambjent sikur li fih jista' jitrabba, u libertà fiżika u emozzjonali;
- (e) sens ta' responsabbiltà biex jikber u jkun indipendenti;
- (f) l-opportunità li jinvolvi ruħu f'materji li għandhom x'jaqsam miegħu u l-kapaċità li jinfluwenzhom;
- (g) il-ħtieġa li tingħata konsiderazzjoni lill-isfond lingwistiku, kulturali u reliġjuż tat-tifel:

Iżda meta tifel ikun tqiegħed volontarjament taħt ħarsien barra mid-dar il-Qorti għandha tapplika l-istess prinċipji u tkun motivata bl-istess konsiderazzjonijiet biex tiżgura l-benesseri tat-tifel. Pjanijiet ta' ħarsien u revizjonijiet għandhom ukoll isiru bl-istess mod u fl-istess perjodi ta' żmien.

10. Il-Qorti għandha tiżgura li l-bżonnijiet partikolari tat-tifel huma eżaminati u jitqiesu fl-evalwazzjoni tal-ħarsien meħtieġ u l-miżuri li għandhom jittieħdu. F'kull deċiżjoni li l-Qorti tiegħu għall-benesseri tat-tifel, Il-Qorti għandha tkun immotivata mill-prinċipju tal-aħjar interessi tat-tifel, il-benesseri tat-tifel u r-responsabbiltà tal-Istat li jipprovdi ħarsien speċjali u għajnuna:

Eżami tal-bżonnijiet partikolari tat-tifel.

Iżda ħarsien speċjali jista' jirrikjedi r-restrizzjoni tal-libertà tal-moviment tat-tifel sal-limitu meħtieġ għall-benesseri tiegħu. F'dawn il-każi l-Qorti għandha tirrevedi ċ-ċirkostanzi fuq bażi regolari u tal-anqas kull tmienja u għoxrin jum:

Iżda wkoll, wara r-rakkomandazzjonijiet fil-pjan ta' ħarsien, il-Qorti tista' taħtar persuni xierqa biex jagħtu kura speċjalizzata meħtieġa fl-aħjar interessi tat-tifel, inkluż trattament mediku u psikoloġiku, terapija u taħriġ. Meta persuni jkunu hekk maħtura, il-Qorti għandha tiżgura illi dawn jipprezentaw rapporti regolari u jzommu rendikont tal-miżuri kollha meħuda fil-pjan ta'

ħarsien tat-tifel.

Mgħiba li tqiegħed lit-tifel jew lil ħaddiehor f'periklu ta' ħsara.

11. (1) Meta tifel ikun qed juri mgħiba li tista' tqiegħed lilu jew lil ħaddiehor f'periklu ta' ħsara, il-kustodju għandu minnufih jieħu passi biex iħares is-sigurtà tat-tifel u għandu javża lill-Qorti b'dawn il-miżuri bla dewmien u fi żmien mhux aktar tard minn jumejn għandu jipprovi lill-Qorti rakkomandazzjonijiet għal tibdil fil-pjan ta' ħarsien tat-tifel, wara konsultazzjoni ma' min jieħu ħsieb it-tifel, il-ħaddiem fil-qasam soċjali u kull persuna oħra xierqa.

(2) In-notifika dwar is-sigurtà tat-tifel imsemmija fis-subartikolu (1) tista' ssir verbalment lill-Qorti:

Iżda fejn din in-notifika ssir b'mod verbali, rapport bil-miktub għandu jkun ipprezentat lill-Qorti bla dewmien u mhux aktar tard minn jumejn.

(3) Il-Qorti għandha tiżgura li jsir kull sforz biex ikun aċċertat li l-mezzi wżati f'każ ta' mgħiba bħal din ikunu proporzjonati.

Ġurisdizzjoni esklussiva tal-Qorti.

12. (1) Il-Qorti għandha ġurisdizzjoni esklussiva li tisma' u tiddetermina ħwejjeġ relatati ma' reviżjoni u terminazzjoni u l-ħwejjeġ kollha oħra anċillari dwar ordnijiet ta' ħarsien tat-tfal, skont id-dispożizzjonijiet ta' dan l-Att.

(2) Il-Qorti għandha f'kull każ tawtorizza pjani ta' ħarsien u tiżgura li dan ikun implimentat, skont kif previst f'dan l-Att.

Għamla tal-Qorti.

13. Il-Qorti għandha tkun preseduta minn Imħallef mgħejjun waqt il-proċeduri minn żewġ membri tal-Grupp Konsultattiv għall-Ħarsien tat-Tfal, li għandhom jissejju l-konsulenti:

Iżda, sa fejn hu possibbli, l-Qorti għandha żżomm l-istess kompożizzjoni meta tittratta kull talba jew rikors dwar l-istess tifel, inkluż kull deċiżjoni preliminari li tkun ittiehdet:

Iżda wkoll l-imħallfin mahtura biex jisimghu każijiet ta' ħarsien tat-tfal f'din il-Qorti għandhom jingħataw taħriġ speċifiku u għandhom ikunu assenjati biss kawzi relatati mal-ħarsien tat-tfal. L-Imħallef li jippresjedi għandu jisma' x-xhieda kollha personalment, ħlief f'ċirkostanzi eċċezzjonali. It-tifel għandu d-dritt li jitlob intervista ġudizzjarja f'liema każ l-imħallef li jippresjedi għandu jisma' lit-tifel *in camera*.

Grupp Konsultattiv għall-Ħarsien tat-Tfal.

14. (1) Għandu jkun hemm Grupp Konsultattiv għall-Ħarsien tat-Tfal li jkun magħmul minn sitt persuni ta' reputazzjoni tajba u li jkollhom mill-anqas seba' snin esperjenza professjonali fil-kura, il-ħarsien, l-iżvilupp u l-protezzjoni tat-tfal, fil-liġi u, jew

psikoloġija tat-tfal.

(2) Il-membri tal-Grupp Konsultattiv għandhom jinhatru wara sejha pubblika ta' interess maħruġa mill-Ministru responsabbli għat-tfal.

(3) L-applikanti kollha għandhom ikunu mistħarrġa dwar imġiba ħazina relatata ma' tfal qabel ma jiġu maħtura u l-istess stħarriġ għandu jibqa' jsir fuq bażi regolari:

Izda l-membri tal-Grupp Konsultattiv għandhom jintgħazlu wara intervista magħmula mill-Ministru responsabbli għat-tfal, il-Ministru responsabbli għall-Ġustizzja, żewġ imħallfin li jippresjedu fil-Qorti li tisma' każijiet relatati mat-tfal, u l-Kummissarju għat-Tfal.

(4) Il-membri tal-Grupp Konsultattiv għandhom jinhatru mill-Ministru u għandhom jzommu l-kariga għal perjodu ta' erba' snin mid-data tal-ħatra;

Izda membru jista' jitneħħa mill-istess Ministru f'każ ta' mġiba ħazina, inkompetenza, negligenza kbira jew għal kwalunkwe raġuni oħra elenkata fl-ittra tal-ħatra.

(5) Membri tal-Grupp Konsultattiv li servew it-terminu tagħhom jistgħu jerġghu japplikaw għal kariga oħra skont is-subartikoli (2) u (3).

15. (1) Il-Qorti għandha żzomm seduti f'Malta u Seduti. f'Għawdex. Id-data u l-ħin ta' kull seduta għandhom ikunu determinati mill-Imħallef li jippresedi.

(2) Matul is-smiġħ l-Imħallef għandu jikkonsulta maż-żewġ konsulenti maħtura għall-każ partikolari. Hlief fil-każ li jkunu eżentati mill-Imħallef, il-konsulenti tal-Qorti għandhom jattendu għas-seduti kollha tal-imsemmija Qorti.

(3) Hlief għal dak previst hawn fuq, f'każ ta' rikors għall-ħruġ ta' ordni ta' emergenza skont l-artikolu 19, l-Imħallef li jippresjedi fil-Qorti tal-Familja jista' jagħżel li ma jikkonsultax maż-żewġ konsulenti. Din il-konsultazzjoni għandha ssir fil-Qorti bil-miftuħ jew *in camera* skont kif tiddeċiedi l-Qorti meta jitqiesu ċ-ċirkostanzi partikolari tal-każ.

(4) L-Imħallef għandu jagħti konsiderazzjoni xierqa lill-fehma tal-konsulenti izda mhuwiex marbut li jimxi mal-opinjoni tagħhom:

Izda fejn l-Imħallef ma jaqbilx mal-fehma tal-konsulenti,

dik l-opinjoni u r-raġunijiet għan-nuqqas ta' qbil għandhom ikunu reġistrati fid-deċiżjoni.

Kap. 12.

(5) Il-konsulenti tal-Qorti jistgħu jastjenu jew ikunu rikuzati bl-istess mod u għall-istess raġunijiet li għalihom, skond il-liġi, maġistrat jew imħallef jista' jastjeni jew ikun rikuzat. L-Imħallef li jipprevedi għandu jiddeċiedi fuq kull talba għar-rikuża skont l-artikoli 733 *et sequitur* tal-Kodiċi ta Organizzazzjoni u Proċedura Ċivili.

(6) Meta jkun mahtur, konsulent tal-Qorti għandu jieħu gürament tal-ħatra. Dan il-gürament għandu jittiehed quddiem l-Imħallef li jipprevedi.

Dispożizzjonijiet generali li japplikaw għall-Qorti.

16. (1) Il-Ministru jista' jagħmel regolamenti għat-twaqqif ta' Reġistru separat għall-Qorti u l-funzjonijiet tiegħu, u bl-istess regolamenti jista' jahtar dawk l-uffiċjali li jista' jkun hemm bżonn għall-operat tal-istess Qorti. L-atti kollha tal-Qorti għandhom jinżammu fir-Reġistru msemmi f'dan is-subartikolu.

(2) L-atti tal-Qorti għandhom ikunu aċċessibbli biss għall-persuni direttament involuti fil-każ partikolari quddiem il-Qorti, u kopji ta' dawn l-atti għandhom jingħataw biss lill-persuni msemmija f'dan is-subartikolu, sakemm il-Qorti ma tiddekrete xort'oħra għal raġunijiet ta' riċerka jew ċirkostanzi eċċezzjonali.

(3) L-atti tal-Qorti għandhom jitqegħdu u jinżammu f'dawk l-arkivji magħżula mill-Ministru b'regolamenti magħmula skont dan l-artikolu.

Applikabbiltà tal-Kodiċi ta Organizzazzjoni u Proċedura Ċivili.
Kap. 12.

17. Id-dispożizzjonijiet tal-artikoli 21, 22 u 23 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom japplikaw quddiem il-Qorti.

Benefiċċju ta' għajjnuna legali.
Kap. 12.

18. Id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili li għandhom x'jaqsmu mal-benefiċċju ta' għajjnuna legali għandhom japplikaw għall-partijiet involuti fil-proċeduri quddiem il-Qorti, sakemm dawn il-persuni ikunu intitolati għal dak il-benefiċċju skont dawk id-dispożizzjonijiet. It-tfal għandhom awtomatikament jingħataw l-għajjnuna ta' Avukat tat-Tfal sakemm huma ma jirrifjutawx espressament din l-offerta.

X'ikun fih ir-rikors.

19. (1) Ir-rikors ipprezentat mis-SHT li bih il-Qorti tintalab toħroġ ordni ta' ħarsien tat-tfal wiehed jew iżjed minn wiehed għandu jkun fih l-isem u n-numru tal-karta tal-identità jew numru ieħor ta' identifikazzjoni tat-tifel flimkien mal-isem, l-indirizz, in-numru tal-karta tal-identità jew numru ieħor ta' identifikazzjoni u d-dettalji kollha magħrufa tal-ġenituri, persuna jew persuni li għandhom jew

jista' jkollhom il-kustodja, legali jew attwali, tat-tifel u għandu jkun fih is-sottomissjonijiet kollha rilevanti flimkien mad-dokumenti kollha li għandhom x'jaqsmu mar-rikors.

(2) Il-Qorti għandha tappunta dan ir-rikors għas-smiġh fi żmien hamest ijiem tax-xogħol u tinnotifika lill-ġenituri u l-persuna li jkollha l-kustodja, legali jew attwali, tat-tifel fejn dan japplika. It-tifel għandu, bi dritt, ikun mistieden jattendi għall-istadji kollha tal-proċeduri. Il-Qorti għandha wkoll tiżgura li medjatur għall-ħarsien tat-tfal jintalab jattendi għall-ewwel seduta tas-smiġh.

(3) Meta, fl-ewwel seduta tas-smiġh, il-Qorti tqis li jeżistu *prima facie* raġunijiet biżżejjed biex il-proċedimenti jitkomplew, il-Qorti għandha tahtar Avukat tat-Tfal u Kustodju mis-Servizzi tal-Qorti tat-Tfal biex jirrapprezentaw u jgħinu lit-tifel:

Izda fejn it-tifel jirrifjuta espressament ir-rappreżentanza ta' Avukat tat-Tfal, ix-xewqa tat-tifel għandha tkun rispettata.

(4) Meta, fl-ewwel seduta tas-smiġh, il-Qorti tqis li jeżistu raġunijiet biżżejjed biex il-proċedimenti jitkomplew, għandu jinħatar medjatur għall-ħarsien tat-tfal biex imexxi l-konferenza ta' ħarsien meħtieġa qabel l-ġhota ta' ordni wiehed ta' protezzjoni tat-tfal jew iżjed minn ordni wiehed. Il-partijiet fis-smiġh għandhom ikunu notifikati *seduta stante* bid-data appuntata għall-konferenza ta' ħarsien u għandha tingħata lill-Qorti lista ta' persuni oħra rilevanti sabiex dawn jiġu nnotifikati immedjatment bit-tahrika għas-smiġh. Il-Qorti għandha tappunta s-smiġh li jmiss għal data mhux aktar tard minn tliet ġimgħat mill-ewwel smiġh u għandha tordna lill-medjatur għall-ħarsien tat-tfal biex jipprezenta rapport tal-indaġni u r-rakkomandazzjonijiet tal-konferenza ta' ħarsien sad-data appuntata għal dak is-smiġh, salv ċirkostanzi eċċezzjonali.

(5) Il-partijiet li għandhom ikunu mħarrka biex jieħdu sehem fil-konferenza ta' ħarsien, imsejha l-partijiet, huma:

- (i) it-tifel,
- (ii) l-Avukat tat-Tfal, fejn dan ikun japplika,
- (iii) il-ħaddiem fil-qasam soċjali tas-SHT,
- (iv) il-kustodju,
- (v) il-ġenituri u l-persuna jew persuni li għandhom jew jista' jkollhom il-kustodja, legali jew attwali, tat-tifel, u l-avukat tagħhom jekk jagħzlu li jkunu rappreżentati, fejn japplika,

(vi) il-haddiem fil-qasam soċjali tat-tifel,

(vii) il-haddiem fil-qasam soċjali tal-ġenituri u tal-persuna jew persuni li għandhom jew jista' jkollhom il-kustodja, legali jew attwali, tat-tifel, fejn japplika,

(viii) dawk il-persuni li l-kontribut tagħhom jitqies essenzjali għat-tfassil tal-proċess tal-pjan ta' harsien:

Izda fejn waħda mill-partijiet professjonali ma tkunx tista' tattendi għall-konferenza ta' harsien, għal xi raġuni valida u sostanzjata, dik il-parti għandha tippreżenta rapport bil-miktub lill-medjatur għall-harsien tat-tfal ta' lanqas sa jum qabel il-konferenza ta' harsien, liema rapport għandu jkun fih it-tħassib tagħha, evidenza ta' abbuż jew riskju għat-tifel u r-rakkomandazzjonijiet tagħha:

Izda wkoll il-Qorti tista' tillimita l-għadd ta' partijiet mharrka għall-konferenza ta' harsien meta l-preżenza ta' ċerti persuni ma titqiesx meħtieġa jew xierqa.

Kustodju.
Kap. 12.

20. (1) Il-kustodju għandu jinħatar minn fost lista ta' esperti nominati mill-Qorti tal-Familja, skont l-artikolu 89 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, li jkunu persuni imparzjali, maturi, ta' reputazzjoni tajba, b'minimu ta' mhux anqas minn għaxar snin esperjenza mat-tfal u li jkollhom l-abilità li jikkomunikaw ma' u jevalwaw lit-tfal f'sitwazzjonijiet stressanti kif ukoll il-mod li bih it-tfal jirrelataw ma' haddiehor.

(2) Il-kustodju għandu jieħu sehem fi kwalunkwe taħriġ meħtieġ.

(3) Il-kustodju għandu jhars u jgħid 'il quddiem l-aħjar interessi u d-drittijiet tat-tifel u għal dan il-ghan għandu:

(a) jagħti rendikont ta' għemilu lill-Qorti u jhars l-ordnijiet u t-talbiet kollha tal-Qorti;

(b) ifisser ir-rwol u r-responsabbiltajiet tal-kustodju lit-tifel;

(ċ) iżomm it-tifel mgħarraf il-hin kollu dwar dak kollu li jista' jaffettwa l-benesseri preżenti u futur tat-tifel;

(d) jiltaqa' ma' u jisma' lit-tifel spiss kemm meħtieġ biex jagħraf ix-xewqat, is-sentimenti u l-fehmiet tat-tifel;

(e) jiżgura li t-tħassib tat-tifel ikun indirizzat u x-xewqat u l-fehmiet tiegħu jigu kkomunikati lill-medjatur jew

lill-Qorti, skont il-każ, u lil dawk kollha involuti fil-ħarsien tat-tifel:

Iżda l-kustodju għandu jagħmel kull sforz biex jirrispetta l-kunfidenzjalità li t-tifel jista' jitlob, sakemm dan ma jkunx ta' ħsara għat-tifel jew għal haddiehor.

(f) isir midhla taċ-cirkostanzi u l-karatteristiċi tat-tifel;

(g) janalizza, jevalwa u jirrevedi regolarment kwalunkwe riskju għat-tifel, inkluż il-possibbiltà ta' xi impatt hazin li l-proċeduri jistgħu jkollhom fuq it-tifel;

(h) jiżgura li l-ħtiġiet ta' edukazzjoni u saħħa tat-tifel ikunu moqdija;

(i) jinkoraġġixxi lit-tifel biex jitkellem mal-Avukat tat-Tfal u fejn it-tifel ma jkunx jista' jew ma jkunx irid jagħmel dan, jikkonsulta hu mal-Avukat tat-Tfal fl-aħjar interessi tat-tifel;

(j) ikun konxju tal-għażliet kollha disponibbli għat-tifel f'kull sitwazzjoni u jgħarraf lit-tifel b'dawn l-għażliet;

(k) iġib għall-attenzjoni tal-Qorti kull materja urġenti jew bidla fiċ-ċirkostanzi li jaffettwaw jew jistgħu jaffettwaw id-drittijiet, il-benesseri u l-interessi tat-tifel;

(l) jiffacilita l-kuntatt bejn it-tifel u l-ġenituri, l-aħwa u, jew dawk il-*carers* li qegħdin jew kienu jiehdu ħsiebu sakemm dan ma jkunx ta' ħsara għall-aħjar interessi tat-tifel;

(m) iżomm kuntatt u jagħti appoġġ lit-tifel wara li dan jilhaq l-età magġorenni fejn dan hu possibbli u xieraq.

(4) Il-kustodju għandu jkun preżenti u jassisti lit-tifel jew jirrappreżenta lit-tifel, meta dan ma jkunx jista' jew ma jkunx irid jipparteċipa fil-konferenza ta' ħarsien u fir-reviżjonijiet ta' ħarsien.

21. (1) Medjatur għall-ħarsien tat-tfal huwa persuna imparzjali ta' reputazzjoni tajba b'minimu ta' mhux anqas minn ħames snin esperjenza professjonali u kwalifika formali fil-medjazzjoni u psikoloġija jew terapija tal-familja jew ħidma soċjali jew ligi tal-familja.

Medjatur għall-ħarsien tat-tfal.

(2) Il-medjatur għall-ħarsien tat-tfal għandu jipparteċipa fi kwalunkwe taħriġ meħtieġ.

(3) Il-medjatur għall-ħarsien tat-tfal għandu jkun fdat bil-presidenza tal-konferenza ta' ħarsien u r-reviżjonijiet ta' ħarsien meħtieġa għall-proċess tal-ħarsien tat-tfal u għal dan il-għan għandu:

(a) ikollu aċċess assikurat għat-tagħrif kollhu rilevanti u għal dawk il-persuni li jistgħu jkollhom dak it-tagħrif;

(b) jiddetermina liema huma dawk il-persuni li l-kontribut tagħhom huwa meħtieġ fit-tfassil ta' pjan ta' ħarsien skont id-dispożizzjonijiet ta' dan l-Att;

(ċ) jiffissa data, ħin u lok għall-konferenza ta' ħarsien u jieħu passi biex jiżgura n-notifika tal-partijiet, skont id-dispożizzjonijiet ta' dan l-Att;

(d) jiżgura li l-partijiet kollha jifhmu l-proċess tal-konferenza ta' ħarsien u li jkunu jistgħu jikkomunikaw l-fehmiet tagħhom skont il-bżonnijiet partikolari tagħhom;

(e) jisma' lill-partijiet flimkien, sakemm ma jkunx hemm ċirkostanzi eċċezzjonali biex jismagħhom separatament, u jagħmel kull sforz biex jiffacilita pjan ta' ħarsien xieraq għat-tifel;

Iżda t-tifel għandu dejjem ikun mistieden li jinstama' waħdu filwaqt li jzomm id-dritt li jipparteċipa fil-proċeduri tal-konferenza ta' ħarsien.

(f) jiffoka d-diskussjoni fuq il-benesseri u l-aħjar interessi tat-tifel;

(g) jirrispetta d-dinjità u s-sensitività tal-partijiet kollha u jagħmel kull sforz biex jiżgura li huma jirrispettaw id-drittijiet u l-opinjoni ta' xulxin;

(h) jiżgura l-użu ta' lingwaġġ sempliċi;

(i) jiżgura li l-partijiet jifhmu l-implikazzjonijiet ta' pjan ta' ħarsien medjat u r-responsabbiltajiet tagħhom fit-twettiq ta' dan il-pjan;

(j) iwettaq kull funzjoni oħra li tista' tiġi assenjata mill-Qorti.

(4) Il-Qorti għandha tassenja wieħed mill-iskrivani tal-Qorti biex jgħinu lill-medjatur għall-ħarsien tat-tfal f'dawk il-ħidmiet amministrattivi u l-operat ta' kuljum, inkluż iżda mhux limitat għal:

- (a) ir-reġistrazzjoni tad-dati u numru ta' sessjonijiet, inklużi d-dokumenti u l-provi;
- (b) ir-reġistrazzjoni tan-notifiki kollha;
- (ċ) iż-żamma tal-minuti ta' kull sessjoni;
- (d) l-ikkuntattjar tal-partijiet fil-medjazzjoni ta' ħarsien tat-tifel;
- (e) iservi ta' persuna ta' kuntatt għall-kisba ta' tagħrif amministrattiv;
- (f) il-ħruġ ta' kontijiet għal ħlasijiet li jistgħu jkunu dovuti.

(5) Il-partijiet fil-konferenza ta' ħarsien m'għandhomx jieħdu gürament u l-medjatur għandu jgħarrafhom fil-bidu tal-proċeduri illi, għall-kuntrarju tal-proċeduri tal-medjazzjoni tal-familja, l-evidenza u d-dokumenti kollha mressqa matul il-konferenza ta' ħarsien għandhom ikunu disponibbli għall-Qorti.

22. (1) Għandu awtomatikament jinħatar Avukat tat-Tfal Avukat tat-Tfal. biex jirrappreżenta lit-tifel fil-bidu tal-proċeduri, sakemm it-tifel ma jirrifjutax dan espressament. L-Avukat tat-Tfal għandu jkollu rapport ta' avukat-klijent mat-tifel safejn l-avukat għandu jirrappreżenta x-xewqat tat-tifel.

(2) Ir-responsabbilitajiet tal-Avukat tat-Tfal għandhom jinkludu dan li ġej:

- (a) illi jagħraf sewwa ix-xewqat tat-tifel;
- (b) illi jgħarraf lit-tifel bid-drittijiet tiegħu f'kull ċirkostanza partikolari;
- (ċ) illi jidher għat-tifel fil-proċeduri kollha relatati quddiem il-Qorti;
- (d) illi jagħti parir lit-tifel dwar kwistjonijiet legali li jistgħu iqumu matul il-proċess;
- (e) illi jieħu taħriġ speċifiku għar-rwol ta' Avukat tat-Tfal inklużi metodi li bihom jikkomunika b'mod effettiv u jifhem it-tifel.

23. Fejn ikun hemm qbil bejn il-partijiet dwar pjan ta' ħarsien, il-medjatur għall-ħarsien tat-tfal għandu jippreżenta dan il-pjan quddiem il-Qorti, flimkien mar-rapport ordnat fl-ewwel seduta. Sottomissjoni tal-pjan ta' ħarsien.

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Nuqqas ta' ftehim.

24. Fejn it-tentattivi tal-medjatur għall-harsien tat-tfal biex jgħin lill-partijiet jilhqu ftehim, kif intqal fuq, ma jirnexxux, il-medjatur għandu jissottometti din l-informazzjoni fir-rapport flimkien ma' rakkomandazzjonijiet oħra li jidhrulu xierqa.

Sottomissjonijiet u l-kontro-sottomissjonijiet

25. Wara li tifi r-rapport tal-medjatur għall-harsien tat-tfal fejn ma jkunx intlaħaq ftehim, il-Qorti għandha tiffissa data biex l-avukati tal-partijiet u l-Avukat tat-Tfal jagħmlu s-sottomissjonijiet u l-kontro-sottomissjonijiet tagħhom u wara dan il-Qorti għandha tgħaddi biex tiddeċiedi dwar l-aktar pjan ta' harsien xieraq għat-tifel:

Izda fejn ma jkun hemm ebda kontestazzjoni, il-Qorti għandha tkompli tikkonsidra s-sottomissjonijiet u tiddeċiedi dwar ir-rakkomandazzjonijiet magħmula fil-pjan ta' harsien permezz ta' digriet:

Izda wkoll fejn il-Qorti tiddeċiedi li tillimita l-kuntatt tat-tifel mal-ġenituri u persuni oħra qrib tiegħu, il-Qorti għandha tagħti r-raġunijiet għal din id-deċiżjoni, inkluż safejn tasal ir-restrizzjoni:

Izda wkoll il-Qorti tista' biss tillimita l-kuntatt tat-tifel mal-ġenituri u persuni oħra qrib tiegħu meta tkun konvinta illi l-kuntatt huwa ta' ħsara għat-trobbija, l-iżvilupp u l-benesseri tat-tifel. Meta l-Qorti tiegħu dik id-deċiżjoni hija għandha tiffissa wkoll data għal reviżjoni mhux aktar tard minn tliet xhur minn din id-deċiżjoni, sakemm dan ma jkunx manifestament kontra l-aħjar interessi tat-tifel.

X'ikun fih il-pjan ta' harsien.

26. Il-pjan ta' harsien imsemmi f'dan l-Att għandu jinkludi:

(a) id-dettalji kollha rilevanti għall-identifikazzjoni tat-tifel;

(b) ir-raġunijiet għaliex inharġet l-ordni ta' protezzjoni tat-tfal;

(ċ) il-kura u l-għajjnuna professjonali li l-ġenituri għandhom jirċievu sabiex l-effetti tal-ordni ta' protezzjoni tat-tfal jistgħu jiġu mtaffija u, jew mitmuma;

(d) il-lok u l-frekwenza tal-aċċess tal-ġenituri għat-tifel, skont il-każ, fejn it-tifel ikun tneħħa minn taht il-kura tal-ġenituri;

(e) il-lok u l-frekwenza tal-aċċess tal-aħwa għat-tifel, fejn japplika, fejn it-tifel ikun tneħħa minn taht il-kura tal-ġenituri;

(f) safejn tasal ir-restrizzjoni imposta fuq il-ġenituri

dwar il-kuntatt tagħhom mat-tifel, u r-raġunijiet għal dan, fejn japplika;

(g) il-lok fejn it-tifel għandu jgħid sakemm ikun taħt l-ordni ta' protezzjoni tat-tfal, meta t-tifel ikun tneħħa minn taħt il-kura tal-ġenituri;

(h) id-drittijiet u d-dmirijiet tal-*carers* fil-konfront tat-tifel, tal-aġenzija li tiddelega din il-kura u ta' kull persuna oħra skont kull ċirkostanza partikolari tat-tifel;

(i) kopja tal-atti kollha miktuba ta' kull seduta miżmuma quddiem il-Qorti;

(j) kopja ta' kwalunkwe deċiżjoni mogħtija mill-Qorti jew mill-Qorti tal-Appell, fejn japplika.

27. Kull deċiżjoni mogħtija mill-Qorti dwar kwalunkwe ordni jew hwejjeġ oħra anċillari skont dan l-Att għandha tiġi riveduta mill-Qorti mhux aktar tard minn tlett xhur mid-data ta' dik id-deċiżjoni:

Revizjoni ta' deċiżjoni.

Izda revizjonijiet sussegwenti, tal-Qorti, għandhom isiru tal-inqas kull sitt xhur, jew kull żmien ieħor iqsar li l-Qorti jidhrilha li jkun meħtieġ fl-aħjar interess tat-tifel:

Izda wkoll kull parti interessata tista' titlob li l-Qorti tirrevedi l-każ qabel ma jiskadi l-perjodu ta' sitt xhur, jew perjodu ieħor iqsar li l-Qorti tkun imponiet, għar-raġuni li hemm prova ta' ħsara imminente lit-tifel sew fl-ambjent li jkun tqiegħed fih jew b'riżultat tal-pjan ta' ħarsien. Meta t-talba ssir għar-raġuni li *prima facie* teżisti prova ta' ħsara imminente lit-tifel sew fl-ambjent li jkun tqiegħed fih jew b'riżultat tal-pjan ta' ħarsien, ir-rikors ipprezentat mill-parti interessata għandu jinstama' bl-urġenza u jiġi appuntat għas-smiġħ mhux aktar tard minn hamest ijiem mid-data tal-prezentata tar-rikors, f'liema żmien il-partijiet kollha konċernati għandhom ikunu notifikati biex jidhru quddiem il-Qorti.

28. (1) Wara kull revizjoni ta' ħarsien, għandu jiġi pprezentat lill-Qorti rapport tal-proċeduri u rakkomandazzjonijiet li jidentifikaw il-bidliet meħtieġa għall-pjan ta' ħarsien għall-benesseri u fl-aħjar interess tat-tifel. Il-Qorti għandha tisma' l-partijiet involuti fir-revizjoni tal-pjan ta' ħarsien, kif meħtieġ, u għandha tiddeċiedi jekk tirrevediex, tikkonfermax jew tirrevokax il-pjan ta' ħarsien u, jew l-ordni li tkun inħarġet, jew parti minnhom. Meta ma jkun ebda kontestazzjoni il-Qorti tista' tipproċedi biex tawtorizza l-implimentazzjoni tar-rakkomandazzjonijiet.

Bidliet għall-pjan ta' ħarsien.

(2) Il-Qorti tista' tordna wkoll li t-tifel jitqiegħed taħt

responsabbiltà maqsuma jekk jidhrilha li dan hu xieraq u meħtieġ għal pjan ta' integrazzjoni mill-ġdid bejn it-tifel u l-ġenituri. F'dan il-każ, il-pjan ta' ħarsien għandu jkun emendat skont il-ħtieġa.

Prinċipji ta' mgħiba amministrattiva tajba.

29. (1) Fir-relazzjonijiet tagħha mal-pubbliku, il-Qorti għandha tirsipetta u tapplika l-prinċipju ta' mgħiba amministrattiva tajba:

(a) il-Qorti għandha tiżgura l-ugwaljanza proċedurali bejn il-partijiet fil-proċeduri. Kull parti għandha tingħata l-opportunità li tressaq il-każ tagħha, sew bil-miktub u kif ukoll bil-fomm jew bit-tnejn, mingħajr ma titqiegħed fi żvantagġ;

(b) il-Qorti għandha tordna li l-amministrazzjoni pubblika tipprovdi d-dokumenti u t-tagħrif kollu rilevanti għall-każ u tiżgura li l-parti l-oħra jew l-partijiet l-oħra fil-proċeduri jkollhom aċċess għal dawn id-dokumenti u tagħrif, izda bla ħsara għal dawk iċ-ċirkostanzi eċċezzjonali li l-Qorti għandha tirreġistra bil-miktub;

(ċ) il-Qorti għandha tiżgura illi l-evidenza kollha miġjuba quddiemha tkun, fil-prinċipju, disponibbli għall-partijiet b'mod li thalli lok li din tista' tkun ikkontestata u li din l-evidenza sa fejn hu possibbli tkun sostnuta bi prova dokumentarja;

(d) ħlief fejn il-liġi tipprovdi xort'oħra, il-proċeduri quddiem il-Qorti għandhom jitmexxew bir-rispett għall-privatezza tal-partijiet;

(e) id-deċiżjoni tal-Qorti għandha tingħata bil-miktub u bil-miftuħ mhux aktar tard minn sebat ijiem mid-data tas-smiġ u kopja ta' dik id-deċiżjoni għandha tingħata lill-partijiet kollha involuti jew lir-rappreżentanti legali tagħhom;

(f) deċiżjoni tal-Qorti għandha tindika b'mod ċar biżżejjed ir-raġunijiet li fuqhom tkun ibbażata u l-Qorti għandha tiżgura li d-deċiżjoni tagħha tkun imfissra lit-tifel li għalih tirreferi.

Appell mid-deċiżjoni tal-Qorti.

30. (1) Kull parti fil-proċeduri quddiem il-Qorti li thossha aggravata bid-deċiżjoni ta' din il-Qorti tista' tappella fuq punti ta' liġi biss quddiem il-Qorti tal-Appell fil-ġurisdizzjoni tagħha inferjuri.

(2) L-appell għandu jkun ippreżentat quddiem il-Qorti tal-Appell permezz ta' rikors ippreżentat fir-Registru ta' dik il-Qorti fi żmien għaxart ijiem mid-data li fiha tkun ingħatat is-sentenza.

(3) Ir-rikors għandu jkun notifikat lill-partijiet l-oħra interessati li għandhom jipprezentaw risposta fi żmien tmint ijiem tax-xogħol:

Izda f'każijiet urgenti l-Qorti tista' tqassar it-termini msemmija f'dan is-subartikolu.

(4) Il-Qorti tal-Appell għandha tappunta l-appell għas-smiġh fi żmien tletin jum mid-data tad-deċiżjoni tal-Qorti, u l-appell għandu jkun deċiż fi żmien sittin jum mid-data li fiha jkun gie appuntat għas-smiġh.

(5) Fis-sentenza tagħha, il-Qorti tal-Appell tista' tikkonferma, tirrevoka jew tibdel id-deċiżjoni li minnha ikun tressaq l-appell u tagħti dawk l-ordnijiet kollha li jidhrilha xierqa.

(6) Hlief fejn hu provdut xort'oħra f'dan l-Att, id-dispożizzjonijiet li jirregolaw il-Qorti tal-Appell fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom japplikaw għall-Qorti tal-Appell fis-smiġh ta' appelli minn deċiżjoni tal-Qorti. Kap. 12.

31. Ordni ta' Harsien tat-Tfal għandha tibqa' fis-seħħ sakemm it-tifel jilhaq l-età ta' tmintax-il sena jew sakemm il-Qorti tirrevoka jew tittermina dak l-Ordni. Validità ta' ordni ta' harsien tat-tfal.

Izda fil-każ tal-aħħar, wara li tisma' lit-tifel, lill-haddiem fil-qasam soċjali tat-tifel, lill-kustodju u l-Avukat tat-Tfal, kif japplika skont il-każ, il-Qorti għandha tkun konvinta illi m'għadx hemm il-htieġa li l-ordni tibqa' fis-seħħ.

32. Fid-deċiżjoni tagħha jekk ittemmx jew le l-effetti tal-Ordni ta' Harsien tat-Tfal, il-Qorti għandha, fl-aħjar interess tat-tifel, tqis: Deċiżjoni jekk ittemmx jew le l-Ordni ta' Harsien tat-Tfal.

(a) is-sitwazzjoni kurrenti tal-ġenituri;

(b) jekk il-ġenituri humiex f'qagħda li jipprovdu kura ta' kuljum adegwata, kuntatt personali u s-sigurtà meħtieġa għall-benesseri tat-tifel, skont il-htigiet partikolari tiegħu;

(c) it-tul ta' żmien li t-tifel ilu mqiegħed taht harsien;

(d) ir-relazzjoni li teżisti bejn it-tifel u l-persuna li tkun qed tiegħu hsiebu barra mid-dar;

(e) ir-relazzjoni li teżisti bejn it-tifel u l-ġenituri; u

(f) il-fehmiet u x-xewqat tat-tifel skont il-grad ta' maturità tiegħu u dak li kapaċi jifhem:

Iżda l-Qorti għandha tiċhad it-talba meta tkun sodisfatta illi t-tifel żviluppa relazzjoni sinifikanti mal-persuna li qed tiehu hsiebu u għall-ambjent alternattiv, li jindika li t-tifel jista' jsofri preġudizzju u hsara sinifikanti kemm-il darba jitneħħa minn hemm.

Foster care.

33. (1) Meta parti interresata turi lill-Qorti li l-*foster care* ilu fis-seħħ għal aktar minn erba' reviżjonijiet ta' harsien u li jidher li ser jiehu fit-tul, u wara li tqis il-fehmiet u x-xewqat tat-tifel, il-Qorti tista' tiddekreta *foster care* permanenti.

(2) *Foster carers* permanenti jibqgħu marbuta bil-htigiet ta' atti ta' amministrazzjoni ordinarja u straordinarja msemmija fl-artikolu 38, iżda r-reviżjonijiet ta' harsien isiru kull sena minflok kull sitt xhur.

Adozzjoni ta' tfal taht harsien fit-tul.

34. (1) Skont id-dispożizzjonijiet ta' dan l-artikolu, il-Qorti tista' tiddeċiedi li tifel li jkun tqiegħed taht ordni ta' harsien ikun jista' jingħata għall-adozzjoni.

(2) Kull persuna li għandha interess fil-benesseri tat-tifel tista' tibda dan il-proċess permezz ta' rikors ipprezentat fir-Registru tal-Qorti, liema rikors għandu jkun fih ir-raġunijiet u ċ-ċirkostanzi li jispjegaw għaliex jitqies illi ikun fl-aħjar interess tat-tifel li jingħata għall-adozzjoni.

Kap. 495.
Kap. 16.

(3) Mar-rikors għandu jkun pprezentat pjan ta' harsien li jsemmi l-ġenituri adottivi prospettivi jekk dawn ikunu identifikati u, fil-każ li l-ġenituri adottivi prospettivi ma jkunux identifikati, il-pjan għandu jkun fih rakkomandazzjonijiet dwar il-harsien tat-tifel li għandu jibqa' fis-seħħ sakemm jinstabu ġenituri adottivi prospettivi xierqa skont kif previst fl-Att dwar l-Amministrazzjoni tal-Adozzjoni u l-artikoli rilevanti tal-Kodiċi Ċivili dwar l-adozzjoni.

(4) Ir-rikors biex tifel jingħata għall-adozzjoni għandu jiġi notifikat lill-ġenituri li għandhom id-dritt li jikkontestaw dawn il-proċeduri.

Kap. 12.

(5) Il-ġenituri jistgħu jipprezentaw risposta fi żmien tletin jum mid-data tan-notifika tar-rikors. Fin-nuqqas ta' risposta il-Qorti għandha tahtar kuratur skont l-artikolu 929 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili biex jirrappreżenta l-interessi tal-ġenituri.

(6) Il-ġenituri jistgħu jagħtu l-kunsens tagħhom li t-tifel jingħata għall-adozzjoni, u f'dak il-każ il-Qorti għandha tirreferi lill-ġenituri għal sessjoni ta' konsulenza pprovduta mis-Servizzi tal-Qorti tat-Tfal u qabel ma tagħti d-digriet tagħha, il-Qorti għandha tfigher lill-ġenituri bl-aktar mod ċar il-konsegwenzi tar-rilaxx tat-tifel għall-

adozzjoni.

35. Il-Qorti tista' taghti digriet biex tifel jinghata għall-adozzjoni meta jitressqu provi illi l-ġenitur jew ġenituri ma jistgħux jew ma jridux jagħtu lit-tifel ħarsien xieraq u l-Qorti taċċerta ruhha illi r-rilaxx għall-adozzjoni hu fl-aħjar interessi tat-tifel. Meta tikkonsidra l-aħjar interessi tat-tifel skont kif provdut f'dan l-artikolu, il-Qorti għandha tikkonsidra:

Digriet biex tifel jinghata għall-adozzjoni.

(a) il-fehmiet u x-xewqat tat-tifel, b'mod li jkun jixraq għall-maturità tat-tifel u dak li kapaci jifhem u l-bżonnijiet partikolari tiegħu;

(b) ir-relazzjoni tat-tifel lejn il-familja naturali tiegħu.

36. (1) Meta tifel jiġi adottat wara digriet li jordna li t-tifel jinghata għall-adozzjoni, il-Qorti għandha teziġi li fil-pjan ta' ħarsien tiddaħħal rakkomandazzjoni dwar il-possibbiltà ta' adoxxjoni miftuħa, tkun xi tkun l-età tat-tifel.

Aċċess tal-ġenituri wara l-adoxxjoni.

(2) Meta adoxxjoni miftuħa tiġi awtorizzata u l-kuntatt fiżiku ikun inkluż fid-deċiżjoni, il-Qorti għandha wkoll tiddeċiedi dwar l-arranġamenti prattiċi biex dan il-kuntatt ikun jista' jseħħ u dwar il-frekwenza ta' dan il-kuntatt.

(3) Meta t-tifel iħoss illi adoxxjoni miftuħa m'għadhiex aktar fl-aħjar interessi tiegħu, il-Qorti għandha tisma' l-partijiet kollha u tista' tvarja jew tittermina l-arranġamenti, fl-aħjar interess tat-tifel.

37. Fejn it-tifel ikun tneħħa mill-kura tal-ġenituri u tqiegħed taht ħarsien barra mid-dar, l-Istat għandu r-responsabbiltà li jiżgura li t-tifel jinghata ħarsien u protezzjoni speċjali għall-benesseri tat-tifel. Dik ir-responsabbiltà għandha tkun vestita fil-kustodju mahtur skont id-dispożizzjonijiet ta' dan l-Att.

Meta t-tifel jitqiegħed taht ħarsien barra mid-dar.

38. (1) Il-Qorti għandha tawtorizza l-persuna li tiehu ħsieb it-tifel biex tagħmel dawk l-atti ordinarji ta' amministrazzjoni li huma meħtieġa għall-benesseri ġenerali u ta' kuljum tat-tifel bħala parti mill-pjan ta' ħarsien tat-tifel.

Atti ta' amministrazzjoni.

(2) Il-Qorti tista' tawtorizza l-persuna li tkun qed tiehu ħsieb it-tifel biex tagħmel dawk l-atti straordinarji ta' amministrazzjoni meqjusa meħtieġa għall-benesseri ta' dak it-tifel, speċifikament bħala parti mill-pjan ta' ħarsien jew separatament fuq talba mressqa verbalment jew bil-kitba:

Izda fejn ikun ipprezentat rikors għall-awtorizzazzjoni biex isir att straordinarju ta' amministrazzjoni, il-Qorti għandha, fejn

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japplika, tisma' lill-ġenituri tat-tifel u tagħti d-digriet tagħha fi żmien hamest ijiem tax-xogħol, hliet f'ċirkostanzi eċċezzjonali.

- (3) Atti straordinarji ta' amministrazzjoni jinkludu:
- (a) safar barra minn Malta flimkien mat-tifel;
 - (b) ir-reġistrazzjoni tat-tifel fi skola jew bidla ta' skola;
 - (ċ) kull tip ta' intervent mediku serju, inkluża l-kirurgija plastika;
 - (d) ir-reġistrazzjoni tat-tifel fi kwalunkwe attività ta' wara l-ħin tal-iskola li tqum ħafna flus;
 - (e) it-thegġiġ tat-tifel għal reliġjon, hliet għar-reliġjon tal-ġenituri tiegħu;
 - (f) l-emanċipazzjoni tat-tifel.

Iżda f'każ ta' emerġenza u fejn il-benesseri tat-tifel ikun f'periklu, il-*carer* tat-tifel jista' jagħmel atti straordinarji ta' amministrazzjoni li jitqiesu meħtieġa u li ma jistgħux jistennew iżda l-istess persuna għandha tgharraf minnufih b'dik l-azzjoni lill-kustodju u lill-Qorti.

Responsabbiltà tal-Istat dwar il-benesseri tat-tifel.

39. (1) F'kull deċiżjoni li tiegħu fl-aħjar interess tat-tifel, il-Qorti għandha tkun tista' tistrieħ fuq ir-responsabbiltà tal-Istat li jgħib 'il quddiem il-benesseri tat-tifel billi jiżgura ħarsien u protezzjoni speċjali meta t-tifel jitneħħa mill-familja u jitqiegħed taħt ħarsien barra mid-dar.

- (2) Ir-responsabbiltajiet tal-Istat għandhom jinkludu:
- (a) li jieħu dawk il-miżuri kollha meħtieġa għall-benesseri u l-ħarsien tat-tfal;
 - (b) li jipprovdi servizzi ta' appoġġ inklużi ċentri ta' kura qabel u wara t-twelid kif ukoll servizzi oħra tas-saħħa, ħarsien matul il-jum, edukazzjoni, xogħol fil-komunità u xogħol fost iż-żgħażaġħ, intiżi biex jipprovdu sistema preventiva ta' *welfare* għat-tfal li tippromwovi u tissalvagwardja t-trobbija, l-iżvilupp u l-benesseri tat-tfal filwaqt li toffri appoġġ lill-ġenituri;
 - (ċ) li jiżgura li l-istrutturi kollha ta' *welfare* ikunu mmirati biex jevitaw problemi familjari u tat-tfal bil-għan li jeliminaw u jevitaw li jfegġu fatturi li jiżvantagġjaw iċ-

ċirkostanzi tat-trobbija tat-tfal;

(d) li jipprovdi appoġġ lill-ġenituri u lil dawk il-persuni involuti fit-trobbija tat-tfal, inkluż l-ghajnuna meħtieġa fi stadju suffiċjentement bikri għall-benefiċċju tat-tfal;

(e) li johlqo strutturi li jipprovdu b'mod xieraq għal tfal li jeħtieġu li jitqegħdu taħt ħarsien barra mid-dar u *aftercare*;

(f) li jipprovdi akkomodazzjoni xierqa għat-tfal kollha li jeħtieġu li jitqegħdu taħt ħarsien barra mid-dar u strutturi speċjalizzati għal tfal bi bżonnijiet partikolari;

(g) li jipprovdi strutturi u attivitajiet xierqa li jghinu tfal li jinħtieġu appoġġ speċjali;

(h) li jagħti konsiderazzjoni partikolari għax-xewqat tat-tfal fit-tfassil tal-politika u strategija, inklużi fit-tfassil u l-iżvilupp ta' servizzi u strutturi;

(i) li jiżgura li l-iskejjel ikun kapaċi joffru servizzi investigattivi psikoloġiċi u soċjali li jagħtu biżżejjed appoġġ u gwida dwar l-iskola u l-edukazzjoni bażika bil-ghan li jevitaw u jeliminaw diffikultajiet soċjali u psikoloġiċi li jistgħu jaffettwaw l-iżvilupp tat-tfal;

(j) li jiżgura li ċ-ċentri tas-saħħa jipprovdu għajnuna esperta f'dak li għandu x'jaqsam mal-*welfare* tat-tfal u l-familja u, fejn meħtieġ, li jkunu f'qagħda li jeżaminaw lit-tfal u joffru kura tas-saħħa u servizzi ta' terapija għat-tfal. Servizzi meħtieġa mit-tfal konnessi mal-istħarriġ ta' abbużi jew attacchi sesswali għandhom ikunu organizzati b'mod li jkunu jistgħu jingħataw b'mod urġenti. Aktar kura u terapija għandha tkun disponibbli fi żmien raġonevoli li jieħu konsiderazzjoni tal-kunċett ta' żmien tat-tfal u l-ħtigiet u d-dritt tat-tfal għall-benesseri tagħhom;

(k) li jiżgura li haddiema fil-qasam soċjali responsabbli għall-affarijiet tat-tfal jipprovdu l-kompetenza tagħhom fit-trobbija, żvilupp u saħħa tat-tfal, u li kompetenza legali u kompetenzi oħra meħtieġa f'ħidma ta' *welfare* mat-tfal ikunu disponibbli, kif ukoll li jiżgura li jkun hemm biżżejjed impjegati biex jaqdu lit-tfal fuq bażi personali, b'mod regolari u fil-ħin;

(l) li jiżgura li membri tal-pulizija eżekuttiva jingħataw it-taħriġ neċessarju tal-bidu u li jkompli minn żmien għal żmien, dwar il-ħarsien tat-tfal b'mod li jkunu jistgħu jwieġbu għall-ħtigijiet ta' kull tifel individwalment u kif jixraq; u

(m) li jwaqqaf Dar tat-Tfal, li jkun lok sigur fejn it-tfal jistgħu ikunu intervistati f'seduta wahda minn tim ta' esperti biex titnaqqas it-trauma fuq it-tfal, filwaqt li jiżgura li d-drittijiet tal-partijiet kollha huma rispettati.

Responsabbiltà tal-haddiem fil-qasam soċjali.

40. (1) Meta tiegħu kwalunkwe deċiżjoni fl-aħjar interess tat-tifel, il-Qorti għandha tkun f'qagħda lil tista' tistrieħ fuq ir-responsabbiltà tal-haddiem fil-qasam soċjali lejn il-benesseri tat-tifel biex jiġu żgurati ħarsien u protezzjoni speċjali meta t-tifel jitneħħa mil-familja u jitqiegħed f'ħarsien barra mid-dar jew meta tifel ikun mifrud mill-ġenituri bħal fil-każ ta' tifel mhux akkumpanjat li jkun qed ifittex l-ażil.

(2) Ir-responsabbiltajiet tal-haddiem fil-qasam soċjali jinkludu dan li ġej:

(a) li jissorvelja li kollox jimxi skont id-deċiżjonijiet tal-Qorti mogħtija fl-aħjar interessi tat-tifel, li jgħin lit-tifel fid-dritt tiegħu li jinstema' u, fejn meħtieġ, li jagħti parir lit-tifel li jikseb għajjnuna legali bis-servizzi tal-Avukat tat-Tfal jew li jiżgura li jinzamm kuntatt bejn it-tifel u l-kustodju tiegħu;

(b) fl-implimentazzjoni tal-miżuri ta' kura tat-tifel, il-haddiem fil-qasam soċjali responsabbli għall-affarijiet tat-tifel għandu jzomm kuntatt mat-tifel b'mod personali, regolari u f'waqtu filwaqt li jivvaluta jekk il-benesseri tat-tifel ikunx imħares bl-arrangamenti li jsiru għall-alloġġ tiegħu;

(c) meta jagħmel arrangamenti biex ikun jista' jara lit-tifel personalment, l-għan għandu jkun sabiex jikkopera mal-kustodju u ma' kull persuna oħra responsabbli għall-kura u l-benesseri tat-tifel;

(d) il-haddiem fil-qasam soċjali għandu jkollu d-dritt li jara lit-tifel fejn meħtieġ ukoll mingħajr il-kunsens tal-kustodju, kemm-il darba dan jitqies li hu fl-aħjar interessi tat-tifel minhabba l-età jew żvilupp tat-tifel jew iċ-ċirkostanzi tat-tifel. Ir-raġunijiet li għalihom ikun hemm il-ħtieġa li jara lit-tifel kontra r-rieda tal-kustodju għandhom ikunu registrati fid-dokumenti dwar it-tifel u kkomunikati lill-Qorti. Il-kustodju għandu jkun notifikat b'dan l-aċċess għat-tifel, sakemm dan ma jkunx b'mod ċar fl-interessi tat-tifel;

(e) il-haddiem fil-qasam soċjali responsabbli għall-affarijiet tat-tifel għandu jissorvelja is-sitwazzjoni tat-tifel. Din is-sorveljanza għandha tinkludi evalwazzjoni taċ-ċirkostanzi li fihom qed jitrabba t-tifel, u tal-prospetti għall-ġenituri jew

persuni oħra li f'dak iż-żmien ikunu responsabbli mill-ħarsien u l-benesseri tat-tifel, kif ukoll tal-bżonn tal-miżuri ta' ħarsien tat-tifel. Il-firxa ta' din is-sorveljanza għandha tkun skont kif rikjesta miċ-ċirkostanzi tal-każ partikolari. Fit-twettiq ta' din is-sorveljanza u evalwazzjoni, il-ħaddiem fil-qasam soċjali jista', meta jkun meħtieġ, jagħmel kuntatt ma' persuni li jkunu qrib tat-tifel kif ukoll partijiet oħra li jkunu jridu jikkoperaw;

(f) li jagħmel arrangamenti għall-provvista ta' servizzi oħra kif imsemmija fil-pjan ta' ħarsien, li jistgħu jinkludu appoġġ u servizzi ta' *counselling*, kif ukoll zjarat ta' aċċess sorveljat;

(g) li jivvaluta u jistabbilixxi l-possibbiltà jew le li t-tifel jerga' jingħaqad mal-familja u li jagħmel rakkomandazzjonijiet f'dan ir-rigward fir-revizjoni tal-ħarsien. Meta ma jkunx possibbli jew ma jkunx ta' benefiċċju li t-tifel jerga' jingħaqad mal-familja, il-ħaddiem fil-qasam soċjali responsabbli mill-affarijiet tat-tifel għandu jippromwovi kuntatt mal-familja naturali, meta dan ikun fl-aħjar interess tat-tifel;

(h) li jkollu sehem attiv fir-revizjonijiet ta' ħarsien u li jagħmel rakomandazzjonijiet dwar l-arrangamenti tal-alloġġ u l-ghoti ta' ħarsien speċjali lit-tifel, kif ukoll li jagħti r-reazzjonijiet tiegħu dwar it-tifel u l-andament tal-pjan ta' ħarsien mill-aħħar revizjoni tal-każ;

(i) li jissorvelja u jikkoordina l-implimentazzjoni tal-pjan ta' ħarsien kif approvat mill-Qorti, kif ukoll li jinforma lill-Qorti meta waħda mill-partijiet tikser xi parti mir-revizjoni tal-ħarsien kif miftiehma jew xi kundizzjoni imposta f'xi waħda mill-ordnijiet maħruġa mill-Qorti;

(j) li jgħarraf lill-kustodju u lill-Qorti bi kwalunkwe incident serju li jkollu x'jaqşam mal-benesseri tat-tifel.

41. L-atti kollha li għandhom x'jaqsmu mal-proċess ta' ħarsien ^{Atti.} tat-tfal għandhom jinżammu fil-każ ta' kull tifel għal mill-inqas hamsa u għoxrin sena wara li t-tifel ikun laħaq l-età maggorenni.

Ghanijiet u Raġunijiet

Dan l-Abbozz ta' Ligi hu maħsub biex jieħu post l-Att dwar it-Tfal u Zgħażaġh (Ordnijiet għall-Ħarsien), biex jistabbilixxi servizzi ta' Qorti tat-Tfal, biex idahħal fis-seħh ordnijiet ta' ħarsien tat-tfal, biex jipprovdi kura u ħarsien speċjali għal tfal mneħħija mill-kura jew mifruda mill-ġenituri tagħhom u mqegħda taħt ħarsien barra mid-dar.

**Bill
entitled**

AN ACT to replace the Children and Young Persons (Care Orders) Act, to establish Child Court Services, to introduce child protection orders, to provide for special care and protection for children removed or separated from their parents and placed in out-of-home care.

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:-

Short title.

1. The short title of this Act is the Child Protection Act (Out of Home Care), 2014.

Interpretation.

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

"Advisory Group" means the Child Care Advisory Group as established in terms of article 14;

"Care Order" means an order issued in terms of article 5(4);

"Care conference" means the meeting whereby all matters relevant to the child's well-being are examined with a view to making recommendations in the best interest of the child in the form of a care plan;

"care review" means the meeting whereby all matters relevant to the child's well-being, including the child's care plan, are reviewed, taking into account any significant changes in connection with the child with a view to updating the care plan in the best interest of the child;

"care plan" means a plan drawn up to promote the well-being of the child and in the best interests of the child;

"child" means a person who is under the age of eighteen years;

"Child 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; S.L. 12.20

"Child Court Services" means a team set up within the Family Court comprising Child Advocates, Child Protection Mediators, CPS and Child Protection Guardians;

"Child Protection Order" means one or more of the orders issued in terms of article 5, and referred to as "the Protection Order";

"Child Protection Guardian" means a guardian appointed in virtue of article 20, and referred to as "the Guardian";

"Court" means the Family Court;

"CPM" means the Child Protection Mediator;

"CPR" means the Child Protection Registry;

"CPS" means the Child Protection Services;

"Emergency Order" means an order issued in terms of article 5(1);

"Executive Police" means the Malta Police Force and any notification referred to in this Act shall be made to the Commissioner of Police in his capacity as head of the police force and responsible for the central immigration office, the vice squad and economic crimes unit, the protective services, the criminal investigation department and the drug squad;

"interested person" means a person determined by the Court to have an interest in the proceedings;

"mediation" means a process in which a child protection mediator facilitates negotiations between the parties to assist them in reaching a voluntary agreement regarding the dispute;

"Minister" means the Minister responsible for family, child and social welfare;

"out-of-home care" means the placing of a child in care, be it foster care, residential care or any other placement as determined by the Court in order to promote that child's well-being;

"parental responsibility" means that responsibility which one or both of the parents or any person having care of a child may require in order to promote the well-being of the child;

"shared parental responsibility" signifies that more than one person may be allocated responsibility for the child at any one time;

"Removal Order" means an order issued in terms of article 5(5);

"special care and protection" is that care accorded to each child removed from the family and placed in out-of-home care;

"specialised care" means professional care responding to the individual needs of the child in order to achieve that child's well-being;

"Supervision Order" means an order issued in terms of article 5(2);

"Treatment Order" means an order issued in terms of article 5(3);

Mandatory reporting.

3. (1) Any person who has reason to believe that a child, born or to be born, is in actual or potential significant harm, or in need of care and protection shall report the circumstances on which the belief or suspicion is based to the CPS or the Executive Police.

(2) Where a person who, in the course of his or her work, whether voluntary or paid, comes in contact with a child, has reason to believe that a child is in actual or potential significant harm, or in need of care and protection, that person shall, without delay and not later than two days, report to CPS or the Executive Police.

(3) Where a person who, in the course of his or her work, comes in contact with a pregnant mother and has reason to believe that the unborn child is in actual or potential significant harm, that person shall, without delay and not later than two days, report to CPS so that CPS shall make provision, or arrangement of provision, of services to support the mother and child. All efforts shall be made to keep mother and child together after birth, unless this is manifestly contrary to the safety and well-being of the child.

(4) Any person indicated under article 2 who fails to fulfil the duty as established in sub-article (2) shall be liable to criminal prosecution punishable with imprisonment from four months to one year and, or by a fine not exceeding five thousand euro.

(5) Any person who maliciously reports a case shall be liable

to criminal prosecution punishable with imprisonment from four months to one year and, or by a fine not exceeding five thousand euro, without prejudice to any other punishment to which such person may be liable to under any other law for providing wrong information.

4. (1) A written record of each report shall be kept by each receiving entity or organisation. Action on report.

(2) Where the report is made to an entity other than CPS, such entity shall without delay, and in no case later than twenty-four hours, refer the case to CPS

(3) CPS shall keep a Child Protection Register (CPR) of all reports. The Court shall determine who has access to the Register:

Provided that any interested person may file an application requesting access to the Register.

(4) CPS shall assess each report expeditiously and shall initiate action without delay and by not later than two days.

(5) After having assessed the report, and by not later than thirty days, CPS may:

(i) apply to the Court for further action;

(ii) refer the case to the Executive Police if there has been a report in bad faith; and, or

(iii) refer the case to the Executive Police where further criminal investigation is required; or

(iv) dismiss the report where it has been determined that there are no grounds for further action:

Provided that where the CPS decides to dismiss the report, the same report shall remain registered in the CPR:

Provided further that, where it appears that further action needs to be taken by CPS, such action shall include:

(a) listening to the child, unless this is shown to be manifestly contrary to the best interests of the child and is documented as such;

(b) making provision, or arrangement of provision, of support services for the child taking into account the particular

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needs of that child, including the services of a social worker;

(c) making provision, or arrangement of provision, of support services for the child's family where applicable, including the appointment of a social worker;

(d) filing of an application in Court for any one or more of the child protection orders, where appropriate;

(e) identifying the provision of out-of-home care including possible placement with a member of kin of the child, keeping of siblings together, keeping parent and child together, appropriate attention to the particular needs of the child and the appointment of a social worker, where appropriate:

Provided further that an appeal from the assessment or decision to dismiss the report, made by CPS may be filed by any interested party before the Court.

(6) Where CPS concludes *prima facie* that the child is in actual or potential significant harm, and, or in need of care and protection, it shall file an application according to the prescribed form to the Court to issue an Emergency Order:

Provided that where CPS determines that the child is in danger of significant harm, CPS shall proceed immediately with the appropriate intervention without the Emergency Order provided that it shall, without delay and by not later than twenty-four hours, inform the Court of such facts and request it to issue an Emergency Order in respect of the child.

(7) Where the Court is satisfied that sufficient grounds exist, it shall issue an Emergency Order. The Emergency Order shall remain valid for a period of not more than fifteen days, which may be renewed on application to the Court.

(8) The Court shall order the immediate notification of the Emergency Order to CPS, the Executive Police, and any other person the Court deems appropriate according to the circumstances of the case in order to ensure the safety of the child.

Child Protection
Orders.

5. The Court may issue one or more of the following Child Protection Orders:

(a) an Emergency Order which is issued for the immediate removal of the child from the person(s) having the legal or actual care of the child where that child is in danger of significant harm;

(b) a Supervision Order placing the child under the supervision of the designated agency for a time to be specified in the order and under those conditions which it may deem expedient;

(c) a Parental Treatment Order ordering any person having the legal or actual care of the child to submit to treatment or training under the supervision of a competent entity or professional, including treatment for any drug or alcohol abuse, psychiatric or psychological treatment, and parental skills training, subject to any conditions which the Court may deem appropriate;

(d) a Care Order which is issued where the child is not receiving such care and protection as a good parent may reasonably be expected to give, including:

(i) where there are serious deficiencies in the everyday care received by the child, or serious deficiencies in terms of the personal contact and security needed by a child of his or her age and development;

(ii) where the parents fail to ensure that a child who is ill, disabled or in special need of assistance receives the treatment and specialized care that child requires;

(iii) where the child is mistreated or subjected to other serious abuses, whether in the home or outside the home, and is not being provided with the adequate protection;

(iv) where it is highly probable that the child's health or development may be seriously harmed because the parents are unable or unwilling to take the required responsibility for the child;

(v) where the child is an unaccompanied asylum seeking child in terms of the Refugees Act;

Cap. 420.

(vi) where the child exhibits very challenging behaviour that is harmful to itself or to others or has been arrested or detained pending proceedings or convicted of an offence;

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Cap. 9.
Cap. 16.

(e) a Removal Order, which is issued to remove the perpetrator of violence against the child from the home and to provide protection to the child, and this without prejudice to the provisions of the Criminal Code and the provisions of the Civil Code:

Provided that in the issuing of any such child protection order, due consideration shall be given to the maintenance of family relationships and the possible reunification of the child with the family where this is shown to be conducive to the child's well-being.

Reduction of
possible trauma
in issue of Child
Protection
Order.

6. (1) When the Court issues a Child Protection Order, all efforts shall be made to reduce any possible trauma by coordinating an appropriate plan. The Court shall adopt a Children's House model in terms of article 39(2)(m) where all evidence is taken from the child in one sitting, by a team of experts, while ensuring that the rights of all parties are duly protected.

(2) In the case of unaccompanied asylum seeking children, all efforts shall be made to reduce any additional trauma to the child by requiring that the child receives appropriate psycho-social care even prior to the issue of the Order but always immediately on issue.

(3) As part of the Emergency or Care Order the Court shall order CPS to carry out an assessment of the child's needs in a residential assessment centre (RAC) so to determine the most suitable out-of-home plan for the child. In the case of unaccompanied asylum seeking children, this RAC shall address issues relating to health, psycho-social, and age assessment procedures which may apply to the child.

Offences and
penalty.

7. Any person who knowingly compels, incites or assists or in any way abets any person to violate any order given by the Court shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding two hundred and thirty-two euro and ninety four cents or to both such fine and imprisonment.

Reference to
Court.

8. (1) In any of the cases referred to in the preceding articles of this Act, the appropriate professional sharing responsibility for the child or working to promote the best interests of the child may at any time refer the case to the Court should the person having the legal or actual care of the child be considered in breach of any agreement concluded with CPS or any child protection order issued by the Court or when the child is deemed to be at risk:

Provided that at all stages and at all times, including where the case is before the Court, all efforts shall be made to ascertain the

child's wishes and views, privately and in a manner that is appropriate to the child's maturity and understanding, and any particular needs. The child shall be asked if anyone should be present during the interviewing process.

(2) The Court shall ensure that all interviews shall be carried out by persons who have received appropriate training to interview children, and in the case of an asylum seeking child shall also ensure linguistic and cultural sensitivity. A formal record shall be kept, detailing the way in which the child's views are ascertained and the principal substance of these views. Where ascertaining the child's views would affect the child's well-being and endanger the child's health or development, this shall also be formally recorded.

(3) The child's views shall be established with sensitivity and in a manner that does not cause unnecessary harm to the relationship between the child and the child's parents or other persons close to the child:

Provided that all efforts shall be made to preserve the confidentiality of the child's views:

Provided further that CPS, the Court or any other party acting in the best interest of the child, shall inform and explain to the child according to that child's maturity and understanding, and any particular needs:

- (a) the procedures that have been taken with respect to the child and the reasons for taking them;
- (b) any further procedures that may be required with respect to the child;
- (c) the child's right to consult with a Child Advocate; and
- (d) any other information which may be pertinent to the child's well-being.

9. All decisions taken in connection with the child protection orders listed under this Act shall be motivated by the best interests principle. When assessing the best interests of the child, consideration shall be given to the extent to which the alternative measures and solutions recommended safeguard the following for the child:

Best interests of the child.

- (a) balanced development and well-being, and close and continuing human relationships;

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(b) the opportunity to be given understanding and affection, as well as supervision and care that accord with the child's age and level of development;

(c) an education consistent with the child's abilities and wishes;

(d) a safe environment in which to grow up, and physical and emotional freedom;

(e) a sense of responsibility in becoming independent and growing up;

(f) the opportunity to become involved in matters affecting the child and to influence them; and

(g) the need to take account of the child's linguistic, cultural and religious background:

Provided that where a child is voluntarily placed in out-of-home care the Court shall apply the same principles and be motivated by the same considerations in ensuring the well-being of the child. Care plans and reviews shall also be made in the same way and within the same time-frames.

Examination of particular needs of the child.

10. The Court shall ensure that the particular needs of each child are examined and taken into account when assessing the care required and the means to respond. In all decisions given by the Court relating to the well-being of the child, the Court shall be motivated by the best interests principle, the well-being of the child and the responsibility of the State to provide special care and assistance:

Provided that special care may necessitate that the child's freedom of movement may be restricted to the extent required by the well-being of the child. In such cases the Court shall review the circumstances regularly and at least every twenty-eight days:

Provided further that, following the recommendations in the care plan, the Court may appoint appropriate persons to deliver specialised care required in the best interests of the child, including medical and psychological treatment, therapy and training. Where such persons are appointed, the Court shall ensure they submit regular reports and record measures taken in the child's care plan.

Behaviour which places child or others in danger of harm.

11. (1) Where a child exhibits behaviour which places that child or others in danger of harm, the guardian shall take immediate steps to place the child in safety and shall notify the Court of these steps without delay and within not later than two days shall provide

the Court with recommendations to amend the care plan of the child, following consultation with the child's carers, social worker and any other appropriate persons.

(2) The notification regarding the safety of the child referred to in sub-article (1) may be made verbally to the Court:

Provided that where such notification is verbal, a written report shall be submitted to the Court without delay and not later than two days.

(3) The Court shall ensure that all efforts shall be taken to ensure that the means employed to deal with such behaviour are proportionate.

12. (1) The Court shall have exclusive jurisdiction to hear and determine matters relating to the issuing of review, termination and all other ancillary matters concerning child protection orders, subject to the provisions of this Act.

Exclusive jurisdiction of the Court.

(2) The Court shall in each case authorise a care plan and ensure its implementation, in accordance with this Act.

13. The Court shall be presided by a judge assisted during proceedings by two members of the Child Care Advisory Group, who shall be referred to as the advisors:

Composition of Court.

Provided that, in so far as possible, the Court shall retain the same composition in dealing with any request or application in relation to the same child, including any preliminary decision which has been taken:

Provided further that the judges appointed to hear child protection cases in this Court shall receive specific training and shall only be assigned cases relating to child protection issues. The presiding judge shall hear all evidence personally, saving exceptional circumstances. The child have the right to request a judicial interview whereby the presiding judge shall hear the child *in camera*.

14. (1) There shall be a Child Care Advisory Group which shall be composed of six persons of good repute and who must have a minimum of seven years of professional experience in child care, child welfare, child development, child protection, child law and, or child psychology.

Child Care Advisory Group.

(2) The members of the Advisory Group shall be appointed following a public call of interest issued by the Minister responsible for children.

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(3) All applicants shall be screened for any child related misconducts prior to appointment and further checks shall be carried out regularly:

Provided that members of the Advisory Group shall be selected following an interview conducted by the Minister responsible for children, the Minister responsible for Justice, two of the Judges presiding over the Court which hears cases related to children, and the Commissioner for Children.

(4) The members of the Advisory Group shall be appointed by the Minister and shall hold office for a period of four years from the date of appointment:

Provided that a member may be removed by the Minister in case of misconduct, incompetence, gross negligence or for any other reason detailed in the letter of appointment.

(5) Members of the Advisory Group who have served their term may reapply for the post in accordance with sub-articles (2) and (3).

Hearings.

15. (1) The Court shall hold hearings in Malta and in Gozo. The day and time of each hearing shall be determined by the presiding Judge.

(2) During its proceedings, the Judge shall consult with the two advisors appointed to a particular case. Unless otherwise exempted by the Judge, advisors of the Court shall attend for all sittings of the said Court.

(3) Save as provided above, in case of an application for an Emergency Order by virtue of article 19, the duty judge sitting in the Family Court may dispense with such consultation with the two advisors. Such consultation shall take place in open court or *in camera*, as the Court may direct taking into account the particular circumstances of the case.

(4) The Judge shall give due consideration to the opinion of the advisors but shall not be bound to abide by their opinion:

Provided that where the Judge does not agree with the opinion of the advisors, such opinion and reasons for disagreement shall be recorded in the decision.

(5) The advisors of the Court may abstain or be challenged in the same manner and on the same grounds as, according to law, a magistrate or a judge may abstain or be challenged. The presiding Judge shall decide any question regarding any cause of challenge in accordance with articles 733 *et sequitur* of the Code of Organisation and Civil Procedure. Cap. 12.

(6) Upon appointment, an advisor of the Court shall take an oath of office. The oath shall be taken before the presiding Judge.

16. (1) The Minister may make regulations to establish a separate Registry for the Court and the functions thereof, and by the same regulations may also appoint such officers as may be necessary for the operation of the said Court. All the records of the Court shall be filed in the Registry referred to in this sub-article. General provisions applicable to the Court.

(2) The records of the Court shall be accessible only to persons directly involved in the particular case before the said Court, and copies thereof shall be given only to the persons referred to in this sub-article, unless the Court decrees otherwise for purposes of research or in exceptional circumstances.

(3) The records of the Court shall be deposited and kept in such archives as may be designated by the Minister by regulations made under this article.

17. The provisions of articles 21, 22 and 23 of the Code of Organisation and Civil Procedure shall apply to proceedings before the Court. Applicability of Code of Organization and Civil Procedure. Cap. 12.

18. The provisions of the Code of Organisation and Civil Procedure relating to the benefit of legal aid shall apply to parties to proceedings before the Court, being persons entitled to such benefit within the meaning of those provisions. Children shall automatically be assigned a Child Advocate, unless they expressly decline the offer. Benefit of legal aid. Cap. 12.

19. (1) The application filed by CPS requesting the Court to issue one or more child protection orders shall include the name and identity card number or other identification number of the child together with the name, address, identity card number or other identification number and all known contact details of the parents, person or persons having, or who might have, the legal or actual custody of the child and shall contain all relevant submissions together with all documents supporting such application. Contents of application.

(2) The Court shall appoint such application for hearing within five working days and notify the parents and person having the legal

or actual custody of the child, where applicable. The child shall be invited to be present at all stages of the proceedings as of right. The Court shall also ensure that a child protection mediator is asked to attend the first hearing.

(3) Where, during the first hearing, the Court determines that there are *prima facie* grounds for the proceedings to continue, it shall appoint a Child Advocate and a Guardian to represent and assist the child from the Child Court Services:

Provided that where the child expressly refuses the representation of a Child Advocate, the child's wishes shall be respected.

(4) Where, during the first hearing, the Court determines that there are grounds for the proceedings to continue, the child protection mediator shall be appointed to lead the care conference required before issuing any one or more child protection orders. The parties at the hearing shall be notified *seduta stante* of the date appointed for the care conference and a list of other relevant persons shall be communicated to the Court for immediate notification by summons. The Court shall set the next hearing for a date not later than three weeks from the first hearing and require the child protection mediator to file a report regarding the findings and recommendations of the care conference by that hearing, saving exceptional circumstances.

(5) The persons who shall be so summoned to participate in the care conference, referred to as the parties, are:

- (i) the child,
- (ii) the Child Advocate, where applicable,
- (iii) the CPS social worker,
- (iv) the guardian,
- (v) the parents and the person or persons having, or who might have, the legal or actual custody of the child, and their advocate if they choose to be so represented, where applicable,
- (vi) the child's social worker,
- (vii) the social worker of the parents, person or persons having or who might have the legal or actual custody of the child, where applicable,
- (viii) those persons whose input is deemed essential to the

care plan process:

Provided that where one of the professional parties cannot attend the care conference, for any substantiated valid reason, that party shall be required to submit a written report to the child protection mediator indicating concerns, evidence of abuse or risk to the child and any recommendations, at least one working day prior to the day of the care conference:

Provided further that the Court may restrict the number of parties summoned to the care conference where the presence of certain persons is unnecessary or not appropriate.

20. (1) The guardian shall be appointed from among the panel of experts nominated by the Family Court, in terms of article 89 of the Code of Organization and Civil Procedure, being persons who are impartial, mature, of good repute, with a minimum of ten years experience with children and have the ability to communicate with and assess children in stressful situations as well as their attachment patterns with others. Guardian.
Cap. 12.

(2) The guardian shall participate in any required training.

(3) The guardian shall safeguard and promote the best interests and rights of the child and to this end shall:

(a) be accountable to the Court and comply with all directions and requests of the Court;

(b) explain the role and responsibilities of the guardian to the child;

(c) keep the child consistently informed of all matters having a possible impact on the child's present and future well-being;

(d) meet and listen to the child as often as necessary to ascertain the wishes, feelings and views of the child;

(e) ensure that the child's concerns are addressed and the child's wishes and views are communicated to the mediator or the Court, as the case may be, and to all those involved in the child's care:

Provided that the guardian shall make all efforts to observe confidentiality requested by the child, unless this may constitute harm to the child or others;

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(f) become acquainted with the child's circumstances and characteristics;

(g) regularly analyse, review and assess any risks to the child, including any possible adverse impact of proceedings on the child;

(h) ensure that the child's educational and medical needs are taken care of;

(i) empower the child to consult with the Child Advocate and where the child is unable or unwilling to do so, consult with the Child Advocate in the child's best interests;

(j) be aware of the options available to the child in any situation and communicate them to the child;

(k) bring to the Court's attention any urgent matter or change in circumstances affecting or likely to affect the child's rights, well-being and interests;

(l) facilitate contact between the child and the parents, siblings and, or current or previous carers unless this is prejudicial to the best interests of the child;

(m) maintain contact with, and support to, the child after attaining the age of majority where this is possible and appropriate.

(4) The guardian shall be present and assist the child or represent the child where the child is unable or unwilling to participate in the care conference and care reviews.

Child protection mediator.

21. (1) A child protection mediator is an impartial person of good repute with a minimum of five years of professional experience and a formal qualification in mediation and psychology or family therapy or social work or family law.

(2) The child protection mediator shall participate in any required training.

(3) The child protection mediator shall be entrusted with chairing the care conference and care reviews necessary to the child protection process and to this end shall:

(a) be assured access to all the relevant information or to all those persons who have that information;

(b) determine the persons whose input is required in the care plan process, in terms of the provisions of this Act;

(c) set the date, time and place for the care conference, and take steps to ensure the notification of the parties, in terms of the provisions of this Act;

(d) ensure that all parties understand the care conference process and are able to articulate their opinions, according to any particular needs;

(e) hear all parties together, unless there are exceptional circumstances to hear them separately, and make all efforts to facilitate a care plan appropriate for the child:

Provided that the child shall always be invited to be heard separately, as well as retaining the right to participate in the care conference proceedings;

(f) focus discussion on the child's best interests and well-being;

(g) respect the dignity and sensitivity of all parties and make all efforts to ensure that they respect each other's rights and opinions;

(h) promote the use of plain language;

(i) ensure that the parties understand the implications of a mediated care plan and their responsibilities in following it through;

(j) carry out any other function which the Court may assign.

(4) The Court shall assign one of its Court clerks to assist each child protection mediator in those administrative tasks and daily operational matters including but not limited to:

(a) keeping a record of the dates and number of sessions, including all documents and evidence;

(b) keeping a record of all notifications;

(c) keeping the minutes of each session;

(d) contacting the parties to the child protection mediation;

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(e) serving as a contact person for administrative queries;

(f) administering invoices of any fees payable.

(5) The parties to the care conference shall not take any oath and the child protection mediator shall inform them at the start of the process that contrary to family mediation procedures, all evidence and documents presented during the care conference shall be shared with the Court.

Child Advocate.

22. (1) A Child Advocate shall be appointed to represent the child automatically at the start of any proceedings, unless the child expressly refuses. The Child Advocate shall maintain a lawyer-client relationship with the child insofar as the advocate shall represent the wishes of the child.

(2) The responsibilities of the Child Advocate shall include the following:

(a) to elicit the wishes of the child;

(b) to inform the child of the rights pertaining to the child in those particular circumstances;

(c) to represent the child in all court related procedures;

(d) to advise the child relating to any legal issues which may arise during the process;

(e) to undergo training, specific to the role of a Child Advocate including methods to effectively communicate with and understand the child.

Submission of care plan.

23. Where a care plan has been agreed upon by the parties, the child protection mediator shall submit it to the Court, together with the report ordered at the first hearing.

Failure to reach agreement.

24. Where the attempts of the child protection mediator to assist the parties in reaching an agreement as aforesaid have failed, the mediator shall submit this information in the report, together with any other recommendations deemed appropriate.

Submissions and counter submissions.

25. After considering the report of the child protection mediator where no agreement has been reached, the Court shall set a date where advocates for the parties and the Child Advocate shall make their submissions and counter submissions and the Court shall thereupon proceed to give a decision on the appropriate care plan for the child:

Provided that where there is no contestation, the Court shall still review the submissions and take a decision with reference to the recommendations contained in the care plan by a decree:

Provided further that where the Court decides to impose restrictions on the contact of the child with parents or other close persons, it must include reasons for such decision, including the extent of the restriction:

Provided also that the Court may only restrict the contact of the parent or other close persons with the child, where it is convinced that contact is detrimental to the child's growth, development and well-being. When taking such a decision, the Court shall also set a date for review not later than three months from the decision, unless this is manifestly not in the best interests of the child.

26. The care plan referred to in this Act shall include:

Contents of care plan.

- (a) all relevant identifying details concerning the child;
- (b) the reasons why a child protection order has been issued;
- (c) the treatment and professional help the parents should receive so that the effects of the child protection order may be mitigated and, or terminated;
- (d) the place and frequency of access to the children by the parents, where applicable, when the child has been removed from their care;
- (e) the place and frequency of access to the children by their siblings, if any, where the child has been removed from the care of the parents;
- (f) the extent of the restriction to contact imposed on the parents with regard to their child, and the reasons, where applicable;
- (g) the place where the child will reside while under a child protection order, if the child is being removed from the care of the parents;
- (h) the carers' rights and duties with respect to the child, the agency delegating such care and any other persons according to each particular child's circumstances;
- (i) a copy of the written records of each hearing held

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before the Court;

(j) a copy of any decision given by the Court or the Court of Appeal, where applicable.

Review of
decision.

27. Any decision concerning any order or any other ancillary issue decided upon by the Court in accordance with this Act shall be reviewed by the Court not later than three months from the date of that decision:

Provided that consequent reviews, by the Court, shall take place at least every six months, or any other shorter period that the Court may deem necessary in the best interest of the child:

Provided further that any interested party may petition the Court to review the case before the expiration of the six-month period, or any other shorter period imposed by the Court, on the ground that there is proof that the child is in immediate danger either in the placement or as a result of the care plan. Where the petition is based on the ground that there is *prima facie* evidence that the child is in immediate danger either in the placement or as a result of the care plan, the application submitted by the interested party is to be heard with urgency and appointed for hearing not later than five days from the date of application, within which period all parties concerned are to be notified to appear before the Court.

Changes to the
care plan.

28. (1) Following each care review, the Court shall be presented with a report on the proceedings and recommendations identifying changes necessary to the care plan for the well-being and in the best interest of the child. The Court shall hear all parties involved in the review of the care plan, as necessary, and shall decide whether to review, confirm or revoke the care plan and, or the order which was issued, or part thereof. Where there is no contestation the Court may proceed to authorize the implementation of the recommendations.

(2) The Court may also order that the child be placed under shared responsibility if it deems it to be appropriate and necessary to a re-integration plan between the child and the parents. In this case, the care-plan is to be amended accordingly.

Principles of
good
administrative
behaviour.

29. In its relations with the public, the Court shall respect and apply the principles of good administrative behaviour:

(a) the Court shall ensure that there shall be procedural equality between the parties to the proceedings. Each party shall be given an opportunity to present its case, whether in writing or orally or both, without being placed at a disadvantage;

(b) the Court shall direct that the public administration makes available the documents and information relevant to the case and that the other party or parties to the proceedings have access to these documents and information, saving for exceptional circumstances which must be recorded by the Court;

(c) the Court shall ensure that all evidence submitted before it shall, in principle, be made available to the parties with a view to adversarial argument and shall be supported by documentary evidence wherever possible;

(d) save as otherwise provided by law, the proceedings before the Court shall be conducted with due respect to the privacy of the parties;

(e) the decision of the Court shall be given in writing and in open court, not later than seven days from the date of hearing and a copy of the said decision shall be served upon all parties involved or their legal representatives;

(f) a Court decision shall indicate with sufficient clarity the grounds on which it bases its decision and shall ensure that its decision is explained to the child to whose well being it is directed.

30. (1) Any party to the proceedings before the Court who feels aggrieved by a decision of the said Court may appeal to the Court of Appeal sitting in its inferior jurisdiction, on points of law. Appeal from the Court's decision.

(2) Such appeal shall be filed before the Court of Appeal by means of an application filed in the Registry of that Court within ten days from the day on which the decision of the Court was delivered.

(3) The application shall be served on the other interested parties who shall, within eight working days, file a reply:

Provided that the Court may, in urgent cases, reduce the period referred to in this sub-article.

(4) The Court of Appeal shall appoint such appeal for hearing within thirty days from the date of the decision of the Court, and the appeal shall be decided within sixty days from the date when it has been appointed for hearing.

(5) The Court of Appeal shall have the power, in its judgment, to confirm, revoke or alter the decision appealed against and to give such directions as it may deem appropriate.

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Cap. 12. (6) Save as otherwise provided in this Act, the provisions regulating the Court of Appeal in the Code of Organisation and Civil Procedure shall apply to the Court of Appeal when hearing appeals from decision of the Court.

Validity of child protection order.

31. A Child Protection Order shall be valid until the child attains the age of eighteen or until the Court revokes or terminates it:

Provided that in the latter case the Court, after listening to the child, the child's social worker, the guardian and the child's advocate, as applicable, must be convinced that the need for such order no longer exists.

Decision as to whether to terminate the child protection order.

32. In deciding whether or not to terminate the effects of a Child Protection Order, the Court shall, in the child's best interest, consider:

- (a) the parents' current situation;
 - (b) whether the parents can provide adequate everyday care, personal contact and security necessary to the well-being of the child, according to the child's particular needs;
 - (c) the length of the period in which the child has been placed in care;
 - (d) the attachment between the child and the person providing out-of-home care;
 - (e) the attachment between the child and the parents;
- and
- (f) the child's views and wishes according to the child's maturity and understanding:

Provided that the Court shall reject such application where it is satisfied that the child has developed a significant attachment to the person taking care of him and alternative environment, which indicate that removing the child may lead to the child suffering significant prejudice or harm.

Foster care.

33. (1) Where any interested part shows to the Court that foster care has been ongoing for more than four care reviews and appears to be long term, and the views and wishes of the child have been considered, it may decree permanent such foster care.

(2) Permanent foster carers shall remain bound by the requirements of ordinary and extraordinary acts of administration referred to in article 38, but care reviews shall take place annually

instead of on a six-monthly basis.

34. (1) In accordance with the provisions of this article the Court may decree that a child who has been placed under a child protection order may be freed for adoption.

Adoption of children in long term care.

(2) Any person having an interest in the well-being of the child may initiate the process by means of an application filed in the Registry of the Court, which application shall contain the reasons and circumstances explaining why freeing the child for adoption is in the child's best interest.

(3) The application shall be accompanied by a care plan which shall make reference to the prospective adopters where these have been identified and, in the case where no such prospective adopters are yet identified, recommendations for the continued care of that child until a suitable adopter is identified in terms of the Adoption Administration Act and the relevant articles of the Civil Code referring to adoption.

Cap. 495.
Cap. 16.

(4) The application for the freeing of a child for adoption shall be served on the parents who have the right to oppose such proceedings.

(5) The parents may file a reply within thirty days from the date of service of the application. In default of such reply the Court shall appoint a curator in accordance with Article 929 of the Code of Organisation and Civil Procedure to represent the interest of the parents.

Cap. 12.

(6) The parent may consent to the freeing of the child and in such case the Court shall refer them to a counselling session provided by Child Court Services and shall unequivocally explain to the parents the consequences of the freeing process before giving a decree.

35. The Court may grant a decree to free the child for adoption if evidence is brought to show that the parent or parents are unlikely to be able or are unwilling to provide the child with appropriate care and the Court has ascertained that freeing the child for adoption is in the child's best interests. In considering the child's best interest in accordance with this article the Court shall take into consideration:

Decree to free child for adoption.

(a) the child's views and wishes, in a manner that is appropriate to the child's maturity and understanding and any particular needs; and

(b) the child's attachment to the natural family.

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Access of the
parents after
adoption.

36. (1) Where a child has been adopted pursuant to a decree freeing the child for adoption, the Court shall require that a recommendation be included in the care plan regarding the possibility of open adoption, whatever the age of the child.

(2) Where an open adoption is authorized and physical contact included in the decision, the Court shall also decide on the practical arrangements necessary for such contact to take place and the frequency of such contact.

(3) Where a child feels that the open adoption is no longer in his best interests, the Court shall hear all parties and may adjust or terminate the arrangements, in the best interest of the child.

Placing of child
in out-of-home
care.

37. Where a child has been removed from the care of the parents and placed in out-of-home care, the State has a responsibility to ensure that the child receives special care and protection for that child's well-being. That responsibility shall be vested in the guardian appointed according to the provisions of this Act.

Acts of
administration.

38. (1) The Court shall authorize the person caring for the child to carry out ordinary acts of administration which are essential for the general and every day well-being of the child as part of the care plan of the child.

(2) The Court may authorize the person caring for the child to carry out extraordinary acts of administration deemed essential for the well-being of that child, specifically within a care plan or separately following an application submitted verbally or in writing:

Provided that where an application is filed for authorization to carry out an extraordinary act of administration, the Court shall where appropriate listen to the parents of the child and give a decree within five working days, saving exceptional circumstances.

(3) Extraordinary acts of administration include:

- (a) travelling with the child outside Malta;
- (b) enrolment of the child in a school or changing school;
- (c) submitting the child to any type of serious medical intervention, including cosmetic surgery;
- (d) enrolment of the child in any costly extra-curricular activity;

(e) promoting a religion to the child, other than the religion of his parents;

(f) emancipating the child:

Provided that in the case of emergency and where the well-being of the child is endangered, the carer may carry out extraordinary acts of administration deemed necessary and which cannot be postponed but shall immediately inform the guardian and the Court of such action.

39. (1) In taking any decision in the best interest of each child, the Court shall be able to count on the State's responsibility towards the well-being of the child in ensuring special care and protection when a child is removed from the family and placed in out-of-home care.

State's
responsibility
towards the
well-being of
the child.

(2) The responsibilities of the State shall include:

(a) taking all appropriate measures with the aim of promoting the well-being and care of children;

(b) provision of support services including pre-natal and ongoing child health centres as well as other health care services, day care, education, community work and youth work, in order to provide a preventative child welfare system, which promotes and safeguards the growth, development and well being of all children and supports parenting;

(c) ensuring that all welfare structures are directed towards preventing child and family problems and eliminating and preventing the emergence of disadvantageous factors concerning the circumstances in which children are brought up;

(d) provision of support to parents and those persons involved in the upbringing of the children, including the provision of necessary assistance at a sufficiently early stage to the benefit of the children;

(e) creation of structures that cater appropriately for children who need to be placed in out-of-home care and aftercare;

(f) setting up appropriate accommodation for all children requiring out-of-home care and specialized structures for children with particular needs;

(g) setting up appropriate structures and activities to

assist children in need of special support;

(h) giving particular consideration to the wishes of children when policy and strategy, including in the planning and development of services and structures;

(i) ensuring that schools are able to provide psychological and social investigative services that give sufficient support and guidance concerning schooling and basic education with the aim of preventing and eliminating social and psychological difficulties affecting the development of children;

(j) ensuring that health centres must provide expert assistance in child-specific and family-specific child welfare and, where necessary, be in a position to arrange for an examination of the child and health-care and therapy services for the child. Services needed by children in connection with the investigation of suspected sexual abuse or assault must be organized in such a way that they can be provided urgently. Further treatment or therapy should be made available within a reasonable time which takes into consideration the child's concept of time and the child's needs and right to well-being;

(k) ensuring that social workers responsible for a child's affairs have at their disposal expertise in child growth, development and health care, and legal and other expertise necessary in child welfare work as well as sufficient personnel to respond to the child in person, regularly and in a timely way;

(l) ensuring that members of the executive police shall receive necessary initial and ongoing training regarding child protection issues to enable them to respond to the needs of each individual child appropriately; and

(m) setting up a Children's House, which is a safe place where the child is interviewed in one sitting, by a team of experts, in order to reduce trauma to the children, while ensuring that the rights of all parties are duly respected.

Social worker's
responsibility.

40. (1) In taking any decision in the best interest of each child, the Court shall be able to count on the social worker's responsibility towards the well-being of the child in ensuring special care and protection when a child is removed from the family and placed in out-of-home care or where a child is separated from parents as in the case of an unaccompanied asylum seeking child.

(2) The responsibilities of the social worker appointed to the child shall include the following:

(a) the monitoring of compliance of decisions given by the Court in the best interests of the child, and providing assistance for children in exercising their right to be heard and, where necessary, directing the child to seek legal aid through the services of the Child Advocate or ensuring that contact is maintained between the child and the child's guardian;

(b) when putting child measures of care into effect, the social worker responsible for the child's affairs shall maintain contact with the child in person, regularly and in a timely way, while assessing the child's well being in the placement arrangements;

(c) when arrangements are being made to see the child in person, the aim must be to cooperate with the guardian and any other person responsible for the child's care and well-being;

(d) the social worker shall be entitled to see the child where necessary, even without the consent of the guardian, if this is considered to be in the child's interests in view of the child's age or development, or the child's circumstances in some other respect. The reasons for seeing the child against the wishes of the guardian shall be entered in the documents concerning the child and communicated to the Court. The guardian shall be notified of this access to the child, unless this would clearly not be in the child's interests;

(e) the social worker responsible for the child's affairs shall monitor the child's situation. The monitoring shall include an assessment of the circumstances in which the child is being brought up, and of the prospects for the parents or other persons who are at that time responsible for the child's care and well-being to see to this care and well-being, and of the need for child care measures. The extent of the monitoring shall be as required by the circumstances of the particular case. In conducting the monitoring and making the assessment, the social worker may, where necessary, contact persons who are close to the child as well as various cooperating parties;

(f) the making of arrangements for the provision of other services as established in the care plan, which may include support and counselling services, supervised access visits;

(g) the assessment and establishment of the possibility or otherwise of re-integrating the child with the family and making recommendations in this regard in the care reviews. When re-integration is not possible or beneficial to the child, the

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social worker responsible for the child's affairs shall promote contact with the natural family, if this is in the child's best interest;

(h) active participation in the care reviews and making of recommendations in relation to the child's placement arrangements and special care provision, as well as provision of feedback in relation to the child's and care plan update since the last case review;

(i) monitoring and co-ordination of the implementation of the care plan as approved by the Court, as well as informing the Court when any of the parties concerned is in breach of any part of the care review agreed upon and any condition imposed in any of the orders issued by the Court;

(j) informing the guardian and the Court of any serious incidents relating to the well-being of the child.

Records.

41. All records relating to the child protection process shall be retained in each child's case for at least twenty-five years following the child's attainment of the age of majority.

Objects and Reasons

The Bill is intended to replace the Children and Young Persons (Care Orders) Act, to establish Child Court Services, to introduce child protection orders, to provide for special care and protection for children removed or separated from their parents and placed in out-of-home care.