

EXECUTIVE COUNCIL

PUBLIC

Title:	Child Minding and Day Care Bill 2017 Policy Paper
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Responsible Director:	Director of Education
Report Author:	Attorney General's Projects Officer
Portfolio Holder:	MLA Barry Elsby
Reason for paper:	This paper is submitted to Executive Council: For policy decision (including budgetary policy) Requested by elected member of the Legislative Assembly
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Previous papers:	01/17 Regulation of Nursery Provision 226/15 Nursery and Childminding Provision in the Falkland Islands December 2015 94/15 Nursery Provision in the Falkland Islands May 2015 118/14 Early Years Childcare Strategy June 2014 08/05 CE - Childcare Facilities 162/05 CE - Childcare Facility 256/04 CE - Childcare Facilities 329/03 CE Childcare Facilities 130/02 Childcare Provision for working parents May 2002 203/01 CE Childcare Provisions for Working Parents
List of Documents:	Appendix 1: Proposed provisions under the Child Minding and Day Care Regulations

1. Recommendations

Honourable Members are recommended to approve:

- (a) The approach and policy concepts in this paper as a basis for the commencement of drafting legislation; and

- (b) The commencement of drafting the Child Minding and Day Care Bill 2017 on the policy basis in this paper.

After some discussion and requests for more explanation and definitions in some areas –

EXECUTIVE COUNCIL RESOLVED TO:

Approve the commencement of drafting of the new Bill and the Child Minding and Day Care (Application, Registration and Suspension) Regulation together. The remaining four regulations to be drafted subsequently as a second and possibly a third step. The benefit of this approach is that it will provide the most critical level of regulation of the sector immediately upon enactment of the Bill.

- (c) The commencement of drafting the Child Minding and Day Care (Application, Registration and Suspension) Regulation on the policy outlined in this paper as noted in 5.3 and 5.4.
- (d) The recommendations in 6.3 and 6.4.

2. Additional Budgetary Implications

2.1 2017/2018

<u>Project Description</u>	<u>Project Cost</u>
Construction of Register	£5,000
(Based on an estimate of £3,500 from Synergy Information Systems Limited)	

No recurring costs.

3. Executive Summary

- 3.1 The need for the regulation of the nursery sector was identified in the 2014 Falklands Islands Childcare Report, the 2015 Lucy Faithful Report and Executive Council's 2016 Consolidated Report on the Childcare Sector.
- 3.2 A system of voluntary regulation of the nursery sector has been trialled but did not have the desired impact. Therefore it is now evident that formal regulation is required for effective public governance over the sector, to protect children from harm and to promote their welfare. An additional benefit of the legislation is the development of the sector through improvements in service and systems.
- 3.3 The two main elements of the proposed Bill are a) the establishment of a register to which providers must apply to become a registered operator b) that upon registration providers become bound by a set of regulations specifying standards for how their business must be operated and managed.
- 3.4 The Bill would provide an enabling framework upon which the following set of five complementary regulations would be overlaid. The regulations provide detail on the requirements of compliance and remove ambiguity. The regulations are as follows:

1. Child Minding and Day Care (Application, Registration and Suspension) Regulation
 2. Child Minding and Day Care (Quality of Care) Regulation
 3. Child Minding and Day Care (Governance and Management of Service) Regulation
 4. Child Minding and Day Care (Complaints, Protection and Notifications of Significant Events) Regulation
 5. Child Minding and Day Care (Physical Environment) Regulation
- 3.5 Many of the concerns detailed in the “Consolidated Report on Childcare Sector and Options for Improvement for Executive Council” such as suitability of premises, skills and experience of staff, staff ratios and the national minimum standards would be addressed within the regulations listed in 3.4 above. Appendix 1 provides a list of proposed provisions to be included within each of the five Child Minding and Day Care Regulations.
- 3.6 Since the Bill makes registration compulsory and the Child Minding and Day Care (Application, Registration and Suspension) Regulation provides the detailed requirements of registration, it is recommended that the drafting of the Bill is commenced alongside the first regulation to ensure that entry onto the Register allows scrutiny of applicants and their businesses. It would become an offence under the new Bill to make any false or misleading statement in an application.
- 3.7 The existence of this Bill would not prevent the establishment of a state run nursery or childcare facility at some stage in the future, if the need arose.

4. Background

- 4.1 Concerns over the management and delivery of childcare services in the Falklands have persisted for many years. The absence of regulation has been identified as a child safeguarding risk. In addition, as a key enabler of the Falklands’ workforce, the failure of the childcare sector could pose a threat to the functioning of the economy.
- 4.2 In terms of the political backdrop, the Island Plan addressed the need for regulation in child protection with the inclusion of the policy “We will ensure that our laws and their enforcement safeguard our children from harm.” The need for regulation is also included within the Education Directorate Business Plan which states that ‘measures to improve nursery provision (for under 3s) in the private sector’ are a priority for 2016/2017.
- 4.3 As a result of the reviews, reports and consultations undertaken on this subject to date, in April of this year Executive Council approved a recommendation to “approve the development and implementation of compulsory regulation of the Childcare sector through a separate Childcare Ordinance.” This paper is the product of that decision.

- 4.4 An assessment of UK childcare legislation¹ has shown that whilst the details of regulations may vary from one country to another and from one to decade to another, the framework of the primary legislation remains very similar. Following the example elsewhere, the new Bill focuses on the establishment of a Register to which childcare providers must apply.

Child Minding and Day Care Bill

- 4.5 As it would become an offence to fail to register, the Bill defines those who must apply to register i.e. it defines providers of child minding and day care services. Some exceptions are made under these definitions to exclude operators such as babysitters, au pairs or sports groups. The exceptions recognise that it is not always necessary to regulate every type of childcare provision or provision that happens to have an element of childcare within it.
- 4.6 The differentiation between the two forms of childcare allows modification of the registration requirements for each. As Day Care can be undertaken by an organisation there are provisions which make clear the responsibilities of the nominated person in charge. It also allows penalties to be awarded against the childcare organisation as well as staff members.
- 4.7 In order to register, the new Bill makes provisions that would require applicants to provide information about the owners/operators, staff, the business, operations and premises. This information would then be scrutinised and assessed for compliance and, if approval is given, a license to operate would be awarded to the applicant.
- 4.8 The new Bill would set out the procedural steps for suspending or revoking licenses as well as disqualifying providers from operating with the regulation providing the detail of the circumstances in which it would take effect.
- 4.9 The Child Minding and Day Care Bill would also include provisions relating to the emergency protection of children along with powers to act, to enforce regulations and to inspect premises by way of regulation.

Child Minding and Day Care (Application, Registration and Suspension) Regulation

- 4.10 The specific prescribed information and documentation to be supplied in the application process would be detailed in the Child Minding and Day Care (Application, Registration and Suspension) Regulation.
- 4.11 The mandatory information to be provided by the applicant includes disclosure of any criminal charges or convictions, mental health information and details of their experience, skills and qualifications. Applicants would also be required to provide a description of the premises and of the operation. The provisions would also require the

¹ Nursery and Child Minding Act 1948, The Day Care and Child Minding (Applications for Registration) (England) Regulations 2001, The Child Minding and Day Care (Wales) Regulation 2010, The Regulation of Child Minding and Day Care (Wales) Order 2010, Children Act 1989, Childcare Act 2006

applicant to assess the suitability of their own staff by similar means to ensure that all those working in the sector have been subject to scrutiny.

- 4.12 As part of the application process, applicants would be required to submit a statement of purpose in which the business, and the way it would be managed, is detailed. The regulation would also require information on security arrangements and insurance details.
- 4.13 This regulation allows the Direction of Education to suspend the registration of any provider for up to 12 weeks if (s)he believes that continued provision of childcare by the provider, exposes one or more children to the risk of harm. The purpose of the suspension as laid out in the regulation is either to a) investigate the matter or b) allow time for steps to reduce or eliminate the risk of harm to be taken.
- 4.14 **What is not included in the new Bill or the regulations**
The Bill and its subsidiary regulations would not require registered persons to provide childcare for children with special needs. The staff of existing childcare centres in the Falkland Islands does not necessarily have the special skills required and the premises are not currently equipped to deal with children with special needs. This gap in provision may be addressed in due course by amending the Child Minding and Day Care regulations if desired.
- 4.15 The Falkland Island Government's Young Persons' Unit can and does provide childcare for children under 12 with special needs however this is incidental to other statutory roles. The Unit only provides care to children on referral by the Social Services Department if specific criteria have been met.

5. Options and Reasons for Recommending Relevant Option

- 5.1 There are three options as follows:

Option 1

- 5.2 Approve the commencement of drafting of the Child Minding and Day Care Bill without any of the associated regulations. The main Bill is concise and could be commenced relatively quickly. However, without the first regulation the main Bill alone would not provide for any scrutiny of applicants or their businesses and would be no more than a shell.

Option 2- Recommended Option

- 5.3 Approve the commencement of drafting of the new Bill and the Child Minding and Day Care (Application, Registration and Suspension) Regulation together. The remaining four regulations would be drafted subsequently as a second and possibly a third step. The benefit of this approach is that it would provide the most critical level of regulation of the sector immediately upon enactment of the Bill.
- 5.4 The first regulation provides for scrutiny of all those involved in the childcare sector. This scrutiny is essential for improved child safeguarding measures.

Option 3

- 5.5 Wait until the complete set of complementary regulations have been drafted and then commence the drafting of both the main Bill and the regulations in unison. The advantage of this option is that the full set of regulations and all the provisions contained therein would apply from the onset of formal regulation.
- 5.6 The remaining four regulations would cover the detailed operations of the business such as food preparation, storage of medicines, identifying and managing hazards, managing records etc.
- 5.7 The disadvantage of this option is that given the detail that would be contained within the regulations and the consultation which would be required, the timeframe required to enact the Bill would be significantly increased.

6. Facilitation within the sector

- 6.1 The following paragraphs outline proposals around the delivery and application of the new legislation and apply to all of the options listed above.
- 6.2 In order to promote a good understanding of, and compliance with the legislation it is recommended that a pre-registration training course on the legislation and the application process be offered. This would ensure that applicants understand the new legislation and how it applies to them, that they understand the full extent of the law and that they understand what they need to do to register successfully. Attendance could be a pre-requisite of registration.
- 6.3 Clear statutory guidance should be issued along with any application forms in relation to the ordinance.
- 6.4 Where reports, statements or evidence is required under this legislation, templates should be made available to providers. This would facilitate compliance and encourage consistency in information being supplied and collected from applicants.
- 6.5 It is not considered that a transition period would be necessary for compliance with the Bill or the first regulation as compliance at this stage, whilst time consuming, is not likely to incur any significant cost to applicants.
- 6.6 It is anticipated that costs to the business and disruption to service could result as registered businesses strive to comply with subsequent regulations relating to premises such as boiler inspections and the suitability of kitchen and toilet areas. It might therefore be appropriate to build in a transition period when introducing the remaining regulations to allow businesses a reasonable time period in which to comply.

7. Management of the Register

- 7.1 A register of child minders and day care providers would be established as a database and managed by the Department of Education. Given its importance in recording and maintaining information intended to improve child safeguarding it is proposed that the various aspects of the database be controlled through restriction of user privileges and permissions. It is hoped that this would avoid any accidental deletions, improve data management and ensure the appropriate management of sensitive information.

7.2 In its construction the database must allow information to be searched and filtered for instance by date, by registered person, by childcare centre or by address. The ability to search for information and to filter information held on the database is an essential tool in identifying child safeguarding issues such as frequency of outbreaks of infectious disease, frequency and site of accidents or patterns of non-compliance.

7.3 Collation and management of information on register

Whilst the registration process would require resourcing, the number of applications per annum is likely to be low given the size of the sector. Some management of the register would be required. Information would need to be entered, maintained and kept up to date in terms of applications, staff changes, inspections, non-compliance, accidents etc. Given the size of the sector, it is envisaged that this would form a minor part of an existing role.

7.4 Inspections and annual reviews

It is proposed that the Director of Education (DoE) would assume authority for inspections but that this would be outsourced to an independent third party. Inspections would be undertaken by a suitably qualified external inspector reflecting international standards.

7.5 A report on the inspection would be issued following the site visit. Any issues of non-compliance would be identified in the report and recorded on the register. The registered person would be notified and a given a timeline for implementing corrective action.

7.6 Annual reviews would be undertaken by the childcare providers in the manner required under the legislation. The reports would be submitted to the DoE for review. Any issues arising would be highlighted with the provider and addressed with the support of the Nursery Liaison Officer and/or Childcare Advisory Teacher.

7.7 In addition to the annual review, the DoE could request the registered person undertake an assessment of the service provided. The provider would have 28 days to comply.

7.8 Non-compliance

In the event of non-compliance, the Nursery Liaison Officer would work with the provider to address any issues within the timescale given and would arrange a follow up visit where required.

If there was a failure to comply and issues were not addressed within the permissible timeframes then the registered person would be guilty of an offence and would be liable to a fine.

The highest level of fines proposed under the Bill in all areas would be level five on the standard scale of fines that is, not exceeding four thousand pounds.

8. Resource Implications

8.1 Financial Implications

8.1.1 There are possible financial implications for Department of Education in discharging its functions under this legislation in particular the carrying out of inspections and

assessments. Any costs involved are unlikely to exceed £15,000 in any financial year. The Bill includes provision to allow the competent authority to impose fees if necessary. This power may be used in future to recover the costs of delivering this Bill.

8.1.2 Synergy has estimated that the costs of constructing a database to act as the Register to be £3,360 based proposals within this paper.

8.1.3 The drafting of the legislation is met from existing budgets.

8.1.4 Executive Council has approved funding in the 2017/2018 budget for capital grants to childcare businesses, a Childcare Advisory Teacher and a Project Manager within the Directorate of Education. Delivery of these complimentary elements supports the proposals within this paper.

8.2 Human Resource Implications

The staff resource required to implement this Bill is outlined above. There are some implications for existing roles but these are not expected to exceed the equivalent of 0.2FTE. It is not envisaged that new staff positions would be required to implement or manage this legislation.

8.2.1 The provision of policy support to the Education Department appears to assist in the progress of legislative reform but is currently only a temporary resource funded by Law and Regulation. Consideration may need to be given to a future resolution.

9. Legal Implications

9.1 The legal implications are set out in the body of this paper.

10. Environmental & Sustainability Implications

10.1 Compliance with regulations 2-5 as listed in section 3.4 above may require some immediate investment by providers to undertake building works. Given that the providers within the sector operate with little working capital or spare funds for capital investments, there may be a risk that businesses become unsustainable in their efforts to comply. This risk would not arise from the implementation of the Bill and the first regulation as recommended in this paper, but rather as a result of the subsequent drafting of further regulation. However, the capital grant approved by Executive Council paper in April (paper 01/17) is intended to mitigate this risk to some degree.

11. Significant Risks

11.1 The introduction of this Bill and its associated regulations aims to reduce the risks within the childcare sector including accidental harm, negligence and/or criminal activity, whilst promoting child safety and child welfare.

11.2 Regulation does not necessarily address the risks related to the economic failure of the sector but the additional resources that will be available from government to support the implementation including the appointment of a project manager, a Childcare Advisory Teacher and the approval of capital grants should mitigate this.

12. Consultation

- 12.1 As a policy paper, this paper has had no public consultation to date. There has been internal consultation within the Department of Education and the Attorney Generals Department.
- 12.2 Significant consultation was undertaken as part of submission of ExCo paper 01/17 in April this year. Consultation included individual meetings within the public and private sector across a wide range of interest groups, in addition to public meetings, focus groups and the distribution of questionnaires. It was approval of the recommendations within paper 01/17 which led to the production of this paper.
- 12.3 As part of the pathway for Executive Council papers, this paper has also been reviewed by the Director of Human Resources, Financial Secretary and Head of Policy.

Schedule of suggested deletions to enable publication of paper: *“No suggested deletions”*

Appendix 1: The proposed provisions under the Child Minding and Day Care regulations

1. Child Minding and Day Care (Application, Registration and Suspension) Regulation
<ol style="list-style-type: none">1. Requirements for registration2. Information and documentation3. License4. Registered person-suitability5. Person in charge6. Requirement to comply with regulations7. National minimum standards8. Statement of purpose9. Compliance10. Offences
2. Child Minding and Day Care (Quality of care) Regulation
<ol style="list-style-type: none">1. Staffing- ratios2. Nurture and well-being3. Behaviour4. Healthcare5. Medication6. Food and drink
3. Child Minding and Day Care (Governance and Management of the service) Regulation
<ol style="list-style-type: none">1. Suitability of workers2. Employment of staff3. Keeping records- daily attendance record (in case of fire etc.)

4. Provision of information- incidences which must be reported including changes of staff, serious harm to a child, infectious disease outbreak. Changes to the type of care and hours of care to initiate regulation if required.

4. Child Minding and Day Care (Complaints, protection and notifications of significant events) Regulation

1. Complaints
2. Handling complaints
3. Local resolution
4. Formal consideration
5. Complaints subject to concurrent consideration

5. Child Minding and Day Care (The physical environment) Regulation

1. Hazards and safety
2. Fitness of premises
3. Fire precautions