

# EXECUTIVE COUNCIL

## PUBLIC

**Title:** Revised draft Child Minding and Day Care (Exemption) Order 2018

**Paper Number:** 198/18

**Date:** 12 December 2018

**Responsible Director:** Director of Education

**Report Author:** Attorney General

**Portfolio Holder:** MLA Stacy Bragger

**Reason for paper:** To resubmit to Honourable members for approval the amended draft Childminding and Day Care (Exemption) Order 2018

**Publication:** Yes

**Previous papers:** 84/18 Childcare Subsidy  
01/18 Childcare (Day Care and Child-Minding) Capital Project  
123/17 Child Minding and Day Care Bill 2017  
01/17 Regulation of Nursery Provision  
226/15 Nursery and Childminding Provision in the Falkland Islands  
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  
174/18 Child Minding and Day Care Bill 2018, Child Minding and Day Care Regulations 2018, Child Minding and Day Care (Exemptions) Order 2018 and Professional's Guide to Implementing National Minimum Standards in Childcare

**List of Documents:** Appendix Revised draft Childminding and Day Care (Exemption) Order 2018

### 1. Recommendations

Honourable Members are recommended to:

- 1.1 approve the amended Child Minding and Day Care (Exemption) Order 2018 (set out in the Appendix) and approve its publication in the Gazette following the passage and assent of the Child Minding and Day Care Bill 2018;
- 1.2 authorise the Attorney General to correct any typographical and minor drafting errors found in the Child Minding and Day Care (Exemption) Order 2018 prior to publication in the Gazette.

## **2. Additional Budgetary Implications**

- 2.1. None

## **3. Executive Summary**

- 3.1. Honourable Members are requested to approve the draft Child Minding and Day Care (Exemption) Order 2018 with amendments (as tracked in the draft in the Appendix) as requested by the Executive Council at its meeting on 21 November 2018.
- 3.2. This paper presents the amended Child Minding and Day Care (Exemption) Order 2018 (Exemptions Order).

## **4. Background and Links to Islands Plan and Directorate Business Plan/s**

- 4.1. The Executive Council considered the draft Child Minding and Day Care (Exemption) Order 2018 together with other child minding legislation on 21 November 2018 under cover of Paper number 174/18. The Attorney General advised at that meeting that in view of a concern raised by a member of the public, he thought it appropriate to amend the draft Exemption Order.
- 4.2. The draft Child Minding and Day Care (Exemption) Order 2018 was deferred for amendment and resubmission to the Executive Council. The concern raised is that parents are not expressly exempt from the requirements for day care providers under Part III as is the case with child minding under Part II of the order.

## **5. Summary of Proposed Legislation**

- 5.1. The Child Minding and Day Care Bill 2018 (the Bill) was approved for publication and progression to the Legislative Assembly and section 4 of the Bill authorises the making of the Child Minding and Day Care (Exemption) Order.
- 5.2. The draft Exemption Order amends the original draft order pursuant to the Attorney General's advice and Members' instructions, as follows (changes tracked):
  - (a) a new article 15 is inserted which exempts parents, relatives, special guardians and foster parents from the requirements of the Bill relating to provision of day care;
  - (b) the definition of "foster parent" has been moved from article 5 to 3 so that it applies generally to the order;
  - (c) article 17(3)(d) is amended by the deletion of "scouts and cubs"; and

(d) articles have been renumbered from 16.

## **6. Options and Reasons for Recommending Relevant Option**

- 6.1. The draft Exemption Order amends the original draft order in accordance with the Attorney General's advice and Members' decision.
- 6.2. It is the view of the Director of Education and the Attorney General that the draft Exemption Order addresses the concerns raised.
- 6.3. It is recommended that Honourable Members approve the making of the Child Minding and Day Care (Exemption) Order 2018 as amended and instruct the Attorney General to arrange its publication in the Gazette.

## **7 Resource Implications**

- 7.1 Financial Implications – None
- 7.2 Human Resource Implications – None

## **8 Legal Implications**

- 8.1.1 The draft Exemption Order addresses the concerns that were raised and gives effect to the Attorney General's advice.
- 8.2 Once the draft Exemption Order is made, it will be commenced and a complete regulatory regime will be introduced subject to the transitional arrangements provided in the Bill.

## **9 Environmental & Sustainability Implications**

- 9.1 None

## **10 Significant Risks**

- 10.1 Addressing the concerns raised ensures that members of the public are happy with the legislation.

## **11 Consultation**

- 11.1 The original draft Child Care and Day Care (Exemption) Order was widely consulted on within the childcare sector (including all current providers) and with all relevant Falkland Islands Government Departments and other stakeholders

## SUBSIDIARY LEGISLATION

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### Child Minding and Day Care (Exemption) Order 2018

S. R. & O. No:            of 2018

*Made:* ..... 2018

*Published:* ..... 2018

*Coming into force: upon publication*

I make the following order under section 4 of the Child Minding and Day Care Ordinance 2018 on the advice of Executive Council

#### PART I: PRELIMINARY

##### 1. Title

This Order is the Child Minding and Day Care (Exemption) Order 2018.

##### 2. Commencement

This Order comes into force on a date appointed by the Governor by notice in the Gazette.

##### 3. Interpretation

In this Order —

“child in care” means a child who is in care of the Crown by virtue of a care order or an order under section 23 of the Children Ordinance 2014;

“domestic premises” means any premises which are used wholly or mainly as a private dwelling;

“foster parent” includes a person with whom a child has been placed under Part 3 of the Children Ordinance 2014 or any other foster parent or foster care arrangement in terms of that Ordinance;

“Ordinance” means the Child Minding and Day Care Ordinance 2018;

“parent” includes a person who has parental responsibility for a child;

“payment” means a payment of money or money’s worth but does not include the provision of goods and services;

“premises” includes any area and any vehicle;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership);

“school” has the same meaning as given in the Education Ordinance 1989;

“sibling group” includes half brothers and sisters; and

“special guardian” means a special guardian appointed under section 18A of the Children Ordinance 1914.

## PART II: CHILD MINDING EXEMPTIONS

### 4. Child minding on domestic premises

A person who looks after a child on domestic premises, whether for reward or not, in circumstances described in articles 5 to 8 does not act as a child minder.

### 5. Parent, relative, special guardian and foster parent

~~(1)~~ A person looking after a child does not act as a child minder if the person is —

(a) ~~is~~ a parent, special guardian or a relative of the child; or

(b) ~~is~~ a foster parent for the child.

~~(2) In this article “foster parent” includes a person with whom a child has been placed under Part 3 of the Children’s Ordinance 2014 or any other foster parent arrangement in terms of that Ordinance.~~

### 6. Employee

A person who is employed by parents to look after a child or sibling group to the exclusion of other children and mainly in the parents’ domestic premises does not act as a child minder.

### 7. Time and period limitation

(1) A person does not act as a child minder where the period, or the total of the periods, in any one day in which the person looks after children does not exceed two hours.

(2) A person does not act as a child minder if the person looks after a child during the period between 6pm and 2am the following day.

### 8. Friends

A person does not act as a child minder when looking after a child or children in the course of friendship with the parents of that child or children and no payment is made for the service.

## PART III: DAY CARE EXEMPTIONS

### 9. Care on ~~domestic~~ premises other than domestic premises

A person who provides day care for children in circumstances described in articles 10 to 167 on premises other than domestic premises is not providing a provider of day care for the purposes of the Ordinance.

**10. Care provided for fewer than six days in a calendar year**

A person does not provide day care where the care is provided on fewer than six days in a calendar year and the person has notified the Director in writing before the first occasion on which the care is provided in that year.

**11. Period of two hours a day**

A person does not provide day care where the period or the total of the periods in any one day on which children are cared for on the premises does not exceed two hours.

**12. Young person's unit**

A person does not provide day care where the care is provided to a child in care in accommodation provided by the Crown under the Children Ordinance 2014.

**13. Institutional care**

A person does not provide day care where —

- (a) the child is a hosted child or in private boarding within the meaning of the Children Ordinance 2014;
- (b) the care is provided to a child in a hostel or in a recreational facility;
- (c) the care is provided to a child accommodated in a care home or a hospital as a patient; or
- (d) the care is provided in a residential family centre as part of the activity of the establishment in question, whether by the provider of the establishment directly or by a person employed on the provider's behalf.

**14. Hotel, guest house or other establishment**

A person does not provide day care where the care is provided at a hotel, guest house or other similar establishment for a child staying in that establishment where —

- (a) the provision only takes place between 6pm and 2am; and
- (b) the person, or any individual employed by the person who is providing the care is doing so for no more than two different persons requiring the service at the same time.

**15. Parent, relative, special guardian and foster parent**

A person looking after a child does not act as a provider of day care if the person looks after a child on premises other than domestic premises and is —

- (a) a parent, special guardian or a relative of the child; or

| (b) a foster parent for the child.

| **156. Care to children at a school**

A person does not provide day care where the care is provided to children at a school and the care is incidental to the provision of education.

| **167. Coaching and tuition in activities**

(1) Subject to paragraph (2), a person does not provide day care when coaching or providing tuition in an activity of a type listed in paragraph (3) and the care provided to them is incidental to that coaching or tuition.

(2) The exemption in this article does not apply if —

(a) the children are below the age of five and they attend for longer than four hours per day;  
or

(b) the person offers coaching or tuition in more than two of the types of activity listed in paragraph (3).

(3) The types of activity are —

(a) sport;

(b) performing arts;

(c) arts and crafts;

| (d) youth clubs, ~~scouts or cubs~~;

(d) school study or homework support; or

(e) religious or cultural study.

**PART IV: GENERAL EXEMPTION**

| **178. Exemption of Mount Pleasant School**

Any child minding or provision of day care that takes place at Mount Pleasant School is exempted from compliance with the Ordinance.

Made

2018

N. J. Phillips C.B.E.,  
*Governor.*

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EXPLANATORY NOTE  
*(not part of the order)*

This Order provides for circumstances that do not amount to child minding or provision of day care for the purpose of the Child Minding and Day Care Ordinance 2018.