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The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015

NOT YET IN FORCE

**The Children (Child Minders and Day Care Providers)
(Guernsey and Alderney) Ordinance, 2015**

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**The Children (Child Minders and Day Care Providers)
(Guernsey and Alderney) Ordinance, 2015**

THE STATES, in pursuance of their Resolution of the 11th December, 2013^a, and in exercise of the powers conferred on them by sections 108, 120 and 123 of the Children (Guernsey and Alderney) Law, 2008^b and section 1 of the Alderney (Application of Legislation) Law, 1948^c, and all other powers enabling them in that behalf, hereby order:-

PART I
REGISTRATION, ETC.

Prohibition of unregistered child minders, day care providers and premises

Child minders and premises to be registered.

1. (1) A person is guilty of an offence who provides child minding services on any premises unless –

- (a) the person is a registered child minder, and
- (b) the premises are registered premises or exempt premises.

(2) Nothing in subsection (1) applies to an exempt minder

^a Article XIII of Billet d'État No. XXIV of 2013.

^b Order in Council No. XIV of 2009 as amended by Ordinances No. XI and XLVIII of 2009.

^c Ordres en Conseil Vol. XIII, p. 448; as amended by Vol. XVI, pp. 124 and 126; Vol. XXIV, p. 210; Vol. XXIX, p. 299; Vol. XXX, p. 224; Vol. XXXVII, p. 251 and Recueil d'Ordonnances Tome XXIX, p. 406 and Tome XXXII, p. 504.

providing child minding services in respect of any child.

(3) In this section –

"exempt minder", in relation to any child, means –

- (a) a person who is a parent of, or who has parental responsibility for, the child,
- (b) a person who is married to, is a civil partner of, or is cohabiting with, a person described in paragraph (a),
- (c) a close relative of the child,
- (d) a person who is a Departmental foster carer for the child, within the meaning of section 20(3) of the Children Law,
- (e) a person who is employed as a carer (for example, a nanny or babysitter) for the child by a person mentioned in paragraph (a), and is looking after that child wholly or mainly in the home of the employer, or
- (f) any other prescribed person, and

"registered child minder" means a child minder registered under section 5.

Day care providers and premises to be registered.

2. (1) A person is guilty of an offence who provides day care services on any premises unless –

- (a) the person –
 - (i) is a registered day care provider, or
 - (ii) is providing those services on behalf of, and under the supervision of, another person who is a registered day care provider, and
- (b) the premises are registered premises or exempt premises.

(2) Nothing in subsection (1) applies to an exempt provider providing day care services in respect of any child.

(3) In this section –

"exempt provider" means –

- (a) a person who is a parent of, or who has parental responsibility for, the child,
- (b) a person who is married to, is a civil partner of, or is cohabiting with, a person described in paragraph (a),
- (c) a close relative of the child,
- (d) a school (within the meaning of section 1(1) of the

Education (Guernsey) Law, 1970^d) to the extent that it looks after children aged 4 years or older wholly or mainly for the purpose of the children's education, or

- (e) any other prescribed person, and

"registered day care provider" means a day care provider registered under section 5.

Registration

Applications for registration.

3. (1) Any individual may apply to the registration officer for -
- (a) registration as a child minder, and
 - (b) registration of any premises as premises on which the person is authorised to provide child minding services.
- (2) Any individual or body corporate may apply to the registration officer for -
- (a) registration as a day care provider, and
 - (b) registration of any premises as premises on which the person is authorised to provide day care services.

^d Ordres en Conseil Vol. XXII, p.318; as amended by Vol. XXVI, p. 107, Vol. XXVII, p. 347; Vol. XXVIII, p. 181; Vol. XXX, p. 179; Vol. XXXI, pp. 168 and 278, and Vol. XXXII, p. 144; Order in Council No. XVII of 2009; Recueil d'Ordonnances Tome XXXIII, pp. 98 and 129.

- (3) An application under this section –
- (a) must include the prescribed fee,
 - (b) must be made in the form and manner prescribed by Regulations or required by the registration officer, and
 - (c) must include any information prescribed by Regulations or required by the registration officer, which may include, for example, any personal data concerning any individual –
 - (i) applying for registration,
 - (ii) looking after the children, or
 - (iii) living, working, or regularly or frequently present at the premises sought to be registered.
- (4) An application for renewal of any registration must be made –
- (a) no later than the date which is 3 months before the day on which the registration is due to expire, or
 - (b) within any further period allowed by the registration officer in that officer's sole discretion.

Circumstances in which applications must be refused.

4. (1) An application for registration must be refused if the registration officer is satisfied that –

- (a) the applicant or any person looking after the children does not satisfy a registration condition, or is otherwise not a fit and proper person,
 - (b) any person living, working or regularly or frequently present at the premises does not satisfy a registration condition, or is otherwise not a fit and proper person,
 - (c) the premises sought to be registered do not satisfy a registration condition, or are otherwise not adequate,
 - (d) any equipment, facilities or vehicles do not satisfy a registration condition, or are otherwise not adequate.
- (2) An application for registration must also be refused if –
- (a) the information provided is insufficient to satisfy the registration officer that the services provided by the applicant would comply with registration conditions or that the applicant would comply with the provisions of this Ordinance, or
 - (b) any information requested by the registration officer is not provided within a reasonable time.
- (3) A refusal under this section must be made in accordance with section 10.

Registrations and certificates.

5. (1) On receipt of an application made in accordance with section 3 and payment of any fee prescribed for the grant of registration, the registration officer must, subject to section 4 –

- (a) register the applicant as a child minder or (as the case may require) day care provider, and
- (b) register the premises sought to be registered as premises on which the services are authorised to be provided by the person registered as a child minder or day care provider.

(2) A registration is subject to registration conditions and cannot be transferred to another person.

(3) Upon registration, the registration officer must issue a certificate of registration to the registered person, which includes the following information –

- (a) the name, principal address and date of birth or (in the case of a body corporate) date of incorporation, of the registered person,
- (b) whether the person is registered as a child minder or day care provider,
- (c) the address of the registered premises on which that person is authorised to provide child minding services or (as the case may be) day care services,

- (d) the registration conditions or information on where these conditions may be viewed,
- (e) the date of issue, and
- (f) the date of expiry of the registration.

(4) A registered person to whom a certificate is issued must prominently display at the registered premises a true copy of the certificate at all times when the services are being provided on those premises.

(5) A registration expires on the second anniversary of the date of issue of the certificate, except as otherwise provided by this Ordinance.

(6) A person who fails to comply with or contravenes subsection (4) is guilty of an offence.

Registration conditions.

6. (1) Registration conditions may be made or issued for the purposes of this Ordinance –

- (a) by Regulations,
- (b) by publication by the registration officer in any manner and form the officer considers appropriate, or
- (c) in the case of registration conditions that are applicable only to a specific registration, by the registration officer specifying the condition in the relevant certificate.

(2) Without limiting the generality of subsection (1), registration conditions may include any conditions, requirements, standards or framework considered appropriate to –

- (a) ensure or safeguard the health or welfare of children,
- (b) ensure or safeguard the quality of education or care of children, or
- (c) minimise the risks to children.

(3) Without limiting the generality of subsection (1) or (2), examples of registration conditions include conditions relating to –

- (a) the number and description of children who may be looked after on the registered premises,
- (b) the persons who are to look after those children,
- (c) the persons who may live, work or otherwise be present in the registered premises at any time,
- (d) the registered premises,
- (e) the equipment, facilities or vehicles,
- (f) the manner in which the services are to be provided,
- (g) the implementation of any quality or other framework,
- (h) the activities involving the children, or

- (i) insurance.

(4) Registration conditions may refer to any guideline, standard, framework or regulatory requirement, made, issued or enacted, in Guernsey, Alderney or elsewhere, and any such reference, unless otherwise specified, takes effect as a reference to the guideline, standard, framework or regulatory requirement as amended, updated, revised, re-issued or re-enacted from time to time.

(5) For the purpose of determining whether or not a registration condition is satisfied or has been breached, the registration officer may at any time—

- (a) seek and receive any information from any person (whether in Guernsey, Alderney or elsewhere) as the officer considers appropriate, and
- (b) take into account any information obtained from any source.

Public register to be kept.

7. (1) The registration officer –

- (a) must maintain a register of child minders, day care providers and premises for the purposes of this Ordinance, and
- (b) must make available to the public, in a form and manner the registration officer considers appropriate, any information prescribed by Regulations.

(2) The registration officer may provide to any person a copy of the register upon payment of a reasonable charge determined by the officer.

Suspension, revocation, variation and improvement notices

Suspension, revocation or variation by registration officer.

8. The registration officer may suspend, revoke or vary a registration in accordance with section 10 if the officer believes, on reasonable grounds, that –

- (a) the registration was granted on the basis of false, deceptive, misleading or incomplete information,
- (b) the registered person has failed to pay any fee or charge required to be paid under this Ordinance,
- (c) the registered person has, without reasonable excuse, failed to comply with any direction in an improvement notice,
- (d) a registration condition has been breached or is no longer satisfied,
- (e) a registration condition is likely to be breached unless the registration were suspended, revoked or varied,
- (f) the services provided by the registered person are inadequate, having regard to the needs of the children concerned, or
- (g) the registered premises or the equipment, facilities or vehicles are inadequate, having regard to the needs of the children concerned.

Registered person may apply for variation.

9. (1) The registration officer may vary a registration on the application of the registered person.

(2) An application –

- (a) must include the prescribed fee, and
- (b) must be made in the form and manner prescribed by Regulations or required by the registration officer.

(3) The registration officer may refuse an application in accordance with section 10.

Procedure for refusal, suspension, revocation or variation of registration.

10. (1) This section applies where the registration officer proposes to make –

- (a) a decision to refuse an application for registration under section 4,
- (b) a decision to suspend, revoke or vary a registration under section 8, or
- (c) a decision to refuse an application to vary a registration under section 9.

(2) Where this section applies, the registration officer must give the applicant or (as the case may be) the registered person, written notice of —

- (a) the proposed decision and the reasons for it, and

- (b) the date (being 14 days or more after the date of the notice) by which a written submission may be made to the registration officer in respect of the proposed decision.

(3) The applicant or registered person may write to the registration officer with any submission that that person wishes to make (including any additional information) –

- (a) on or before the date specified in that notice under subsection (2)(b), or
- (b) within any further period allowed by the registration officer in that officer's sole discretion.

(4) Following consideration of any submission made in accordance with subsection (3) and any other information the registration officer considers relevant, that officer must decide whether or not to refuse the application or to suspend, revoke or vary the registration.

(5) The registration officer must give the applicant or registered person –

- (a) written notice of that officer's decision under subsection (4) and the reasons for it, and
- (b) a copy of Part II.

Improvement notices.

11. (1) The registration officer may issue an improvement notice in accordance with subsections (2) to (5) if the officer forms an opinion, on reasonable grounds, that —

- (a) a registration condition has been breached or is no longer satisfied,
- (b) a registration condition is likely to be breached unless an improvement notice is issued,
- (c) the services provided by a registered person are inadequate, having regard to the needs of the children concerned, or
- (d) the registered premises or equipment, facilities or vehicles are inadequate, having regard to the needs of the children concerned.

(2) An improvement notice may be issued by giving written notice to the registered person in the prescribed form stating the registration officer's opinion and the reasons for that opinion, specifying –

- (a) where subsection (1)(a) or (b) applies, the relevant registration condition, and
- (b) where subsection (1)(c) or (d) applies, in what respect the services, registered premises, equipment, facilities or vehicles are inadequate, having regard to the needs of the children concerned.

(3) An improvement notice must direct specified steps to be taken—

- (a) where subsection (1)(a) applies, to remedy the breach of the registration condition or to satisfy the relevant registration condition,
- (b) where subsection (1)(b) applies, to avoid a breach of the registration condition, and
- (c) where subsection (1)(c) or (d) applies, to ensure that the services, registered premises, equipment, facilities or vehicles are adequate, having regard to the needs of the children concerned.

(4) An improvement notice may direct the registered person to choose one of a number of steps specified in the improvement notice and that person must comply with the specified step chosen by that person.

(5) An improvement notice must —

- (a) specify a time limit within which each direction in the notice is to be complied with (and, for the avoidance of doubt, an improvement notice may require immediate compliance with a direction),
- (b) specify that the notice is issued under section 11 of this Ordinance, and
- (c) include a copy of Part II.

(6) A registered person to whom an improvement notice is issued must comply with directions in the notice, subject to –

- (a) any suspension or modification of the notice under section 15(7), and
- (b) any variation or revocation of the notice under section 15(4)(c).

(7) The costs of any action directed by an improvement notice must be borne by the registered person to whom the notice is issued.

(8) An improvement notice (in this subsection referred to as "**the earlier improvement notice**") may be amended or withdrawn by a further notice in writing, and the earlier improvement notice has effect subject to such amendment or withdrawal.

(9) A person who fails to comply with or contravenes subsection (6) is guilty of an offence.

Duties of registered child minders and registered day care providers

Duties of registered persons.

- 12.** (1) A registered person must –
- (a) comply with all registration conditions,
 - (b) keep prescribed records in the prescribed form and manner for the prescribed period,

- (c) make any information returns prescribed by Regulations in the prescribed form and manner and at the prescribed times,
- (d) on request by an authorised officer, produce for inspection any records required to be kept and the certificate issued to the registered person, and
- (e) promptly give written notice to the registration officer of any material change in the conduct of the services, and where appropriate, apply for a variation of the registration.

(2) Without limiting the duties in subsection (1), a registered person has a duty to ensure that the services, registered premises, equipment, facilities and vehicles, as well as any activities involving the children, are safe and appropriate.

(3) A person who fails to comply with or contravenes subsection (1) or (2) is guilty of an offence.

(4) In subsection (1)(e), "**material change in the conduct of the services**" includes –

- (a) any change that affects or might affect the ability of the registered person to comply with or continue to satisfy registration conditions,
- (b) any change that affects or might affect the ability of the registered person to comply with any provision of this Ordinance, and

- (c) any other prescribed change or event.

Replacement certificates.

13. (1) A registered person must give written notice to the registration officer of any loss or destruction of a certificate issued to the registered person within 14 days of becoming aware of it.

(2) If the registration officer is satisfied that a certificate has been lost or destroyed, that officer may issue a duplicate certificate on payment of the prescribed fee.

Surrender of certificates.

14. (1) A registered person who holds any certificate must surrender the certificate to the registration officer within 14 days of any of the following –

- (a) ceasing to carry out the services for which the certificate was issued,
- (b) expiry of the registration,
- (c) receiving written notice of suspension or revocation of the registration under this Ordinance,
- (d) receiving a written request from the registration officer to surrender the certificate for the purposes of variation, or
- (e) receiving an amended certificate from the registration officer.

(2) A person who fails to comply with or contravenes subsection (1) is guilty of an offence.

(3) A registered person may at any time surrender the person's certificate to the registration officer.

(4) Upon surrender of a certificate —

(a) the registration signified by the certificate (other than a certificate surrendered for the purposes of variation) ceases to have effect when the certificate is received by the registration officer, but

(b) this Ordinance continues to apply, for the purpose of enabling the person who formerly held the certificate to be investigated or otherwise dealt with for a matter arising before the surrender, as if the certificate had not been surrendered.

(5) Upon the expiry of any period of suspension, the registration officer must return any certificate surrendered to the officer as a result of the suspension.

PART II REVIEWS AND APPEALS

Review of registration decisions and improvement notices.

15. (1) A notified person may apply to the Department to review a registration decision or an improvement notice in accordance with this section, even if the person has complied with the decision or notice.

- (2) An application for review –
- (a) must be made within 14 days of the applicant receiving written notice of the reviewable decision,
 - (b) must be made in the form and manner specified by the Department and must include any information which the applicant believes would assist that applicant's case, and
 - (c) must be served by giving written notice of it to the registration officer.

(3) Within 14 days of being served with an application for review or within any further period allowed by the Department in its sole discretion, the registration officer must respond in writing to the Department with any information which that officer believes the Department should consider.

(4) Within 14 days of receiving the written response from the registration officer, the Department must –

- (a) consider any information submitted under subsection (2) or (3) and take into account any other information the Department considers relevant,
- (b) hear any oral submissions that the applicant or the registration officer wishes to make to the Department,
- (c) determine the application by –

- (i) confirming or varying the reviewable decision,
or
 - (ii) revoking the reviewable decision, and, if the Department considers it appropriate, substituting that decision with a decision made by the Department or an improvement notice issued by the Department,
 - (d) give the applicant, any other notified person and the registration officer written notice of the Department's determination of the review under paragraph (c) and the reasons for it, and
 - (e) give the applicant and any other notified person a copy of Part II.
- (5) In determining an application for review, the Department may—
- (a) make any decision and issue any improvement notice that the registration officer is authorised to make or issue under this Ordinance, and
 - (b) give any direction it considers appropriate to the registration officer in order to give effect to the Department's decision or improvement notice.
- (6) A decision made or improvement notice issued by the Department under subsection (4)(c) has effect as if it were made or issued by the registration officer, but –

- (a) neither the decision nor the improvement notice made or issued under subsection (4)(c) is reviewable under this section,
- (b) the procedure in section 10 does not apply to a decision of the Department made in substitution of the registration decision, and
- (c) if the Department issues an improvement notice in substitution of an improvement notice issued by the registration officer, section 11 has effect as if –
 - (i) in subsection (5) of that section, paragraphs (b) and (c) were omitted, and
 - (ii) in subsection (6) of that section, paragraphs (a) and (b) were substituted with the following paragraphs –
 - "(a) any suspension or modification of the notice under section 16(7), and
 - (b) any determination of the Court under section 16(6)(a)."

(7) Pending determination of a review, on application by the applicant, the Department may in exceptional circumstances and on such terms as it considers appropriate suspend or modify the effect of the reviewable decision by giving written notice to the registration officer.

(8) In this section and section 16 –

"**notified person**" in relation to a registration decision or an improvement notice, means any person given written notice of the registration decision, or to whom the improvement notice was issued, in accordance with this Ordinance,

"**registration decision**" means any decision of a kind specified in section 10(1), and

"**reviewable decision**" means registration decision or improvement notice.

Appeal to relevant Court.

16. (1) A determination by the Department under section 15(4)(c) following a review may be appealed to the relevant Court in accordance with this section by –

- (a) the person who applied for the review, or
- (b) any other notified person.

(2) The grounds of an appeal are that –

- (a) the determination was *ultra vires* or there was some other error of law,
- (b) the determination was unreasonable,
- (c) the determination was made in bad faith,

- (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal must be made –
- (a) within the period of 28 days immediately following the date on which written notice of the Department's determination was received by the appellant, and
 - (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.
- (4) Where an appeal has been made, the Department may apply to the relevant Court by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the court may–
- (a) dismiss the appeal or dismiss the application (in either case with such directions as the court thinks fit), or
 - (b) make such other order as the court considers just.
- (5) The provisions of subsection (4) are without prejudice to the inherent powers of the relevant Court or to the rules of the relevant Court.
- (6) On an appeal, the relevant Court may –
- (a) set the Department's determination aside in whole or in part and remit that determination to the Department

with such directions as the court thinks fit, or

- (b) confirm that determination, in whole or in part.

(7) On the application of the appellant, the relevant Court may suspend or modify the effect of the Department's determination with such directions as the court thinks just, pending the determination of the appeal.

(8) An appeal from a decision of the relevant Court under this section, on a question of law, lies –

- (a) where the relevant Court is the Royal Court, to the Court of Appeal, and
- (b) where the relevant Court is the Court of Alderney, to the Royal Court.

(9) For the avoidance of doubt, section 105 of the Children Law applies to any decision of the relevant Court under this section.

(10) In this section and section 18, "**relevant Court**" –

- (a) in relation to Guernsey, means the Royal Court,
- (b) in relation to Alderney, means the Court of Alderney.

PART III
EMERGENCY PROTECTION OF CHILDREN

Emergency suspension or variation by Department.

17. (1) This section applies where the Department forms an opinion, on reasonable grounds, that a child looked after by a registered person –

- (a) is suffering serious harm, or
- (b) is at imminent risk of suffering serious harm.

(2) Where this section applies, the Department may suspend or vary the registration with immediate effect by written notice to the registered person.

(3) A suspension or variation under subsection (2) –

- (a) must not be made except with the prior consent of Her Majesty's Procureur, and
- (b) has effect for a period of 72 hours from the time the written notice under subsection (2) was given to the registered person, or any lesser period specified in that written notice.

(4) In this section, "**Her Majesty's Procureur**" includes Her Majesty's Comptroller.

Court may order immediate suspension, revocation or variation.

18. (1) The Department may at any time apply to the relevant Court for an order under this section to suspend, revoke or vary a registration.

(2) An application may be made *ex parte* and must be supported by a written statement of the Department's reasons for making the application.

(3) Upon hearing the application, the relevant Court may make an order to suspend, revoke or vary a registration, with such directions as the court considers appropriate, if the court is satisfied that a child looked after by a registered person –

- (a) is suffering serious harm, or
- (b) is at imminent risk of suffering serious harm.

(4) Where an order is made under subsection (3), the Department must serve on the registered person, as soon as is reasonably practicable, notice of the order and a copy of the statement of the Department's reasons for making the application.

(5) For the avoidance of doubt, section 105 of the Children Law applies to any decision of the relevant Court under this section.

PART IV ADMINISTRATION, ENFORCEMENT AND PENALTIES

Registration officer and authorised officers

Department to appoint registration officer and authorised officers.

19. (1) The Department may in writing –
- (a) appoint an officer to be both the registration officer and an authorised officer, and

(b) appoint any other officer it considers appropriate as authorised officers for the purposes of this Ordinance.

(2) In subsection (1), "**officer**" means employee of the States.

Powers of entry, search, etc.

General powers of entry, search, etc.

20. (1) Subject to section 22, an authorised officer may at any reasonable time –

(a) enter any premises specified in subsection (2) for a purpose specified in subsection (3), and

(b) exercise the power specified in subsection (4) on or in relation to those premises.

(2) Subsection (1)(a) refers to the following premises –

(a) registered premises,

(b) premises at which the authorised officer believes, on reasonable grounds, that child minding services or day care services are being or have been provided.

(3) Subsection (1)(a) refers to the following purposes –

(a) establishing whether registration conditions –

(i) are or have been breached, or

- (ii) are or continue to be satisfied,
 - (b) establishing whether there are any grounds for the registration officer to exercise any of the officer's functions under this Ordinance,
 - (c) establishing whether there are any grounds for the Department to exercise any of its functions under this Ordinance or to apply to the relevant Court for an order under section 18,
 - (d) establishing whether any offence under this Ordinance is being, or has been, committed on those premises, or
 - (e) detecting or investigating an alleged offence under this Ordinance.
- (4) Subsection (1)(b) refers to the power to do all or any of the following –
- (a) search the premises and examine anything at the premises, and open it (or break it open) as the officer considers necessary,
 - (b) photograph, film or otherwise record anything at the premises,
 - (c) measure or cause to be measured anything at the premises,

- (d) require the production of any equipment, facility, vehicle, record, document, or any other thing, and inspect it,
- (e) take copies of or extracts from any record or document,
- (f) if anything at the premises cannot be conveniently removed, secure it against interference,
- (g) require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer considers necessary, and
- (h) seize any equipment, facility, vehicle, record, document, or any other thing, which is at the premises and retain it for as long as the officer considers necessary.

(5) Subsection (4) does not apply to, or in relation to, any items subject to legal professional privilege.

Safeguards for general powers of entry, search, etc.

21. (1) An authorised officer entering any premises under section 20 must, if the occupier or any person who appears to be in charge of those premises is present –

- (a) identify himself or herself to the occupier or that person, and
- (b) produce to the occupier or that person documentary

evidence that that officer is an authorised officer.

(2) If neither the occupier nor any person who appears to be in charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer –

- (a) must leave the premises as effectively secured against trespassers as that officer found them, and
- (b) must leave in a prominent place on those premises -
 - (i) written notice that those premises have been entered and searched under section 20 of this Ordinance (such notice to include that officer's name and an address at which that officer may be contacted), and
 - (ii) a copy of the documentary evidence referred to in subsection (1)(b).

(3) An authorised officer who seizes anything under section 20(4) must leave a statement, containing particulars of anything that has been seized and explaining that the officer has seized it -

- (a) if the occupier or person in charge of the premises is present, with that occupier or person in charge, or
- (b) in any other case, in a prominent place on those premises.

Entry to dwellings restricted.

22. An authorised officer must not enter a dwelling under section 20, except –

- (a) with the consent of the occupier or a person who appears to the officer to be in charge of those premises,
- (b) in the case of any dwelling registered as child minding premises, where the officer has given written notice to the occupier or a person who appears to that officer to be in charge of those premises at least 24 hours before that officer enters the dwelling, or
- (c) under and in accordance with a warrant issued under section 23.

Warrant to enter dwellings, etc.

Warrants for entry, etc.

23. (1) On application by an authorised officer in accordance with section 24, the Bailiff may, in accordance with sections 24 and 25, issue a warrant authorising an authorised officer to enter and search any premises (including a dwelling), if the Bailiff is satisfied that there are reasonable grounds for believing –

- (a) that an offence under this Ordinance is about to be committed, is being committed or has been committed on or in relation to those premises,
- (b) that there is material on those premises which is likely to be of substantial value (whether by itself or together

with other material) to the investigation of the offence,

- (c) that the material is likely to be relevant evidence,
- (d) that the material does not consist of or include items subject to legal professional privilege, and
- (e) that at least one of the conditions specified in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1)(e) are –

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
- (b) that it is not practicable to communicate with any person entitled to grant access to the evidence,
- (c) that entry to the premises will not be granted unless a warrant is produced, and
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless an authorised officer arriving at the premises can secure immediate entry to them.

(3) In this section, "**relevant evidence**", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(4) In this section and section 24, "**the Bailiff**" –

- (a) in relation to Guernsey, means the Bailiff, the Deputy Bailiff, a Judge of the Royal Court, the Lieutenant-Bailiff or a Juge Délégué, and
- (b) in relation to Alderney, means the Chairman of the Court of Alderney, or, if the Chairman is not available, a Jurat of that court.

Procedure for search warrants.

24. (1) An application for a warrant –
- (a) must be made and supported by information in writing, and
 - (b) must state –
 - (i) that the warrant would be issued under section 23 of this Ordinance,
 - (ii) the ground on which the authorised officer makes the application,
 - (iii) the premises which it is desired to enter and search, and
 - (iv) so far as is practicable, the things to be sought.
- (2) The Bailiff must hear the application in private and *ex parte*.
- (3) The authorised officer making the application must answer on oath any question that that officer is asked by the person hearing the application.

Requirements of search warrants.

25. (1) A warrant authorises entry only on one occasion.
- (2) A warrant –
- (a) must state the person who applied for it, the date on which it is issued, and the premises to be searched,
 - (b) must state that it is issued under section 23 of this Ordinance, and
 - (c) so far as is practicable, must identify the things to be sought.
- (3) The Greffier must ensure that two copies are made of each warrant, and that those copies are clearly certified as copies.

Execution of warrants.

26. (1) Any authorised officer may execute a warrant to enter premises.
- (2) An authorised officer executing a warrant may exercise all or any of the powers specified in section 20(4) on or in relation to those premises, subject to section 20(5), if the officer considers it reasonably necessary for the purpose for which the warrant was issued.
- (3) An authorised officer executing a warrant –
- (a) must be accompanied by a police officer,

(b) must do so at a reasonable hour, and

(c) must do so within one month from the date of its issue.

(4) Subsection (3)(b) does not apply if it appears to the authorised officer executing the warrant that the purpose of the search may be frustrated by making an entry at a reasonable hour.

(5) In subsection (3)(a), "**police officer**" means a member of the salaried police force of the Island of Guernsey, and includes -

(a) in relation to Guernsey, a member of the special constabulary of the Island of Guernsey, or

(b) in relation to Alderney, a member of the special constabulary of the Island of Alderney,

within the limits of the member's jurisdiction.

Safeguards for warranted entry, search, etc.

27. (1) An authorised officer entering any premises under section 26 must, if the occupier or any person who appears to be in charge of those premises is present –

(a) identify himself or herself to the occupier or that person, and

(b) produce to that occupier or person in charge the warrant being executed by the officer.

(2) If neither the occupier nor any person who appears to be in

charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer –

(a) must leave the premises as effectively secured against trespassers as that officer found them, and

(b) must leave in a prominent place on those premises -

(i) written notice that those premises have been entered and searched under section 26 of this Ordinance (such notice to include that officer's name and an address at which that officer may be contacted), and

(ii) a copy of the warrant mentioned in subsection (1)(b).

(3) An authorised officer who seizes anything under section 26(2) must leave a statement (setting out particulars of anything that has been seized and explaining that the officer has seized it) -

(a) with the occupier or person in charge of the premises, if that occupier or person in charge is present, or

(b) in a prominent place on those premises, if the occupier or person in charge of the premises is not present.

Endorsement, return and inspection of warrants.

28. (1) An authorised officer executing a warrant must, after executing it, make an endorsement on it stating –

- (a) whether the things sought were found, and
- (b) whether any things, other than things which were sought, were seized.

(2) A warrant which has been executed, or which has not been executed within the time allowed for its execution, must be returned to the Greffier.

(3) The Greffier must retain a warrant which is returned for 12 months beginning on the date of its return.

(4) If, during the period for which a warrant is to be retained under subsection (3), the occupier of the premises to which it relates asks to inspect it, the Greffier must allow that occupier to do so.

Miscellaneous powers

Persons exercising powers may bring other persons, etc.

29. An authorised officer entering any premises under section 20 or 26 may bring onto the premises any person or thing that the officer considers necessary.

Storage and disposal of seized property.

30. (1) An authorised officer must store and dispose of any seized property in accordance with Schedule 1.

(2) Schedule 1 has effect in relation to any seized property.

(3) On the application of any authorised officer or any person who claims the seized property, the Court may, notwithstanding any provision to

the contrary in Schedule 1 –

- (a) make an order for the delivery of the property to the person appearing to the court to be the owner of it, or
 - (b) make any other order that the court thinks fit in respect of the property, for example an order for the forfeiture or destruction of the property.
- (4) In this section, "**the Court**" –
- (a) in relation to Guernsey, means the Magistrate's Court, and
 - (b) in relation to Alderney, means the Court of Alderney.

Other powers not limited.

31. For the avoidance of doubt, the powers conferred by any provision of this Ordinance are in addition to any other powers conferred by or under any other enactment or any rule of customary or common law.

Obstruction, penalties, etc.

Obstruction, etc. or provision of false, deceptive or misleading information.

32. (1) A person is guilty of an offence who –
- (a) intentionally obstructs an authorised officer who is acting in the exercise of the officer's functions under this Ordinance,
 - (b) without reasonable cause fails to comply with any

requirement made by an authorised officer who is acting in the exercise of the officer's functions under this Ordinance, or

- (c) removes, tampers or otherwise interferes with a thing secured against interference under section 20(4)(f) or 26(2).

(2) A person is guilty of an offence if –

- (a) for the purposes of or in connection with an application made under this Ordinance,
- (b) in purported compliance with any registration condition,
- (c) in purported compliance with any direction or requirement imposed under, or otherwise for the purposes of, this Ordinance, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which the person intends, or could reasonably be expected to know, that the information would or might be used by any person for the purpose of exercising that person's functions under this Ordinance,

the person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes, or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

Penalties and proceedings.

33. (1) A person guilty of an offence under this Ordinance is liable upon summary conviction or conviction on indictment, to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 3 on the uniform scale, or both.

(2) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that officer or other person, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its

members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

(4) In subsection (1), "**uniform scale**" means the uniform scale of fines for the time being in force in relation to the relevant island under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e.

Court may order forfeitures or suspension.

34. (1) Where a person is convicted of an offence under this Ordinance, the court may, in addition to imposing the penalties specified in section 33(1), order the forfeiture to the States of anything that was used in, the subject of, or otherwise involved in the commission of the offence.

(2) Where a registered person is convicted of an offence under this Ordinance, the court may order any registration held by the person to be suspended –

- (a) in the case of a person convicted summarily of an offence, for a period not exceeding three months, and
- (b) in the case of a person convicted of an offence on indictment, for a period not exceeding one year,

and the registration ceases to have effect during that period.

(3) The court may make a forfeiture order under subsection (1) -

^e Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXXI, p. 542; Ordinance No. XXIX of 2006.

- (a) regardless whether the thing to be forfeited is seized property, and
 - (b) in the case of seized property, regardless whether the property has been returned to the person entitled to possession of that property.
- (4) The court may make any order it considers appropriate to give effect to a forfeiture order made under subsection (1).

PART V
GENERAL PROVISIONS

Delegations by Department or registration officer.

35. Section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^f has effect in relation to the functions of the Department and the registration officer under this Ordinance as if –

- (a) the reference to "any officer responsible to that Committee" in section 4(1)(a) of that Law includes a reference to any employee of the States of Guernsey (whether or not that employee is responsible to the Department), and
- (b) the office of registration officer is a public office for the purposes of section 4(1)(b) of that Law.

^f Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

Service of documents.

36. (1) Any document to be given or served under, or for the purposes, of this Ordinance may be given or served –

- (a) on an individual, by being delivered to the individual, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) on an authorised officer or the Department, by being left at, or sent by post or transmitted to, the principal offices of the authorised officer or the Department in Guernsey.

- (2) In subsection (1) –
- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
 - (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

(3) If a person notifies an authorised officer or the Department of an address for service within Guernsey or Alderney for the purposes of this Ordinance, any document to be given to or served on that person may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served –

- (a) by being published by an authorised officer or the Department in such manner and for such period as the officer or the Department thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of subsections (1) to (5) and (8) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on an authorised officer or the Department, under or for the purposes of this Ordinance, is to be regarded as being given or served until it is received.

(7) If a person upon whom a document is to be served under this Ordinance is a child or a person under legal disability, the document shall be served on the person's guardian; and if there is no guardian, the party wishing to effect service may apply to the court for the appointment of a person to act as guardian for the purposes of this Ordinance.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(9) Service of a document sent by post is proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section "**document**" does not include a summons.

(11) The provisions of this section are subject to any contrary provision under this Ordinance.

Confidentiality.

37. (1) This section applies to any information from which an individual or body may be identified and which is acquired by a person in carrying out the person's functions under this Ordinance.

(2) A person mentioned in subsection (1) must not disclose any information to which this section applies without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure –

- (a) is expressly authorised or required by or under this Ordinance or any other enactment, or
- (b) appears to that person to be necessary –
 - (i) to enable functions under this Ordinance to be carried out,
 - (ii) in the interests of –
 - (A) the investigation, detection or prevention of offences, or
 - (B) the apprehension or prosecution of offenders, or
 - (iii) to comply with a court order.

(3) A person who fails to comply with or contravenes subsection (2) is guilty of an offence.

Protection from self-incrimination.

38. A statement made by a person in response to a requirement imposed by or under this Ordinance ("**the statement concerned**") –

- (a) may be used in evidence against the person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against the person in criminal proceedings except –
 - (i) where evidence relating to the statement concerned is adduced, or a question relating to the statement concerned is asked, in the proceedings by or on behalf of that person,
 - (ii) in proceedings for an offence under section 32(2),
 - (iii) in proceedings for perjury or perverting the course of justice, or
 - (iv) in proceedings where, in giving evidence, that person makes a statement inconsistent with the statement concerned, but in this case the statement concerned is only admissible to the extent necessary to establish the inconsistency.

Regulations may amend period for notices, applications, etc.

39. The Department may at any time by Regulations amend any period for the giving of notices, making of applications, submissions or appeals, or the doing of any other thing, specified in any of the following provisions –

- (a) section 10(2)(b),
- (b) section 13(1),
- (c) section 14(1),
- (d) section 15(3) or (4), or
- (e) section 16(3)(a).

General provisions as to regulations.

40. (1) Regulations made under this Ordinance –

- (a) may be amended or repealed by subsequent regulations made under this Ordinance, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to the Department to be necessary or expedient (including, without limitation, provision making consequential amendments to this Ordinance or any other enactment).

(2) Any power conferred by this Ordinance to make regulations may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

Interpretation.

41. (1) In this Ordinance, unless the context requires otherwise –

"**the 1972 Law**" means the Child Protection (Guernsey) Law, 1972^g,

"**the 2011 Regulations**" means the Child Protection (Registration

^g Ordres en Conseil Vol. XXIII, p. 238; as amended by Vol. XXXI, p. 278; Vol. XXXVII, p. 45; Vol. XLI, p. 151; applied to Alderney by Recueil d'Ordonnances Tome XXVIII, p. 295; Recueil d'Ordonnances Tome XXIX, p. 406; Ordinance Nos. VII and XLII of 2010; No. XXVII of 2012.

Fees) (Guernsey and Alderney) Regulations, 2011^h,

"**authorised officer**" means the registration officer and any other officer appointed to be an authorised officer under section 19(1)(b),

"**certificate**" means a certificate of registration issued under section 5(3),

"**child minder**" means a person who looks after any child under the age of 8 years (whether or not the service is provided in the form of an educational activity) for the designated period of time or longer –

- (a) for reward, and
- (b) on premises which are wholly or mainly used as a dwelling,

"**child minding services**" means services provided as a child minder,

"**Children Law**" means the Children (Guernsey and Alderney) Law, 2008,

"**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004ⁱ, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled,

^h G.S.I. No. 9 of 2011.

ⁱ An Act of Parliament, Chapter 33 of 2004.

"close relative" means any grandparent, great-grandparent, brother, sister, uncle, aunt, nephew, niece or first cousin; and a relationship of the whole blood includes a relationship of a half-blood,

"day care provider" means a person who looks after any child under the age of 8 years (whether or not the service is provided in the form of an educational activity) for the designated period of time or longer –

- (a) whether or not for reward, and
- (b) on any premises except –
 - (i) premises which are wholly or mainly used as a dwelling, or
 - (ii) any hospital, home or institution mentioned in section 3(3) of the 1972 Law,

"day care services" means services provided as a day care provider,

"Department" means the States of Guernsey Health and Social Services Department,

"designated period" means –

- (a) 2 hours or more a day, on six or more days in any 12-month period, or
- (b) any other period that may be prescribed in place of the period in paragraph (a),

"equipment, facilities or vehicles" means equipment, facilities or vehicles used or provided, or to be used or provided, in connection with the services,

"exempt premises" means –

- (a) premises on which child minding services or day care services are provided only during occasional outings or visits supervised by a registered person, or
- (b) any other prescribed premises,

"the Greffier" –

- (a) in relation to Guernsey, means Her Majesty's Greffier, and
- (b) in relation to Alderney, means the Greffier of the Court of Alderney,

"Guernsey" includes the islands of Guernsey,

"improvement notice" means an improvement notice issued under section 11,

"information" includes any document, statement or evidence, regardless of the manner or form in which it is kept or given,

"items subject to legal professional privilege" has the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^j,

"parent" and **"parental responsibility"** have the meanings given by sections 2 and 5, respectively, of the Children Law,

"premises" includes any place and any vehicle, vessel, aircraft, offshore installation, tent or moveable structure,

"prescribed" means prescribed by Regulations,

"registered person" means a child minder or day care provider registered under section 5,

"registered premises" –

- (a) in relation to premises on which child minding services are provided, means premises registered as premises on which those services are authorised to be provided, and
- (b) in relation to premises on which day care services are provided, means premises registered as premises on which those services are authorised to be provided,

"registration" means registration under Part I of this Ordinance and

^j Ordres en Conseil Vol. XLIII(2), p. 617; as amended by Order in Council No. XVI of 2009 and No. XV of 2011; Recueil d'Ordonnances Tome XXIX, p. 406, Tome XXXIII, p. 617 and Ordinance No. XXIX of 2011.

includes renewal of registration, and "**registered**" and other cognate terms have a corresponding meaning,

"**registration condition**" means any registration condition made or issued in accordance with section 6(1),

"**registration officer**" means the officer appointed as registration officer under section 19(1)(a),

"**Regulations**" means regulations made by the Department,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of any proceedings under this Ordinance, the Court may appoint one or more assessors to assist it in the determination of any matter before it,

"**seized property**" means anything seized by an authorised officer under this Ordinance,

"**services**" means child minding services or day care services,

"**the States**" means the States of Guernsey, and

"**vary**", in relation to a registration, includes varying the registration conditions.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^k apply to the interpretation of this Ordinance as they apply in Guernsey to the

^k Ordres en Conseil Vol. XIII, p. 355.

interpretation of an enactment.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Index of defined expressions.

42. In this Ordinance, the expressions listed below are defined by the provisions specified in relation to those expressions:

Expression	Provision
The 1972 Law	Section 41(1)
The 2011 Regulations	Section 41(1)
Authorised officer	Section 41(1)
The Bailiff	Section 23(3)
By post	Section 36(2)
Certificate	Section 41(1)
Child minder	Section 41(1)
Child minding services	Section 41(1)
Children Law	Section 41(1)
Civil partner	Section 41(1)
Close relative	Section 41(1)
Commencement date	Paragraph 12 of Schedule 2
The Court	Section 30(4)
Day care provider	Section 41(1)
Day care services	Section 41(1)
Deemed registration	Paragraph 12 of Schedule 2
Department	Section 41(1)
Designated period	Section 41(1)
Document	Section 36(10)
The earlier improvement notice	Section 11(8)
Equipment, facilities or vehicles	Section 41(1)
Exempt minder	Section 1(3)
Exempt premises	Section 41(1)
Exempt provider	Section 2(3)
The Greffier	Section 41(1)
Guernsey	Section 41(1)
Her Majesty's Procureur	Section 17(4)
Improvement notice	Section 41(1)
Information	Section 41(1)

Expression	Provision
Items subject to legal professional privilege	Section 41(1)
Last application date	Paragraph 12 of Schedule 2
Material change in the conduct of the services	Section 12(4)
Notified person	Section 15(8)
Officer	Section 19(2)
Parent	Section 41(1)
Parental responsibility	Section 41(1)
Police officer	Section 26(5)
Premises	Section 41(1)
Prescribed	Section 41(1)
Previous certificate	Paragraph 12 of Schedule 2
Registered	Section 41(1)
Registered child minder	Section 1(3)
Registered day care provider	Section 2(3)
Registered person	Section 41(1); paragraph 12 of Schedule 2
Registered premises	Section 41(1); paragraph 12 of Schedule 2
Registration	Section 41(1)
Registration condition	Section 41(1)
Registration decision	Section 15(8)
Registration officer	Section 41(1)
Regulations	Section 41(1)
Relevant Court	Section 16(10)
Relevant evidence	Section 23(3)
Reviewable decision	Section 15(8)
Royal Court	Section 41(1)
Seized property	Section 41(1)
Services	Section 41(1)
The statement concerned	Section 38
The States	Section 41(1)
Transmitted	Section 36(2)
Uniform scale	Section 33(4)
Vary	Section 41(1)

Repeals and revocations.

43. (1) The following legislation is repealed –

(a) Part III of the 1972 Law,

- (b) the Child Protection (Amendment) (Guernsey) Ordinance, 2012^l, and
- (c) the Child Protection (Amendment) (Guernsey) Ordinance, 2010^m.

(2) The 2011 Regulations are revoked.

Transitional provisions.

44. The provisions of Schedule 2 have effect.

Extent.

45. This Ordinance has effect in Guernsey and Alderney, including the territorial waters adjacent to these islands.

Citation.

46. This Ordinance may be cited as the Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015.

Commencement.

47. This Ordinance shall come into force on a date specified by regulation made by the Department.

^l Ordinance No. XXVII of 2012.

^m Ordinance No. XLII of 2010

SCHEDULE 1

PROVISIONS FOR STORAGE AND DISPOSAL OF SEIZED PROPERTY

Section 30

1. An authorised officer may store seized property in any manner and place the officer considers appropriate, before the seized property is disposed of in accordance with this Ordinance.

2. Any person who appears to an authorised officer to be the person who would, but for the seizure, be entitled to possession of the seized property must be given reasonable access to that property.

3. Where the seized property is perishable or its storage involves unreasonable expense or inconvenience, and –

- (a) the Department is unaware of any person who would, but for the seizure, be entitled to possession of the seized property,
- (b) no person has claimed the property within the period of three months after it was seized under this Ordinance, and
- (c) there is no order to the contrary by a competent court,

the Department may destroy, sell or otherwise dispose of that property in any manner the Department considers appropriate.

4. A person convicted of an offence under this Ordinance is liable to pay to the States (through the Department) all expenses reasonably incurred in relation to the storage of any seized property that was used in, the subject of, or otherwise involved in, the commission of the offence; and –

- (a) the States may recover the expenses, for which that person is liable, as a civil debt due from the person to the States, and
- (b) this paragraph applies whether or not the seized property is forfeited to the States under any enactment, but a person is not liable to pay expenses incurred on and from the day on which the thing is so forfeited.

NOT YET IN FORCE

SCHEDULE 2
TRANSITIONAL PROVISIONS

Section 44

1. Any person who, immediately before the commencement date, was registered under section 15(1)(b) of the 1972 Law –

- (a) in the case of a child minder within the meaning of section 41(1) of this Ordinance, is deemed to be registered as a child minder under section 5 of this Ordinance, and
- (b) in the case of a day care provider within the meaning of section 41(1) of this Ordinance, is deemed to be registered as a day care provider under section 5 of this Ordinance.

2. Any premises that, immediately before the commencement date, were registered under section 15(1)(a) of the 1972 Law are deemed to be registered under section 5(1)(b) of this Ordinance as premises on which child minding services or (as the case may be) day care services are authorised to be provided by the registered person in respect of those premises.

3. The registration conditions for a deemed registration are –

- (a) the conditions applicable to the registered premises under the 2011 Regulations, by reference to the type and category of those premises as specified in its previous certificate,
- (b) any other conditions or requirements made or imposed by the Department under the 2011 Regulations or the 1972 Law, that

were in force in relation to the registered person or registered premises immediately before the commencement date, and

- (c) conditions made or issued under section 6(1) of this Ordinance.

4. As soon as practicable after this Ordinance comes into force, the registration officer must issue a fresh certificate to each registered person, specifying the premises deemed to be registered in relation to that person and any registration conditions.

5. For the avoidance of doubt, a deemed registration may be suspended, revoked or varied in accordance with this Ordinance.

6. If a registered person has not made an application for registration in accordance with section 3 of this Ordinance in respect of the registered premises on or before the last application date, the deemed registration expires on the day immediately following that date.

7. Where a registered person has made an application for registration in accordance with section 3 of this Ordinance on or before the last application date, and the application is granted under this Ordinance, the deemed registration expires on the date on which the application is so granted.

8. Where a registered person has made an application for registration in accordance with section 3 of this Ordinance on or before the last application date, but the application is refused, the deemed registration expires -

- (a) if no application for review of the refusal is made within the period specified in section 15(2)(a) of this Ordinance, on the expiry of that period,

- (b) if an application for review of the refusal is made within the period specified in section 15(2)(a) of this Ordinance,
 - (i) when the application for review is finally determined or withdrawn, or
 - (ii) where an appeal against the Department's determination of the review is made within the period specified in section 16(3)(a) of this Ordinance, when the appeal is finally determined or withdrawn.

9. For the purposes of paragraph 8(b)(i), an application for review is finally determined if the application is determined by the Department and the period for appeal specified in section 16(3)(a) of this Ordinance expires without any appeal being made against the Department's determination of the review.

10. For the purposes of paragraph 8(b)(ii), an appeal against the Department's determination of a review is finally determined when the appeal and any further appeal is determined.

11. Where a registered person applies for registration in respect of registered premises in accordance with section 3 of this Ordinance and, at any time within the 12 month period preceding the commencement date –

- (a) the person or the premises were registered under section 15(1) of the 1972 Law, or
- (b) any fee for continuing registration payable under regulation 3 of the 2011 Regulations was paid to the Department in respect of the person or the premises –

the registration officer may waive all or any part of the fee prescribed under this Ordinance for an application for registration or for a grant of registration, if the officer considers it fair and just to do so in the circumstances.

12. In this Schedule –

"**commencement date**" means the date specified by Regulations for this Ordinance to come into force,

"**deemed registration**" means a deemed registration under paragraph 1 or 2,

"**last application date**" means the date which is two months following the commencement date,

"**previous certificate**" in relation to any registered person or registered premises, means the certificate of registration –

- (a) in force immediately before the commencement date in respect of the person or premises concerned, and
- (b) issued under the 2011 Regulations or the 1972 Law,

"**registered person**" means a person who is deemed to be a registered child minder or registered day care provider under paragraph 1, and

"**registered premises**" means premises which are deemed to be registered premises under paragraph 2.

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