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Secretary for Health, Welfare and Food
(Attn : Mr Gavin Kwai, Assistant Secretary (Family 1))
Health, Welfare and Food Bureau
Family Division
20/F, Murray Building
Garden Road
Hong Kong

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BY FAX

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Dear Mr Kwai,

Child Care Services (Amendment) Bill 2005

I write further to the first meeting of the Bills Committee on 12 May 2005.

Clause 19 Smoking and spitting

Clause 19 of the Bill proposes to amend Regulation 38(1) of the Child Care Services Regulations (“CCSR”) to provide that no person shall smoke in a centre during the hours that a centre is being operated. This proposal seems to base on Regulation 51(1) of the Education Regulations (Cap. 279, sub. leg. A) where no smoking shall be permitted in any classroom during school hours.

It has been suggested at the Bills Committee meeting that smoking should be prohibited in a child care centre at all times. We note that in the Smoking (Public Health) (Amendment) Bill 2005, any child care centre and any school would be designated as no smoking areas and that Regulation 38(1) is proposed to be repealed as a consequential amendment.

Please clarify:

- (a) whether the proposed amendment to Regulation 38(1) is within the scope of the captioned Bill, given that the main object of the Bill is to harmonize the services provided to pre-primary school children by child care centres, nurseries and kindergartens;

- (b) if the suggested amendment is within scope, whether there is any consequential amendment to Regulation 51(1) of the Education Regulations;
- (c) if the suggested amendment falls outside the scope of this Bill, whether the Administration would consider repealing the said Regulation 51(1) as a consequential amendment to the Smoking (Public Health) (Amendment) Bill 2005?

Clause 4 Application

According to your letter dated 6 May 2005, the policy intent of Clause 4 is that the Child Care Services Ordinance (“CCSO”) would not apply if a school satisfies all 3 criteria set out in the new section 3(1)(c). The Administration has also mentioned at the Bills Committee meeting that dual registration for certain schools under the Education Ordinance and CCSO is expected. It would facilitate discussion by members if you could kindly inform us:

- (a) the number of schools that would be exempted from application of CCSO under the new section 3(1)(c);
- (b) the number and types of schools that need to apply for registration under CCSO as a result of the Bill;
- (c) whether existing institutions providing overnight accommodation to more than 5 children under the age of 6 years or receiving more than 5 children with disability under that age need to register under the Education Ordinance. Please explain why the LegCo Brief states that these institutions would continue to be governed by CCSO and supervised by the Social Welfare Department.

Clause 18 Area of floor space per child

We note that the proposed amendments to Regulation 31 of CCSR are based on Regulation 40 of the Education Regulations as amended by two Education (Amendment) Regulations in 1982 and 1983 (L.N. 237/82 and L.N. 192 of 1983). Those amendments have not yet come into operation. Please clarify when the amendments to Regulation 40 would take effect.

Under the amended Regulation 40(3) of the Education Regulations, any area which appears to the Permanent Secretary for Education and Manpower to be unsuitable for any reason in calculating the area of floor space required for each pupil shall be excluded. Please confirm that the Permanent Secretary would exercise this power in the same way as the Director of Social Welfare under Regulation 31(2) of CCSR.

Education Regulations (Cap. 279, sub. leg. A)

Please explain what other administrative measures the Education and Manpower Bureau would take under the Education Ordinance and Education Regulations to achieve harmonization of services provided to pre-primary school children.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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