

CHILD CARE SERVICES (AMENDMENT) ORDINANCE 2005

CONTENTS

Section Page

PART 1

PRELIMINARY

- | | | |
|----|--------------------|------|
| 1. | Short title | A459 |
| 2. | Commencement | A459 |

PART 2

AMENDMENTS TO CHILD CARE SERVICES ORDINANCE

- | | | |
|----|--|------|
| 3. | Interpretation | A461 |
| 4. | Application | A463 |
| 5. | Exercise of Director's powers | A463 |
| 6. | Register of child care centres | A463 |
| 7. | Appointment of inspectors and medical officers | A463 |
| 8. | Regulations | A463 |

PART 3

AMENDMENTS TO CHILD CARE SERVICES REGULATIONS

- | | | |
|-----|---|------|
| 9. | Interpretation | A463 |
| 10. | Supervisors, child care workers and trainee child care workers | A465 |
| 11. | Inclusion in and removal from the registers referred to in regulation 3 | A465 |
| 12. | Appointment of staff | A467 |
| 13. | Ventilation and lighting | A467 |
| 14. | Periodic inspection of premises | A469 |
| 15. | Roof playgrounds | A469 |

Section	Page
16. Fire drills, exits	A469
17. Area of floor space per child	A471
18. Smoking and spitting	A471
19. First Schedule amended	A471
20. Third Schedule amended	A477

PART 4

SAVINGS AND TRANSITIONAL PROVISIONS

21. Transitional provision for trainee child care workers	A477
22. Savings provision for supervisors and child care workers, etc.	A479

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 15 OF 2005

L.S.

Donald TSANG
Chief Executive
7 July 2005

An Ordinance to amend the Child Care Services Ordinance and the Child Care Services Regulations to harmonize the services provided to pre-primary school children by child care centres, nurseries and kindergartens, and to make a number of miscellaneous amendments.

[1 September 2005]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Child Care Services (Amendment) Ordinance 2005.

2. Commencement

(1) Subject to subsection (2), this Ordinance shall come into operation on 1 September 2005.

(2) The following provisions of this Ordinance shall come into operation on 1 September 2007—

- (a) section 9 (in relation to paragraphs (a), (b) and (c) of that section);
- (b) section 10 (in relation to paragraphs (a), (b)(iii), (c)(iii) and (d) of that section);
- (c) section 11 (in relation to paragraph (c) of that section);
- (d) section 12; and
- (e) section 19 (in relation to paragraph (d) of that section).

PART 2

AMENDMENTS TO CHILD CARE SERVICES ORDINANCE

3. Interpretation

Section 2 of the Child Care Services Ordinance (Cap. 243) is amended—

(a) in subsection (1), by repealing the definition of “child care centre” and substituting—

““child care centre” (幼兒中心) means premises which satisfy one or more of the following descriptions—

(a) any premises which habitually receive at any one time more than 5 children who are under the age of 3 years for the purposes of care and supervision;

(b) any premises which habitually receive at any one time more than 5 children with disability who are under the age of 6 years for the purposes of care and supervision;

(c) any premises which—

(i) habitually receive at any one time more than 5 children who are under the age of 6 years for the purposes of care and supervision; and

(ii) habitually provide overnight accommodation to any of the children;”;

(b) by repealing subsection (2) and substituting—

“(2) Without prejudice to section 3(2)—

(a) for the purposes of paragraphs (a) and (b) of the definition of “child care centre”, a child of any family ordinarily residing in the premises shall be regarded as being habitually received there for the purposes of care and supervision;

(b) for the purposes of paragraph (c) of the definition of “child care centre”, a child of any family ordinarily residing in the premises—

(i) shall be regarded as being habitually received there for the purposes of care and supervision; and

(ii) shall not be regarded as being provided overnight accommodation.”.

4. Application

Section 3(1)(c) is repealed and the following substituted—

“(c) any school registered under the Education Ordinance (Cap. 279) which satisfies all of the following criteria—

- (i) all the children who are under the age of 3 years habitually received at the school are pupils receiving a nursery education within the meaning of section 3(1) of the Education Ordinance (Cap. 279) from the school;
- (ii) the school does not habitually receive at any one time more than 5 children with disability who are under the age of 6 years for the purposes of care and supervision; and
- (iii) the school does not habitually provide overnight accommodation to any child who is under the age of 6 years.”.

5. Exercise of Director’s powers

Section 4(2) is amended by adding “or the Education and Manpower Bureau” after “Social Welfare Department”.

6. Register of child care centres

Section 8(1)(a) is amended by repealing “and address”.

7. Appointment of inspectors and medical officers

Section 12(a) is amended by adding “or the Education and Manpower Bureau” after “Social Welfare Department”.

8. Regulations

Section 18(2B)(d) is amended by adding “and the keeping of registers in respect of such persons” after “such centres”.

PART 3

AMENDMENTS TO CHILD CARE SERVICES REGULATIONS

9. Interpretation

Regulation 2 of the Child Care Services Regulations (Cap. 243 sub. leg. A) is amended—

- (a) in the definition of “staff”, by repealing “or trainee worker”;
- (b) in the definition of “supervisor”, by repealing “regulation 5(1)(a);” and substituting “regulation 5(1)(a).”;
- (c) by repealing the definition of “trainee worker”;
- (d) by adding—
 - ““authorized person” (認可人士) has the meaning assigned to it under section 2 of the Buildings Ordinance (Cap. 123);
 - “non-residential centre” (非留宿中心) means a centre other than a residential centre;”.

10. Supervisors, child care workers and trainee child care workers

Regulation 3 is amended—

- (a) by repealing the heading and substituting “**Registers of supervisors and child care workers**”;
- (b) in paragraph (1)(a)—
 - (i) by repealing “and address”;
 - (ii) by repealing “paragraph 1 or 2 of”;
 - (iii) by adding “and” after “First Schedule;”;
- (c) in paragraph (1)(b)—
 - (i) by repealing “and address”;
 - (ii) by repealing “paragraph 1 or 2 of”;
 - (iii) by repealing “First Schedule; and” and substituting “First Schedule.”;
- (d) by repealing paragraph (1)(c).

11. Inclusion in and removal from the registers referred to in regulation 3

Regulation 4 is amended—

- (a) in paragraph (2)(a), by repealing “, address and qualifications”;
- (b) in paragraph (3)(a), by repealing “, whether by reason of age or otherwise,”;
- (c) by repealing paragraph (5);
- (d) by adding—

“(6) Notwithstanding any provision in these regulations, the Director may refuse an application to which paragraph (7) applies unless it is made—

- (a) before 1 March 2006; or
- (b) where the Director is satisfied that there is a good reason to grant an extension of time to a particular applicant, before a date notified in writing by the Director to the applicant.

(7) This paragraph applies to—

- (a) an application for inclusion in the register referred to in regulation 3(1)(a) by virtue of holding a qualification specified in paragraph 2(a), (b) or (c) of Part I of the First Schedule; and
- (b) an application for inclusion in the register of child care workers by virtue of holding a qualification specified in paragraph 2(a) or (b) of Part II of the First Schedule.”.

12. Appointment of staff

Regulation 5 is amended—

- (a) in paragraph (1)(b), by repealing “or, subject to paragraph (2), trainee workers”;
- (b) by repealing paragraph (2).

13. Ventilation and lighting

Regulation 21 is amended—

- (a) by repealing paragraph (3) and substituting—

“(3) Subject to paragraphs (4) and (5), the ceiling of every room in the centre shall be not less than 2.5 m above the floor level of the room.”;
- (b) by adding—

“(4) Where—

 - (a) a centre is wholly or partly situated in specified premises; and
 - (b) the premises are designed and constructed for the purposes of a child care centre,

the ceiling of every room in the centre shall be not less than 3 m above the floor level of the room.

(5) Where—

- (a) a centre is wholly or partly situated in specified premises; and
- (b) the premises are not designed and constructed for the purposes of a child care centre, the ceiling of every room in the centre shall be not less than 2.75 m above the floor level of the room.

(6) In this regulation—

“specified premises” (指明處所) means premises—

- (a) which were not used as a centre immediately before 1 September 2005; and
- (b) in respect of which an application for registration as a centre or part of a centre is made on or after 1 September 2005, irrespective of whether the premises are to be used as a new centre, as an addition to an existing centre or as the new location of an existing centre.”.

14. Periodic inspection of premises

Regulation 23 is amended—

- (a) in paragraph (1), by adding “an authorized person or” after “request”;
- (b) in paragraph (2), by repealing “Where an inspection is carried out under paragraph (1), the person specified” and substituting “A person who carries out an inspection”.

15. Roof playgrounds

Regulation 24(2) is amended by adding “an authorized person or” after “stability has been given by”.

16. Fire drills, exits

Regulation 30(1)(b) is repealed and the following substituted—

“(b) ensure that—

- (i) a fire drill, which involves the use of all exits from the centre premises, is carried out by the employees and children at least once in every 6 months; and
- (ii) once in every year such fire drill includes the evacuation of the centre premises to the point of egress at ground floor level; and”.

17. Area of floor space per child

Regulation 31 is amended—

- (a) in paragraph (1), by repealing “The minimum area” and substituting “Subject to paragraph (1A), the minimum area”;
- (b) by adding—
 - “(1A) The minimum area of floor space required in respect of each child in a centre—
 - (a) which is a non-residential centre;
 - (b) which habitually receives children aged 2 years or over; and
 - (c) which is wholly or partly situated in specified premises,shall be the area specified opposite that age in column 3(a) of the Second Schedule.”;
- (c) in paragraph (2), by repealing “paragraph (1)” and substituting “paragraphs (1) and (1A)”;
- (d) by adding—
 - “(4) In this regulation—
“specified premises” (指明處所) means premises—
 - (a) which were not used as a centre immediately before 1 September 2005; and
 - (b) in respect of which an application for registration as a centre or part of a centre is made on or after 1 September 2005, irrespective of whether the premises are to be used as a new centre, as an addition to an existing centre or as the new location of an existing centre.”.

18. Smoking and spitting

Regulation 38(1) is amended—

- (a) by repealing “Except in a room specified by the Director, no person shall smoke in a” and substituting “No person shall smoke in the premises of any”;
- (b) by repealing “during the hours that a centre is being operated”.

19. First Schedule amended

The First Schedule is amended—

- (a) by adding before Part I—

“PART IA

INTERPRETATION

In this Schedule—

“kindergarten education” (幼稚園教育) has the meaning assigned to it under section 3(1) of the Education Ordinance (Cap. 279);

“nursery education” (幼兒教育) has the meaning assigned to it under section 3(1) of the Education Ordinance (Cap. 279);

“principal” (校長), in relation to a school, means a teacher who is approved as the principal of a school under—

(a) section 53(2) or section 57(2) of the Education Ordinance (Cap. 279); or

(b) either of the repealed Ordinances;

“registered teacher” (檢定教員) has the meaning assigned to it under section 3(1) of the Education Ordinance (Cap. 279);

“repealed Ordinances” (已廢除條例) has the meaning assigned to it under section 3(1) of the Education Ordinance (Cap. 279);

“school” (學校) means a school registered under the Education Ordinance (Cap. 279).”;

(b) in Part I—

(i) by repealing “[reg. 3(1)(a)]” and substituting “[regs. 3(1)(a) & 4(7)(a)]”;

(ii) by repealing everything after the title “QUALIFICATIONS FOR ENTRY IN THE REGISTER KEPT UNDER REGULATION 3(1)(a)” and substituting—

“1. Successful completion of a training course approved by the Director.

OR

2. Being—

(a) a person who, at any time between 1 March 2005 and 31 August 2005 (both days inclusive), was the principal of a school providing nursery education or kindergarten education;

- (b) a person—
 - (i) who was recommended before 1 September 2005 under section 53(1) or section 57(1) of the Education Ordinance (Cap. 279) for approval to be the principal of a school providing nursery education or kindergarten education; and
 - (ii) in respect of whom the recommendation is subsequently approved on or after 1 September 2005 under that Ordinance; or
- (c) a person who—
 - (i) at any time before 1 March 2005 had been the principal of a school providing nursery education or kindergarten education;
 - (ii) was not such a principal at any time between 1 March 2005 and 31 August 2005 (both days inclusive) for a reason acceptable to the Director; and
 - (iii) appears to the Director to be a suitable person to be included in the register referred to in regulation 3(1)(a).”;
- (c) in Part II—
 - (i) by repealing “[reg. 3(1)(b)]” and substituting “[regs. 3(1)(b) & 4(7)(b)]”;
 - (ii) by repealing everything after the title “QUALIFICATIONS FOR A CHILD CARE WORKER” and substituting—
 - “1. Successful completion of a training course approved by the Director.
 - OR*
 - 2. Being—
 - (a) a person who, at any time between 1 March 2005 and 31 August 2005 (both days inclusive), was a registered teacher teaching pupils undergoing nursery education or kindergarten education in a school; or

- (b) a person who—
 - (i) at any time before 1 March 2005 had been a registered teacher teaching pupils undergoing nursery education or kindergarten education in a school;
 - (ii) was not such a registered teacher at any time between 1 March 2005 and 31 August 2005 (both days inclusive) for a reason acceptable to the Director; and
 - (iii) appears to the Director to be a suitable person to be included in the register of child care workers.”;
- (d) by repealing Part III.

20. Third Schedule amended

The Third Schedule is amended, in Form 1—

- (a) by repealing paragraph 3 and substituting—
 - “3. Name of person registered in respect of above centre—
 - (a) Name (in English)
 - (b) Name (in Chinese)”;
- (b) by repealing “Hong Kong 19.....” and substituting “Hong Kong 20.....”.

PART 4

SAVINGS AND TRANSITIONAL PROVISIONS

21. Transitional provision for trainee child care workers

Notwithstanding anything contained in the Child Care Services Regulations (Cap. 243 sub. leg. A), no application for inclusion in the register of trainee child care workers mentioned in regulation 3(1)(c) of the Regulations will be accepted on or after 1 September 2005.

22. Savings provision for supervisors and child care workers, etc.

Without prejudice to section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), any person whose name has been included in any of the registers referred to in regulation 3 of the Child Care Services Regulations (Cap. 243 sub. leg. A) or who has submitted an application for inclusion in any of the registers before 1 September 2005 shall not be affected by the amendments made by section 19 of this Ordinance and the provisions in the First Schedule to the Child Care Services Regulations (Cap. 243 sub. leg. A) in force immediately before 1 September 2005 shall continue to apply to that person.