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19 March 2010

Clerk to Legislative Council Panel on Welfare Services
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Miss Betty MA)

Dear Miss Ma,

“Joint Parental Responsibility Model”

At the meeting of the Legislative Council Panel on Welfare Services held on 8 February 2010, the Administration advised that it was considering in detail the “joint parental responsibility model” advocated in the Report on Child Custody and Access published by the Law Reform Commission of Hong Kong (LRC), and had consulted the Law Society of Hong Kong, social workers and women’s groups on the above LRC’s recommendation and made reference to overseas experiences. As requested by Members, we undertook to provide the names of organisations / individuals which the Administration had consulted so far, a summary of the major views collected, and hyperlinks to websites about overseas experiences in implementing the “joint parental responsibility model” after the meeting for Members’ reference. This letter aims to provide Members with the relevant information.

“Joint Parental Responsibility Model”

As set out in the Panel paper (LC Paper No. CB(2)845/09-10(05)), the specific recommendations made by the LRC for the implementation of the “joint parental responsibility model” include abolition and replacement of the existing custody order with residence orders. It follows that the parent granted

- 2 -

the residence order would only have the right to reside with the concerned child and make decisions relating to the day-to-day care of the child. For major decisions affecting the child, he would have to notify or obtain the prior consent of the other parent. The recommendations will fundamentally change the concept of "custody" which is deeply rooted in our local culture and underpins the existing Family Law. They have far-reaching implications on children and family on various fronts. As such, they must be carefully considered.

Stakeholders which the Administration has consulted on the "joint parental responsibility model" and summary of the major views collected

The list of organisations / individuals which we have consulted on the "joint parental responsibility model" so far is at Annex A. During the consultation process, they have expressed different views on the recommendations, which are summarised as follows -

The Law Society of Hong Kong agrees with the LRC's recommendations. It considers the "joint parental responsibility model" beneficial to children as the model can facilitate the embodiment of the notion that both parents still have the responsibilities for their children after divorce. The Society points out that jurisdictions such as England and Wales, Scotland and Australia have already implemented the model. Hong Kong should also adopt the model as early as possible. One of the women's groups which we have consulted also thinks that Hong Kong should implement the "joint parental responsibility model" progressively subject to the availability of sufficient complementary measures.

On the other hand, the social workers and most of the women's groups which we have consulted think that while the concept underlying the "joint parental responsibility model" is good, problems may emerge when it comes to the actual implementation. They have expressed some concerns and worries about the model, which mainly include: after the implementation of the model, there may be an increase in the number of court cases between divorced parents on issues about their children; some parents may abuse the right to participate in their children's lives and deliberately obstruct or delay the making of major decisions relating to their children, which in the end will work against the children's interests; the requirement that parents need to notify or obtain the prior consent of the other parents before making major decisions for their children may also cause unnecessary worries and disruptions to parents who have a broken relationship with their ex-spouses (including victims of domestic violence). Social workers and women's groups in general consider that changes in terminology in law may not be able to alter the mindset of parents on custody issues. Enhancing education may be more effective than law reform.

- 3 -

Information about the implementation of the “joint parental responsibility model” in overseas jurisdictions

In studying the “joint parental responsibility model”, we have made reference to the legislation and research information of overseas jurisdictions such as England and Wales and Australia. Hyperlinks to the relevant websites are at Annex B.

Yours sincerely,



(Ms Karyn CHAN)
for Secretary for Labour and Welfare

Encl.

Organisations / Individuals which the Labour and Welfare Bureau have consulted on the “Joint Parental Responsibility Model” so far

- The Law Society of Hong Kong

Social workers (in random order)

- Social workers from the Family and Child Protective Services Units of the Social Welfare Department
- Representatives from the district welfare offices of the Social Welfare Department responsible for family welfare issues
- Representatives from non-governmental organisations which operate integrated family service centres / integrated services centres

Women’s groups (in random order)

- Hong Kong Federation of Women’s Centres
- Hong Kong Women Development Association Limited
- Hong Kong Single Parents Association
- The Association for the Advancement of Feminism
- Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)
- Society for Community Organisation ¹

¹ While the Society for Community Organisation is not a women’s group per se, it may offer opinions on the subject from the perspective of women from a disadvantaged background (including new arrival women and women in poverty, etc.).

Annex B**Hyperlinks to Websites in relation to the Implementation of the “Joint Parental Responsibility Model” in Overseas Jurisdictions****Relevant research reports**

- “An Analysis of Options for Changes in the Legal Regulation of Child Custody and Access” commissioned by the Department of Justice of Canada in 2001 –

http://canada.justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2001/2001_2b/index.html

- “The Family Law Reform Act 1995: the First Three Years” published by the University of Sydney and the Family Court of Australia in 2000 –

<http://www.familycourt.gov.au/wps/wcm/resources/file/ebab0a49e079ac3/famlaw.pdf>

- “Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation” published by the Standing Committee on Family and Community Affairs of the House of Representatives of Australia in 2003 –

<http://www.aph.gov.au/house/committee/fca/childcustody/report.htm>

Relevant legislation**England and Wales–**

- The Children Act 1989: The main legislation of England and Wales for implementing the “joint parental responsibility model” –

http://www.opsi.gov.uk/acts/acts1989/ukpga_19890041_en_1

- The Children and Adoption Act 2006: A more important amendment exercise to the law in England and Wales subsequent to the implementation of the shared parental responsibility model –

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060020_en_1

- Explanatory notes for the Children and Adoption Act 2006 –

http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060020_en.pdf

Australia–

- The Family Law Act 1975: The main legislation of Australia for implementing the “joint parental responsibility model” –

[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/596B57AB34085FB6CA2575E00023CBC3/\\$file/FamilyLaw1975_WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/596B57AB34085FB6CA2575E00023CBC3/$file/FamilyLaw1975_WD02.pdf)

- The Family Law Amendment (Shared Responsibility) Act 2006: A more important amendment exercise to the law in Australia subsequent to the implementation of the shared parental responsibility model –

[http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/DB3E280E1FF93C62CA2572AE0001543D/\\$file/FamilyLawAmendSharParResp2006.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/DB3E280E1FF93C62CA2572AE0001543D/$file/FamilyLawAmendSharParResp2006.pdf)

- Brief on the Family Law Amendment (Shared Responsibility) Act 2006 –

[http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyLawAmendment\(SharedResponsibility\)Act2006](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyLawAmendment(SharedResponsibility)Act2006)