

Our Ref. : HWF CR2/5091/05 Pt.3
Tel. No. : 2973 8126
Fax No. : 2524 7635

LC Paper No. CB(2)1536/04-05(03)

6 May 2005

Ms. Bernice WONG
Legal Division
Legislative Council Secretariat
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong

Dear Bernice,

Child Care Services (Amendment) Bill 2005

Thank you for your letter of 26 April 2005.

You have sought our clarifications on a number of issues regarding some clauses of the captioned Bill. Our reply is set out in the following paragraphs –

Clause 3 Interpretation

You have raised the scenario that the proposed amendment will relax the current regulation on child care centres receiving children of 3 to 6 years under the existing Child Care Services Ordinance (CCSO) (i.e. centres habitually receiving 6 or 7 children of 3 to 6 years of age). It is a relaxation arising from the proposed amendment and the Administration is fully aware of the scenario in the drafting of the Bill. For children aged 3 to 6, they are more ready to receive systemic education programme that could only be provided in a formal educational setting regulated by the Education Ordinance (Cap 279) (EO). Centres habitually receiving 6 or 7 children of 3 to 6 years of age which fall outside of the scope of both Ordinances are

unlikely to survive as they would not be eligible for any financial assistance provided by the Government. It is also unlikely that parents will opt for the services provided by such setting which takes advantage of the statutory exemption of non-registration.

On the proposed Section 2(2)(b)(i) of the Bill, you have suggested the Administration to consider replacing the word “and” with “but”. The choice of the word “and” with “but” is a conscious decision. We use the word “and” at the end of the proposed section 2(2)(b)(i) for the following reasons –

(i) sub-paragraphs (i) and (ii) of the proposed Section 2(2)(b) set down 2 rules and the intention is that both rules will apply in deciding whether certain premises will fall within paragraph (c) of the definition of “child care centre”, hence the use of the “and” between the two sub-paragraphs; and

(ii) if we use the word “but” at the end of the proposed Section 2(2)(b)(i), it may give the impression that Section 2(2)(b)(ii) is an exception to Section 2(2)(b)(i); in fact a child habitually received in certain premises for care and supervision may or may not be provided overnight accommodation, depending on the circumstances; the word “and” is used to show that sub-paragraphs (i) and (ii) are parallel rules, rather than sub-paragraph (ii) being an exception of sub-paragraph (i).

Clause 4 Application

For your comment in paragraph (a), at present, some children who are only 2 years and 8 months old could attend nursery schools for smooth transition from child care centre (CCC) which emphasizes more on care and supervision to kindergarten (KG) which emphasizes more on the provision of education. Under EO, the words “nursery education” is defined as “a one year course of education **normally commencing** when a child has attained the age of 3 years”. The words “normally commencing” allow some flexibility regarding the age of children attending nursery school. The proposed Section 3(1)(c)(i) makes sure that a nursery will not fall within CCSO just because some of its pupils are below 3 years of age.

For your comment in paragraph (b), the policy intent is that CCSO would not apply if a school satisfies **all** 3 criteria, not just any one of the criteria. If a school satisfies any one of them, it is not exempted from registration under CCSO. For example, if a school habitually receives 8 children with disability who are under the age of 6 years for the purpose of care and supervision, the school has to be registered under CCSO. Nevertheless, there is currently only one existing institution that requires to be dually registered under such circumstances and it will be closed in August 2008 due to low utilization.

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

The Administration's plan is to implement the harmonization of pre-primary services in the 2005/06 school year (i.e September 2005). We are now making the necessary preparation for accepting applications for inclusion in the registers. We would allow for 6 months for application after the amendment Bill comes into effect. We have not provided a concrete date in the clause as we do not want to pre-empt deliberation by the legislature. Depending on the progress of the vetting of the Bill, the Administration will consider including the date in the Bill by way of Committee Stage Amendment at a later stage of the deliberation of the Bill; or to publish the date in the Gazette upon the commencement of the Bill. The Administration will also inform all CCCs and KGs on the arrangement including the period of application by way of Education Circulars, correspondences and briefing sessions.

Clause 15 Periodic inspection of premises

At present, inspections and the issue of certificate regarding structural stability of CCCs are carried out by the Director of Buildings/Housing. While in the case of KG, this is carried out by an authorized person (AP). To give more flexibility to the child care sector and to align the requirement between CCCs and KGs, amendment to Regulation 23 of the Child Care Services Regulations is necessary.

Clause 20 First Schedule amended

Paragraph 2(c) of Part I and paragraph 2(b) of Part II are for registration as CCC supervisors and child care workers respectively. These two paragraphs serve as a saving provision for those persons who have been in the business but due to certain reasons acceptable to the Director of Social Welfare (e.g. sickness, between jobs, etc.), they were not a principal or a registered teacher during the period of 6 months before the commencement of the Child Care Services (Amendment) Ordinance 2005. They will still be qualified for registration as a child care supervisor/child care worker under the mutual recognition arrangement of child care centre supervisor/KG principal and child care worker/qualified kindergarten teachers if it appears to the Director of Social Welfare that they are suitable persons.

Separately, on distinction between “a suitable person” in this context and “a fit person” referred to in Regulation 4(3)(a), while the criteria behind “a fit person” are intended to be applicable to all applicants seeking registration under Regulation 3 and information such as previous criminal record would be taken into consideration, the criteria behind “a suitable person” are intended to be applicable to persons that would not be able to benefit under the mutual recognition arrangement as a result of the inclusion of Paragraph 2(a) in the Bill and information such as the person’s recent education would be taken into consideration.

Finally, I trust that Ms. Grace LEUNG of the Law Draftsman Division of the Department of Justice has liaised with you on the Chinese text of paragraph 2(c)(ii) of Part I and paragraph 2(b)(ii) of Part II of the proposed First Schedule. We are of the view that the present Chinese text accurately reflects the English text. It seems that no amendment is required.

Yours sincerely,

(Gavin KWAI)

for Secretary for Health, Welfare and Food

c.c. Secretary for Education and Manpower (Attn: Mr Andrew Poon)
Director of Social Welfare (Attn: Mr PY Fung)
Law Draftsman (Attn: Ms Grace Leung)