

**CHILD CARE SERVICES (AMENDMENT) BILL 2005****CONTENTS**

Clause	Page
--------	------

**PART 1****PRELIMINARY**

- |    |                    |      |
|----|--------------------|------|
| 1. | Short title .....  | C495 |
| 2. | Commencement ..... | C495 |

**PART 2****AMENDMENTS TO CHILD CARE SERVICES ORDINANCE**

- |    |  |      |
|----|--|------|
| 3. | Interpretation .....                                 | C495 |
| 4. | Application .....                                    | C497 |
| 5. | Exercise of Director's powers .....                  | C499 |
| 6. | Register of child care centres .....                 | C499 |
| 7. | Appointment of inspectors and medical officers ..... | C499 |
| 8. | Regulations .....                                    | C499 |

**PART 3****AMENDMENTS TO CHILD CARE SERVICES REGULATIONS**

- |     |   |      |
|-----|---|------|
| 9.  | Interpretation .....  | C499 |
| 10. | Supervisors, child care workers and trainee child care workers                | C501 |
| 11. | Inclusion in and removal from the registers referred to in regulation 3 ..... | C501 |
| 12. | Appointment of staff .....  | C503 |
| 13. | Minimum staff requirements .....  | C503 |
| 14. | Ventilation and lighting .....  | C503 |
| 15. | Periodic inspection of premises .....   | C505 |

Clause		Page
16.	Roof playgrounds .....	C505
17.	Fire drills, exits .....	C507
18.	Area of floor space per child .....	C507
19.	Smoking and spitting .....	C509
20.	First Schedule amended .....	C509
21.	Third Schedule amended .....	C513

#### PART 4

##### SAVINGS AND TRANSITIONAL PROVISIONS

22.	Transitional provision for trainee child care workers .....	C513
23.	Savings provision for supervisors and child care workers, etc.	C515

# A BILL

## 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.

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

This Ordinance shall come into operation on a day to be appointed by the Director of Social Welfare by notice published in the Gazette.

### 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 a date specified by the Director by notice published in the Gazette; 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.
- (8) A notice published under paragraph (6)(a) is not subsidiary legislation for the purposes of section 34 of the Interpretation and General Clauses Ordinance (Cap. 1)."

## 12. Appointment of staff

Regulation 5 is amended—

- (a) in paragraph (1)(b), by repealing “or, subject to paragraph (2), trainee workers”;
- (b) in paragraph (1A)(b), by repealing “28” and substituting “30”;
- (c) by repealing paragraph (2).

## 13. Minimum staff requirements

Regulation 6(1)(c) is amended by repealing “14” and substituting “15”.

## 14. 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 post-relevant date 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 post-relevant date 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—

“post-relevant date premises” (在有關日期後啟用的處所) means premises—

(a) which were not used as a centre immediately before the relevant date; and

(b) in respect of which an application for registration as a centre or part of a centre is made on or after the relevant date, 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;

“relevant date” (有關日期) means the day appointed for the commencement of section 3 of the Child Care Services (Amendment) Ordinance 2005 ( of 2005).”.

## 15. 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”.

## 16. Roof playgrounds

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



**17. 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”.

**18. 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 post-relevant date 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—

“post-relevant date premises” (在有關日期後啟用的處所) means premises—

(a) which were not used as a centre immediately before the relevant date; and

(b) in respect of which an application for registration as a centre or part of a centre is made on or after the relevant date, 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;

“relevant date” (有關日期) means the day appointed for the commencement of section 3 of the Child Care Services (Amendment) Ordinance 2005 ( of 2005).”.

## 19. Smoking and spitting

Regulation 38(1) is amended by repealing “Except in a room specified by the Director, no” and substituting “No”.

## 20. 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);

“relevant date” (有關日期) means the day appointed for the commencement of section 3 of the Child Care Services (Amendment) Ordinance 2005 ( of 2005);

“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 during the period of 6 months immediately before the relevant date, was the principal of a school providing nursery education or kindergarten education;
    - (b) a person—
      - (i) who was recommended before the relevant date 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 under that Ordinance; or
    - (c) a person who—
      - (i) had been the principal of a school providing nursery education or kindergarten education;
      - (ii) was not such a principal at any time during the period of 6 months immediately before the relevant date 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 during the period of 6 months immediately before the relevant date, was a registered teacher teaching pupils undergoing nursery education or kindergarten education in a school; or
  - (b) a person who—
    - (i) 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 during the period of 6 months immediately before the relevant date 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.

## 21. 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

## 22. 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 the day appointed for the commencement of section 3 of this Ordinance.

### **23. 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 the day appointed for the commencement of section 3 of this Ordinance shall not be affected by the amendments made by section 20 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 that commencement shall continue to apply to that person.

## **Explanatory Memorandum**

The main object of this Bill is to amend the Child Care Services Ordinance (Cap. 243) (“the Ordinance”) and the Child Care Services Regulations (Cap. 243 sub. leg. A) (“the Regulations”) to harmonize the services provided to pre-primary school children by child care centres, nurseries and kindergartens. The more important provisions of the Bill are explained below.

### **Preliminary (Part 1)**

2. Part 1 deals with the short title and the commencement date (clauses 1 and 2).

### **Amendments to Child Care Services Ordinance (Part 2)**

3. The definition of “child care centre” is amended so that—

- (a) premises receiving more than 5 children who are under the age of 3 years; or
- (b) (in the situation that the premises provide overnight accommodation to children or receive children with disability) premises receiving more than 5 children who are under the age of 6 years,

will be a child care centre within the meaning of the Ordinance (clause 3(a)).

4. For the purposes of determining whether certain premises are a child care centre within the meaning of the Ordinance, children who are members of any family ordinarily residing in the premises will also be counted (clause 3(b)). It should be noted that the provisions of the Ordinance relating to child care centres do not apply where the only children in the premises are members of families ordinarily residing in the premises (section 3(2) of the Ordinance).

5. The Ordinance does not apply to a school registered under the Education Ordinance (Cap. 279) if all the children received at the school are receiving a nursery education from the school, and the school does not provide overnight accommodation or receive more than 5 children with disability under the age of 6 years (clause 4).
6. The Director of Social Welfare is given the power to authorize any officer of the Education and Manpower Bureau to exercise any function of the Director under the Ordinance to facilitate the working of a joint office to be staffed by officers from both the Social Welfare Department and the Education and Manpower Bureau (clause 5). The Chief Executive is also given the power to appoint any officer of the Education and Manpower Bureau to be an inspector of child care centres (clause 7).

### **Amendments to Child Care Services Regulations (Part 3)**

7. The definition of “trainee worker” and references to trainee workers are repealed (to be effective on a later date to be appointed by the Director of Social Welfare) (clauses 9, 10, 11, 12 and 20).
8. To be qualified as a supervisor of a child care centre suitable for appointment under regulation 5(1A) of the Regulations or a child care worker, a person has to complete a training course approved by the Director (clause 20).
9. A person who, at any time during the period of 6 months immediately before the day appointed for the commencement of the main part of the Bill when enacted (“the relevant date”), was a principal (or recommended to be a principal) or a registered teacher of a school providing nursery or kindergarten education, is qualified to apply for registration as a supervisor of a child care centre or a child care worker respectively. However, he must apply within the time limit imposed by the Director of Social Welfare. If a person had been a principal or registered teacher before the relevant date but for a reason acceptable to the Director was not respectively a principal or registered teacher at any time during the period of 6 months immediately before the relevant date, the Director may include that person in the registers if it appears to the Director that the person is a suitable person for inclusion in the registers (clauses 11 and 20).
10. In respect of child care centres which receive non-resident children of the age of 2 years or above, the staff to children ratio is changed from 1:14 to 1:15 (clause 13).

11. In respect of child care centres which are wholly or partly situated in premises which were not used as a child care centre immediately before the relevant date and for which an application for registration as a child care centre is made on or after the relevant date, they have to comply with new ceiling height and new floor space requirements (clauses 14 and 18).

#### **Savings and Transitional Provisions (Part 4)**

12. Application for inclusion in the register of trainee child care workers will not be accepted after the relevant date (clause 22).

13. Any person whose name has been included in the registers of supervisors of child care centres, child care workers or trainee child care workers or any person who has submitted an application for inclusion in those registers before the relevant date will not be affected by the new qualification requirements (clause 23).