

Chapter:	243	CHILD CARE SERVICES ORDINANCE	Gazette Number	Version Date
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		Long title	L.N. 446 of 1997	30/09/1997
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To provide for the registration, control and inspection of child care centres, to provide for the control of childminders, and for purposes connected therewith.

(Amended 38 of 1997 s. 2)

[Sections 1 to 5 and 7 to 18

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1 June 1976

Section 6

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1 June 1977

L.N. 104 of 1976]

(Originally 13 of 1975)

Part:	I	PRELIMINARY	L.N. 446 of 1997	30/09/1997
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Section:	1	Short title	L.N. 446 of 1997	30/09/1997
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This Ordinance may be cited as the Child Care Services Ordinance.

(Amended 38 of 1997 s. 3)

Section:	2	Interpretation	15 of 2005	01/09/2005
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(1) In this Ordinance, unless the context otherwise requires-

"certificate of exemption" (豁免證明書) means a certificate issued by the Director under section 11B; (Added 38 of 1997 s. 4)

"certificate of registration" (註冊證明書) means the certificate issued in respect of a child care centre under section 7(2);

"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; (Replaced 15 of 2005 s. 3)

"childminder" (幼兒托管人) means a person who habitually undertakes the care and supervision of one or more, but fewer than 6, children who are under the age of 6 years and at least one of whom is not related to that person, at premises not being the home of any of the children in his or her care; (Added 38 of 1997 s. 4)

"Director" (署長) means the Director of Social Welfare;

"inspector" (視察主任) means a person appointed under section 12 to be an inspector of child care centres;

"medical officer" (中心醫生) means a Government medical officer appointed under section 12 to be a medical officer of child care centres;

"mutual help child care centre" (互助幼兒中心) means a child care centre in respect of which a certificate of exemption has been issued; (Added 38 of 1997 s. 4)

"mutual help child care group" (互助幼兒小組) has the meaning assigned to it in section 11A; (Added 38 of 1997 s. 4)

- "parent organization" (主辦機構) has the meaning assigned to it in section 11A; (Added 38 of 1997 s. 4)
- "person exempted" (獲豁免人士) means, in relation to a mutual help child care centre, the organization specified in the certificate of exemption issued in respect of the centre; (Added 38 of 1997 s. 4)
- "premises" (處所) includes any building, enclosure, ground or open air space;
- "prohibited person" (被禁止人士) means a person who is prohibited from acting as, or holding himself out as willing to act as, a childminder for the purposes of section 15A(1); (Added 38 of 1997 s. 4)
- "registered child care centre" (註冊幼兒中心) means a child care centre in respect of which a person is registered under section 7(2).
- (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. (Replaced 15 of 2005 s. 3)
- (3) For the avoidance of doubt it is declared that a person undertakes the care and supervision of a child for the purposes of the definition of "childminder" in subsection (1) notwithstanding that he does so solely for the purpose of providing an education for the child or of providing instruction for the child in any activity or discipline. (Added 38 of 1997 s. 4)

Section:	3	Application	15 of 2005	01/09/2005
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- (1) This Ordinance shall not apply to-
- (a) any child care centre maintained and controlled by the Government;
 - (b) any child care centre situated in the premises of a hospital-
 - (i) which is under the management and control of the Hospital Authority or is maintained and controlled by the Government; or (Amended 38 of 1997 s. 5)
 - (ii) in respect of which a person is registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165); or
 - (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. (Replaced 15 of 2005 s. 4)
- (2) For the avoidance of doubt, the provisions of this Ordinance relating to child care centres do not apply where the only children in premises are members of families ordinarily residing in the premises. (Amended 38 of 1997 s. 5)

Section:	4	Exercise of Director's powers	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Deputy Director of Social Welfare may exercise any function of the Director under any provision of this Ordinance.

(2) The Director may authorize any officer of the Social Welfare Department or the Education Bureau to exercise any function of the Director under any provision of this Ordinance. (Amended 15 of 2005 s. 5; L.N. 130 of 2007)

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Section:	5	Power of Chief Executive to give directions	L.N. 446 of 1997	30/09/1997
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Remarks:

Adaptation amendments retroactively made - see 37 of 2000 s. 3

(1) The Chief Executive may give to the Director or to any other public officer such directions as he thinks fit with respect to the exercise or performance of their respective functions under this Ordinance, either generally or in any particular case.

(2) A person to whom a direction is given by the Chief Executive under subsection (1) shall, in the exercise or performance of his functions under this Ordinance, comply with that direction.

(Amended 37 of 2000 s. 3)

Part:	II	REGISTRATION OF CHILD CARE CENTRES	L.N. 446 of 1997	30/09/1997
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Section:	6	Prohibition of unregistered child care centres	L.N. 446 of 1997	30/09/1997
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(1) Subject to section 11B, no person shall operate or take part in the management of a child care centre which is not a registered child care centre.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine at level 6 and to imprisonment for 2 years. (Amended 39 of 1983 s. 2)

(Amended 38 of 1997 s. 6)

Section:	7	Registration	L.N. 446 of 1997	30/09/1997
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(1) Application for registration in respect of a child care centre shall be-

(a) made to the Director in the form specified by him; and

(b) accompanied-

(i) by the documents specified in such form; and

(ii) by any certificate or notice specified in the form, signed by the person specified in the form in relation to that certificate or notice, concerning the suitability of the design and construction of the centre, its structural condition, fire safety in the centre, the safety of gas and electrical installations in the centre and any other matter pertaining to the safety of children attending the centre. (Replaced 38 of 1997 s. 7)

(2) The Director shall, on receipt of an application in accordance with subsection (1), determine the application-

(a) by-

(i) registering the applicant in respect of the child care centre named in the application; and

(ii) issuing to the applicant, subject to any conditions specified therein, a certificate of registration in the prescribed form; or

(b) by refusing to register the applicant.

(3) The Director may refuse to register the applicant if it appears to him-

(a) that the applicant or any person he proposes to employ at the child care centre is not a fit person, whether by reason of age or otherwise, to operate, take part in the management of or be employed at the child care centre;

(b) that for reasons connected with the situation, construction, accommodation, staffing or equipment, the premises to be used for the child care centre are not fit to be used for the purposes of a child care centre;

(c) that such premises do not comply with any requirements relating to the structure, fire precautions, health, sanitation and safety set out in regulations made under section 18;

(d) that the child care centre would not be under the continuous personal management and supervision of a person of sufficient qualifications and experience to ensure the satisfactory operation of the child care centre;

- (e) that the proposed name of the child care centre is unsuitable or is the same as or similar to-
 - (i) the name of any other registered child care centre;
 - (ii) the name of any child care centre in respect of which the registration of a person has been cancelled.

(4) A certificate of registration or a copy thereof purporting to be signed by or for the Director shall be admitted in evidence without further proof and shall-

- (a) until the contrary is proved, be presumed to be such certificate or copy so signed;
- (b) be evidence of the facts stated therein.

Section:	7A	Unregistered person not to operate registered child care centre	L.N. 446 of 1997	30/09/1997
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(1) A person shall not operate a registered child care centre unless he is the person registered under section 7 in respect of that centre.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine at level 6 and to imprisonment for 2 years.

(Added 38 of 1997 s. 8)

Section:	8	Register of child care centres	15 of 2005	01/09/2005
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(1) The Director shall cause to be kept, in such form as he may specify, a register of registered child care centres containing-

- (a) the name of every person registered in respect of child care centres; (Amended 15 of 2005 s. 6)
- (b) the name and address of every registered child care centre; and
- (c) such other particulars as the Director thinks fit.

(2) A certificate purporting to be signed by or for the Director that a child care centre is registered or is not registered shall be evidence of the facts stated therein until the contrary is proved.

(3) A copy of an entry in the register kept under subsection (1) purporting to be certified under the hand of the Director shall, until the contrary is proved, be admitted in evidence as proof of the facts stated therein as at the date of such certified copy.

(4) The register may, on application in writing to the Director and on payment of the fee, if any, prescribed, be inspected at the office of the Director during office hours by any member of the public.

Section:	9	Cancellation of registration	L.N. 446 of 1997	30/09/1997
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The Director may cancel the registration of a person in respect of a child care centre-

- (a) on any ground specified in section 7(3)(a), (b), (c) or (d) which would have entitled him to refuse an application for registration of that person in respect of that child care centre;
- (b) on the ground that-
 - (i) that person has been convicted of an offence against this Ordinance or an indictable offence; or
 - (ii) any other person has been convicted of such an offence in respect of that child care centre;
- (c) on the ground that, in respect of that child care centre or the children of that centre-
 - (i) any of the provisions of this Ordinance have been or are being contravened; or
 - (ii) any requirement, order or direction made or given under this Ordinance has not been complied with;
- (d) on the ground that any condition specified in its certificate of registration has not been or is not being complied with; or
- (e) if it appears to him that-
 - (i) that child care centre has ceased to be operated as such or to exist; or
 - (ii) that such person has ceased to operate that child care centre.

Section:	10	Notice of refusal or cancellation of registration	L.N. 446 of 1997	30/09/1997
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(1) The Director shall, before refusing an application for registration or cancelling any registration, give to the applicant or the person registered, as the case may be, notice of his intention to do so, stating the grounds on which he

intends to refuse the application or cancel the registration and containing an intimation that the applicant or the person registered may make written representations to him.

(2) If the Director decides to refuse an application for registration or to cancel the registration, he shall make a written order, properly dated and signed, to that effect and shall send a copy thereof by registered post to the applicant or the person registered, at the address last known to the Director.

Section:	11	Right of appeal	L.N. 446 of 1997	30/09/1997
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Any person aggrieved by a decision of the Director-

- (a) under section 7(2) refusing an application for registration; or
- (b) under section 9 cancelling a registration,

made in respect of him may, within 28 days after receipt of a copy of the order in relation to that decision, appeal to the Administrative Appeals Board.

(Replaced 38 of 1997 s. 9)

Part:	IIA	EXEMPTION FROM REGISTRATION OF CHILD CARE CENTRES	L.N. 446 of 1997	30/09/1997
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(Part IIA added 38 of 1997 s. 10)

Section:	11A	Interpretation	L.N. 446 of 1997	30/09/1997
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In this Part-

"mutual help child care group" (互相幼兒小組) means a group established by a bona fide non-profit-making organization and operating on a non-profit-making basis for the purpose of providing occasional care and supervision of the children of members of the group;

"parent organization" (主辦機構) means, in relation to a mutual help child care group, the bona fide non-profit-making organization by which the mutual help child care group was established.

(Added 38 of 1997 s. 10)

Section:	11B	Exemption for mutual help child care centre	L.N. 446 of 1997	30/09/1997
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(1) The parent organization of a mutual help child care group operating or proposing to operate a child care centre in premises occupied by that organization or group may apply to the Director, in respect of that child care centre, for exemption from the requirement for registration in section 6(1).

(2) An application for the purposes of subsection (1) shall be-

- (a) made to the Director in a form specified by him;
- (b) accompanied-
 - (i) by the documents specified in such form; and
 - (ii) by any certificate or notice specified in the form, signed by the person specified in the form in relation to that certificate or notice, concerning the suitability of the design and construction of the centre, its structural condition, fire safety in the centre, the safety of gas and electrical installations in the centre and any other matter pertaining to the safety of children attending the centre.

(3) The Director shall, on receipt of an application in accordance with subsection (2), determine the application-

- (a) by-
 - (i) granting an exemption in respect of the child care centre named in the application; and
 - (ii) issuing to the applicant, subject to any conditions specified in the certificate, a certificate of exemption in the prescribed form; or
- (b) by refusing to grant an exemption.

(4) The Director may refuse to grant an exemption if it appears to him-

- (a) that the group established by the applicant for the purpose of operating a child care centre is not a mutual help child care group;

(b) that for reasons connected with the situation, construction, accommodation, staffing or equipment, the premises to be used for the proposed mutual help child care centre are not fit to be used for that purpose;

(c) that the premises referred to in paragraph (b) do not comply with any requirements relating to the structure, fire precautions, health, sanitation and safety set out in regulations made under section 18.

(5) The granting of an exemption and issuing of a certificate under this section shall have the effect that the following persons shall, unless the exemption has been revoked, be exempt from the application of Part II as regards the mutual help child care centre specified in the certificate, namely-

(a) the parent organization named in the certificate or any person who is for the time being a member or office bearer of that organization;

(b) any mutual help child care group established by the parent organization or any person who is a member of such a group.

(6) A certificate of exemption or a copy of such certificate purporting to be signed by or for the Director shall be admitted in evidence without further proof and shall-

(a) until the contrary is proved, be presumed to be such certificate or copy so signed;

(b) be evidence of the facts stated in the certificate.

(Added 38 of 1997 s. 10)

Section:	11C	Mutual help child care centre not to be operated except by person exempted	L.N. 446 of 1997	30/09/1997
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(1) A person shall not operate or take part in the management of a mutual help child care centre unless he is-

(a) a member of a mutual help child care group established by the parent organization named in a certificate of exemption issued under section 11B in respect of that centre; or

(b) a person authorized in writing by that parent organization to operate or take part in the management of that child care centre.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine at level 6 and to imprisonment for 2 years.

(Added 38 of 1997 s. 10)

Section:	11D	Revocation of exemption	L.N. 446 of 1997	30/09/1997
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The Director may revoke any exemption granted under section 11B-

(a) on any ground specified in section 11B(4) which would have entitled him to refuse an application for exemption in respect of the mutual help child care centre concerned;

(b) on the ground that-

(i) there is received into care and supervision in the centre any child who is not the child of a member of the mutual help child care group; or

(ii) a fee is charged to any person for the provision of care and supervision of a child in the mutual help child care centre, other than a fee representing a pro rata apportionment of the reasonable costs directly incurred in the operation of the centre, except for rent and rates;

(c) on the ground that, in respect of that mutual help child care centre or the children of that centre-

(i) any of the provisions of this Ordinance have been or are being contravened; or

(ii) any requirement, order or direction made or given under this Ordinance has not been complied with;

(d) on the ground that any condition specified in its certificate of exemption has not been or is not being complied with.

(Added 38 of 1997 s. 10)

Section:	11E	Notice of refusal or withdrawal of certificate of exemption	L.N. 446 of 1997	30/09/1997
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(1) The Director shall, before refusing an application for exemption or revoking any exemption, give to the applicant or the person exempted, as the case may be, notice of his intention to do so, stating the grounds on which he intends to refuse the application or revoke the exemption and containing an intimation that the applicant or the person exempted may make written representations to him.

(2) If the Director decides to refuse an application for exemption or to revoke the exemption, he shall make a written order, properly dated and signed, to that effect and shall send a copy of the order by registered post to the applicant or the person exempted, at the address last known to the Director.

(Added 38 of 1997 s. 10)

Section:	11F	Right of appeal	L.N. 446 of 1997	30/09/1997
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Any person aggrieved by a decision of the Director-

- (a) under section 11B(3) refusing an application for exemption; or
- (b) under section 11D revoking an exemption,

made in respect of him may, within 28 days after receipt of a copy of the order in relation to that decision, appeal to the Administrative Appeals Board.

(Added 38 of 1997 s. 10)

Part:	III	INSPECTION OF CHILD CARE CENTRES	L.N. 130 of 2007	01/07/2007
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Section:	12	Appointment of inspectors and medical officers	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

The Chief Executive may by notice in the Gazette appoint- (Amended 37 of 2000 s. 3)

- (a) any officer of the Social Welfare Department or the Education Bureau to be an inspector of child care centres; (Amended 15 of 2005 s. 7; L.N. 130 of 2007)
- (b) any Government medical officer to be a medical officer of child care centres.

Section:	13	Inspection of child care centres	L.N. 446 of 1997	30/09/1997
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The Director and any inspector or medical officer may-

- (a) at all reasonable times enter and inspect any child care centre or any premises which he has reason to suspect are used for the purposes of a child care centre; (Replaced 62 of 1982 s. 3)
- (b) require any person taking part in the operation or management of a child care centre to produce any book, document or other article relating to the management of that child care centre or to any other activity in respect of the child care centre, or to furnish any information relating to such management or activity;
- (c) remove for further examination any book, document or other article which he has reason to suspect is evidence of the commission of an offence against this Ordinance, or is evidence of a ground for the cancellation of the registration of a person, or the revocation of an exemption, in respect of a child care centre; and (Amended 38 of 1997 s. 11)
- (d) do such other things as are necessary for the inspection of a child care centre.

Section:	14	Director may direct remedial measures	L.N. 446 of 1997	30/09/1997
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(1) The Director may, in respect of any registered child care centre or mutual help child care centre, by notice in writing, give such directions as he thinks necessary to ensure that- (Amended 38 of 1997 s. 12)

- (a) it is operated and managed satisfactorily;
- (b) the welfare of the children attending it is promoted in a proper manner;
- (c) adequate apparatus and equipment necessary as safeguards against fire are provided therein; and
- (d) the provisions of this Ordinance are complied with.

(2) A notice under subsection (1)-

- (a) shall be served upon the person registered or exempted (as the case may be) in respect of the child care centre; and (Amended 38 of 1997 s. 12)

(b) shall specify a period of time within which the directions shall be complied with.

Section:	15	Director may order cessation of use of premises as child care centre	L.N. 446 of 1997	30/09/1997
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(1) The Director may-

- (a) if it appears to him that there is any danger or risk of danger to persons in any registered child care centre premises or mutual help child care centre premises; or (Amended 38 of 1997 s. 13)
- (b) if, in respect of any such premises, a direction given under section 14 is not complied with within the period of time specified in the notice served thereunder,

by order in writing direct that the premises shall cease to be used as a child care centre for such period as he thinks fit or until further notice.

(2) An order under this section shall be served on the person registered or exempted (as the case may be) in respect of the premises concerned and shall take effect from the date of the service thereof. (Amended 38 of 1997 s. 13)

(3) It shall be sufficient service of an order under this section if-

- (a) it is delivered personally to the person on whom it is to be served;
- (b) it is sent by registered post to the last known address of that person; or
- (c) a copy thereof is posted in a conspicuous place upon or in the premises to which it relates.

Part:	IIIA	CHILDMINDERS	L.N. 446 of 1997	30/09/1997
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(Part IIIA added 38 of 1997 s. 14)

Section:	15A	Prohibited person not to act as childminder	L.N. 446 of 1997	30/09/1997
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(1) Subject to section 15D, any person-

- (a) who has at any time been convicted-
 - (i) in Hong Kong of any of the offences set out in paragraphs 3 to 12 of the Schedule; or
 - (ii) in Hong Kong or elsewhere of any of the offences set out in paragraph 1 or 2 of the Schedule; or
- (b) who has been determined by the Director under section 15B to be unsuited to act as a childminder,

(in this Part referred to as a "prohibited person") shall not act as a childminder nor hold himself out as willing to act as a childminder.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 6 and to imprisonment for 2 years.

(3) This section has effect notwithstanding section 2 of the Rehabilitation of Offenders Ordinance (Cap 297).
(Added 38 of 1997 s. 14)

Section:	15B	Persons may be determined to be unsuited to act as childminder on basis of coroner's inquiry	L.N. 446 of 1997	30/09/1997
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(1) Following the conclusion of an inquiry by a coroner into the death of a child while in the care of a childminder the coroner shall, if so requested by the Director, or may, of his own accord, forward to the Director for the purpose of considering a determination under subsection (2) copies of the following documents relating to the inquiry, namely-

- (a) the record of his findings or the findings and verdict of the jury (as the case may be);
- (b) any riders recorded by the coroner;
- (c) a transcript of any notes or record of evidence taken or made; and
- (d) any documents which have been produced in evidence.

(2) Where-

- (a) the Director has received documents forwarded to him under subsection (1) concerning the death of a child while in the care of a person acting as a childminder;
- (b) the Director is of the opinion, having regard to such documents, that the death of the child was caused or contributed to by the failure of the person to exercise proper care in acting as a childminder,

he may determine the person to be unsuited to act as a childminder.

- (3) A determination shall not be made by the Director under subsection (2) in respect of any person unless-
- (a) not less than 28 days before making the determination the person has been given notice in writing informing him of the Director's intention to consider the making of a determination under subsection (1) and enclosing copies of any documents received by the Director under subsection (1);
 - (b) the person has been allowed an opportunity to make written representations to the Director.

(4) Where the Director has made a determination under subsection (2) in respect of a person he shall by notice in writing notify the person of his determination stating the grounds upon which the determination was made.

(5) A person aggrieved by a decision of the Director under subsection (2) made in respect of him may, within 28 days after receiving notification of the decision under subsection (4), appeal to the Administrative Appeals Board.

(6) In this section, reference to the death of a child while in the care of a childminder shall be read as including a reference to the death of a child the cause of which death arose while the child was in the care of a childminder.

(7) Any notice required to be given to a person under this section may be so given by being sent by registered post to the person at his last address known to the Director.

(Added 38 of 1997 s. 14)

Section:	15C	Issue of certificate to childminder	L.N. 446 of 1997	30/09/1997
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(1) A person who is not a prohibited person may by notice in writing to the Director request the issue of a certificate stating that as at the date of issue of the certificate the person is not to the knowledge of the Director a person who is prohibited from acting as a childminder for the purposes of section 15A.

(2) A notice requesting a certificate under this section shall be in a form approved by the Director and shall be accompanied by such fee as may be prescribed by the Director and notified in the Gazette.

- (3) A person requesting a certificate under subsection (1) shall in his notice of request-
- (a) declare that he is not a person who is prohibited from acting as a childminder under section 15A(1);
 - (b) authorize the Commissioner of Police to release to the Director such information as the Director may request, being information which the Director considers may tend to indicate whether or not the person is or may be a prohibited person.

(4) The Director shall on receipt of a request in accordance with subsection (1) make such inquiries, including inquiries with the Commissioner of Police, as he considers necessary to enable him to determine whether or not the person requesting the certificate is a prohibited person, and after making such inquiries shall determine the request by issuing or refusing to issue the certificate specified in that subsection.

(5) For the purposes of subsection (4), the Director may require a person requesting a certificate under subsection (1)-

- (a) to execute a document authorizing such person as the Director may specify to release to the Director such information as the Director may request, being information which the Director considers may tend to indicate whether or not the person requesting the certificate is or may be a prohibited person; and
- (b) to attend before a police officer specified by the Director and allow that police officer to take and record the person's fingerprint impressions.

(6) For the purpose of verifying whether or not a person has been convicted of an offence specified in the Schedule, a police officer may take and record the fingerprint impressions of that person for checking against police records, but any fingerprints obtained pursuant to this subsection shall be destroyed or returned to the person as soon as reasonably practicable after the record checking has been conducted.

(7) Any failure without reasonable excuse by a person requesting a certificate under this section to comply with a requirement of the Director under subsection (5) shall constitute sufficient ground for refusal to issue a certificate under subsection (4).

(8) A person who knowingly or recklessly makes any false declaration under subsection (3) commits an offence and is liable to a fine at level 6 and to imprisonment for 2 years.

(9) Where the Director has determined a request by refusing to issue a certificate under subsection (4) in respect of a person he shall by notice in writing notify the person of such refusal stating the grounds upon which the refusal was made; and any such notice may be given by being sent by registered post to the person at his last address known to the Director.

(10) A person aggrieved by a decision of the Director under subsection (4) made in respect of him may, within 28 days after receiving notification of the decision under subsection (9), appeal to the Administrative Appeals Board.

Section:	15D	Declaration that prohibited person no longer deemed unsuited to act as childminder	L.N. 446 of 1997	30/09/1997
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(1) A prohibited person who considers that he should no longer be deemed unsuited to act as a childminder may by notice in writing to the Director request a declaration under this section.

(2) A person requesting a declaration under this section shall in his notice of request-

- (a) disclose every offence or other matter by virtue of which he is deemed to be a prohibited person for the purposes of section 15A(1);
- (b) set out any matter that he wishes the Director to have regard to for the purpose of determining the request;
- (c) authorize the Commissioner of Police to release to the Director such information as the Director may request, being information which the Director considers to be relevant for the purpose of determining the request.

(3) A person requesting a declaration under this section shall, if so required by the Director, execute a document authorizing such person as the Director may specify to release to the Director such information as the Director may request, being information which the Director considers to be relevant for the purpose of determining the request for a declaration.

(4) Where the Director considers it would be appropriate in the case of a person requesting a declaration under this section, having regard to all or any of-

- (a) the nature and circumstances of the matters disclosed in the notice of request pursuant to subsection (2)(a);
- (b) the period of time that has elapsed since those matters arose;
- (c) the good conduct of the person;
- (d) the general family circumstances of the person,

he may declare that the person should no longer be deemed unsuited to act as a childminder by reason only of the matters disclosed in the person's notice of request pursuant to subsection (2)(a).

(5) Subject to subsection (6), a declaration made by the Director has the effect that the matters disclosed in the person's notice of request pursuant to subsection (2)(a) are no longer of any account for the purposes of section 15A(1).

(6) A declaration under this section is of no effect if the person has failed to disclose in his notice of request any matter required to be disclosed under subsection (2)(a).

(7) Where the Director has determined a request by refusing to make a declaration under subsection (4) in respect of a person he shall by notice in writing notify the person of such refusal stating the grounds upon which the refusal was made; and any such notice may be given by being sent by registered post to the person at his last address known to the Director.

(8) A person aggrieved by a decision of the Director under subsection (4) made in respect of him may, within 28 days after receiving notification of the decision under subsection (7), appeal to the Administrative Appeals Board.

(9) A notice requesting a declaration under this section shall be in a form approved by the Director.

(10) Any failure by a person requesting a declaration under this section without reasonable excuse to execute an authorization when required by the Director in accordance with subsection (3) shall constitute sufficient ground for a refusal to make a declaration under subsection (4).

Section:	15E	Power to enter premises	L.N. 446 of 1997	30/09/1997
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(1) The Director or any inspector may enter and search any premises in which he has reason to believe an offence under section 15A(2) is being or has been committed, but no such entry shall be effected unless the Director or inspector has first obtained a warrant issued by a magistrate under subsection (2) for that purpose.

(2) A magistrate may issue a warrant to the Director or any inspector to enter any premises for the purpose of subsection (1) if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under section 15A(2) is being, or has been, committed.

(3) Any person who enters any premises under this section shall-

- (a) if so required, produce evidence of his identity;

- (b) produce the warrant or a copy thereof; and
- (c) use only such force as is reasonably necessary to effect entry.

(Added 38 of 1997 s. 14)

Part:	IV	MISCELLANEOUS	L.N. 446 of 1997	30/09/1997
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Section:	16	Offences and penalties	L.N. 446 of 1997	30/09/1997
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- (1) Any person who-
- (a) operates or takes part in the management of a child care centre in any premises other than premises specified in the certificate of registration or exemption of the child care centre; (Amended 38 of 1997 s. 15)
 - (b) in or in connection with any application under this Ordinance makes any statement or furnishes information, whether such statement be oral or written, which is false in any material particular and which he knows or reasonably ought to know is false in such particular;
 - (c) obstructs the Director or any inspector or medical officer in the exercise of any of his powers under this Ordinance;
 - (d) refuses to produce any book, document or other article upon being so required under section 13, or, when so required, furnishes information which is false in a material particular and which he knows or reasonably ought to know is false in such particular;
 - (e) (Repealed 39 of 1983 s. 3)
 - (f) fails to comply with an order served on him under section 15,

shall be guilty of an offence and shall be liable on conviction to a fine at level 6 and to imprisonment for 2 years. (Amended 39 of 1983 s. 3; 38 of 1997 s. 15)

(2) Any person who operates or takes part in the management of a child care centre, other than a mutual help child care centre, which is operated in any name other than the name in which it is registered shall be guilty of an offence and shall be liable on conviction to a fine at level 4 and to imprisonment for 2 years. (Added 39 of 1983 s. 3. Amended 38 of 1997 s. 15)

Section:	17	Evidence	L.N. 446 of 1997	30/09/1997
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In any prosecution for an offence against this Ordinance, if it is proved that any person did any act in connection with the organization or operation of a child care centre, it shall be presumed, until the contrary is proved, that such person took part in the management of such child care centre.

Section:	18	Regulations	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Chief Executive in Council may make regulations providing in relation to registered child care centres or, insofar as may be applicable, in relation to mutual help child care centres for all or any of the following matters- (Amended 37 of 2000 s. 3)

- (a) the medical examination of the children cared for and the persons employed in such centres;
- (b) the exclusion from such centres of any child or employee and measures to preserve the health and well-being of children or employees;
- (c) the reports and information to be supplied to the Director in respect of such centres;
- (d) the authorizing of officers of the Fire Services Department to enter and inspect premises in the neighbourhood of such centres;
- (e) the amount of fees and other charges that may be charged or imposed in respect of the services provided in such centres or otherwise on account of the attendance of children at such centres and the restriction or prohibition of any further fees and charges or of any specified fees and charges;

- (f) the methods of payment or collection of fees and charges and the restriction or prohibition of collections or subscriptions of moneys;
- (g) the fees to be charged for inspection and any other service or matter prescribed or permitted by this Ordinance. (Replaced 80 of 1997 s. 17)

(2) Any regulation made under subsection (1) may- (Amended 80 of 1997 s. 17)

- (a) prohibit the performance of specified acts without the consent of the Director;
- (b) authorize the Director to require or prohibit the performance of specified acts; and
- (c) require specified acts to be performed to the satisfaction of the Director.

(2A) Subject to subsections (1) and (2), the Secretary for Labour and Welfare may make regulations providing for anything which shall or may be prescribed and generally for carrying into effect the provisions of this Ordinance. (Added 80 of 1997 s. 17. Amended L.N. 106 of 2002; L.N. 130 of 2007)

(2B) Without prejudice to the generality of subsection (2A), regulations made under that subsection may provide in relation to registered child care centres or, insofar as may be applicable, in relation to mutual help child care centres for all or any of the following matters-

- (a) the operation, management and supervision of such centres;
- (b) the classes or types of such centres;
- (c) the duties and responsibilities of persons registered in respect of such centres;
- (d) the qualifications, experience, appointment, duties, responsibilities and discipline of persons for the purposes of the operation, management and supervision of such centres and the keeping of registers in respect of such persons; (Amended 15 of 2005 s. 8)
- (e) the admission of children to such centres and the minimum or maximum age of children who may be admitted to any class or type of such centres and the maximum number of children that may be admitted to any class or type of such centres;
- (f) the control and supervision of activities in such centres;
- (g) the adequacy, suitability and use of equipment in such centres;
- (h) the keeping, in respect of such centres, of registers, records, time-tables, menus and books of account;
- (i) the structure, hygiene and sanitation of such centres;
- (j) the precautions to be taken against fire or other peril likely to endanger the lives or health of children cared for in such centres;
- (k) the control of entrances to and exits from such centres. (Added 80 of 1997 s. 17)

(3) The Director may, by notice in writing to the person registered or exempted in respect of a child care centre, waive wholly, partly or conditionally the requirements of any regulation in respect of that child care centre and may amend, or withdraw any such notice. (Amended 38 of 1997 s. 16)

(4) Regulations made under this section may provide that a contravention thereof shall be an offence punishable on conviction by a fine at a level not exceeding level 4 and a term of imprisonment not exceeding 2 years. (Added 39 of 1983 s. 4. Amended 38 of 1997 s. 16)

Section:	19	Amendment of Schedule	L.N. 446 of 1997	30/09/1997
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Remarks:

Adaptation amendments retroactively made - see 37 of 2000 s. 3

The Chief Executive may by order published in the Gazette amend the Schedule.

(Added 38 of 1997 s. 17. Amended 37 of 2000 s. 3)

Schedule:		SCHEDULE	L.N. 232 of 2003	19/12/2003
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[sections 15A(1)(a), 15C(6) &19]

OFFENCES RELEVANT TO MEANING
OF "PROHIBITED PERSON"

Common law offences

1. Murder.

2. Manslaughter.

Statutory offences

Offence	Descriptions*
3. Dangerous Drugs Ordinance (Cap134)	
section 4(1)	trafficking in dangerous drug
section 5(1)	supplying or procuring a dangerous drug to or for any person
section 6(1)	manufacturing a dangerous drug
section 8(1)	possessing or consuming a dangerous drug
4. Affiliation Proceedings Ordinance (Cap 183)	
section 16(b)	ill-treating a child
5. Crimes Ordinance (Cap 200)	
section 47	incest by men
section 48	incest by women of or over 16
section 118	rape
section 118A	non-consensual buggery
section 118B	assault with intent to commit buggery
section 118C	homosexual buggery with or by a man under 21
section 118D	buggery with a girl under 21
section 118E	buggery with a defective
section 118F	homosexual buggery committed otherwise than in private
section 118G	procuring others to commit homosexual buggery
section 118H	gross indecency with or by a man under 21
section 118I	gross indecency by a man with a male defective
section 118J	gross indecency by a man with another man otherwise than in private
section 118K	procuring gross indecency by a man with another man
section 118L	bestiality
section 119	procurement of an unlawful sexual act by threats or intimidation
section 120	procurement of an unlawful sexual act by false pretences
section 121	administering drugs so as to enable a third person to do an unlawful sexual act
section 122	indecent assault
section 123	sexual intercourse with a girl under 13
section 124	sexual intercourse with a girl under 16
section 125	sexual intercourse with a woman who is a defective
section 126	abduction of an unmarried girl under 16
section 127	abduction of an unmarried girl under 18 for sexual intercourse
section 128	abduction of a defective for an unlawful sexual act
section 129	trafficking in persons for the purpose of prostitution
section 130	control over persons for the purpose of unlawful sexual acts or prostitution
section 131	causing prostitution
section 132	procurement of a girl under 21 to have unlawful sexual

	intercourse
section 133	procurement of a woman who is a defective to have sexual intercourse
section 134	detention of a person for an unlawful sexual act or in a vice establishment
section 135	causing or encouraging the prostitution of, an unlawful sexual act with, or indecent assault on a girl or boy under 16
section 136	causing or encouraging the prostitution of a defective
section 137	living on earnings of prostitution of others
section 138A	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances (Added 31 of 2003 s. 20)
section 139	keeping a vice establishment
section 140	permitting a girl or boy under 13 to resort to or be on premises for prostitution or an unlawful sexual act
section 141	permitting a young person to resort to or be on premises for the purpose of prostitution, sexual intercourse or a homosexual act
section 142	permitting defective to resort to or be on premises or vessel for intercourse, prostitution or homosexual act
section 146	indecent conduct towards a child under 16
section 147	soliciting for an immoral purpose
section 153Q	Arrangement or advertisement relating to commission against a child of act outside Hong Kong that offends Schedule 2 provision (Added 31 of 2003 s. 20)

For the avoidance of doubt, where an offence under a section of the Crimes Ordinance (Cap 200) may, by virtue of section 153P of that Ordinance, be constituted by an act committed outside Hong Kong, a reference in this item to an offence under that section includes a reference to an offence so constituted. (Added 31 of 2003 s. 20)

6. Offences against the Person Ordinance (Cap 212)

section 5	conspiring or soliciting to commit murder
section 10	administering poison or wounding with intent to murder
section 17	shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm
section 19	wounding or inflicting grievous bodily harm
section 20	attempting to choke, etc., in order to commit indictable offence
section 21	using chloroform, etc., in order to commit indictable offence
section 22	administering poison, etc., so as to endanger life or inflict grievous bodily harm
section 23	administering poison, etc., with intent to injure, etc.
section 26	exposing a child whereby his or her life is endangered
section 27	ill-treatment or neglect by those in charge of a child or young person
section 28	causing bodily injury by gunpowder, etc.
section 29	causing gunpowder to explode, etc., with intent to do grievous bodily harm
section 30	placing gunpowder near a building, etc., with intent to do bodily injury
section 31	setting a man trap, etc., with intent to inflict grievous bodily harm

section 33	injuring a person by furious driving of a vehicle
section 39	assault occasioning actual bodily harm
section 42	forcible taking or detention of a person with intent to sell him or her
section 43	stealing a child under 14 years
section 44	unlawful transfers of possession, custody or control of other persons for valuable consideration
section 46	administering a drug or using an instrument to procure abortion
section 47	procuring a drug, etc., with intent to cause abortion
section 47B	child destruction
section 47C	infanticide
section 48	disposing of the dead body of a child with intent to conceal the fact of its birth

7. Protection of Children and Juveniles Ordinance (Cap 213)

section 26	abduction of child or juvenile
section 42	assisting escape of child or juvenile from custody or control

7A. Prevention of Child Pornography Ordinance (Cap 579)

section 3	Offences relating to child pornography	(Added 31 of 2003 s. 20)
	Miscellaneous	

8. Any offence proof of the commission of which involves proof that actual bodily harm was occasioned to another person.
9. Inciting another to commit any of the offences specified in paragraphs 1 to 8.
10. Aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraphs 1 to 8.
11. Conspiracy to commit any of the offences specified in paragraphs 1 to 8 contrary to section 159A of the Crimes Ordinance (Cap 200).
12. Attempting to commit any of the offences specified in paragraphs 1 to 8 contrary to section 159G of the Crimes Ordinance (Cap 200).

*Note: The short description of offences in this Schedule is for ease of reference only. (Added 38 of 1997 s. 18)