

立法會
Legislative Council

LC Paper No. CB(2)1319/10-11
(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/09

Bills Committee on Residential Care Homes (Persons with Disabilities) Bill

Minutes of the 10th meeting
held on Thursday, 24 February 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon WONG Sing-chi (Chairman)
Hon LEUNG Yiu-chung
Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Members absent : Hon LEE Cheuk-yan
Dr Hon Joseph LEE Kok-long, SBS, JP

Public Officers attending : Item I

Mr Roy TANG Yun-kwong, JP
Deputy Secretary for Labour and Welfare (Welfare) 1

Mr Stephen SUI Wai-keung
Commissioner for Rehabilitation
Labour and Welfare Bureau

Mrs Cecilia YUEN
Assistant Director of Social Welfare
(Rehabilitation & Medical Social Services)

Mrs Helen KWOK
Chief Social Work Officer
(Rehabilitation & Medical Social Services) 2

Ms Lonnie NG Wah-chi
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 4

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Yvonne YU
Senior Council Secretary (2) 5

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Meeting with the Administration

[The Bill, LC Paper Nos. CB(2)2002/09-10(01),
CB(2)2274/09-10(01), CB(2)2289/09-10(01) and
CB(2)1116/10-11(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members noted that the Administration had provided responses to issues raised at the meetings on 4 January 2011 and 11 February (LC Paper No. CB(2)1116/10-11(01)).

3. The Administration was requested to provide written responses to the following –

Admin

Action

- (a) to consider whether a channel should be established for users of residential care homes for persons with disabilities ("RCHDs") to express their views on the decisions of Director of Social Welfare ("DSW") in relation to issue and renewal of licences/certificates of exemption ("COEs");
- (b) to consider members' view that an avenue of appeal should be provided under clause 14 for non-compliance of clauses 10 and 13 by DSW;
- (c) to upload onto the Social Welfare Department website the list of licensed RCHDs as well as the conditions being imposed on the holders of COEs for public viewing;
- (d) to consider making it clear in clause 16(2)(b) to (d) so that the powers under these subclauses were also applicable to suspected premises referred to in clause 16(2)(a) of the Bill;
- (e) to amend clause 17 to spell out expressly that the immunity of a specified person referred to in clause 17 was confined to civil liability only;
- (f) to consider modelling on clause 17 of the Bill and introduce a consequential amendment to the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("RCHE Ordinance") to the effect that specified persons were exempted from incurring personal liabilities arising from the acts or omissions in the inspection of residential care homes for the elderly;
- (g) to consider amending clause 19 to the effect that an order of DSW under clause 19 could be subject to an appeal to the Administrative Appeals Board ("AAB") while such order was not subject to the suspension pending determination of AAB; and
- (h) to provide information on the background and a list of existing Ordinances containing the reference to "Power of Chief Executive to give directions" similar to that in clause 21 of the Bill.

4. Members noted that the Administration would add a clause to the Bill

Action

similar to section 12(2) of the RCHE Ordinance to the effect that the decision or order of DSW under appeal should be suspended as from the date on which the appeal was made until such appeal was disposed of, and would reinstate the provision in the RCHE Ordinance.

II. Any other business

5. The Chairman reminded members that the next meeting would be held on 11 March 2011 at 10:45 am.
6. There being no other business, the meeting ended at 4:24 pm.

Council Business Division 2
Legislative Council Secretariat
21 March 2011

**Proceedings of the 10th meeting of the
Bills Committee on Residential Care Homes (Persons with Disabilities) Bill
on Thursday, 24 February 2011, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000000 - 000119	Chairman	The Administration's response to certain issues raised at the meetings held on 4 January and 11 February 2011. [LC Paper No. CB(2)1116/10-11(01)]	
000120 - 001409	Chairman Administration Mr CHEUNG Kwok-che	Continuation of the clause-by-clause examination of the Bill Clause 9 – Cancellation or suspension; amendment or variation of conditions of licence Clause 10 – Notice of refusal of licence or renewal and of cancellation or suspension, etc. Mr CHEUNG Kwok-che's concern that there was no provision specifying that a licensee of residential care home for persons with disabilities ("RCHD") should make decanting arrangements for the residents if the Director of Social Welfare ("DSW") decided to suspend the licence. The Administration's advice that the displacement arrangements to be made by RCHD operators in case of closure was set out in the Code of Practice ("CoP") for RCHDs. The affected residents might apply for priority placements and SWD would provide assistance as appropriate.	
001410 - 002623	Administration Chairman Mr CHEUNG Kwok-che	Clause 11 – Application for and issue of certificate of exemption ("COE") Clause 12 – Renewal of COE Mr CHEUNG Kwok-che's concern whether the validity period of COE provided for under clauses 11 and 12 was unduly long. The Administration's explanation that the validity period of a COE would depend on the expected time for the RCHD to comply with the licensing requirements. The implementation experience of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("RCHE Ordinance") showed that the validity period of COEs issued to the RCHEs concerned ranged from less than six months, six to 12 months to over 12 months	

Time marker	Speaker(s)	Subject(s)	Action required
		depending on the lead time required for compliance with the licensing requirements under the RCHE Ordinance.	
002624 - 003631	Mr Ronny TONG Administration Chairman ALA8	Views of Mr Ronny TONG - (a) the maximum validity period of COE up to 72 months was unacceptable; and (b) service users (i.e. residents and their family members) of RCHDs did not have an avenue to express disagreement with the decisions of DSW in relation to issue and renewal of licences/COEs. The Administration was requested to consider whether a channel should be established for RCHD users to express their views on the decisions of DSW in relation to issue and renewal of licences/COEs and whether an avenue of appeal should be provided under clause 14 for non-compliance of clauses 10 and 13 by DSW.	Admin
003632 – 004114	Ms Cyd HO Administration Chairman	Ms Cyd HO's view that a monitoring mechanism should be established such that private RCHD residents and their family carers could participate in monitoring the progress of RCHDs in making improvements to comply with the requirements of COEs. The Administration was requested to upload onto the SWD website the list of licensed RCHDs as well as the conditions being imposed on the holders of COEs for public viewing.	Admin
004115 - 005434	Mr CHEUNG Kwok-che Chairman Administration Ms Cyd HO	Mr CHEUNG Kwok-che's concern whether the validity period of COEs would vary according to the lead time needed for meeting conditions imposed by DSW. The Administration's advice that under clause 11, DSW would specify the conditions imposed in relation to the operation and management of RCHDs when issuing a COE. As set out in the CoP, RCHDs had to display the licence or COE at prominent location in the RCHD concerned.	
005435 - 005640	Chairman Administration	The Chairman sought more information about the Administrative Appeals Board ("AAB") referred to in clause 14. The Administration's explanation that AAB was an independent statutory body established under the Administrative Appeals Board Ordinance	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>(Cap. 442). In the light of the operational experience of the Appeal Board established under the RCHE Ordinance, the Administration did not see the need to establish a dedicated appeal board to deal with appeals against decisions of DSW for the purpose of the Bill. The proposed arrangement sought to streamline the appeals mechanism.</p>	
005641 - 005813	ALA8 Administration Chairman	<p>Clause 14 – Appeals against decisions</p> <p>The legal adviser's enquiry whether it was necessary to include a provision in the Bill similar to section 12(2) of the RCHE Ordinance to the effect that the decision of DSW under appeal should be suspended as from the date on which the appeal was made until such appeal was disposed of.</p> <p>The Administration's response that it agreed with the legal adviser's observation. It would add a clause providing the same effect under the Bill and would reinstate the provision in the RCHE Ordinance.</p>	Admin
005814 - 010034	ALA8 Administration Chairman	<p>Clause 13 – Notice of refusal of COE or renewal and of revocation, etc.</p> <p>The legal adviser's enquiry about the reason(s) and/or justification(s) for proposing different treatments to applicants for issue/renewal of licences for RCHDs and applicants for COEs for RCHDs under clauses 10 and 13.</p> <p>The Administration's response that the absence of provision in the Bill which allowed for written representations against the refusal of issue/renewal of COE was in line with the Administration's intention to encourage an existing RCHD to strive to meet all the licensing requirements and obtain a licence as early as practicable, instead of continuously holding a COE.</p>	
010035 - 010603	Mr Ronny TONG Administration Chairman	<p>Mr Ronny TONG's concern whether there could be an appeal avenue if DSW did not state the grounds for rejecting applications for issue/renewal of licences/COEs as required under clauses 10 and 13.</p> <p>The Administration was requested to consider whether clauses 10 and 13 should also be subject to appeal under clause 14.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action required
010604 - 010614	Administration Chairman	Clause 15 – Appointment of inspectors Members raised no question on clause 15.	
010615 - 011145	Administration Chairman ALA8	Clause 16 – Inspection of RCHDs In response to the legal adviser's enquiry, the Administration was requested to consider making it clear in clause 16(2)(b) to (d) so that the powers under these subclauses were also applicable to suspected premises referred to in clause 16(2)(a).	Admin
011146 - 011352	Administration Chairman ALA8	Clause 17 – Protection of specified persons from certain acts and omissions Responding to the legal adviser, the Administration would consider modelling on clause 17 of the Bill and introduce a consequential amendment to the RCHE Ordinance to the effect that specified persons were exempted from incurring personal liabilities arising from the acts or omissions in the inspection of residential care homes for the elderly.	Admin
011353 - 011749	Ms Cyd HO Administration Chairman Mr Ronny TONG	The Administration's advice that the immunity of a specified person referred to in clause 17 was confined to civil liability only. The Administration would amend clause 17 to spell out expressly the intention.	Admin
011750 – 011809	Administration Chairman	Clause 18 – Director may direct remedial measures Members raised no question on clause 18.	
011810 - 013505	Administration Chairman ALA8 Mr LEUNG Kwok-hung Mr Ronny TONG Mr CHEUNG Kwok-che	Clause 19 – Director may order cessation of use of premises as RCHD Enquiries made by the legal adviser - (a) the reason for proposing that an order for cessation of use of premises as RCHDs be made by DSW instead of the courts; and (b) whether the person to whom the order is issued under clause 19 could appeal against the order. The Administration's advice that with the powers given under the Bill, DSW monitored closely the service performance and operating situation of all RCHDs. Therefore, DSW was in the best position to directly assess when and on what basis to invoke the power of clause 19. Moreover, Cap.	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>442 provided for the power to include provisions to the effect that a decision that was appealed against would be suspended in its operation as from the day on which notice of the appeal was lodged until such appeal was disposed of. This would prevent DSW from taking immediate action to order cessation of RCHDs if the safety of the residents was at risk. For the consideration above, it was the Administration's policy intention not to provide an appeal against a cessation order to better safeguard the interest and safety of RCHD residents. Nevertheless, any person aggrieved by the decision of DSW might apply to the court for a judicial review.</p> <p>Views of Mr LEUNG Kwok-hung and Mr CHEUNG Kwok-che that an appeal channel should be provided for the person affected by the order issued by DSW under clause 19.</p> <p>The Administration would consider to allow the aggrieved persons to appeal to AAB and take into account the legal adviser's suggestion to amend clause 19 to the effect that the cessation order would not be subject to stay of execution pending the determination of AAB.</p>	<p>Admin</p>
013506 - 013531	Administration Chairman	<p>Clause 20 – Exercise of Director's functions</p> <p>Members raised no question on clause 20.</p>	
013532 - 014341	Administration Ms Cyd HO Chairman	<p>Clause 21 – Power of Chief Executive to give directions</p> <p>Ms Cyd HO's enquiry about the need and rationale for including clause 21 in the Bill</p> <p>The Administration's advice that a similar provision was provided in the RCHE Ordinance and other legislation in relation to licensing systems. Clause 21 was a standard provision which was common among licensing systems.</p> <p>The Administration was requested to provide information on similar provisions in the existing Ordinances containing the reference to "Power of Chief Executive to give directions".</p>	<p>Admin</p>
014342 - 015310	Mr LEUNG Yiu-chung Chairman Administration Ms Cyd HO	<p>Views of Mr LEUNG Yiu-chung and Ms Cyd HO that the Administration should explain the justifications for conferring the Chief Executive the powers under clause 21 and the circumstances for invoking the provision.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
015311 - 015403	Chairman	Date of the next meeting	

Council Business Division 2
Legislative Council Secretariat
21 March 2011