

立法會
Legislative Council

LC Paper No. CB(2)2362/10-11
(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 11th meeting
held on Tuesday, 29 March 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon WONG Sing-chi (Chairman)
Hon LEUNG Yiu-chung
Dr Hon Joseph LEE Kok-long, SBS, JP
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
Hon TAM Yiu-chung, GBS, JP
Hon Ronny TONG Ka-wah, SC

Public Officers attending : Item II

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) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Confirmation of minutes

[LC Paper Nos. CB(2)1223/10-11 and CB(2)1319/10-11]

The minutes of the meetings held on 20 January and 24 February 2011 were confirmed.

II. 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)1217/10-11(01)]

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

3. The Administration took members through the draft Residential Care Homes (Persons with Disabilities) Regulation ("the Regulation"). Members noted that the Secretary for Labour and Welfare was empowered under clause 24 of the Bill to make regulations to provide for the requirements on

Action

the operation, management and supervision of residential care homes for persons with disabilities ("RCHDs") (including staffing and spatial requirements, health and safety requirements, penalties and fees, etc.). The Administration planned to table the Regulation for negative vetting by the Legislative Council after passage of the Bill.

Admin

4. The Administration was requested to consider -

- (a) revising the references to "any Deputy Director of Social Welfare" in both the Bill and the Residential Care Homes (Elderly Persons) Ordinance to specify a DDSW who was responsible for administering the respective licensing schemes;
- (b) spelling out explicitly in the proposed section 18 of the Regulation to provide that the home manager must report immediately a case of scheduled infectious disease under the Prevention and Control of Disease Ordinance (Cap. 599) if he "reasonably suspected" or knew of such a case;
- (c) taking into account members' view in setting out the level of minimum area of floor space of each resident in the proposed section 22 of the Regulation; and
- (d) elaborating in the proposed section 34 of the Regulation or the Code of Practice to ensure that every resident of RCHDs would be medically examined at least once in every 12 months.

5. Members agreed to refer to the Panel on Manpower for follow up issues relating to the interface between the training courses organised by the welfare sector and the quality-assured qualifications which were registered in the Qualifications Register.

III. Any other business

6. The Chairman said that the site visit to Chi Yun School would be held on 15 April 2011. In anticipation of the possible continuation of the Council meeting on that day, members agreed that the visit would be deferred to a later date. Members would be informed of the rescheduled date in due course.

Action

7. The Chairman reminded members that the next meeting would be held on 12 April 2011 at 10:45 am.
8. There being no other business, the meeting ended at 6:17 pm.

Council Business Division 2
Legislative Council Secretariat
13 July 2011

**Proceedings of the 11th meeting of the
Bills Committee on Residential Care Homes (Persons with Disabilities) Bill
on Tuesday, 29 March 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Confirmation of minutes</i>			
000000 - 000112	Chairman	Confirmation of minutes of meetings on 20 January and 24 February 2011 [LC Paper Nos. CB(2)1223/10-11 and CB(2)1319/10-11]	
<i>Agenda item II – Meeting with the Administration</i>			
000113 - 001033	Chairman Administration ALA8 Mr CHEUNG Kwok-che	<p>Continuation of the clause-by-clause examination of the Bill</p> <p>Clause 22 – Offences in relation to licences and certificates of exemption ("COEs")</p> <p>The legal adviser to the Bills Committee's enquiry whether and how bodies corporate and partnerships would be regarded as a natural person who committed offences in relation to licences and COEs for the purpose of clause 22</p> <p>The Administration's advice that under the Bill, a "person" (i.e. an applicant) should be construed as an individual, a corporate or a partnership. Such construction was based on the definition of 'person' in section 3 of the Interpretation and General Clauses Ordinance (Cap.1)</p> <p>Mr CHEUNG Kwok-che's concern about the liability of a director or the management of the residential care home for persons with disabilities ("RCHD") under clause 22(1)</p> <p>The Administration's advice that the liability of a director or other officer concerned in the management of the company was provided under section 101E of the Criminal Procedure Ordinance (Cap. 221) that governed all criminal offences under other legislation</p>	
001034 - 001420	Administration Chairman	<p>Clause 23 – Code of Practice ("CoP") relating to operation of RCHDs</p> <p>Clause 24 – Regulation</p> <p>Clause 25 – No fee payable in respect of licence or CoE</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		Members raised no question on clauses 23 to 25	
001421 - 002035	Chairman Administration Mr CHEUNG Kwok-che Ms Cyd HO	Part 8 (clauses 26 to 47) – Consequential and related amendments The Administration's advice that clause 27 sought to amend the Building (Planning) Regulation to the effect that a cinema should not be situated in a building in which a RCHD was for the time being in operation	
002036 - 002201	Chairman Administration	Members raised no question on the consequential amendments proposed under clauses 28 to 30	
002202 - 002400	Chairman Administration Ms Cyd HO	The Administration's explanation that the consequential amendments proposed under clause 31 sought to streamline the appeal mechanism for the Administrative Appeal Board ("AAB") to handle appeals under both the Bill and the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("the RCHE Ordinance")	
002401 - 002500	Administration Chairman Ms Cyd HO	Members raised no question on the consequential amendments proposed under clauses 32 and 33	
002501 - 003240	Chairman Ms Cyd HO Administration ALA8	In connection with clauses 34 and 35, members raised concern on whether the references to "any Deputy Director of Social Welfare" in both the Bill and the RCHE Ordinance should be amended to specify a DDSW who was responsible for administering the respective licensing schemes	Admin to consider
003241 - 004440	Chairman Administration Ms Cyd HO	The Administration's explanation that clause 41 sought to amend section 12 of the RCHE Ordinance to the effect that a decision or an order of the Director of Social Welfare ("DSW") was subject to an appeal to AAB Members raised no question on the consequential amendments proposed under clauses 36 to 40 and 42 to 47	
004441 - 004952	Chairman Administration Mr CHEUNG Kwok-che Ms Cyd HO	Examination of the draft Residential Care Homes (Persons with Disabilities) Regulation ("the draft Regulation") [LC Paper No. CB(2)1217/10-11(01)] The Administration's advice that the draft Regulation was subject to amendments having regard to the final version of the Bill. It planned to table the Regulation to provide for the requirements on the operation, management and supervision of RCHDs for negative vetting by the	

Time marker	Speaker(s)	Subject(s)	Action required
		Legislative Council after the passage of the Bill	
004953 - 005824	Chairman Mr CHEUNG Kwok-che Administration Ms Cyd HO	<p>Responding to members' concern about the registration of health workers (Part 3 of the draft Regulation), the Administration advised that Hong Kong Red Cross, Hong Kong St. John Ambulance and the Management Society for Healthcare Professionals, etc. had been organising training courses for health workers approved by DSW under the RCHE Regulation. Upon completion of a training course approved by DSW, a person would be qualified to be registered as a health worker for the purpose of the licensing schemes under the Bill and the RCHE Ordinance</p> <p>Members' concern that the attainment of the above qualification might not be recognised under the Hong Kong Qualifications Framework. The issue should be referred to the Panel on Manpower for follow up</p>	
005825 - 010029	Chairman Administration Mr CHEUNG Kwok-che	Mr CHEUNG Kwok-che's concern that the inconsistent post titles adopted in different RCHDs would give rise to enforcement difficulties in respect of the employment of adequate staff for posts stipulated in section 11 of the draft Regulation. The Administration's advice that while individual RCHDs might decide on the post titles for staff members in RCHDs, the operators were obliged to maintain and submit records of staff lists according to the posts stated in the draft Regulation	
010030 - 011230	Chairman Administration Mr CHEUNG Kwok-che Mr LEUNG Yiu-chung Ms Cyd HO	<p>Responding to the Chairman and Mr CHEUNG Kwok-che, the Administration advised that sections 12 and 16 of the draft Regulation dealt with the maintenance of records by operators and home managers respectively. While both the operator and home manager could be the same person, the former was required to inform DSW of any staff changes within 14 day (i.e. maintaining up-to-date record) and the latter was required to submit the record at least once every three months</p> <p>Mr LEUNG Yiu-chung's enquiry about the levels of fine and prosecution procedures for non-compliance with the draft Regulation</p>	
011231 - 011917	Chairman Ms Cyd HO Administration ALA8	After taking into account members' view and the suggestion of the legal adviser, the Administration would consider spelling out explicitly in the proposed section 18(1) of the Regulation to provide that the home manager must report immediately to DSW a case of scheduled infectious disease under the Prevention and	Admin

Time marker	Speaker(s)	Subject(s)	Action required
		<p>Control of Disease Ordinance (Cap. 599) if he "reasonably suspected" or knew of such a case</p> <p>Ms Cyd HO's enquiry whether a RCHD could be situated in an industrial building. The Administration's response that having regard to the specific land use of industrial buildings, it was considered not viable to develop a RCHD in an industrial building</p>	
011918 - 012232	<p>Chairman Administration Mr CHEUNG Kwok-che Ms Cyd HO</p>	<p>Mr CHEUNG Kwok-che's view that the Administration should consider lifting the minimum spatial requirement by, say, including outdoors space for the purpose of calculating the enhanced spatial requirement</p> <p>The Administration's advice that it would take into account members' view in setting out the level of minimum area of floor space of each resident in the proposed section 22 of the Regulation</p>	Admin
012233 - 012502	<p>Chairman Mr CHEUNG Kwok-che Administration Ms Cyd HO</p>	<p>Noting that Part 6 of the draft Regulation set out the requirements as to location, design and other matters relating to the safety of a RCHD, Mr CHEUNG Kwok-che took the view that the Administration should set out the relevant objective standards in the CoP for the compliance of RCHDs</p>	
012503 - 013122	<p>Chairman Mr CHEUNG Kwok-che Administration</p>	<p>Mr CHEUNG Kwok-che's concern about the rationale for requiring an operator of a RCHD to ensure that every resident of the residential care home who had attained the age of 60 years was medically examined at least once in every 12 months</p> <p>At the Chairman's request, the Administration undertook to consider beefing up the related part in the Code of Practice as appropriate</p>	Admin
013123 - 014053	<p>Chairman Mr CHEUNG Kwok-che Dr PAN Pey-chyou Administration Ms Cyd HO</p>	<p>Mr CHEUNG Kwok-che's enquiry about the rationale for including the proposed section 35 under which an operator could discharge a RCHD resident. Dr PAN Pey-chyou and Ms Cyd HO were concerned that those RCHD residents who were regarded as having behavioural problems would be discharged by an operator without valid reasons</p> <p>The Administration's advice that similar arrangement was adopted in the licensing scheme under the RCHE Ordinance. While subvented RCHDs were not allowed to reject the admission of eligible residents, residents of private RCHDs were free to choose RCHDs according to their</p>	

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		own wish. Nevertheless, alternative placement and priority placement for residents in RCHDs would be arranged if such needs arose	
014054 - 014238	Chairman Mr CHEUNG Kwok-che Administration Dr PAN Pey-chyou	Members noted that the fees for registration as health workers was calculated based on the full cost recovery principle. No annual or renewal fee was required after paying the registration fee	
014239 - 014514	Mr CHEUNG Kwok-che Chairman Administration	The Administration's advice that the Schedule to the Regulation prescribed the requirement for the type and number of staff by reference to different types of RCHDs	
<i>Agenda item III – Any other business</i>			
014515 - 014630	Chairman Administration	Date and discussion items of the next meeting	
014631 - 014743	Chairman	Postponement of the site visit to Chi Yun School	

Council Business Division 2
Legislative Council Secretariat
 13 July 2011