

立法會
Legislative Council

LC Paper No. CB(2)1997/10-11

Ref : CB2/BC/4/09

**Report of the Bills Committee on Residential Care Homes
(Persons with Disabilities) Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Residential Care Homes (Persons with Disabilities) Bill.

Background

2. According to the Administration, as at end-2009, there were altogether 304 residential care homes for persons with disabilities ("RCHDs") providing 14 331 places in Hong Kong. There are three types of RCHDs, namely subvented homes, self-financing homes operated by non-governmental organisations and homes operated by the private sector.

3. At present, there is no statutory framework to monitor the operation of RCHDs. The regulation of these RCHDs is mainly administrative and voluntary in nature. The service standards of subvented homes have been monitored under the Service Performance Monitoring System of the Social Welfare Department ("SWD") since 1999. A Code of Practice ("CoP"), issued by SWD in 2002, serves as a guide on the service standards for all RCHDs, including subvented, self-financing and private homes. These service standards are not mandatory as the CoP does not have legal backing.

4. Apart from the issuance of a non-statutory CoP, SWD has since 2006 implemented a Voluntary Registration Scheme ("VRS") for private RCHDs to encourage operators of private RCHDs to enhance service quality. As at April 2010, of the 54 private RCHDs known to SWDs, only six have joined VRS. In view of the lukewarm response from the private RCHDs, the Administration considers it unlikely that private RCHDs will improve their service quality on their own volition. Legislation is the only option to ensure that all RCHDs meet the basic service standards.

The Bill

5. The Residential Care Homes (Persons with Disabilities) Bill ("the Bill") aims to provide for the control of RCHDs through a licensing scheme administered by the Director of Social Welfare ("DSW"). The legislative proposal in the Bill comprises –

- (a) a statutory framework to regulate RCHDs (including application of and exception to the Bill, mechanism for application, issue, renewal, cancellation, suspension and refusal of licences, appeal mechanism, supervision and offences, etc.);
- (b) an empowering provision for the Secretary for Labour and Welfare ("SLW") to make regulations. A Regulation stipulating the requirements on the operation, management and supervision of RCHDs (including staffing and space requirements, health and safety requirements, penalties and fees, etc.) will be made after the passage of the Bill;
- (c) a power be given to DSW to issue a CoP specifying detailed procedures, guidelines and standards for the operation, management and other control of RCHDs for compliance by the licensees, such as the requirements for building and fire safety, barrier-free access, general management and health care, etc.; and
- (d) consequential and related amendments to other legislation arising from the introduction of the statutory licensing scheme for RCHDs.

The Bills Committee

6. At the House Committee meeting on 2 July 2010, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon WONG Sing-chi, the Bills Committee held 14 meetings. The membership of the Bills Committee is in **Appendix I**. The Bills Committee has also received views from 14 deputations at one of its meetings. The list of deputations which have given written and/or oral views to the Bills Committee is in **Appendix II**. To better understand the operation of private RCHDs, the Bills Committee paid a visit to two private RCHDs on 17 January 2011.

Deliberations of the Bills Committee

7. Members support the policy intent of the Bill to regulate all RCHDs through a statutory licensing scheme to require all RCHDs to meet the basic service standards as stipulated in the legislation. All the deputations which have given views to the Bills Committee also express support for the spirit of the Bill. In the course of deliberations, members have examined issues relating to the statutory framework of the licensing system, the application mechanism, enforcement of the licensing system, the licensing standards and requirements and the likely impact of the licensing scheme on the operation of private RCHDs. The deliberations of the Bills Committee are set out in the ensuing paragraphs.

Statutory framework of the licensing system

8. The main purpose of the Bill is to provide for the control of RCHDs (including subvented, self-financing and private homes) through a licensing scheme administered by DSW. The licensing scheme is modelled on that provided in the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) ("the RCHE Ordinance"). The statutory framework includes application of and exemption to the Bill, mechanism for application, issue, renewal, cancellation, suspension and refusal of licences, appeal mechanism, supervision and offences, etc.

One licence for one residential care home

9. Members have noted that many residential care homes for the elderly ("RCHEs") with residents suffering from frailty and psycho-geriatric illness will be caught by the future licensing scheme for RCHDs. Given the prevailing policy of continuum of care, the improved health services and the increasing lifespan of persons with disabilities ("PWDs"), some RCHDs would also be caught by the RCHE Ordinance. It is the policy intention of the Administration that one residential care home is to be covered only by a licence issued either under the RCHE Ordinance or the Residential Care Homes (Persons with Disabilities) Ordinance ("RCHD Ordinance") upon enactment. Such intention is reflected in clauses 7(5) and 9(2) of the Bill. If a residential care home fits into the definitions of the home to be regulated as set out in both the existing RCHE Ordinance and the RCHD Ordinance, the home operator must hold a licence under one of these two Ordinances but cannot be licensed under both. In other words, the home operator will need to indicate his intention to hold or apply for one licence under either of these two Ordinances. Once a licence has been issued and remains in force under one of these two Ordinances, the Government will not issue to the operator a licence under the

other Ordinance. Hence, there is no need for the operator to apply for another licence under the other Ordinance, unless the operator intends to switch over to provide the other type of service.

10. Concern has been raised that some private RCHDs may choose to apply for a licence under the RCHE Ordinance so as to evade the more stringent licensing requirements for RCHDs. Members note the Administration's explanation that if the operator intends to switch over to provide the other types of service and successfully applies for a licence under the other Ordinance, the operator must surrender the existing licence which will then be cancelled by DSW before a licence under the other Ordinance is issued. Although PWDs and the elderly have many similar residential care needs, they also have distinct care needs. The Administration considers that a residential care home should focus on providing dedicated services to either PWDs or the elderly instead of diversifying its services to cover more than one service target groups.

Definition of "PWD"

11. Members have noted that the disabilities referred to in the definition of "PWD" in the Bill are modelled on the definition of "disability" under the Disability Discrimination Ordinance (Cap. 487) ("DDO"). Some members have sought information on the reason for not including in the Bill certain disabilities covered in the definition of "disability" under DDO. These include disabilities of "the presence in the body of organisms capable of causing disease or illness" and "a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction".

12. According to the Administration, given the different objectives of the two pieces of legislation, suitable adjustments have been made for the purpose of the Bill which aims to regulate homes that provide residential care services to PWDs. Depending on the support and resources available in the community, a person with "disability" defined in DDO may or may not require residential care services. In this regard, the definition of "PWD" in the Bill is designed to identify PWDs who are generally perceived as having a need for residential care services. The definition as currently drafted adequately reflects the policy intent and is sufficient for the present purpose. Since "the presence in the body of organisms capable of causing disease or illness" (e.g. Hepatitis B) in a person and "a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction" (e.g. specific learning difficulties) are not generally perceived as having a need for residential care services, the relevant paragraphs under DDO are not included in the definition of "PWD" in the Bill.

13. Dr PAN Pey-chyau has queried the use of the wording "organism" in the disabilities of "the presence in the body of organisms causing disease or illness" under the definition of "PWDs" since disease or illness may not be necessarily caused by organisms. After consulting the Department of Health, the Administration agrees with Dr PAN's observation. Given that all other forms of disabilities under the definition of "PWD" can adequately cover those PWDs who have a need for residential care services, the Administration will move a Committee Stage amendment ("CSA") to delete the reference to "the presence in the body of organisms causing disease or illness" from the definition of "PWD" in clause 2.

14. Ms Cyd HO has expressed concern that the Chinese rendition of the term "malformation" (畸形) is discriminatory, and has requested the Administration to consider the need to refine the Chinese expression.

15. According to the advice of the Equal Opportunities Commission and the Department of Health, the term "畸形" (malformation) is neutral in meaning and is universally adopted by the medical sector. The Administration considers that there is no need to amend the Chinese rendition of the term "malformation" (畸形). Members accept the Administration's explanation.

Application of the Bill

16. The Bill stipulates that RCHD means any premises at which more than five PWDs, who have attained the age of six years, are habitually received for the purpose of residential accommodation with the provision of care.

17. Under clause 3(1), the proposed licensing scheme does not apply to certain types of establishments, including premises used or intended for use solely for the purpose of the medical treatment of persons requiring medical treatment, a nursing home regulated under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165), a boarding school within the meaning of the Education Regulations (Cap. 279 sub. leg. A) and a treatment centre within the meaning of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566). These establishments will be exempted from the application of the RCHD Ordinance. Members note that registered child care centres within the meaning of the Child Care Services Ordinance (Cap. 243) are not covered in the list of exempted premises/institutions.

18. According to the Administration, there is no need to include registered child care centres as they only provide residential care services to children with disabilities below the age of six and fall outside the coverage of the Bill which will apply to PWDs aged six or above. Members also note that the skills centres within the meaning of Vocational Training Council Ordinance (Cap. 1130) will not be included in the list of exempted premises/institutions under the Bill as there is only one skills centre with residential care service and its service standards have not been specifically spelt out in the related legislation or CoP.

19. Members have expressed concern about the regulatory mechanism and the respective service standards of the premises/institutions providing residential care services for PWDs which are proposed to be exempted from the application of the Bill. Some members are concerned about the regulation of residential care services for children with disabilities and the need to take follow-up action by making amendments to the relevant legislation so as to ensure that the service standards of those residential care services for children are on par with the licensing scheme for RCHDs.

20. The Administration has advised that the Bill seeks to regulate RCHDs which provide residential care services for more than five PWDs who have attained the age of six years. The above exempted premises/institutions are specifically designed to cater for the special medical, educational or other needs of service users including PWDs, and given the difference in target service users and service needs, it is understandable that their service standards and requirements are different from those of RCHDs. Given that these premises/institutions are already subject to the regulatory regime under the relevant legislation, the Administration does not see the need to require these premises/institutions to be regulated concurrently by the proposed licensing system for RCHDs.

21. Some members note with concern that the spatial requirements in respect of the Drug Dependent Persons Treatment and Rehabilitation Centres and Child Care Centres are on the low side and outdated, and call for a review of the requirements. While sharing members' view that licensing requirements should be kept under review in the light of prevailing circumstances, the Administration considers that the issue is beyond the scope of the Bill.

22. Members agree that any concern about the regulatory mechanism and the respective service standards of the premises/institutions that are exempted from the Bill should be followed up by the relevant Panels.

Classification of RCHDs

23. Members note the broad classification of RCHDs into three categories according to the levels of care and assistance required by their residents, viz. high-care-level RCHDs, medium-care-level RCHDs and low-care-level RCHDs. RCHD residents should have a medical examination conducted by a registered medical practitioner before admission. SWD will consider the profile of residents admitted to a RCHD when the latter submits application for issuance/renewal of licence in determining the category of the RCHD.

24. Noting that in practice, RCHDs may concurrently admit residents requiring different levels of care services, members have sought information on the Administration's criteria for classification of a mixed home. The Administration has explained the "majority rule". For example, a home with over 50% of residents in need of care services of high level is classified as a high-care-level home. If the number of residents receiving care services of high and medium levels are the same, the RCHD will be classified as a high-care-level home. In cases where a mixture of PWDs requiring high, medium and low levels of care are served, the number of PWDs requiring low-level care will be disregarded and the home will either be classified as high-care-level or medium-care-level according to the simple majority rule. The above principles can ensure that the interest of residents who need care services of a higher level will be protected. All small group homes for PWDs will be classified as low-care-level homes as the number of their residents is limited to eight.

25. Members have expressed concern about the appropriate level of care provided to the residents upon a change in the proportion of different types of residents which results in a change of classification of home to a lower level. The Administration has assured members that after determining the category of a RCHD, SWD will specify clearly the level of care services provided by the RCHD on its licence. Although RCHDs may decide on the admission of different types of PWDs, SWD will conduct regular inspections to ensure that the residents' interests are protected. If any home is found to have violated the requirements on its classification, which has in turn affected its quality of service, DSW may, according to clause 18 of the Bill, give directions to any RCHDs by notice in writing to ensure that the residential care home is operated and managed satisfactorily and the welfare of the residents is promoted in a proper manner.

Level of offence

26. Clause 4 of the Bill makes it an offence for a person to operate, keep,

manage or has control of a RCHD in any other way without a licence. The maximum penalty for the offence is a fine at level 6 (\$100,000) and two years' imprisonment, and in the case of a continuing offence, a further fine of \$10,000 may be imposed for each day during which the offence continues. RCHDs which exist before the RCHD Ordinance comes into operation (except Part 2) ("existing RCHDs") and are covered by valid certificates of exemption ("COEs") issued under clause 11 of the Bill are exempted from the application of clause 4.

Licence application system

Application and renewal of licence/COE

27. Clauses 7 and 11 provide for the licensing of RCHDs and the issue of a COE, and empower DSW to refuse to issue a licence or a COE on specified grounds. Members have sought clarification on whether bodies corporate or partnerships are within the meaning of applicants for licences or COEs for the purpose of clause 7 or 11, and if so, how DSW will assess whether a corporate or partnership applicant is a fit person for the purpose of clause 7(3)(a).

28. According to the Administration, the intention is that bodies corporate and partnerships may also apply for licences or COEs under clause 7 or 11. Under the Bill, a "person" (i.e. an applicant) may be construed as an individual, a corporate or a partnership. Such construction is based on the interpretation of "person" under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1). The application system under the RCHE Ordinance adopts the same approach. In line with this interpretation, clause 7(3)(a) provides DSW with the power to refuse to issue a licence if it appears to DSW that the applicant or any person the applicant proposes to employ at the RCHD is not a fit person to operate, take part in the management of or be employed at the RCHD. In considering whether a corporate or partnership is a fit person, DSW may take into account general factors such as whether there is any known record of abuse to clients.

29. Members note that under clause 8(2), an application for the renewal of a licence must be made to DSW not more than four months and not less than two months before the licence expires. Should the application be made less than two months before the licence expires, the application is admissible provided that DSW gives permission in writing, but under no circumstances will the application be entertained after the licence expires. Members have raised concern about the possibility of operation of a RCHD without a licence if DSW has taken unduly long time to consider an application for renewal of licences.

30. The Administration has advised that in general DSW would aim to make a decision on the application for renewal of licence before the expiry of the licence. As an administrative arrangement, the licensing office, which will be set up after enactment of the Bill, will issue letters to RCHD operators reminding them of the renewal of licences four months before the expiry. A performance pledge for different types of services of the licensing office will be drawn up. In any event, clause 8(6) provides that any licence in respect of which an application for renewal is made and would expire before the determination of the application remains in force until DSW's determination of the application.

Validity period of COEs

31. DSW is empowered under clause 11 to issue a COE and specify the validity period of the certificate of not more than 36 months, and a holder of COE may apply for the certificate to be renewed for a period of not more than 36 months under clause 12. Noting that the maximum validity period of a COE is 36 months and is renewable, and the objective of COE is to allow more time for the RCHD concerned to carry out improvement works to comply with the licensing requirements and standards, members have expressed concern about the potentially long validity period of COEs. Members have questioned whether the validity period of COEs will vary according to the lead time needed for meeting the specific conditions imposed by DSW.

32. The Administration has explained that the validity period of individual COE may vary depending on the expected lead time for the RCHD concerned to comply with the licensing requirements, and in any event will be no more than 36 months. The Administration's intention is to encourage an existing RCHD to strive to meet all the licensing requirements and obtain a licence as early as practicable. Hence, a COE will only be issued or renewed where DSW considers that there are full justifications for allowing a reasonable time for completion of the rectification works. The implementation experience of the RCHE Ordinance shows that the validity period of COEs issued to the RCHEs concerned ranges from less than six months, six to 12 months to over 12 months, depending on the lead time required for compliance with the licensing requirements under the RCHE Ordinance. Generally speaking, RCHDs will need more time for carrying out improvement works relating to the building safety requirements. Under clause 11, DSW may specify the conditions imposed in relation to the operation and management of RCHDs when issuing a COE. As set out in the CoP, RCHDs have to display the licence or COE at prominent location in the RCHD.

Making public the conditions imposed on COE holders

33. To enable RCHD residents and their family carers to participate in monitoring the progress of existing RCHDs in making improvements to comply with the requirements of COEs, some members consider that a monitoring mechanism ought to be established in this respect. The Administration has explained that SWD will upload on its website the list of licensed RCHDs together with a copy of their licence and COE on which the conditions being imposed will be specified.

Appeal mechanism

Administrative Appeals Board ("AAB")

34. Clause 14 of the Bill provides for an avenue of appeal against the decisions of DSW to AAB set up under the Administrative Appeals Board Ordinance (Cap. 442) ("AABO"). A person who is aggrieved by any decisions of DSW to impose any condition on a licence/COE, and refuse to issue, renew or cancel a licence/COE under clauses 7, 8, 9, 11 and 12 may appeal to AAB. Members note that since the coming into operation of the RCHE Ordinance in 1995, no appeal has been made to the Appeal Board established thereunder. Having regard to the operational experience of the licensing scheme of RCHEs and its similarity with the proposed licensing scheme of RCHDs, the Administration does not expect a significant number of appeals in respect of RCHDs. To streamline the appeal mechanism, the Administration proposes for AAB to handle appeals both under the RCHE Ordinance and the Bill, instead of setting up another Appeal Board. The Administration will make a consequential amendment to the RCHE Ordinance to this effect. Members consider the arrangement acceptable.

Appeals against DSW's decisions

35. While welcoming the availability of a channel for appeals against the decisions of DSW to AAB, members have questioned why no avenue of appeal is provided under clause 14 for non-compliance with clauses 10 and 13 by DSW in relation to the procedures in exercising his powers. Some members have also raised concern on the need to establish a channel for users of RCHDs to express their views on the decisions of DSW in relation to the issue and renewal of licences/COEs.

36. The Administration has advised that clauses 10 and 13 only set out the procedures that DSW must comply with before exercising powers under clauses

7, 8, 9, 11 or 12, rather than a decision. Any persons who are aggrieved by DSW's decisions made under clauses 7, 8, 9, 11 or 12 may appeal to AAB as provided for under clause 14. As the decision of DSW in relation to the issue and renewal of licences/COEs is made in respect of the applicant, the Administration considers it inappropriate to allow a third party to appeal against the matter. Public views relating to the issue and renewal of licences/COEs can be put forward to SWD under the existing established mechanism.

37. Members have questioned the disparity of treatment to applicants for issue/renewal of licences and applicants for COEs under clauses 10 and 13. Under clause 13, the applicant for a COE will not be offered an opportunity to make written representations to DSW relating to his intended refusal of the application, whereas the applicant for issue/renewal of licence is given such an opportunity under clause 10.

38. According to the Administration, the introduction of a COE in the Bill is a transitional arrangement allowing the existing RCHDs to stay in operation and providing leeway for their operators to rectify non-compliance with the licensing requirements. Strictly speaking, DSW may refuse to issue a licence if an existing RCHD does not comply with all the licensing requirements. However, if the non-compliance is rectifiable (e.g. pending issue of the certificates of fire service installations, awaiting delivery of the necessary equipment), it is the Administration's intention to allow the operator to apply for a COE with certain conditions imposed to require completion of the rectification works within a reasonable period of time. A COE will only be renewed on an exceptional basis where DSW considers that there are full justifications for further extension to allow for completion of the rectification.

39. The Administration has stressed that in the best interests of RCHD residents, its intention is 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. The absence of provisions in the Bill to allow for written representations against the refusal of renewal/issue of COE is in line with the above intent. Such an arrangement is also adopted in the RCHE Ordinance.

Whether an order of DSW should be suspended pending appeals

40. Members note the advice of the legal adviser to the Bills Committee that clause 14 is silent on whether a decision of DSW which is subject to an appeal to AAB should be suspended in operation as from the day on which the appeal is made until such appeal is disposed of. There is also no provision of similar effect in AABO. However, a provision of this effect (i.e. section 12) is

provided in the RCHE Ordinance in relation to the DSW's decision to cancel, suspend or refuse to renew the licence.

41. The Administration has taken on board the legal adviser's observation and has proposed to amend section 10 of the RCHE Ordinance such that certain decisions of DSW made under section 10 of the RCHE Ordinance that are appealed against are suspended as from the day on which the appeals are lodged until the appeals are disposed of, withdrawn or abandoned. Similar amendments will also be made to clause 9 of the Bill so that a decision of DSW made under clause 9(1) of the Bill that is appealed against is suspended in its operation as from the day on which the appeal is lodged until the appeal is disposed of, withdrawn or abandoned.

Enforcement of licensing scheme

Power of entry and inspection

42. Clause 16(2)(a) provides for a specified person with the power to enter and inspect both RCHDs and suspected RCHDs. Members note with concern that uncertainty may arise as to whether the powers proposed in clause 16(2)(b) to (d) are also applicable to suspected premises as no reference to such premises is made after clause 16(2)(a).

43. The Administration has clarified that upon entry into a "suspected RCHD", the specified person will ascertain whether the place is a RCHD as defined in clause 2 of the Bill. If the place is a RCHD, the specified person may exercise the powers under clause 16(2)(b) to (d) to carry out inspection and gather evidence for prosecution under the Bill. In view of members' concern that a specified person may require more power to ascertain whether a suspected premises is indeed a RCHD within the meaning of the Bill, to put the matter beyond doubt, the Administration agrees to explicitly stipulate that the powers of the specified person under clause 16(2)(b) and (c)(i) should also apply to suspected premises. The Administration, however, does not see the need to confer the specified person with the powers under clause 16(d) in respect of inspection of suspected premises. Moreover, clause 16(2)(c)(ii) deals with licensed RCHDs only. The Administration will move a CSA to the effect that clause 16(2)(b) and (c)(i) are also applicable to the suspected premises.

44. Members agree with the Administration's proposal to move a consequential amendment to section 18 of the RCHE Ordinance to the same effect to ensure consistency in operation for both RCHEs and RCHDs as the arrangement proposed under clause 16 has also been adopted in the licensing system for RCHEs.

Order for cessation of use of premises as RCHD

45. DSW is empowered under clause 19 to order that any premises used as a RCHD ceases to be so used under certain circumstances. Concern has been raised about the reason for empowering DSW instead of the court to make such an order, and the availability of appeal against the order. Members have requested the Administration to consider allowing the aggrieved persons to appeal to AAB.

46. The Administration has explained that with the powers given under the Bill, DSW will closely monitor the service performance and operating situation of all RCHDs. DSW is therefore in the best position to directly assess when and on what basis to invoke the power of clause 19, thereby ensuring better protection to the safety of RCHD residents. The policy intention of not providing an appeal against a cessation order is to better safeguard the interest and safety of RCHD residents having regard to seriousness of the case. This proposed arrangement is consistent with that of other statutory licensing schemes currently administered by SWD, including those under the Child Care Services Ordinance, RCHE Ordinance and Drug Dependant Persons Treatment and Rehabilitation Centres (Licensing) Ordinance. Nevertheless, any person who is aggrieved by the decision of DSW may apply to the court for a judicial review.

Exercise of Director's functions

47. Clause 20(1) provides that a Deputy Director of Social Welfare ("DDSW") may exercise any function of DSW under the RCHD Ordinance. Members have questioned whether the reference to "any DDSW" in subclause (4) should be amended to a DDSW who is responsible for administering the licensing scheme for RCHDs. The Administration has explained that as there is more than one DDSW in SWD, the current drafting will provide flexibility for any DDSWs to discharge the duties of DSW for the purpose of the Ordinance. Consequential amendment will be made to the RCHE Ordinance to achieve the same effect.

Liabilities of enforcement officers

48. Under clause 17, specified persons are exempted from incurring personal liabilities arising from the acts or omissions in the inspection of RCHDs. Members have sought clarification of whether the immunity of a specified person referred to in the clause is confined to civil liability only. The Administration has affirmed members' understanding. To put the

interpretation beyond doubt, the Administration will amend clause 17 to spell out the intention expressly.

49. Members accept the Administration's proposal to model on clause 17 of the Bill and introduce a consequential amendment to the RCHE Ordinance to the effect that specified persons are exempted from incurring personal civil liabilities arising from the acts or omissions in the inspection of RCHEs.

Liabilities of bodies corporate and partnerships

50. Members have expressed concern about the liability of the directors and the management of RCHDs. Under the current drafting of clause 22, it will be difficult for the enforcement agency to take action against directors and former directors of limited companies/partnership for committing an offence under the Bill. Members call on the Administration to consider spelling out explicitly that directors and former directors of bodies corporate and partnerships, who are holders of licences/COEs, are liable for the offences in relation to the operation of RCHDs.

51. The Administration has advised that clause 22(1) and (3) provide for offences in relation to licences and COEs committed by a person who operates, keeps, manages or has control of RCHDs for the time being in force, and due diligence defence is provided under clause 22(2) and (4) of the Bill. As "person" is given a wide meaning under Cap. 1 (see paragraph 28 above), and the liability of a director or other officer concerned in the management of the company is provided for under section 101E of the Criminal Procedure Ordinance (Cap. 221) that governs all criminal offences under other legislation, if a company committed an offence under clause 22(1) or (3) of the Bill, a person who was at the time of the offence a director of that company is legally responsible. In this regard, the Administration holds the view that no amendment to clause 22 is necessary. Moreover, in acquiring a new business of RCHD, it remains the responsibility of the buyer to conduct due diligence on whether the RCHD's has complied with the licensing requirements. Members accept the Administration's explanations.

Licensing standards and requirements

52. Whilst noting that the Bill seeks to provide a statutory framework to regulate RCHDs and that the requirements on the operation, management and supervision of RCHDs will be provided in the Regulation to be made after the passage of the Bill, members consider it necessary to examine the proposed licensing requirements given their impact on the operation of RCHDs and the well-being of the RCHD residents. The Bills Committee has therefore

examined in great depth the licensing requirements and standards for RCHDs.

Spatial requirement

53. Members note the proposed minimum area of floor space required for each resident in a licensed RCHD is 6.5 m² across the board for all RCHDs. In determining the area of floor space, the area of any open space, podium, garden or any other area in the RCHD which DSW considers unsuitable for the purpose of a RCHD will be disregarded.

54. Members are gravely concerned that the proposed spatial requirement is lower than that set out in the existing non-statutory CoP for RCHDs issued in 2002, under which the minimum area of floor space for each resident of homes for mildly to moderately disabled persons and severely disabled persons is 6.5 m² and 8 m² respectively. Members have stressed the Government's responsibility to ensure the service quality of RCHDs. The service standards of RCHDs should not be compromised in order to facilitate substandard homes to continue operation. Some members have indicated that they may not support the Bill if the proposed licensing requirements and standards are too low. They consider that the floor area for the purpose of calculating spatial requirement should include personal living space and nursing care space for RCHD residents. Members have queried how RCHD residents could be provided with adequate personal living and nursing care space under the proposed minimum spatial requirement of 6.5 m² per resident.

55. The Administration has explained that the proposed licensing scheme aims to set out the minimum requirements and standards on the operation of RCHDs. As part of the statutory licensing scheme, the CoP will set out the minimum licensing standards for compliance by RCHDs. For this purpose, a Working Group comprising representatives from PWDs, parent groups, subvented RCHDs, private RCHDs, the academia and the Hong Kong Council of Social Service had been set up to review the 2002 CoP which was drawn up with reference to the standards for subvented RCHDs. The Working Group had convened meetings and organised eight consultation sessions to gauge the views of the rehabilitation sector and stakeholders. The Panel on Welfare Services and the Rehabilitation Advisory Committee have also discussed the draft CoP at several meetings. The Administration has stressed that the licensing standards proposed in the latest draft CoP ("2008 CoP") have balanced the practical situations of RCHDs and the needs of PWDs.

56. Some members remain of the view that the Administration should critically consider lifting the minimum spatial requirement, e.g. for persons with severe disabilities. On the other hand, some members suggested that

consideration should be given to including outdoor space (or a portion thereof) for the purpose of calculating the spatial requirement in order to encourage the operators to provide more spacious area for recreational activities for the RCHD residents.

57. The Administration has advised that the number of residents to be accommodated in a RCHD is determined by its physical size and the space standard per capita, i.e. the net floor area for the exclusive use of the home. The inclusion of outdoor space, such as garden and podium may result in a reduction in the usable area for each resident. Diverse views have been received from the residents and the operators on the basis for calculating the floor space. Nevertheless, in the light of members' views, the Administration has agreed to revisit the level of minimum area of floor space to be required for each resident in a RCHD and the criteria for determining the area in a RCHD for the purpose of the spatial requirement. The space standard per capita will be stipulated in the Regulation which will be tabled for negative vetting by the Legislative Council ("LegCo") after passage of the Bill. Members have taken note of the Administration's proposed arrangements.

Staffing requirement

58. Members reckon the need to set out the minimum staffing requirements for each type of RCHDs in different periods of a day according to the levels of care required by the residents. The respective minimum staffing requirements for different types of RCHDs, and the duties and responsibilities of different types of staff will be set out in the Regulation and CoP.

59. Noting that the proposed minimum staffing requirements set out in the 2008 CoP are lower than those in the 2002 CoP, members have expressed concern that the proposed minimum staffing requirements are too low to ensure the service quality of RCHDs. For instance, the respective minimum staffing provision for ancillary workers in a high-level-care home is one for every 30 residents in the 2002 CoP and one for every 40 residents as proposed in the 2008 CoP. Members highlight the need for the Administration to assist the private RCHD sector to upgrade and enhance the service quality, instead of lowering the staffing requirement to facilitate the continued operation of private RCHDs after the implementation of the licensing scheme.

60. Some members are particularly concerned about the service quality and workload of staff of high-level-care homes having regard to their slim workforce under the proposed minimum staffing requirement. For instance, the manning ratio for care workers is one to 20 residents between 7 am and 3 pm, whereas the manning ratio is reduced to 60 residents between 10 pm and

7 am. The manning ratio for health workers is one to 30 residents between 7 am and 6 pm. Members have also queried why nurses and health workers are not required for the night shift.

61. The Administration has reiterated that the minimum staffing requirements have balanced the different views of the rehabilitation sector and stakeholders upon consultation and deliberations of the Working Group to review the 2002 CoP. Under the existing arrangement, the RCHD residents will seek emergency ambulance service for receiving medical treatment at public hospitals if such needs arise at the night time. The Administration has advised members that none of the existing private RCHDs comply with the requirements under the non-statutory 2002 CoP, and a majority of them do not comply with the proposed requirements under the 2008 CoP. Hence, by adopting the 2008 CoP, the private RCHDs would achieve a material improvement in service standards after the introduction of a licensing system.

62. Another issue of concern to members is the impact of the statutory minimum wage on the manpower requirement of RCHDs. Members note the Administration's advice that the draft CoP has been drawn up prior to the coming into force of the statutory minimum wage legislation. Hence, the element of statutory minimum wage has not been reflected in the CoP. Notwithstanding this, the Administration has taken into account the impact of the statutory minimum wage on staff costs and an eight-hour work per shift in drawing up the staffing requirement for the Bought Place Scheme homes, although the actual number of working hours per shift is usually agreed upon in the contract of employment between the employer and the employee. The Administration has explained that the RCHD operators had been advised to observe the requirements under the Minimum Wage Ordinance (Cap. 608) in arranging duty hours for their staff. To address members' concern about possible misunderstanding, the Administration agrees to spell out explicitly the arrangements in the CoP.

Likely impact of the licensing system on the private RCHD sector

63. Members note the view of the private RCHD sector that private home fees will inevitably increase so as to meet the additional costs for carrying out substantial improvement works in RCHDs and/or to compensate the loss of income arising from the reduction in the number of beds. According to the estimation provided by the Hong Kong Private Hostel for Rehabilitation Association, which comprises 46 private RCHDs, the unit operating cost of a private RCHD place in urban areas will be \$5,923 per month and that for a place in the New Territories ("NT") will be \$4,789 after the enactment of the Bill. The major cost elements are rental and staff costs.

64. In assessing the respective impact of the different staffing and spatial requirements under the 2002 CoP and the 2008 CoP on the operation of existing private RCHDs, the Bills Committee has requested the Administration to make an estimate on the unit operating cost of a private RCHD place in the urban areas and NT. According to the Administration, the respective unit operating costs of a RCHD place in urban areas and NT are \$3,785 - \$5,631 and \$3,368 - \$5,134 under the 2002 CoP standard and \$3,439 - \$4,568 and \$3,022 - \$4,151 under the 2008 CoP standard.

65. Members note with concern that about 80% of the residents of private RCHDs are on Comprehensive Social Security Assistance ("CSSA"), and hence the private home fees are set on par with the monthly CSSA payment level, i.e. in the region of \$4,000. Members are worried that some private RCHDs may close down upon the implementation of the statutory licensing scheme because of inability to meet the licensing requirements, resulting in displacement of residents. They are concerned whether the Administration will make necessary decanting arrangements for the affected residents. Noting the discrepancies in the estimation on the unit operating cost provided by the private RCHD sector and the Administration, the Bills Committee has requested the Administration to provide its observation on the estimation made by the Hong Kong Private Hostel for Rehabilitation Association and its assessment on the likely impact of the Bill on private RCHDs.

66. The Administration considers that private RCHDs are not obliged to disclose their financial position. If the existing operating costs of private RCHDs have exceeded the CSSA payments of RCHD residents, these private RCHDs should now be running at a loss. However, it is noteworthy that as a matter of fact, the number of private RCHDs has been increasing despite the imminent introduction of the proposed licensing scheme. In addition, the CSSA Scheme has already taken into account the special needs of PWDs, and has provided higher standard rates, special grants and supplements.

67. The Administration anticipates that 52 of the 64 private RCHDs known to SWD will need to carry out improvement works in respect of building and fire safety to meet the future licensing requirements. A total of 24 private RCHDs (affecting 671 residents) in the urban areas may find it financially not viable if the staffing and spatial standards under the 2002 CoP are adopted. However, no private RCHD is expected to be affected if the standards of the 2008 CoP are adopted. The Administration has pointed out that for the 11 homes (affecting 360 residents) which have non-rectifiable structural/means of escape problems, they may close down if alternative accommodation cannot be secured. None of these 11 homes will be qualified for the proposed Financial Assistance

Scheme which aims to provide subsidies to existing private RCHDs to carry out the necessary improvement works in compliance with the licensing requirements in building and fire safety, although it is observed that these 11 private RCHDs have no immediate safety concerns.

68. According to the Administration's observations, no single private RCHD meets the staffing and spatial requirements of the non-statutory 2002 CoP. In the absence of the licensing scheme, RCHDs are likely to continue to operate below not only the standards of 2002 CoP, but also those of 2008 CoP. Hence, introduction of the licensing scheme would ensure that RCHDs would meet reasonable service standards.

69. Notwithstanding the Administration's explanations, members remain concerned about the operating difficulties and the financial viability of private RCHDs after the implementation of the licensing system having regard to the fact that the majority of residents living in private RCHDs are CSSA recipients who will not be able to meet the increased home fees as a result of the reduction in the number of RCHD places for meeting the spatial requirement. While members are supportive of enhancing the service standards of private RCHDs, they consider it equally important to safeguard the well-being of private RCHD residents and ensure that they will not be adversely affected after the implementation of the licensing scheme. Members have called on the Administration, in tandem with the Bill, to consider increasing the CSSA payment rates for private RCHD recipients prior to the implementation of the statutory licensing system.

70. The Administration has assured members that it is fully aware of their concerns, and will formulate suitable complementary measures to encourage private RCHDs to upgrade their service standards. To this end, a pilot Bought Place Scheme will be introduced prior to the implementation of the statutory licensing system to encourage the private RCHD operators to enhance their service quality, and participating private RCHDs will need to meet higher staffing and spatial requirements. Moreover, a Financial Assistance Scheme will be implemented upon the enactment of the Bill to provide subsidies to private RCHDs to carry out improvement works for compliance with the licensing requirements in building and fire safety. Besides, there will be a grace period of 18 months after the commencement of the Bill to allow time for RCHDs to put in place suitable arrangements to apply for a licence or a COE and for SWD to process all such applications.

71. As regards the decanting arrangements for residents of failing private RCHDs, the Administration has further assured members that it attaches great importance to the well-being of RCHD residents. In addition to introducing

various complementary measures for upgrading service standards of RCHDs, the Administration will assist affected residents to move to other RCHDs as far as practicable if individual private RCHDs cease to operate. Members take note of the Administration's advice that some private RCHDs have indicated their intention to join VRS and SWD will process these applications once received.

The draft CoP

72. Clause 23 empowers DSW to issue CoPs relating to the operation of RCHDs. Members have examined the draft 2008 CoP, which sets out the detailed procedures, guidelines and standards for the operation, management and other control of RCHDs for compliance by the licensees, such as the requirements for building and fire safety, barrier-free access, general management and health care, etc.

73. Members welcome that the Administration has taken on board their suggestions to improve the draft CoP. The Administration also agrees to state explicitly in the CoP that the operator of a RCHD must observe the Minimum Wage Ordinance in arranging the duty hours of staff (paragraph 62 above refers).

The draft Regulation

74. Clause 24 empowers SLW to make regulations for the purpose of the Bill. According to the Administration, it will table the Residential Care Homes (Persons with Disabilities) Regulation to provide for the requirements on the operation, management and supervision of RCHDs (including staffing and space requirements, health and safety requirements, penalties and fees, etc.) for negative vetting by LegCo after the passage of the Bill.

75. Members have examined the draft Regulation to be made by SLW after the enactment of the Bill. The Administration agrees to consider members' suggestions to improve the draft Regulation by spelling out explicitly in the proposed section 18 of the Regulation to provide that the home manager of a RCHD must report immediately to DSW a case of scheduled infectious disease under the Prevention and Control of Disease Ordinance (Cap. 599) if he "reasonably suspects" or knows of such a case. Regarding members' concern over the medical examination for residents, the Administration agrees to elaborate on the related arrangement in the CoP.

76. Members also note that the Administration will set out the level of minimum area of floor space of each resident and the criteria for determining

the area in a RCHD for the purpose of spatial requirement (paragraph 57 above refers) in the proposed section 22 of the Regulation. Members will examine the provisions in the Regulation again as the draft Regulation will be revised having regard to the final version of the Bill. The revised Regulation will be tabled for negative vetting by the LegCo after enactment of the Bill.

77. In the course of deliberations on registration of health workers (Part 3 of the draft Regulation), some members have raised concern about the qualification of health workers. Members note that a health worker means any person who has completed training courses approved by DSW and whose name appears on the register maintained by DSW under the proposed Regulation. While the health workers are obliged to attend specified training courses approved by DSW for the purpose of the Regulation, the attainment of such qualification may not be recognised under the Hong Kong Qualifications Framework. To give recognition to the skills, knowledge and experience of health workers, members consider that the interface between the training courses organised by the welfare sector and the quality-assured qualifications which are registered in the Qualifications Register should warrant further study from the policy perspective. The Bills Committee agrees that the issue should be referred to the Panel on Manpower for follow up.

Commencement of the licensing system

78. The Administration proposes to resume the Second Reading debate on the Bill at the Council meeting of 15 June 2011. Subject to the passage of the Bill, the Administration initially proposes to gazette the Commencement Notice on 30 June 2011 and to appoint the same date as the day on which the Ordinance (except Part 2 on sanctions) shall come into operation. SLW will gazette another Commencement Notice for Part 2 of the Ordinance after the expiry of the 18-month grace period. According to the Administration, it is preferable that the Regulation under section 24 of the RCHD Ordinance is made after most parts of the Ordinance have come into operation. In view of its target to introduce the Regulation before the end of the current legislative session, it therefore proposes to appoint the gazettal date of the Commencement Notice as the day on which the Ordinance (except Part 2 on sanctions) shall come into operation.

79. Members note section 32(1) of the Interpretation and General Clauses Ordinance (Cap. 1) which stipulates that "where an Ordinance is to come into operation on a day other than the day of its publication in the Gazette, a power to do anything under the Ordinance may be exercised at any time after its publication in the Gazette". Members appreciate the need to gazette the proposed Regulation as early as practicable so that the RCHD sector will be

aware of the statutory requirements on the operation, management and supervision of RCHDs, and make rectification works within the 18-month grace period as appropriate. Nevertheless, members consider it important to allow due process for the scrutiny of subsidiary legislation and not preferable for SLW to appoint a date for commencement of the RCHD Ordinance before the expiry of the negative vetting period.

80. After taking into account members' views, the Administration has agreed to revise the legislative timetable accordingly. Subject to the passage of the Bill, the Administration further proposes to gazette the Commencement Notice and the Regulation on 30 June 2011 and appoint 11 November 2011 (i.e. after the expiration of the full negative vetting period on the assumption that the first LegCo meeting will be held on 12 October 2011) as the date on which both the Ordinance (except Part 2 on sanctions) and the Regulation will come into operation. Members consider the revised legislative timetable agreeable.

Consequential amendments

81. Part 8 of the Bill contains consequential and related amendments to other legislation. Under clause 24 of the Bill, SLW is empowered to make regulations for the purpose of the Ordinance, which will cover operational details. Under the RCHE Ordinance, the power to make regulations is vested with the Chief Executive-in-Council. The Administration has included consequential amendments to the RCHE Ordinance in the Bill to confer the regulation-making power provided thereunder to SLW. Members have raised no objection to the proposed consequential amendments.

Committee Stage amendments

82. Apart from the major CSAs highlighted above, the Administration will also move technical and consequential amendments. The CSAs to be moved by the Administration are supported by the Bills Committee.

Follow-up actions

83. The Bills Committee has 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 are registered in the Qualifications Register (paragraph 77 above refers).

Resumption of Second Reading debate

84. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 15 June 2011.

Consultation with the House Committee

85. The Bills Committee reported its deliberations to the House Committee on 27 May 2011.

Council Business Division 2
Legislative Council Secretariat
10 June 2011

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

Membership List

Chairman	Hon WONG Sing-chi
Members	Hon LEE Cheuk-yan
	Hon LEUNG Yiu-chung (since 9 July 2010)
	Hon TAM Yiu-chung, GBS, JP
	Dr Hon Joseph LEE Kok-long, SBS, 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
	 (Total : 12 Members)
Clerk	Miss Betty MA
Legal adviser	Mr YICK Wing-kin
Date	9 July 2010

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

List of deputations which have given written and/or oral views to the Bills Committee

1. Civic Party
2. Concord Mutual-Aid Club Alliance
3. Department of Social Work and Social Administration, The University of Hong Kong
4. Direction Association for the Handicapped
5. Hong Kong Private Hostel for Rehabilitation Association
6. Labour-welfare Group of Democratic Party
7. The Forthright Caucus
8. The Hong Kong Council of Social Service
9. The Hong Kong Joint Council of Parents of the Mentally Handicapped
10. 香港區私營院舍聯會
11. 私人院舍社會工作者同盟
12. 新界東私營復康院舍聯會
13. 爭取私營院舍權益大聯盟
14. 爭取資助院舍聯席

Written submissions only

1. The Association of Parents of the Severely Mentally Handicapped
2. The Hong Kong Joint Council for People with Disabilities