

LEGISLATIVE COUNCIL BRIEF

**RESIDENTIAL CARE HOMES
(PERSONS WITH DISABILITIES) BILL**

INTRODUCTION

A At the meeting of the Executive Council on 8 June 2010, the Council ADVISED and the Chief Executive ORDERED that the Residential Care Homes (Persons with Disabilities) Bill (the Bill) at Annex A should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Existing RCHDs

2. Demand for residential care services for persons with disabilities (PWDs) is ever increasing. Despite an expansion in the number of subsidised residential care places for PWDs from some 6 400 in 1997 to about 11 100 at present, representing an increase of about 74%, some 6 700 PWDs were on the waiting lists for subsidised residential care services as at end-2009. Some of the service demand is being met by self-financing homes operated by non-government organisations (NGOs) and homes operated by the private sector. As at end-2009, there were altogether 304 RCHDs, providing 14 331 places in the territory. These included 228 subvented and 2 Government-operated homes providing 11 098 subsidised places; 20 self-financing homes providing 326 places; and 54 private homes providing 2 907 places. While private homes have been making contribution to the care for PWDs, the quality of their services, which is not always satisfactory, has been a subject of public concern.

3. At present, there is no statutory framework to monitor the operation of RCHDs. The service standards of subvented homes are 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. Having regard to the views of LegCo, groups of PWDs and their parents and the rehabilitation sector, and bearing in mind that we have had in place since 1995 a statutory licensing scheme for the elderly homes, the Administration has undertaken to regulate all RCHDs through a statutory licensing scheme to require all RCHDs to meet the basic service standards as stipulated in the legislation. This licensing scheme, coupled with the introduction of suitable complementary measures, will also help the market develop RCHDs of different types and operational modes and provide PWDs with more service options.

Voluntary Registration Scheme

5. Apart from the issuance of a non-statutory CoP for RCHDs, SWD has since 2006 implemented a Voluntary Registration Scheme (VRS) for private RCHDs as an interim measure to encourage operators of private RCHDs to enhance service quality. Under the VRS, information on private RCHDs meeting the requirements in building safety, fire safety, general management and health care is uploaded to the SWD homepage for public viewing. As at April 2010, there were 54 private RCHDs known to SWD, of which only six have joined the VRS. In spite of SWD's efforts in promoting the VRS and implementing the non-statutory CoP in the last few years, the response from the private RCHDs to the VRS has been lukewarm. A number of private RCHDs are known to be operating below the service standards set out in the CoP.

OTHER OPTIONS

6. Given the lukewarm response of private RCHDs to the VRS, it is most unlikely that they will improve their service quality on their own initiative. Legislative means is the only option to ensure that all RCHDs meet the basic service standards.

THE BILL

Legislative Proposal

7. 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) a clause which empowers 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 to 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 pieces of legislation arising from the introduction of the statutory licensing scheme for RCHDs.

8. To streamline the legislative process, we propose that the power to make regulations under the Residential Care Homes (Persons with Disabilities) Ordinance (RCHD Ordinance), when enacted, be given to SLW given that these regulations will cover operational details. Under the Residential Care Homes (Elderly Persons) Ordinance, Cap 459 (RCHE Ordinance), the power to make regulations is vested with the Chief Executive-in-Council. We will introduce consequential amendments to the RCHE Ordinance through the Bill to confer the regulation-making power provided thereunder to SLW.

Key Features of the Statutory Licensing Scheme

One Licence for One Residential Care Home

9. 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. The existing Care and Attention Homes for the Aged Blind¹ will fit into the categories of both RCHDs and RCHEs. Given the prevailing policy of continuum of care, the improved health services and the increasing lifespan of PWDs, some RCHDs will also be

¹ Care and Attention Homes for the Aged Blind [the Aged Blind Homes] are for elders aged 60 and above who are certified blind and require personal care and attention in the course of daily living activities and are unable to live at home, but who do not require intensive nursing care. The operation of the Aged Blind Homes is regulated by the RCHE Ordinance.

caught by the RCHE Ordinance. We propose that any residential care home should be covered by one licence only, issued under either the RCHE Ordinance or the RCHD Ordinance upon enactment. In other words, if a residential care home fits the definition of a home under both the RCHE Ordinance and the future RCHD Ordinance, the home operator must hold a licence under one of those Ordinances but cannot be licensed under both. Once a licence has been issued and remains in force under one of those Ordinances, we will not issue to the operator a licence under the other Ordinance. 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.

10. Although PWDs and the elderly have many similar residential care requirements, they also have distinct residential care needs. To cater for the needs of these two types of service users and to provide better services, a residential care home should provide dedicated services to either the PWDs or the elderly. It is under such a principle that we intend to discourage the operator of a residential care home from diversifying its services to serve both PWDs and the elderly at the same time, e.g. serving a significant proportion of PWDs in a RCHE, or vice versa. Indeed, allowing a residential care home to have two types of licences in parallel implies that the home is permitted under the law to admit both PWDs and the elderly, and is therefore not in line with the above principle. Also, from the operational perspective, it may create a situation whereby some homes will be subject to two licensing schemes both administered by the SWD, resulting in the overlapping of licensing and monitoring efforts.

Reference to the Residential Care Homes (Elderly Persons) Ordinance, Cap 459

11. Given the ‘one licence for one residential care home’ principle outlined above and the operational experience of the statutory licensing scheme for the elderly homes, we are modelling the Bill on the RCHE Ordinance as far as practicable to ensure consistency while giving due consideration to the circumstances specific to RCHDs.

Coverage

12. To better safeguard the interest of PWD residents and to be fair to all home operators, the Bill will apply to all subvented, self-financing and private homes.

The Bill

13. The key provisions of the Bill are set out below –

- (a) Clause 2 defines terms used in the Bill. The definition of “existing home” shows that Part 2 will come into operation at a later stage;
- (b) Clause 3 deals with the application of the Bill by excepting certain types of establishments;
- (c) Clause 4 creates an offence for the operation of RCHDs without a licence that is in force;
- (d) Clauses 5 and 6 provide for exceptions to Clause 4;
- (e) Clauses 7 to 10 empower DSW to issue or renew a licence for RCHDs, or to cancel or suspend a licence already issued. Clauses 7(5) and 9(2) reflect the policy of one licence for one residential care home;
- (f) Clauses 11 to 13 empower DSW to issue or renew a certificate of exemption, or to revoke a certificate of exemption already issued;
- (g) Clause 14 provides for appeals against DSW’s decisions to the Administrative Appeals Board;
- (h) Clauses 15 to 17 provide for the appointment of certain persons for the inspection of RCHDs;
- (i) Clauses 18 to 19 empower DSW to supervise and control the operation of RCHDs by giving directions or ordering cessation of the use of certain premises as RCHDs;
- (j) Clause 21 empowers the Chief Executive to give directions to DSW and other public officers with respect to the exercise of their functions under the Bill;
- (k) Clause 22 contains various offences relating to a licence and a certificate of exemption;
- (l) Clause 23 gives power to DSW to issue Codes of Practice; and

- (m) Clause 24 empowers SLW to make regulations.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be –

Publication in the Gazette	18 June 2010
First Reading and commencement of Second Reading Debate	30 June 2010
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

B 15. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has economic, financial and civil service implications as set out in **Annex B**. It has no significant environmental implications. Any conversion works of existing RCHDs, if needed, will be conducted in accordance with all applicable environmental legislation and standards. The proposal has no productivity or sustainability implications.

16. The Bill does not contain any express binding effect provision.

PUBLIC CONSULTATION

17. We consulted the LegCo Panel on Welfare Services (the Panel) on the VRS and the draft revised CoP and briefed the Panel on the progress of introducing a statutory licensing scheme for RCHDs at its meetings held in June 2007, May 2008 and January 2009. A special meeting of the Panel was held in February 2009 to collect views from deputations on the draft revised CoP. We updated the Panel on the progress of the preparation of the Bill at its meeting on 12 April 2010. A special meeting of the Panel was also held on 24 April 2010 to receive views of deputations.

18. We consulted the Rehabilitation Advisory Committee (RAC) in October 2008 on the draft revised CoP and the proposed implementation of the licensing scheme.

19. SWD has all along involved the rehabilitation sector and other stakeholders in the process of reviewing the non-statutory CoP for RCHDs and formulating the future licensing requirements. SWD set up a Working Group on RCHDs comprising representatives from PWDs, parent groups of PWDs, operators of subvented and private RCHDs, the academia and the Hong Kong Council of Social Service (HKCSS) to review the CoP. SWD also organised a total of eight consultation sessions to seek the views and comments of the rehabilitation sector and other stakeholders in 2007 and 2008 with regard to the revised requirements in the CoP.

20. Members of LegCo, RAC, the rehabilitation sector, parent groups, PWD groups, HKCSS, operators of subvented, self-financing and private homes and other stakeholders generally supported the proposal to introduce a statutory licensing scheme to regulate the operation of all RCHDs in the territory. While urging the Administration to speed up the legislative process, LegCo Members and the rehabilitation sector also expressed concern that some private RCHDs might close down upon the implementation of the statutory licensing scheme, resulting in displacement of residents. They were concerned that some private RCHDs would increase fees to cover the additional costs for meeting the licensing requirements on building and fire safety or to compensate for the loss of income arising from the reduction in the number of beds. Some LegCo Members and parent groups asked for even higher licensing requirements for space and staffing, on the ground that the proposed standards were lower than those in the existing non-statutory CoP. At the special meeting of the Panel held on 24 April 2010, private RCHDs operators expressed grave concern over the financial viability of their homes should there be an increase in the spatial and staffing requirements above the agreed standards set out in the draft revised CoP. In the worst case scenario, this would cause closure of private homes, displacement of PWDs and loss of jobs.

21. To address these concerns, in tandem with the legislative proposal, we will introduce suitable complementary measures to encourage private RCHDs to upgrade their service standards and help the market develop more service options for PWDs. To this end, we will introduce a pilot Bought Place Scheme (BPS) for private RCHDs prior to the implementation of the statutory licensing scheme. In addition, we will also implement a Financial Assistance Scheme after enactment of the Bill to provide subsidies to private RCHDs to carry out improvement works in compliance with the licensing requirements in building and fire safety. To allow time for individual RCHDs to put in place suitable arrangements for application for a new licence

or a certificate of exemption and for SWD to process all applications, there will be a grace period of 18 months after the passage of the Bill. SWD will closely monitor the operation of the private market and put in place suitable arrangements, e.g. alternative placements for affected residents as necessary. It should be noted that the proposed licensing standards provide only the minimum requirements to ensure compliance by all existing RCHDs and that RCHDs with bought places in future will need to comply with higher standards.

PUBLICITY

22. A press release will be issued on 15 June 2010 and a spokesman will be available to handle media and public enquiries.

OTHERS

23. In case of enquiries about this brief, please contact Mr Stephen SUI, Commissioner for Rehabilitation, Labour and Welfare Bureau, at 2509 4899.

Labour and Welfare Bureau
15 June 2010

RESIDENTIAL CARE HOMES (PERSONS WITH DISABILITIES) BILL

CONTENTS

Clause Page

PART 1

PRELIMINARY

1.	Short title and commencement	1
2.	Interpretation	1
3.	Application	2

PART 2

**RESTRICTION AND EXCEPTION RELATING TO
OPERATION OF RESIDENTIAL CARE HOMES FOR
PERSONS WITH DISABILITIES**

4.	Offence of operating residential care homes for PWDs without licence	3
5.	Certain existing homes excepted from application of section 4	4
6.	Certain residential care homes for elderly persons excepted from application of section 4	4

PART 3

LICENCES

7.	Application for and issue of licence	5
8.	Renewal of licence	8
9.	Cancellation or suspension; amendment or variation of conditions of licence	10

10.	Notice of refusal of licence or renewal and of cancellation or suspension, etc.	10
-----	---	----

PART 4

CERTIFICATES OF EXEMPTION

11.	Application for and issue of certificate of exemption	11
12.	Renewal of certificate of exemption	12
13.	Notice of refusal of certificate of exemption or renewal and of revocation, etc.	13

PART 5

APPEALS

14.	Appeals against decisions	14
-----	---------------------------	----

PART 6

SUPERVISION OF RESIDENTIAL CARE HOMES FOR PERSONS WITH DISABILITIES

15.	Appointment of inspectors	15
16.	Inspection of residential care homes for PWDs	15
17.	Protection of specified persons from certain acts and omissions	17
18.	Director may direct remedial measures	17
19.	Director may order cessation of use of premises as residential care home for PWDs	18
20.	Exercise of Director's functions	18
21.	Power of Chief Executive to give directions	19

PART 7

MISCELLANEOUS

22.	Offences in relation to licences and certificates of exemption	19
23.	Code of Practice relating to operation of residential care homes for PWDs	22
24.	Regulation	22
25.	No fee payable in respect of licence or certificate of exemption	25

PART 8

CONSEQUENTIAL AND RELATED AMENDMENTS

Inland Revenue Ordinance

26.	Elderly residential care expenses	25
-----	-----------------------------------	----

Building (Planning) Regulations

27.	Cinemas	26
-----	---------	----

Hotel and Guesthouse Accommodation (Exclusion) Order

28.	Schedule amended	27
-----	------------------	----

Smoking (Public Health) Ordinance

29.	Interpretation	27
30.	Designated no smoking areas and exempt areas	28

Administrative Appeals Board Ordinance

31.	Schedule amended	28
-----	------------------	----

Bedspace Apartments Ordinance

32.	Application	28
-----	-------------	----

Residential Care Homes (Elderly Persons) Ordinance

33.	Interpretation	29
34.	Exercise of Director's powers	29
35.	Power of Chief Executive to give directions	29
36.	Restriction on operating residential care homes unless exempted or licensed	29
37.	Section 6A added	
	6A. Certain residential care homes for PWDs excepted from application of section 6	30
38.	Application for and issue of licence	30
39.	Cancellation and suspension of licence or refusal to renew and amendment or variation of conditions	31
40.	Section 11 substituted	
	11. Notice of refusal of licence or renewal and of cancellation or suspension, etc.	32
41.	Part V substituted	

PART V

APPEALS

42.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; vertical-align: top;">12.</td> <td style="width: 85%; vertical-align: top;">Appeals against decisions of Director</td> <td style="width: 10%; text-align: right; vertical-align: top;">33</td> </tr> </table>	12.	Appeals against decisions of Director	33	33
12.	Appeals against decisions of Director	33			
42.	Regulation	33			

Residential Care Homes (Elderly Persons) (Appeal Board) Regulation

43. Repeal 33

Fire Safety (Commercial Premises) Ordinance

44. Interpretation 33

Fire Safety (Buildings) Ordinance

45. Interpretation 34

Prevention and Control of Disease Regulation

46. Power of entry and examination 35
47. Escape from quarantine or isolation in hospitals or other establishments 35

A BILL

To

Regulate residential care homes for persons with disabilities by a licensing system, and to make consequential and related amendments to other Ordinances.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Residential Care Homes (Persons with Disabilities) Ordinance.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Interpretation

In this Ordinance –

“certificate of exemption” (豁免證明書) means a certificate of exemption issued under section 11(2)(a) or renewed under section 12(3)(a);

“Director” (署長) means the Director of Social Welfare;

“existing home” (原有院舍) means a residential care home for PWDs that exists immediately before the date on which this Ordinance, except Part 2, comes into operation;

“inspector” (督察) means a person appointed under section 15 to be an inspector of residential care homes for PWDs;

“licence” (牌照、牌) means a licence issued under section 7(2)(a) or renewed under section 8(3)(a);

“person with disabilities” and “PWD” (殘疾人士) mean a person who suffers from one or more of the following disabilities –

- (a) total or partial loss of the bodily or mental functions;
- (b) total or partial loss of a part of the body;
- (c) the presence in the body of organisms causing disease or illness;
- (d) the malfunction, malformation or disfigurement of a part of the body;
- (e) a disorder, illness or disease that affects the thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour;

“premises” (處所) includes any building, enclosure, ground or open air space;

“resident” (住客) means a person who is admitted to reside in any residential care home for PWDs;

“residential care home for PWDs” (殘疾人士院舍) means any premises at which more than 5 PWDs, who have attained the age of 6 years, are habitually received for the purpose of residential accommodation with the provision of care.

3. Application

- (1) This Ordinance does not apply to –
 - (a) any premises used or intended for use solely for the purpose of the medical treatment of persons requiring medical treatment;
 - (b) a nursing home regulated under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165);
 - (c) a boarding school within the meaning of the Education Regulations (Cap. 279 sub. leg. A);

- (d) a treatment centre within the meaning of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566); or
 - (e) a residential care home for PWDs, or type or description of residential care home for PWDs, excluded by the Director by order published in the Gazette.
- (2) An order under subsection (1)(e) may specify that the relevant exclusion is –
- (a) subject to any condition as indicated in the order;
 - (b) subject to any geographical limitation as indicated in the order;
 - (c) to have effect for the period as indicated in the order; or
 - (d) to have partial application as indicated in the order.
- (3) An order under subsection (1)(e) is subsidiary legislation.

PART 2

RESTRICTION AND EXCEPTION RELATING TO OPERATION OF RESIDENTIAL CARE HOMES FOR PERSONS WITH DISABILITIES

4. Offence of operating residential care homes for PWDs without licence

(1) Subject to sections 5 and 6, a person must not operate, keep, manage or in any other way have control of a residential care home for PWDs otherwise than under a licence for the time being in force.

(2) It is not a defence for a person charged with an offence under subsection (1) to show that –

- (a) the person did not know that a licence was not at the relevant time in force in respect of the residential care home;
- (b) if the residential care home is an existing home, the person did not know that a certificate of exemption was not at the

relevant time in force in respect of the residential care home; or

- (c) if the residential care home is also a “residential care home” as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the person did not know that a certificate of exemption or a licence issued under that Ordinance was not at the relevant time in force in respect of the residential care home.

(3) A person who contravenes subsection (1) commits an offence and is liable –

- (a) to a fine at level 6 and to imprisonment for 2 years; and
- (b) in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues.

5. Certain existing homes excepted from application of section 4

Section 4 does not apply to a residential care home for PWDs that is an existing home in respect of which a certificate of exemption is for the time being in force.

6. Certain residential care homes for elderly persons excepted from application of section 4

Section 4 does not apply to a residential care home for PWDs that is also a “residential care home” as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) if a certificate of exemption or a licence issued under that Ordinance is for the time being in force in respect of the residential care home.

PART 3

LICENCES

7. Application for and issue of licence

(1) An application by a person for the issue of a licence in respect of a residential care home for PWDs must be –

- (a) made to the Director in the form and manner determined by the Director; and
- (b) accompanied by the information, particulars and plans required by the Director.

(2) The Director must, on receipt of an application under subsection (1), determine the application –

- (a) by issuing to, and in the name of, the applicant a licence subject to any conditions that the Director thinks fit in relation to the operation, keeping, management or other control of the residential care home; or
- (b) by refusing to issue a licence to the applicant.

(3) Without limiting subsection (2)(b), the Director may refuse to issue a licence to the applicant if it appears to the Director that –

- (a) the applicant or any person the applicant proposes to employ at the residential care home is not a fit person to operate, take part in the management of or be employed at the residential care home;
- (b) the premises used or intended to be used for the residential care home are not fit to be used for the purposes of a residential care home for PWDs for reasons connected with the situation, means of ingress and egress, design, construction, size, type of building, staffing or equipment;
- (c) the premises used or intended to be used for the residential care home do not comply with any requirements relating

to design, construction, fire precautions, health, sanitation and safety set out in –

- (i) any regulation made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123);
 - (ii) any Code of Practice published by the Director of Fire Services and referred to in section 16(1)(b) of the Buildings Ordinance (Cap. 123);
 - (iii) any Code of Practice issued by the Director under section 23; or
 - (iv) any regulation made by the Secretary for Labour and Welfare under section 24; or
- (d) the proposed name of the residential care home is unsuitable or is the same as or similar to –
- (i) the name of an existing home in respect of which a certificate of exemption is for the time being in force;
 - (ii) the name of a residential care home for PWDs in respect of which a licence is for the time being in force;
 - (iii) the name of a residential care home regulated by the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);
 - (iv) the name of a residential care home for PWDs in respect of which a licence has been suspended, surrendered or cancelled; or
 - (v) the name of a residential care home under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) in respect of which a

licence issued under that Ordinance has been suspended, surrendered or cancelled.

- (4) A licence issued under this section must –
- (a) be in the form determined by the Director;
 - (b) specify the conditions, if any, imposed under subsection (2)(a);
 - (c) include an endorsement authorizing the person to whom it is issued to operate, keep, manage or otherwise have control of a residential care home for PWDs of a type prescribed for the purposes of this section; and
 - (d) specify the validity period of the licence, not being a period of more than 36 months.

(5) If a licence issued under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is for the time being in force in respect of the residential care home, the applicant must, after being advised by the Director that the application under subsection (1) is successful, surrender the first-mentioned licence to the Director on the issue of a licence under this section.

- (6) A licence or a copy of it purporting to be signed by the Director –
- (a) is evidence of the facts stated in it as at the date of the licence or the copy; and
 - (b) is to be received in evidence without further proof.

(7) A certificate purporting to be signed by the Director that a residential care home for PWDs is licensed or is not licensed –

- (a) is evidence of the facts stated in it as at the date of the certificate; and
- (b) is to be received in evidence without further proof.

8. Renewal of licence

(1) A person holding a licence in respect of a residential care home for PWDs may, before the licence expires, apply for the licence to be renewed for a period of not more than 36 months.

(2) An application for the renewal of a licence must be made to the Director –

- (a) not more than 4 months and not less than 2 months before the licence expires or within any other period before its expiry as permitted by the Director in writing; and
- (b) in the form and manner determined by the Director.

(3) The Director may, on receipt of an application under subsection (1) –

- (a) renew the licence and impose any conditions in relation to the operation, keeping, management or other control of the residential care home in respect of the renewed licence, in addition to or instead of any conditions previously imposed under section 7(2)(a); or
- (b) refuse to renew the licence.

(4) Without limiting subsection (3)(b), the Director may refuse to renew the licence in respect of a residential care home for PWDs –

- (a) on any ground specified in section 7(3)(a), (b) or (c) that would have entitled the Director to refuse an application for the licensing of the residential care home;
- (b) on the ground that –
 - (i) the person holding the licence has been convicted of an offence against this Ordinance or an indictable offence; or
 - (ii) any other person has been convicted of an offence against this Ordinance or an indictable offence in respect of the residential care home;

- (c) on the ground that, in respect of the residential care home or its residents –
 - (i) this Ordinance has been or is being contravened; or
 - (ii) any requirement, order or direction made or given under this Ordinance has not been complied with by the person;
- (d) on the ground that any condition of the licence has not been or is not being complied with by the person; or
- (e) if it appears to the Director that –
 - (i) the residential care home has ceased to be operated or to exist;
 - (ii) the person has ceased to operate, keep, manage or otherwise have control of the residential care home; or
 - (iii) the residential care home has, on any occasion since the date on which the licence is issued in respect of it, been operated in a manner contrary to the public interest.

(5) A renewal of a licence under this section before the expiry of the licence takes effect on the day following the day of its expiry.

(6) Subject to subsection (7), any licence in respect of which an application for renewal is made under this section and which, but for this subsection, would expire before the determination of the application remains in force until the determination by the Director of the application.

(7) Subsection (6) does not apply if –

- (a) the application is withdrawn; or
- (b) the licence is cancelled or suspended under section 9.

(8) A renewal of a licence under this section takes effect on the day following the day on which the licence would have expired but for subsection

(6), for the period (not being more than 36 months) indicated by the Director at the time of renewal.

9. Cancellation or suspension; amendment or variation of conditions of licence

(1) The Director may cancel or suspend the licence in respect of a residential care home for PWDs, or amend or vary any condition of the licence, on any ground specified in section 8(4) that would have entitled the Director to refuse an application for the renewal of a licence.

(2) If a licence is for the time being in force in respect of a residential care home for PWDs and an application for the issue of a licence in respect of the same residential care home premises is successful under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the Director must cancel the licence issued under this Ordinance immediately before issuing a licence under section 8 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459).

10. Notice of refusal of licence or renewal and of cancellation or suspension, etc.

(1) The Director must, before refusing an application for a licence or for the renewal of a licence, or before exercising the power under section 9(1), give notice to the applicant or the person holding the licence in respect of a residential care home for PWDs of the intention to do so –

- (a) stating the grounds on which the Director intends to refuse the application or exercise the power under that section; and
- (b) stating that the applicant or the person may make written representations to the Director.

(2) If the Director decides to refuse an application for a licence or for the renewal of a licence, or if the Director decides to exercise the power under section 9(1), the Director must make a written order, properly dated and signed, to that effect.

(3) The Director must send a copy of the written order under subsection (2) to the applicant or the person holding the licence by delivering it personally or by registered post to the applicant or that person, at the address last known to the Director.

PART 4

CERTIFICATES OF EXEMPTION

11. Application for and issue of certificate of exemption

(1) An application by a person for the issue of a certificate of exemption in respect of an existing home must be –

- (a) made to the Director in the form and manner determined by the Director; and
- (b) accompanied by the information, particulars and plans required by the Director.

(2) The Director may, on receipt of an application under subsection (1), determine the application –

- (a) by issuing to, and in the name of, the applicant a certificate of exemption subject to any conditions that the Director thinks fit in relation to the operation, keeping, management or other control of the existing home; or
- (b) by refusing to issue a certificate of exemption to the applicant.

(3) A certificate of exemption issued under this section must –

- (a) be in the form determined by the Director;
- (b) specify the conditions, if any, imposed under subsection (2)(a);
- (c) include an endorsement authorizing the person to whom it is issued to operate, keep, manage or otherwise have

control of an existing home of a type prescribed for the purposes of this section; and

(*d*) specify the validity period of the certificate, not being a period of more than 36 months.

(4) The Director may revoke a certificate of exemption.

(5) A certificate of exemption or a copy of it purporting to be signed by the Director –

(*a*) is evidence of the facts stated in it as at the date of the certificate or the copy; and

(*b*) is to be received in evidence without further proof.

(6) A certificate purporting to be signed by the Director that a certificate of exemption has or has not been issued in respect of an existing home –

(*a*) is evidence of the facts stated in it as at the date of the first-mentioned certificate; and

(*b*) is to be received in evidence without further proof.

12. Renewal of certificate of exemption

(1) A person holding a certificate of exemption in respect of an existing home may, before the certificate expires, apply for the certificate to be renewed for a period of not more than 36 months.

(2) An application for the renewal of a certificate of exemption must be made to the Director –

(*a*) not more than 4 months and not less than 2 months before the certificate expires or within any other period before its expiry as permitted by the Director in writing; and

(*b*) in the form and manner determined by the Director.

(3) The Director may, on receipt of an application under subsection (1) –

- (a) renew the certificate and impose any conditions in relation to the operation, keeping, management or other control of the existing home in respect of the renewed certificate of exemption, in addition to or instead of any conditions previously imposed under section 11(2)(a); or
- (b) refuse to renew the certificate.

(4) A renewal of a certificate of exemption under this section before the expiry of the certificate takes effect on the day following the day of its expiry.

(5) Subject to subsection (6), any certificate of exemption in respect of which an application for renewal is made under this section and which, but for this subsection, would expire before the determination of the application remains in force until the determination by the Director of the application.

(6) Subsection (5) does not apply if –

- (a) the application is withdrawn; or
- (b) the certificate is revoked under section 11(4).

(7) A renewal of a certificate of exemption under this section takes effect on the day following the day on which the certificate would have expired but for subsection (5), for the period (not being more than 36 months) indicated by the Director at the time of renewal.

13. Notice of refusal of certificate of exemption or renewal and of revocation, etc.

(1) If the Director decides to refuse an application for a certificate of exemption under section 11(2)(b), the Director must give notice of the decision to the applicant stating the grounds for the refusal.

(2) If the Director decides to revoke a certificate of exemption under section 11(4), the Director must give notice of the decision to the person holding the certificate stating the grounds for the revocation.

(3) If the Director decides to refuse an application for the renewal of a certificate of exemption under section 12(3)(b), or to grant an application subject to conditions imposed in respect of the renewed certificate of exemption under

section 12(3)(a), the Director must give notice of the decision to the applicant or the person holding the certificate stating the grounds for the refusal or conditions.

(4) A notice given under this section must be in writing and be sent to the applicant or the person referred to in subsection (1), (2) or (3) respectively by delivering it personally or by registered post to the applicant or that person, at the address last known to the Director.

PART 5

APPEALS

14. Appeals against decisions

A person who is aggrieved by any of the following decisions made in respect of the person may appeal to the Administrative Appeals Board –

- (a) a decision of the Director to impose any condition under section 7;
- (b) a decision of the Director to refuse to issue a licence under section 7;
- (c) a decision of the Director to impose any condition under section 8;
- (d) a decision of the Director to refuse to renew a licence under section 8;
- (e) a decision of the Director to cancel or suspend, or to amend or vary any condition of, a licence under section 9(1);
- (f) a decision of the Director to impose any condition under section 11;
- (g) a decision of the Director to refuse to issue a certificate of exemption under section 11;
- (h) a decision of the Director to revoke a certificate of exemption under section 11;

- (i) a decision of the Director to impose any condition under section 12;
- (j) a decision of the Director to refuse to renew a certificate of exemption under section 12.

PART 6

SUPERVISION OF RESIDENTIAL CARE HOMES FOR PERSONS WITH DISABILITIES

15. Appointment of inspectors

The Director may by notice in writing appoint the following persons to be an inspector of residential care homes for PWDs –

- (a) an officer of the Social Welfare Department;
- (b) an officer of the Buildings Department;
- (c) a person who is registered as a medical practitioner under the Medical Registration Ordinance (Cap. 161);
- (d) a person whose name appears on the register of nurses maintained under section 5 of the Nurses Registration Ordinance (Cap. 164).

16. Inspection of residential care homes for PWDs

(1) In this section, “specified person” (指明人士) means –

- (a) the Director;
- (b) an officer of the Fire Services Department; or
- (c) an inspector.

(2) If a specified person produces, if so required, proof of identity as the specified person, and the specified person’s identity card issued under the Registration of Persons Ordinance (Cap. 177), the specified person may –

- (a) at all reasonable times enter and inspect any residential care home for PWDs or any premises which the specified

- person has reason to suspect are used as or for the purposes of a residential care home for PWDs;
- (b) require any person taking part in the operation or management of a residential care home for PWDs to –
 - (i) produce any book, document or other article relating to the operation or management of the residential care home or to any other activity in respect of the residential care home; or
 - (ii) give any information relating to the operation, management or activity mentioned in subparagraph (i);
 - (c) remove for further examination any book, document or other article which the specified person has reason to suspect is –
 - (i) evidence of the commission of an offence against this Ordinance; or
 - (ii) evidence of a ground for the cancellation of the licence issued in respect of a residential care home for PWDs; and
 - (d) do any other things that are necessary for –
 - (i) the inspection of a residential care home for PWDs; or
 - (ii) the inspection or testing of any equipment, works or system used for or in connection with the operation, keeping, management or other control of a residential care home for PWDs.

17. Protection of specified persons from certain acts and omissions

(1) A specified person under section 16 is not personally liable for anything done or omitted to be done by the specified person in good faith in the exercise of a function or purported exercise of a function under this Ordinance.

(2) The protection conferred by subsection (1) does not affect any liability of the Government for the act or omission.

18. Director may direct remedial measures

(1) The Director may, in respect of any residential care home for PWDs, by notice in writing, give any directions that appear to the Director to be required to ensure that –

- (a) the residential care home is operated and managed satisfactorily;
- (b) the welfare of the residents is promoted in a proper manner;
- (c) it is provided with adequate apparatus and equipment to safeguard the residential care home against fire or other hazards likely to endanger the lives or health of residents; and
- (d) this Ordinance is complied with.

(2) A notice under subsection (1) –

- (a) may be sent to the person who is the operator, keeper or manager, or who otherwise has control, of the residential care home by delivering it personally or by registered post to that person at the address last known to the Director; and
- (b) must indicate a period within which the directions are to be complied with.

19. Director may order cessation of use of premises as residential care home for PWDs

(1) The Director may by a written order direct that the premises used as a residential care home for PWDs cease to be used as a residential care home for PWDs for the period that the Director thinks fit or until further notice –

- (a) if it appears to the Director that there is any danger or risk of danger to the residents in the residential care home; or
- (b) if, in respect of the residential care home, the requirements of a direction given under section 18(1) are not complied with within the period indicated in the notice sent under section 18(2).

(2) An order under this section –

- (a) is to be sent to the person who is the operator, keeper or manager, or who otherwise has control, of the residential care home concerned; and
- (b) takes effect from the date of sending or posting.

(3) An order under this section is properly sent if –

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

20. Exercise of Director's functions

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

(2) The Director may authorize any public officer to exercise any function of the Director under this Ordinance.

(3) A person to whom this subsection applies is not personally liable for anything done or omitted to be done by the person in good faith in the exercise of a function or purported exercise of a function under this Ordinance.

(4) Subsection (3) applies to –

- (a) the Director;
- (b) any Deputy Director of Social Welfare; and
- (c) any public officer authorized under subsection (2).

(5) The protection conferred by subsection (3) does not affect any liability of the Government for the act or omission.

21. Power of Chief Executive to give directions

(1) The Chief Executive may give to the Director, any Deputy Director of Social Welfare or to any other public officer any directions that the Chief Executive thinks fit with respect to the exercise of the person's 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) must, in the exercise of the person's functions under this Ordinance, comply with that direction.

PART 7

MISCELLANEOUS

22. Offences in relation to licences and certificates of exemption

(1) A person commits an offence if the person on any occasion operates, keeps, manages or otherwise has control of a residential care home for PWDs in respect of which a licence is for the time being in force –

- (a) in contravention of any condition of the licence;
- (b) in any premises other than the residential care home premises indicated in the licence; or

- (c) under any name other than the name of the residential care home indicated in the licence.

(2) If any condition of a licence is contravened, the person holding the licence in respect of the residential care home commits an offence unless the person proves that –

- (a) the person did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and
- (b) the person could not have prevented those circumstances arising by the exercise of reasonable supervision and reasonable diligence.

(3) A person commits an offence if the person on any occasion operates, keeps, manages or otherwise has control of an existing home in respect of which a certificate of exemption is for the time being in force –

- (a) in contravention of any condition of the certificate of exemption;
- (b) in any premises other than the existing home premises indicated in the certificate of exemption; or
- (c) under any name other than the name of the existing home indicated in the certificate of exemption.

(4) If any condition of a certificate of exemption is contravened, the person holding the certificate in respect of the existing home commits an offence unless the person proves that –

- (a) the person did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and
- (b) the person could not have prevented those circumstances arising by the exercise of reasonable supervision and reasonable diligence.

(5) If an offence under subsection (1) or (3) is alleged to have been committed, proof that a defendant did any act in connection with the operation, keeping, management or other control of a residential care home for PWDs is, in the absence of evidence to the contrary, proof that the defendant operated, kept, managed or otherwise had control of the residential care home.

- (6) A person commits an offence if the person –
- (a) in or in connection with any application under this Ordinance makes any statement or gives any information, whether in oral or written form, which is false in any material particular and which the person knows or reasonably ought to know is false in the material particular;
 - (b) obstructs the Director, any officer of the Fire Services Department or any inspector in the exercise of any functions under this Ordinance;
 - (c) refuses to produce any book, document or other article when so required under section 16 or gives any information which is false in a material particular and which the person knows or reasonably ought to know is false in the material particular;
 - (d) fails to comply with the requirements of a direction given under section 18 within the period indicated in the notice sent under it; or
 - (e) fails to comply with the requirements of an order sent to the person under section 19.
- (7) A person who commits an offence under this section is liable –
- (a) to a fine at level 6 and to imprisonment for 2 years; and
 - (b) in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues.

23. Code of Practice relating to operation of residential care homes for PWDs

(1) The Director may issue from time to time any Code of Practice setting out principles, procedures, guidelines and standards for the operation, keeping, management or other control of residential care homes for PWDs.

(2) A copy of every Code of Practice issued from time to time under subsection (1) is to be made available during business hours by the Director for inspection by the public, free of charge, at the offices of the Government directed by the Director.

24. Regulation

(1) The Secretary for Labour and Welfare may by regulation provide for or in relation to residential care homes for PWDs for –

- (a) their operation, management, supervision and inspection;
- (b) their classes or description;
- (c) the duties and responsibilities of persons holding the licences in respect of residential care homes for PWDs;
- (d) the qualifications, experience, appointment, duties, responsibilities and discipline of persons employed for the purposes of the operation, management and supervision of residential care homes for PWDs, including the number of persons to be so employed in relation to the number of residents and the registration of their employment by the Director;
- (e) the admission of residents having regard to the age of residents who may be admitted to any class or description of residential care homes for PWDs;
- (f) the medical examination of the residents and the persons employed;

- (g) the exclusion from residential care homes for PWDs of any resident or employee and measures to preserve the health and well-being of residents or employees;
- (h) the discharge of residents from residential care homes for PWDs and the procedure to be adopted for the discharge, including the period of notice to be given for the discharge of any resident;
- (i) the control and supervision of activities in residential care homes for PWDs;
- (j) the adequacy, suitability and use of equipment in residential care homes for PWDs;
- (k) the keeping of records, timetables, menus and books of account;
- (l) the reports and information to be supplied to the Director;
- (m) the design, construction, hygiene and sanitation of residential care homes for PWDs;
- (n) the precautions to be taken against fire or other hazards likely to endanger the lives or health of residents;
- (o) the provision of and control of entrances to and exits from residential care homes for PWDs;
- (p) the disclosure and provision of information relating to the level or amount of fees and other charges that may be charged or imposed in respect of the services provided or otherwise on account of the care of residents;
- (q) subject to section 25, the fees to be charged for any matter prescribed or permitted by this Ordinance;
- (r) the promotion, including the advertising or marketing, of residential care homes for PWDs by specifying whether licences or certificates of exemption are for the time being in force in respect of the residential care homes;

- (s) generally, carrying into effect this Ordinance.
- (2) Any regulation made under this section may –
- (a) prohibit the performance of particular acts without the consent of the Director;
 - (b) authorize the Director to require or prohibit the performance of particular acts; and
 - (c) require particular acts to be performed to the satisfaction of the Director.
- (3) The Director may, by notice in writing sent to the person who is the operator, keeper or manager, or who otherwise has control, of a residential care home for PWDs –
- (a) waive wholly, partly or conditionally the requirements of any regulation made under this section in respect of the residential care home; and
 - (b) amend or withdraw the notice.
- (4) Regulations made under this section may provide that any contravention of the regulations is an offence punishable by –
- (a) a fine not exceeding level 6 and a term of imprisonment not exceeding 2 years; and
 - (b) a fine not exceeding \$10,000 for each day during which the offence continues.
- (5) The amount of fees provided for under subsection (1)(q) need not be limited by reference to the amount of administrative or other costs incurred, or likely to be incurred, by the Director in the exercise of the Director’s functions under this Ordinance.
- (6) Without affecting subsection (5), any regulation made under subsection (1)(q) may provide for –
- (a) a different fee to be payable having regard to –

- (i) the type or description of any residential care home for PWDs or of any matter prescribed or permitted by this Ordinance; or
 - (ii) the period indicated in the licence or the certificate of exemption; and
- (b) the waiver, remission, reduction or refund of any fee.

25. No fee payable in respect of licence or certificate of exemption

No fee is payable –

- (a) on an application for the issue or renewal of a licence;
- (b) on an application for the issue or renewal of a certificate of exemption;
- (c) for the issue or renewal of a licence; or
- (d) for the issue or renewal of a certificate of exemption.

PART 8

CONSEQUENTIAL AND RELATED AMENDMENTS

Inland Revenue Ordinance

26. Elderly residential care expenses

(1) Section 26D(5) of the Inland Revenue Ordinance (Cap. 112) is amended, in the definition of “residential care home” –

- (a) by repealing “(安老院)” and substituting “(院舍)”;
- (b) in paragraph (b), by repealing “that Ordinance” and substituting “the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)”;
- (c) by repealing paragraph (c) and substituting –

- “(c) to which the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) does not apply by virtue of section 3 of that Ordinance;”;
- (d) in paragraph (d), in the English text, by repealing the full stop at the end and substituting a semicolon;
- (e) by adding –
 - “(e) in respect of which a licence issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) is for the time being in force; or
 - (f) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) is for the time being in force.”.

(2) Section 26D(5) is amended, in the Chinese text, in the definition of “住宿照顧開支” –

- (a) by repealing “安老院” wherever it appears and substituting “院舍”;
- (b) by repealing the full stop and substituting a semicolon.

Building (Planning) Regulations

27. Cinemas

(1) Regulation 49B(4)(c) of the Building (Planning) Regulations (Cap. 123 sub. leg. F) is amended –

- (a) in sub-subparagraph (vi), by repealing “or”;
- (b) by repealing sub-subparagraph (vii) and substituting –
 - “(vii) a home for elderly persons; or”;
- (c) by adding –
 - “(viii) a home for persons with disabilities.”.

(2) Regulation 49B is amended by adding –

“(6) In this regulation –

“home for elderly persons” (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

“home for persons with disabilities” (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010).”.

Hotel and Guesthouse Accommodation (Exclusion) Order

28. Schedule amended

The Schedule to the Hotel and Guesthouse Accommodation (Exclusion) Order (Cap. 349 sub. leg. C) is amended by adding –

“4A. Premises to which the provisions of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) apply.”.

Smoking (Public Health) Ordinance

29. Interpretation

Section 2 of the Smoking (Public Health) Ordinance (Cap. 371) is amended by repealing the definition of “residential care home” and substituting –

““residential care home” (院舍) means –

(a) a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459); or

(b) a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010);”.

30. Designated no smoking areas and exempt areas

Schedule 2 is amended, in the Chinese text, in Part 1, in item 19(k), by repealing “安老院” and substituting “院舍”.

Administrative Appeals Board Ordinance

31. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding –

- | | | |
|------|---|--|
| “69. | Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) | A decision of the Director of Social Welfare under section 7, 8, 9 or 10(1). |
| 70. | Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) | A decision of the Director of Social Welfare under section 7, 8, 9(1), 11 or 12.”. |

Bedspace Apartments Ordinance

32. Application

(1) Section 3(1)(e) of the Bedspace Apartments Ordinance (Cap. 447) is amended by repealing “or disabled persons” and substituting “persons or for persons with disabilities”.

(2) Section 3 is amended by adding –

“(4) In this section –

“home for elderly persons” (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

“home for persons with disabilities” (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010).”.

Residential Care Homes (Elderly Persons) Ordinance

33. Interpretation

(1) Section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is amended by repealing the definition of “Appeal Board”.

(2) Section 2 is amended by repealing the definition of “Chairman”.

34. Exercise of Director’s powers

(1) The heading of section 4 is amended by repealing “**powers**” and substituting “**functions**”.

(2) Section 4(1) is amended by repealing “The” and substituting “A”.

35. Power of Chief Executive to give directions

(1) Section 5(1) is amended by repealing “the Deputy Director of Social Welfare or to any other public officer such directions as he thinks fit with respect to the exercise or performance” and substituting “any Deputy Director of Social Welfare or to any other public officer any directions that the Chief Executive thinks fit with respect to the exercise”.

(2) Section 5(2) is amended, in the English text, by repealing “shall, in the exercise or performance of his” and substituting “must, in the exercise of the person’s”.

36. Restriction on operating residential care homes unless exempted or licensed

Section 6 is amended by adding –

“(4) It is not a defence for a person charged with an offence under subsection (1) to show that, if the residential care home is also a “residential care home for PWDs” as defined by section 2 of the

Residential Care Homes (Persons with Disabilities) Ordinance (of 2010), the person did not know that a licence or a certificate of exemption issued under that Ordinance was not at the relevant time in force in respect of the residential care home.”.

37. Section 6A added

The following is added in Part II –

“6A. Certain residential care homes for PWDs excepted from application of section 6

Section 6 does not apply to a residential care home that is also a “residential care home for PWDs” as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) if a licence or a certificate of exemption issued under that Ordinance is for the time being in force in respect of the residential care home.”.

38. Application for and issue of licence

(1) Section 8(3)(a) is amended by repealing “, whether by reason of age or otherwise,”.

(2) Section 8(3)(d)(i) is amended by repealing everything after “name of” and substituting “a residential care home in respect of which a certificate of exemption is for the time being in force;”.

(3) Section 8(3)(d)(ii) is amended by repealing “any other residential care home; or” and substituting “a residential care home in respect of which a licence is for the time being in force or the name of a residential care home for PWDs regulated by the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010);”.

(4) Section 8(3)(d)(iii) is amended by repealing “cancelled.” and substituting “suspended, surrendered or cancelled; or”.

(5) Section 8(3)(d) is amended by adding –

- “(iv) the name of a residential care home for PWDs under the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) in respect of which a licence issued under that Ordinance has been suspended, surrendered or cancelled.”.
- (6) Section 8 is amended by adding –
- “(4A) If a licence issued under the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010) is for the time being in force in respect of the residential care home, the applicant must, after being advised by the Director that the application under subsection (1) is successful, surrender the first-mentioned licence to the Director on the issue of a licence under this section.”.

39. Cancellation and suspension of licence or refusal to renew and amendment or variation of conditions

- (1) Section 10 is amended by renumbering it as section 10(1).
- (2) Section 10(1) is amended by repealing everything before paragraph (a) and substituting –
- “(1) The Director may cancel, suspend or refuse to renew the licence in respect of a residential care home, or amend or vary any condition of the licence –”.
- (3) Section 10(1)(b)(i) is amended by repealing “that person” and substituting “the person holding the licence”.
- (4) Section 10 is amended by adding –
- “(2) If a licence is for the time being in force in respect of a residential care home and an application for the issue of a licence in respect of the same residential care home premises is successful under the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010), the Director must cancel the

licence issued under this Ordinance immediately before issuing a licence under section 7 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010).”.

40. Section 11 substituted

Section 11 is repealed and the following substituted –

“11. Notice of refusal of licence or renewal and of cancellation or suspension, etc.

(1) The Director must, before refusing an application for a licence or for the renewal of a licence, or before exercising the power under section 10(1), give notice to the applicant or the person holding the licence in respect of a residential care home of the intention to do so –

- (a) stating the grounds on which the Director intends to refuse the application or exercise the power under that section; and
- (b) stating that the applicant or the person may make written representations to the Director.

(2) If the Director decides to refuse an application for a licence or for the renewal of a licence, or if the Director decides to exercise the power under section 10(1), the Director must make a written order, properly dated and signed, to that effect.

(3) The Director must send a copy of the written order under subsection (2) to the applicant or the person holding the licence by delivering it personally or by registered post to the applicant or that person, at the address last known to the Director.”.

41. Part V substituted

Part V is repealed and the following substituted –

“PART V

APPEALS

12. Appeals against decisions of Director

A person who is aggrieved by any decisions made in respect of the person under section 7, 8, 9 or 10(1) may appeal to the Administrative Appeals Board.”.

42. Regulation

(1) Section 23(1) is amended by repealing “Chief Executive in Council” and substituting “Secretary for Labour and Welfare”.

(2) Section 23(1)(*q*) is repealed.

(3) Section 23(1) is amended by adding –

“(ra) the promotion, including the advertising or marketing, of residential care homes by specifying whether certificates of exemption or licences are for the time being in force in respect of the residential care homes;”.

Residential Care Homes (Elderly Persons) (Appeal Board) Regulation

43. Repeal

The Residential Care Homes (Elderly Persons) (Appeal Board) Regulation (Cap. 459 sub. leg. B) is repealed.

Fire Safety (Commercial Premises) Ordinance

44. Interpretation

(1) Section 3(1) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) is amended, in the definition of “commercial building”, in paragraph (a)(v), by repealing “elderly home” and substituting “home for elderly persons, home for persons with disabilities”.

(2) Section 3(1) is amended, in the definition of “domestic”, by repealing “elderly home” and substituting “home for elderly persons, home for persons with disabilities”.

(3) Section 3(1) is amended by adding –

““home for elderly persons” (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

“home for persons with disabilities” (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010);”.

Fire Safety (Buildings) Ordinance

45. Interpretation

(1) Section 3(1) of the Fire Safety (Buildings) Ordinance (Cap. 572) is amended, in the definition of “domestic purposes”, by repealing “the elderly” and substituting “elderly persons, home for persons with disabilities”.

(2) Section 3(1) is amended by adding –

““home for elderly persons” (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

“home for persons with disabilities” (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (of 2010);”.

(3) Section 3(3) is amended by repealing “the elderly” and substituting “elderly persons, home for persons with disabilities”.

Prevention and Control of Disease Regulation

46. Power of entry and examination

Section 10(6)(a) of the Prevention and Control of Disease Regulation (Cap. 599 sub. leg. A) is amended by adding “home for persons with disabilities,” after “home for the aged,”.

47. Escape from quarantine or isolation in hospitals or other establishments

Section 28(1) is amended by adding “home for persons with disabilities,” after “home for the aged,”.

Explanatory Memorandum

The object of this Bill is to provide for the control of residential homes established for the care of persons with disabilities (“PWDs”). The control is to be effected by a licensing system to be administered by the Director of Social Welfare (“the Director”).

2. The Bill is divided into 8 Parts.

Part 1 of the Bill

3. Part 1 provides for preliminary matters.

4. Clause 1 provides for the short title and commencement of the Ordinance (when enacted).

5. Clause 2 contains the definitions of the words and expressions used in the Bill. This clause, in particular, defines “existing home” as a residential care home for PWDs that exists before the Ordinance (when enacted) first comes into effect (“existing home”). The purpose is to allow a grace period for those homes to obtain a licence.

6. Clause 3 excepts certain types of establishments from the application of the Ordinance (when enacted).

Part 2 of the Bill

7. Clause 4 creates an offence for the operation of residential care homes for PWDs without licences.

8. Clause 5 deals with existing homes in respect of which certificates of exemption are in force. Clause 6 provides that certain residential care homes for elderly persons in respect of which certificates of exemption or licences issued under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (“Cap. 459”) are in force are excepted from the prohibition under clause 4.

Part 3 of the Bill

9. Clause 7 provides for the licensing of residential care homes for PWDs and empowers the Director to refuse to issue a licence on specified grounds. In particular, if in respect of a residential care home a licence issued under Cap. 459 is in force, the applicant is required to surrender that licence on the issue of a licence under the Ordinance (when enacted).

10. Clause 8 deals with the renewal of licences and sets out the grounds for refusal.

11. Clause 9 empowers the Director to cancel or suspend licences on certain grounds. In particular, the Director is required to cancel a licence issued under the Ordinance (when enacted) in respect of a residential care home for PWDs immediately before issuing a licence in respect of the residential care home under Cap. 459.

12. Notice is required under clause 10 before exercising certain powers under clause 7, 8 or 9.

Part 4 of the Bill

13. Clause 11 provides for the issue of certificates of exemption to existing homes.

14. Clause 12 deals with the renewal of certificates of exemption.

15. Notice is required under clause 13 before exercising certain powers under clause 11 or 12.

Part 5 of the Bill

16. Clause 14 provides for appeals against decisions of the Director to the Administrative Appeals Board.

Part 6 of the Bill

17. Clauses 15 and 16 provide for the inspection of residential care homes for PWDs by specified persons.

18. Clause 17 exempts specified persons from incurring personal liabilities arising from the acts or omissions in the inspection of residential care homes for PWDs.

19. Clause 18 empowers the Director to give directions to ensure the proper operation and management of residential care homes for PWDs and that the Ordinance (when enacted) is complied with.

20. Clause 19 empowers the Director to order that any premises used as a residential care home for PWDs must cease to be so used under certain circumstances.

21. Clause 20 deals with administrative matters. This clause also exempts public officers from incurring personal liabilities arising from the acts or omissions in the exercise of any functions under the Ordinance (when enacted).

Part 7 of the Bill

22. Clause 22 provides for offences relating to licences and certificates of exemption.

23. Clause 23 empowers the Director to issue Codes of Practice relating to the operation of residential care homes for PWDs.

24. Clause 24 empowers the Secretary for Labour and Welfare to make regulations for the purposes of the Ordinance (when enacted).

25. Clause 25 provides that no fee is payable for the issue or renewal of licences or certificates of exemption.

Part 8 of the Bill

26. Clauses 26 to 47 contain consequential and related amendments.

ECONOMIC, FINANCIAL AND CIVIL SERVICE IMPLICATIONS

ECONOMIC IMPLICATIONS

The legislative proposal would increase the compliance costs of some private RCHDs which currently fall short of the proposed statutory standards. Nevertheless, the proposed complementary measures would assist these private RCHDs to upgrade their services to meet the statutory standards. In the longer term, the proposal would ensure the service quality of RCHDs and help the market develop residential care homes of different types and operational modes, thereby enhancing competition among licensees and providing more service options. It should have a positive impact on the development of the private RCHDs market.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

Pilot Bought Place Scheme (BPS) for Private RCHDs

2. SWD will purchase BPS places in two phases over the 4-year pilot period, with an initial purchase of around 100 places in the first year, building up to a total of 250 to 300 places from the second year onwards. Having regard to the response of service users, the number of new homes coming on stream, the quality of places to be provided by private RCHDs and their response, SWD will consider suitable adjustment to the number of places to be purchased. Funding approval under the Lotteries Fund will be sought.

Financial Assistance Scheme

3. In line with the established mechanism, the expenditure for carrying out improvement works in subvented and self-financing homes for meeting the licensing requirements, if required, will be covered under the Lotteries Fund. In this regard, a subsidy will be provided to private homes to meet part of their costs in carrying out improvement works for meeting the licensing requirements in building and fire safety. Funding approval under the Lotteries Fund will be sought.

Strengthening Staffing of the Registration Office of SWD

4. The Registration Office of SWD currently has a staffing set-up of 12 civil service posts. We anticipate that additional civil service posts will be required to strengthen the staffing of the Registration Office upon implementation of the licensing scheme. Additional annual recurrent expenditure and staffing resources, if required, will be considered in accordance with the established procedures.