

立法會
Legislative Council

LC Paper No. CB(2)937/12-13(08)

Ref : CB2/PL/WS

Panel on Welfare Services

**Updated background brief prepared by Legislative Council Secretariat
for the meeting on 16 April 2013**

**Licensing scheme for residential care homes
for persons with disabilities**

Purpose

This paper summarizes past discussions on the licensing scheme for residential care homes for persons with disabilities ("RCHDs") by relevant committees of the Legislative Council including the recent discussion held by the Panel on Welfare Services ("the Panel") as set out in paragraphs 23 to 25.

Background

2. RCHDs in Hong Kong are run by both the private sector and non-governmental organizations ("NGOs"). There are three types of RCHDs, namely subvented RCHDs, self-financing RCHDs operated by NGOs and private homes.

3. According to the Administration, as at end-2009, there were altogether 304 RCHDs, providing 14 331 places in the territory, of which there were about 11 100 subsidized residential care places for persons with disabilities ("PWDs"). Various kinds of subsidized residential care services are provided to those who cannot live independently or cannot be adequately cared for by their families. These services include –

- (a) Hostel for Severely Mentally Handicapped Persons;
- (b) Hostel for Moderately Mentally Handicapped Persons;
- (c) Supported Hostel;

- (d) Care and Attention Homes for Severely Disabled Persons;
- (e) Hostel for Severely Physically Handicapped Persons;
- (f) Long Stay Care Home;
- (g) Halfway House;
- (h) Care and Attention Home for the Aged Blind;
- (i) Small Group Home for Mildly Mentally Handicapped Children/Integrated Small Group Home;
- (j) Residential Special Child Care Centre; and
- (k) Integrated Vocational Training Centre (Residential Service).

4. The Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) ("the Ordinance") was enacted in June 2011, and commenced operation on 18 November 2011 (except Part 2 on sanctions for operating a residential care home without a licence or certificate of exemption ("CoE")). The Ordinance provides for the control of RCHDs through a licensing system administered by the Director of Social Welfare ("DSW"), to ensure that residents of RCHDs receive services of acceptable standards physically, emotionally and socially.

5. For RCHDs that operate immediately before commencement of the Ordinance but not yet able to comply fully with the legislative requirements, the operators may apply for a CoE in order to allow time for existing RCHDs to make improvements for meeting the licensing requirements and standards. All RCHDs that are established and operated on or after that date should be subject to regulatory control by way of the issue of a licence rather than CoE, so as to ensure the services of RCHDs meeting the statutory standards and to protect the interests of PWDs more effectively.

Members' major deliberations and concerns

6. In the course of deliberating the licensing scheme for RCHDs, members had discussed, among others, issues relating to the licensing standards and requirements, the impact of the licensing system on RCHD operators and the residents, and the related complementary measures.

Licensing standards and requirements

7. At its meeting on 12 April 2010, the Panel was briefed on the key legislative proposals in the Residential Care Homes (Persons with Disabilities) Bill. The Panel noted that the Bill, which was modelled on the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), aimed to provide for the control of RCHDs through a licensing system administered by DSW. As part of the statutory licensing mechanism, a Code of Practice ("CoP") would set out the minimum licensing standards for compliance by RCHDs. The CoP would replace the non-statutory code and the Voluntary Registration Scheme ("VRS") which were in force before the implementation of the Ordinance.

8. While raising no objection to the policy direction of regulating the operation of RCHDs, most members generally considered that the licensing standards set out in the draft CoP were lower than the standards set out in the non-statutory CoP and VRS in force at that time. For example, the minimum floor space requirement for each resident in an RCHD was six and a half square metres in the draft CoP, whereas the corresponding requirement in an RCHD for mildly to moderately disabled persons and severely disabled persons set out in the non-statutory CoP was six and a half square metres and eight square metres respectively. They considered that the proposed licensing standards were too low for quality residential care service standards.

9. According to the Administration, it had balanced the different views of the rehabilitation sector and stakeholders in drawing up the requirements in the draft CoP. The CoP set out the minimum standards of services to be complied with by all RCHDs.

10. Some other members had noted from the private RCHD sector that the proposed spatial requirement was the maximum floor area that a private RCHD could comply with, having regard to the soaring rentals and the difficulties in securing premises for RCHDs. These members suggested that consideration should be given to including outdoor space (or a portion thereof) for the purpose of calculating the spatial requirement.

11. The Administration advised that the number of residents to be accommodated in an RCHD was 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 may result in a reduction in the usable area for each resident. The spatial requirement had been drawn up after balancing the different views of the rehabilitation sector and the stakeholders, having regard to the practical situation of RCHDs and the needs of PWDs.

Impact of licensing scheme on the RCHD operators and residents

12. Noting that most private RCHD residents were recipients of Comprehensive Social Security Assistance ("CSSA"), members were concerned that these residents could not afford fee rise as a result of upgrading facilities of RCHDs for compliance with the licensing standards. Given that some private RCHD operators had indicated that they would cease to operate for not being able to meet the additional costs for upgrading facilities and the fact that only six RCHDs had joined VRS, members were gravely concerned about the impact of the licensing system on the operation of RCHDs and the well-being of RCHD residents. They took a strong view that the Administration should draw up decanting arrangement for the affected residents.

13. The Administration assured members that it attached great importance to the well-being of RCHD residents. The Administration advised that most of the 74 private RCHDs known to the Social Welfare Department ("SWD") would need to carry out improvement works in respect of fire and building safety to meet the licensing requirements, of which 11 had non-rectifiable structural/means of escape problems and might close down if alternative accommodation could not be secured. It was envisaged that some 243 residents in these 11 private RCHDs might need to be decanted. The private market had the capacity to absorb decanted residents, if any, resulting from closure of private RCHDs owing to different reasons given that the average enrolment rate of the private RCHDs was 65%. SWD would arrange, where necessary, relevant casework units to provide assistance and formulate welfare plan for individual affected residents, such as providing alternative placement or support services. SWD would continue to closely monitor the market situations, maintain contact with RCHD operators and provide appropriate assistance where necessary to ensure the well-being of the residents.

14. The Administration had further advised that DSW was empowered to issue a CoE to individual operators to allow the existing RCHDs to stay in operation and to rectify non-compliance with the licensing requirements. Moreover, there would be a grace period of 18 months starting from the commencement of the Ordinance to allow time for individual RCHDs to put in place suitable arrangements for application for a new licence/CoE and for SWD to process all applications. During the grace period, no sanction would be imposed on the operation of RCHD without a licence/CoE. The Secretary for Labour and Welfare would publish a commencement notice to the effect that Part 2 of the Ordinance which created an offence for the operation of an RCHD without a licence/CoE would come into operation upon the expiry of the 18-month grace period. The Administration had undertaken to report to the Panel the implementation progress of the licensing scheme for RCHDs during the 18-month grace period.

15. In response to members' concern on whether the CSSA payments were adequate for the RCHD residents to meet an increase in home fees of private RCHDs upon the implementation of the licensing scheme, the Administration advised that higher standard CSSA payment rates were payable to recipients with disabilities, and RCHD residents receiving CSSA were also eligible for a monthly rent allowance, and depending on the circumstances of individual recipients, other supplements, e.g. transport supplement, under that CSSA Scheme. These adjustments and supplements might help relieve CSSA recipients' financial burden in meeting the home fees.

Complementary measures to facilitate private RCHDs to comply with the statutory requirements

16. While welcoming the proposal of introducing a licensing scheme to regulate the operation of RCHDs, members were gravely concerned about the well-being of the residents in private RCHDs in the event that the RCHDs could not meet the licensing standards and had to cease operation. They urged the Administration to provide resources and introduce complementary measures to facilitate private RCHDs to meet the standards when the licensing scheme was introduced. Members also requested the Administration to report progress to the Panel.

Four-year pilot Bought Place Scheme

17. At its meetings on 8 February and 13 March 2010, the Panel discussed the framework on a four-year pilot Bought Place Scheme ("BPS") for private RCHDs which was a complementary measure prior to the implementation of a statutory licensing system. At the Panel meeting on 21 October 2011, members were advised that in tandem with the licensing scheme, BPS was introduced in October 2010 to upgrade the service standard of these homes, shorten the waiting time for services by increasing the overall supply of subsidized residential care places, and help the market develop more service options for PWDs. The pilot scheme aimed to purchase a total of 300 places in two phases. At the Panel meeting on 10 December 2012, members were advised that as at end-October 2012, SWD purchased 245 residential care places for PWDs under BPS.

Financial Assistance Scheme

18. At the Panel meeting on 13 June 2011, members were briefed on the Financial Assistance Scheme ("FAS"), which was proposed by the Administration to provide subsidies for private RCHDs to carry out improvement works in compliance with the licensing requirements for building

and fire safety. FAS was further discussed at meetings of the Subcommittee on Residential Care Homes (Persons with Disabilities) Regulation and Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011.

19. While welcoming the proposal to assist private RCHD operators in complying with the licensing requirements, members noted with concern that the approved grant would be released only upon completion of the improvement works and that a maximum grant up to 60% of the recognized cost of the improvement works would be allocated to each eligible private RCHDs. Members were worried that, in view of the increasing operating costs and difficulties in operating private RCHDs, some operators would encounter cashflow problem if they had to pay the entire costs of the improvement works first. Members requested the Administration to release partial subsidy in advance before the commencement of the improvement works and asked whether the Administration would accede to the request of private RCHD operators for a higher level of subsidy under FAS.

20. Pointing out that private RCHD operators were not well versed in the payment arrangements of public funds, members called on the Administration to explain clearly to the private RCHD sector the application and reimbursement procedures so as to avoid unnecessary delay in effecting the grant payments. Members also called on the Administration to explain to the RCHD sector the eligibility criteria for Small and Medium Enterprises Loan Guarantee Scheme such that the operators might consider applying for the loan to meet the compliance costs.

21. The Administration explained that FAS was funded by the Lotteries Fund ("LF"), and the standing practice of reimbursement of grant was therefore applicable to all organizations receiving LF. As private RCHDs were commercially operated, to ensure the proper use of public money, the maximum grant allocated to each private RCHD under FAS would be 60% of the recognized cost of the improvement works. The private RCHD operators were required to shoulder a certain portion of the cost to demonstrate their clear intention to continue with the operation of their private homes for a reasonable period. Moreover, in the absence of a recovery mechanism in case of subsequent discontinuation of operation of these private RCHDs, the Administration considered it appropriate to require the operators to shoulder part of the cost. Under the proposed arrangement, the operators would be required to undertake to continue with the operation for at least two years after receiving the grant of FAS. Prior to the implementation of FAS, SWD would conduct briefing sessions for the private RCHD sector to explain to them the details of the parameters and payment arrangement for FAS.

22. With \$39 million funding support of LF, FAS was introduced in December 2011.

Progress of the licensing scheme towards the end of the 18-month grace period

23. At the Panel meeting on 14 January 2013, members were updated on the progress of the licensing scheme since the commencement of the Residential Care Homes (Persons with Disabilities) Ordinance in November 2011. They noted that as at 1 January 2013, of the 312 RCHDs¹ in the territory, 10 were issued with licences and 147 with CoEs. Of the 78 private RCHDs, 47 had submitted applications for licences/CoEs and among them eight were issued licences and 12 CoEs. Members and deputations expressed concern about the difficulties of private RCHDs in complying with the licensing requirements, which faced financial and operational problems such as high rental and shortage of manpower. Members also urged the Administration to provide more support to private RCHDs such as offering loans to operators of private RCHDs and increasing the percentage of purchased places under the Pilot BPS.

24. The Administration advised that RCHDs which had been granted CoEs would be given time to complete the improvement works for meeting the licensing requirements. The Ordinance provided that the validity period of CoEs should not be more than 36 months and the Administration would usually issue CoEs with one-year validity and renewal would only be granted where DSW considered that there were full justifications for allowing a reasonable time for completion of the rectification works. During the course of applications for CoE and licenses, the Licensing Office of Residential Care Homes for Persons with Disabilities would provide necessary assistance to RCHD applicants to facilitate them to carry out the improvement works. In tandem, the Administration was conducting an interim review of the Pilot BPS and collecting views from stakeholders and would consider adjusting the percentage of purchased places to enhance the sustainability of the operation of private care homes. The Administration assured members that it would closely monitor the situation with a view to minimizing the adverse impact on the residents. The Administration also pointed out that operators of private RCHDs were required to give residents one month prior notice if they intended to close their RCHDs.

25. As regards manpower shortage, members were advised that training had been strengthened for various ranks of staff servicing RCHDs. DSW had approved 16 training institutes to organize health worker training courses, providing a total of 56 training courses applicable to RCHDs. The Employees Retraining Board provided training places to upgrade the health care skills of

¹ As at 1 January 2013, there were 312 RCHDs in the territory, including 78 private RCHDs, 213 subvented RCHDs and 21 self-financing RCHDs operated by NGOs.

existing staff of RCHDs and health workers who were interested to work in RCHDs. Participants who had successfully completed the training course might apply for registration as health workers according to the Residential Care Homes (Persons with Disabilities) Regulation. In addition, SWD had collaborated with the Hospital Authority in offering the enrolled nurse training programme since 2006. SWD would fully subsidize trainees of the programme, provided that they met the requirement of working in the welfare sector for a continuous period of no less than two years after satisfactory completion of the training.

Latest Development

26. The difficulties encountered by private RCHDs and the possible closures of the care homes have all along been concerns to the Panel. Noting that the Administration planned to publish a notice, before the expiry of the grace period on 17 May 2013, to bring Part 2 of the Ordinance into operation, members requested the Administration to report to the Panel, on or before that date, regarding the latest progress of the implementation of the licensing scheme for RCHDs.

Relevant papers

27. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
10 April 2013

Appendix

Relevant papers on the licensing scheme for residential care homes for persons with disabilities

Committee	Date of meeting	Paper
Panel on Welfare Services	8 February 2010 (Item IV)	Agenda Minutes
Panel on Welfare Services	13 March 2010 (Item I)	Agenda Minutes
Panel on Welfare Services	12 April 2010 (Item IV)	Agenda Minutes
Panel on Welfare Services	24 April 2010 (Item I)	Agenda Minutes
Bills Committee on Residential Care Homes (Persons with Disabilities) Bill	9 July 2010 to 13 May 2011	Legislative Council Brief Report of the Bills Committee on Residential Care Homes (Persons with Disabilities) Bill
Subcommittee on Residential Care Homes (Persons with Disabilities) Regulation and Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011	22 July 2011 to 18 October 2011	Report of the Subcommittee on Residential Care Homes (Persons with Disabilities) Regulation and Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2011
Panel on Welfare Services	13 June 2011 (Item V)	Agenda Minutes

Committee	Date of meeting	Paper
Panel on Welfare Services	21 October 2011 (Item I)	Agenda Minutes
Finance Committee	8 March 2012	Administration's replies to members' written questions in examining the Estimates of Expenditure 2012-2013 Pages 886 - 887
Panel on Welfare Services	10 December 2012 (Item IV)	Agenda
Panel on Welfare Services	14 January 2013 (Item IV)	Agenda

Council Business Division 2
Legislative Council Secretariat
10 April 2013