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**Subcommittee on Residential Care Homes  
(Persons with Disabilities) Ordinance (Commencement) Notice 2013**

**Background brief**

**Purpose**

This paper provides background information on the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) ("the Ordinance") and gives a brief account of past discussions on the licensing scheme for residential care homes for persons with disabilities ("RCHDs") by relevant committees of the Legislative Council ("LegCo") including the recent discussion held by the Panel on Welfare Services ("the Panel") on the latest progress of the implementation of the licensing scheme at its meeting on 16 April 2013.

**Background**

Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)

2. The Residential Care Homes (Persons with Disabilities) Bill (enacted as the Ordinance) was passed by LegCo on 16 June 2011 and the enacted Ordinance was published in the Gazette on 24 June 2011. The Ordinance provides for the control of RCHDs through a licensing scheme administered by the Director of Social Welfare ("DSW"). The Ordinance (except Part 2), together with the Residential Care Homes (Persons with Disabilities) Regulation (L.N. 111 of 2011) made by the Secretary for Labour and Welfare ("SLW") under section 24 of the Ordinance to stipulate the requirements for the operation, management and supervision of RCHDs, came into operation on 18 November 2011 (L.N. 112 of 2011).

Residential Care Homes (Persons with Disabilities) Ordinance (Commencement) Notice 2013 (L.N. 53)

3. By L.N. 53, SLW appoints 10 June 2013 as the day on which Part 2 (i.e. sections 4 to 6) of the Ordinance comes into operation. Part 2 of the

Ordinance makes it an offence for anyone to operate, keep, manage or control an RCHD without a licence or certificate of exemption ("CoE"). The maximum penalty is a fine at level 6 (i.e. \$100,000) and imprisonment for two years, and a further fine of \$10,000 per day in the case of a continuing offence.

4. According to the Administration, the commencement of Part 2 of the Ordinance has been delayed to provide for a grace period of 18 months after the commencement of the other parts of the Ordinance. The grace period aims to allow sufficient time for individual RCHDs to put in place suitable arrangements for application for a new licence or CoE and for the Social Welfare Department ("SWD") to process the applications.

### **Members' major deliberations and concerns**

5. 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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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

11. 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.

12. The Administration assured members that it attached great importance to the well-being of RCHD residents. The Administration advised that, as at 30 June 2011, most of the 74 private RCHDs known to 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.

13. 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

14. 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*

15. 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.

16. At the Panel meeting on 16 April 2013, members reiterated their concern about the difficulties of private RCHDs in complying with the licensing requirements. They urged the Administration to provide more support to private RCHDs such as increasing the percentage of purchased places to 60% or 70%. The Administration advised that it would steadily increase the number

of bought places and review the cap of bought places under BPS.

*Financial Assistance Scheme*

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

22. At the Panel meetings on 14 January and 16 April 2013, members were updated on the progress of the licensing scheme since the commencement of the Ordinance in November 2011. The Administration advised that as at 1 April 2013, there were 316 RCHDs in the territory, including 78 private RCHDs, 217 subvented RCHDs and 21 self-financing RCHDs operated by non-governmental organizations. SWD had received applications in respect of 310 RCHDs, of which 276 RCHDs had been issued with licences or CoEs (including 14 RCHDs issued with licences and 262 RCHDs issued with 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.

23. 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 licences, 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.

24. Noting that seven private RCHDs had not yet submitted applications for the licence or CoE and 34 RCHDs had not yet been issued with licence or CoE, members expressed concern about the decanting arrangements for the residents of these RCHDs should they cease operation for non-compliance with the licensing requirements before the expiry of the grace period. They called on the Administration to work out detailed displacement plans for each and every resident being affected by the closure of these RCHDs.

25. The Administration advised that there were about 50 residents residing in the seven RCHDs which had not applied for licences or CoEs. The RCHDs concerned had already reserved places in other RCHDs for these residents. Regarding the 34 RCHDs which had submitted applications, SWD would endeavour to issue licences or CoEs to these RCHDs before the end of the grace period, provided that they met the relevant statutory requirements.

26. 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 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.

### **Relevant papers**

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

**Subcommittee on Residential Care Homes  
(Persons with Disabilities) Ordinance (Commencement) Notice 2013**

**List of relevant papers**

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



<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Welfare Services	21 October 2011 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Finance Committee	8 March 2012	<a href="#">Administration's replies to members' written questions in examining the Estimates of Expenditure 2012-2013</a> Pages 886 - 887
Panel on Welfare Services	10 December 2012 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Welfare Services	14 January 2013 (Item IV)	<a href="#">Agenda</a>
Panel on Welfare Services	16 April 2013 (Item V)	<a href="#">Agenda</a>

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