

LEGISLATIVE COUNCIL BRIEF

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

RESIDENTIAL CARE HOMES (PERSONS WITH DISABILITIES) ORDINANCE (COMMENCEMENT) NOTICE 2013

INTRODUCTION

To fully implement the licensing scheme for residential care homes for persons with disabilities (“RCHDs”) under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) (“the Ordinance”), the Secretary for Labour and Welfare (“SLW”) has made the Residential Care Homes (Persons with Disabilities) (Commencement) Notice 2013 (“Commencement Notice”) (at **Annex A**) pursuant to section 1(2) of the Ordinance to appoint 10 June 2013 as the day on which Part 2 of the Ordinance comes into operation.

BACKGROUND AND JUSTIFICATIONS

Legal Framework of the Ordinance

2. The Ordinance provides for the control of RCHDs through a licensing scheme administered by the Director of Social Welfare (“DSW”). The Ordinance comprises –

- (a) a statutory framework to regulate RCHDs (including application of and exception to the Ordinance, mechanism for application, issue, renewal, cancellation, suspension and refusal of licences, appeal mechanism, supervision and offences, etc.);
- (b) section 24 which empowers SLW to make regulations. The Residential Care Homes (Persons with Disabilities) Regulation (“the Regulation”) which has been made by SLW aims to stipulate the requirements for the operation, management and supervision of RCHDs (including staffing and space requirements, health and safety requirements, penalties and fees, etc.); and

- (c) section 23 which gives power to DSW to issue a Code of Practice for Residential Care Homes (Persons with Disabilities) (“CoP”) to specify detailed procedures, guidelines and standards for the operation, management and other control of RCHDs for compliance by the operators, such as the requirements for building and fire safety, barrier-free access, general management and health care, etc.

The Commencement Notice

3. Following scrutiny by the Legislative Council (“LegCo”), the Ordinance has come into operation since 18 November 2011, except Part 2 on sanctions for operating a residential care home without a licence/certificate of exemption (“CoE”). In tandem, SLW has also made the Regulation pursuant to section 24 of the Ordinance. Subsequently, DSW has also issued the CoP pursuant to section 23 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, there is a grace period of 18 months starting from the commencement of the Ordinance. During the grace period, no sanction will be imposed on the operation of RCHD without a licence/CoE. SLW will issue another notice to the effect that Part 2 of the Ordinance which creates an offence for the operation of an RCHD without a valid licence/CoE will come into operation upon the expiry of the 18-month grace period.

4. The grace period will expire soon. To facilitate full implementation of the licensing scheme, we propose to appoint 10 June 2013 as the day on which Part 2 of the Ordinance comes into operation.

Progress of the Licensing Scheme

5. In tandem with the implementation of the licensing scheme, we have introduced suitable complementary measures to encourage private RCHDs to upgrade their service standards and help the market develop more service options for persons with disabilities. To this end, SWD launched a four-year pilot Bought Place Scheme (“BPS”) for private RCHDs in October 2010. The Scheme targets to purchase about 300 places by phases. Up to now, 245 places have been purchased from six private RCHDs, and all these private RCHDs have been successfully licensed. SWD has also implemented a Financial Assistance Scheme (“FAS”) for Private RCHDs to provide subsidies for private RCHDs to carry out improvement works in compliance with the licensing requirements in building and fire safety.

6. On manpower support, SWD has invited training institutes to organise a series of health worker training courses in accordance with the relevant requirements applicable to RCHDs. These include the Health Worker Training

Course for RCHDs, Bridging Courses for Health Workers of RCHDs, and Combined Health Worker Training Course which is applicable to both RCHDs and residential care homes for the elderly. Persons who are interested in working in RCHDs may enrol for these training courses. Up to now, more than 600 graduates of the health worker training courses have been registered as health workers under the Regulation and are working in RCHDs.

7. To carry out the statutory duties in relation to the licensing scheme, SWD has established the Licensing Office of Residential Care Homes for Persons with Disabilities (“LORCHD”) upon the commencement of the Ordinance. LORCHD is responsible for enforcing the related licensing requirements. The inspectorate teams of LORCHD conduct regular inspections in respect of building safety, fire safety, health care and home management to ensure that RCHDs comply with the statutory requirements in staffing, space and layout, building structure, precautionary measures and quality of care, etc. LORCHD also strives to enhance the service quality of RCHDs through various measures, such as handling matters relating to RCHDs in collaboration with relevant departments (such as co-ordination with the Hospital Authority and the Department of Health in implementing infection control measures and obtaining professional advice on health care issues), organising training programmes and seminars for the staff of RCHDs, disseminating relevant information to RCHDs and the public, etc.

8. SWD has also organised a series of briefing and sharing sessions to enable operators of RCHDs to have a clear understanding on the operational details of the licensing scheme and the procedures of applying for licences/CoEs. SWD organised several briefing sessions for non-governmental organisations (“NGOs”) and private operators of RCHDs on 28 November, 30 November and 7 December 2011 respectively with a total attendance of about 500 participants. Apart from explaining the statutory requirements and operational details in the briefing sessions, SWD also distributed information folders enclosing the CoP, Procedural Guide on Application for a Licence/CoE, Guidance Notes on Submission of Floor Plans for RCHDs, samples of the floor plans, and application forms for licence/CoE, etc. SWD also conducted a briefing session on FAS for operators of private RCHDs on 29 December 2011 to explain details of the scheme. Having regard to the suggestion made by LegCo Members in the course of vetting the Regulation, SWD invited a representative of the Trade and Industry Department to provide information on the Small and Medium Enterprises Loan Guarantee Scheme at the briefing session to facilitate consideration by the operators for applying for the loans to meet the related financial needs. To maintain communication with the sector and further elaborate on the licensing requirements, SWD organised a seminar and a sharing session again in June 2012 to assist the operators of private RCHDs and NGO representatives to properly follow up the application logistics in meeting the relevant requirements.

9. To facilitate better understanding of RCHDs by the public, SWD has published a booklet: “Tips for Selecting a Suitable RCHD” in the course of implementing the licensing scheme. The objective is to provide basic information and guidelines for reference by persons with disabilities and their family members in selecting a suitable RCHD and preparing for admission to an RCHD.

10. As at 1 April 2013, there were 316 RCHDs in the territory, including 217 subvented RCHDs, 21 self-financing RCHDs and 78 private RCHDs. A total of 276 RCHDs has been issued with licences/CoEs under the Ordinance. LORCHD is processing the remaining applications and will issue licences/CoEs to all qualified RCHDs before the expiry of the grace period.

LEGISLATIVE TIMETABLE

11. The legislative timetable of the Commencement Notice will be –

Publication in the Gazette	12 April 2013
Tabling at the LegCo	17 April 2013
Date of Commencement	10 June 2013

IMPLICATIONS OF THE PROPOSAL

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Notice does not affect the current binding effect of the Ordinance. 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 not in compliance with the statutory standards) will be conducted in accordance with all applicable environmental legislation and standards. The proposal has no productivity or sustainability implications.

PUBLIC CONSULTATION

13. In the course of scrutiny of the Residential Care Homes (Persons with Disabilities) Bill from July 2010 to May 2011, the Bills Committee had already examined in depth the licensing requirements and standards stipulated in the draft Regulation and the draft revised CoP. Views from deputations were also invited at the Bills Committee meeting on 27 September 2010. Subsequently, the Subcommittee on Residential Care Homes (Persons with Disabilities) Regulation and Residential Care Homes (Persons with Disabilities) Ordinance

(Commencement) Notice 2011 was established under the House Committee of LegCo on 22 July 2011. Five meetings were held to further examine the draft Regulation and CoP, as well as details and arrangements under the licensing scheme.

14. We reported the progress of the licensing scheme at the meetings of Rehabilitation Advisory Committee (“RAC”) and the LegCo Panel on Welfare Services (“the Panel”) held on 30 December 2011 and 14 January 2013 respectively. As regards the complementary measures for the licensing scheme, including the pilot BPS for private RCHDs and the FAS for private RCHDs, we also consulted RAC at its meetings held on 18 December 2009 and 20 May 2011, and the Panel at its meetings held on 8 February 2010 and 13 June 2011. We will also brief the Panel on 16 April 2013 on the latest progress of implementing the licensing scheme.

15. LegCo Members and the rehabilitation sector generally expressed concern that some private RCHDs might cease operation upon the implementation of the statutory licensing scheme, resulting in displacement of residents. In this regard, SWD has introduced the complementary measures mentioned in paragraph 5 above to encourage private RCHDs to upgrade their service standards and help the market develop more service options for persons with disabilities. Moreover, SWD has all along closely monitored the operation of private RCHDs and made suitable arrangements as appropriate. If an operator intends to cease operation of an RCHD, LORCHD will request the person in charge of the RCHD to submit a removal plan for the residents, and give a notice in writing to the residents, their family members or guardians at least 30 days prior to the closure of the RCHD. LORCHD will pay close attention to the development and offer assistance in collaboration with the casework service units in the relevant district when necessary.

PUBLICITY

16. A press release will be issued today and a spokesman will be available to answer media and public enquiries.

ENQUIRIES

17. In case of enquiries about this brief, please contact Mr Stephen SUI, Commissioner for Rehabilitation, Labour and Welfare Bureau, at 2810 2029.

Labour and Welfare Bureau
10 April 2013

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

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

Under section 1(2) of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), I appoint 10 June 2013 as the day on which Part 2 of the Ordinance comes into operation.



Secretary for Labour and Welfare

3 APRIL 2013

ECONOMIC, FINANCIAL AND CIVIL SERVICE IMPLICATIONS

Economic Implications

The Residential Care Homes (Persons with Disabilities) Ordinance (the Ordinance) has come into operation since 18 November 2011 (except Part 2 on sanctions for operating a residential care home without a licence/certificate of exemption (“CoE”)). The legislative proposal will make effect that Part 2 of the Ordinance, which will create an offence for the operation of a residential care home for persons with disabilities (“RCHD”) by any person without a licence/CoE, will come into force on 10 June 2013. This may increase the compliance costs of some private RCHDs which currently fall short of the proposed statutory standards. Nevertheless, we have provided a grace period of 18 months starting from the commencement of the Ordinance. We have also implemented related complementary measures to assist these private RCHDs to upgrade their services and facilities to meet the statutory standards. In the longer term, the implementation of the licensing scheme can 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 for persons with disabilities. It should have a positive impact on the development of the private RCHDs market.

Financial and Civil Service Implications

2. To carry out the statutory duties in relation to the licensing scheme, the Social Welfare Department (“SWD”) has established the Licensing Office of Residential Care Homes for Persons with Disabilities (“LORCHD”) upon the commencement of the Ordinance, which is responsible for enforcing the relevant duties. LORCHD 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 LORCHD upon implementation of Part 2 of the Ordinance to process applications for the issue and renewal of licence/CoE, conduct inspection and monitoring after issue of licences/CoEs, deal with non-compliant operators, manage public enquiries and complaints, and handle matters relating to the registration of health workers. Additional annual recurrent expenditure and staffing resources, if required, will be sought in accordance with the established procedures.