



(傳真：2509 9055)

福利事務委員會  
主席邵家臻議員

立法會CB(2)1935/17-18(01)號文件  
LC Paper No. CB(2)1935/17-18(01)

邵主席：

提交由張超雄議員擬議的條例草案之摘要說明及法案草擬本

本人於7月18日致函，要求事務委員會討論本人就《安老院條例》(第459章)及《殘疾人士院舍條例》(第613章)提出的擬議修訂。

本人現向本委員會提交《安老院(修訂)條例草案》、《殘疾人士院舍(修訂)條例草案》(下稱《條例草案》)的摘要說明(只限英文版)和法案草擬本，懇請閣下將《條例草案》盡快進行討論。

順祝  
台安！

立法會議員

張超雄 謹啟

二零一八年八月十三日

**Explanatory Notes**  
**Residential Care Homes (Elderly Persons) (Amendment) Bill 2018**

1. In the past five years, the Licensing Office of Residential Care Homes for the Elderly and the Licensing Office of Residential Care Homes for Persons with Disabilities (collectively referred to as "Licensing Offices") of the Social Welfare Department (SWD) received each year on average a total of about 300 complaints relating to residential care homes for the elderly (RCHEs) and residential care homes for persons with disabilities (RCHDs). In terms of subject matter, the above complaints received mainly involved care services (about 40 per cent), management (about 15 per cent), meals, environment and facilities (about 10 per cent), and manpower arrangements (about 10 per cent), etc.<sup>1</sup>
  
2. As at end-June 2018, there were 736 RCHEs issued with licences. There are 655 RCHEs which registered by Body Corporate<sup>2</sup>, the proportion is nearly 90%, which was much higher than that of 77.9% for all licensees. The remaining distribution of licensees are partnership (7.06%) and solo proprietorships (3.94%).
  
3. A majority of RCHEs are operated and registered in the name of body corporate, even if it is an accident which leads to revoke of license or CoE, the principal can continue to operate the business as long as they make change on the name of the residential care home or transfer the licence. Under the current ordinance, the principal does not own any liability and legal responsibility to manage or operate the residential care home.
  
4. In 2015, there was allegedly letting elderly residents wait naked for showers in full view of neighbors in Tai Po. The Director of Social Welfare (DSW) refused its license renewal application, and move out all of the affected residents from the premises. Three months after, there was an investor registered license for RCHEs with the same address. There is transferal of licences to an offshore company 10 months after the operation which the new principal involved in the scandal of the incident. In another words, the RCHE runs with another name only.

---

<sup>1</sup> Labour and Welfare Bureau-Replies to LegCo Questions: Improving service quality of private residential care homes for the elderly and for persons with disabilities:  
[https://www.lwb.gov.hk/eng/legco/11012017\\_3.htm](https://www.lwb.gov.hk/eng/legco/11012017_3.htm)

<sup>2</sup> The paper of 7th meeting of Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (20 July 2018):  
[https://www.swd.gov.hk/storage/asset/section/2970/en/2018\\_7\\_20\\_paper.pdf](https://www.swd.gov.hk/storage/asset/section/2970/en/2018_7_20_paper.pdf)

5. In United Kingdom, it adopted fit and proper persons as directors in section 5 of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 that set out the requirements including the individual is of good character, be able to properly perform tasks that are intrinsic to their role and have the necessary qualifications, competence, skills and experience. Besides, there are the grounds of unfitness specified apply to the individual.<sup>3</sup>
6. The draft Bill references to decisions of board and appeals to municipal services appeals board in section 17 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B). The liquor licence is only issue to “the applicant is a fit and proper person to hold the licence which the application is only granted by a natural person. This provided for a clear liability and legal responsibility of the licensee to supervise and manage the licensed premises personally.
7. Thus, the draft Bill seeks to the enhancement measures of the granting licence, in order to provide better quality care and protection mechanism to the resident in RCHEs, by way of providing specific requirement to the application for and issue of certificates of exemption or licences. It sets out the Director’s considerations for the issue of a licence. Besides, the amendment imposes the restrictions on the issue of CoE or licence. The director must consider the conviction record of the proposed employee (home manager or health worker) at the residential care home.
8. The draft bill is suggested to be enforce simultaneously with the Residential Care Homes (Persons with disabilities) (Amendment) Bill 2018.

30 July 2018

---

<sup>3</sup> The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014:  
<https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4>

**Residential Care Homes (Elderly Persons)  
(Amendment) Bill 2018**

**Contents**

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Short title .....	1
2. Enactments amended .....	1
<b>Part 2</b>	
<b>Amendments to Residential Care Homes (Elderly Persons) Ordinance</b>	
3. Section 2 amended (interpretation) .....	2
4. Section 7 amended (application for and issue of certificate of exemption) .....	2
5. Section 8 amended (application for and issue of licence) .....	3
6. Part 4A added .....	5
<b>Part 4A</b>	
<b>Restrictions on Issue of Certificate of Exemption or Licence</b>	
11A. Restrictions on issue of certificate of exemption or licence .....	5
7. Section 25 added .....	7
25. Restrictions on use and transfer of licences and	

Clause	Page
certificates of exemption .....	7
8. Schedule added .....	7
Schedule .....	8
<b>Part 3</b>	
<b>Amendment to Residential Care Homes (Elderly Persons) Regulation</b>	
9. Section 2 amended (interpretation) .....	9

## A BILL

### To

Amend the Residential Care Homes (Elderly Persons) Ordinance and the Residential Care Homes (Elderly Persons) Regulation to list specifically the licensing requirements for residential care homes.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

1. **Short title**

This Ordinance may be cited as the Residential Care Homes (Elderly Persons) (Amendment) Ordinance 2018.

2. **Enactments amended**

- (1) The Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is amended as set out in Part 2.
- (2) The Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) is amended as set out in Part 3.

### Part 2

#### Amendments to Residential Care Homes (Elderly Persons) Ordinance

3. **Section 2 amended (interpretation)**

Section 2—

**Add in alphabetical order**

*“health worker* (保健員) means any person whose name appears on the register maintained by the Director under section 5 of the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A);

*home manager* (主管) means any person responsible for the management of a residential care home;

*licensee* (持牌人) means a natural person to whom a certificate of exemption has been issued under section 7 or a person to whom a licence has been issued under section 8;

*operator* (經營者) means a legal or a natural person to whom a certificate of exemption has been issued under section 7 or a person to whom a licence has been issued under section 8;”.

4. **Section 7 amended (application for and issue of certificate of exemption)**

Section 7(1)—

**Repeal paragraph (a)**

**Substitute**

“(a) made to the Director in such form and manner as the Director may determine, which includes listing a natural person as the intended licensee; and”.

**5. Section 8 amended (application for and issue of licence)**

(1) Section 8(1)—

**Repeal paragraph (a)**

**Substitute**

“(a) made to the Director in such form and manner as the Director may determine, which includes listing a natural person as the intended licensee; and”.

(2) Section 8(3)—

**Repeal paragraph (a)**

**Substitute**

“(a) that, having regard to subsection (3A), 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;”.

(3) After section 8(3)—

**Add**

“(3A) For subsection (3)(a), the Director must consider—

- (a) the applicant’s reputation, character, reliability, so that the person is capable of operating, qualified and experienced to operate the residential care home competently and honestly;
- (b) whether the applicant is an undischarged bankrupt;
- (c) whether, in the 5 years before the relevant application, the applicant has entered into a

composition or scheme of arrangement with the individual’s creditors;

- (d) whether the applicant or any person the applicant proposes to employ at the residential care home as a home manager has been censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
- (e) whether the applicant has been convicted of an indictable offence;
- (f) other conditions set out in section 10; and
- (g) where the applicant is or was the licence holder or home manager of a residential care home under this Ordinance or a residential care home for person with disabilities under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)—
  - (i) whether the applicant has been convicted of an offence under this Ordinance, the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A), the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) or the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A);
  - (ii) whether the applicant has failed to comply with the regulations under the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) or the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A); and
  - (iii) whether the applicant has failed to comply with any requirement, order or direction made

or given by the Director under this Ordinance, the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A), the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) or the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A).”.

**6. Part 4A added**

After Part 4—

**Add**

**“Part 4A**

**Restrictions on Issue of Certificate of Exemption or Licence**

**11A. Restrictions on issue of certificate of exemption or licence**

- (1) Unless the Director is satisfied that an applicant is a fit and proper person to hold a licence, and will adequately supervise or will ensure the adequate supervision of the operation of residential care homes, the Director is obliged to refuse the issue of a certificate of exemption or a licence in respect of the application to be exempted, licensed or renewed.
- (2) Under the circumstances stated below, the Director must not issue a certificate of exemption or a licence in respect of the application to be exempted, licensed or renewed—

- (a) the applicant or any person the applicant proposes to employ as a home manager or health worker at the residential care home has been convicted of—
  - (i) any of the offences listed in the Schedule, and has been awarded a punishment specified in column 3 of the Schedule;
  - (ii) inciting to commit any of those offences;
  - (iii) aiding, abetting, counselling or procuring the commission of any of those offences;
  - (iv) conspiring to commit any of those offences; or
  - (v) attempting to commit any of those offences;
- (b) where the applicant is or was the licence holder or manager of a residential care home under this Ordinance or a residential care home for person with disabilities under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), and the residential care home or residential care home for person with disabilities has been convicted of—
  - (i) an offence under section 6 or 21(1), (2), (3) or (4); or
  - (ii) an offence under section 4 or 22(1), (2), (3) or (4) of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613);
- (c) where the applicant is or was the licence holder or manager of a residential care home under this Ordinance or a residential care home for person with disabilities under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), and—

- (i) the application for a certificate of exemption, a licence or renewal regarding the residential care home or residential care home for person with disabilities has once been refused; or
- (ii) the certificate of exemption or licence of the residential care home or residential care home for person with disabilities has been cancelled or suspended.”.

**7. Section 25 added**

After section 24—

**Add**

**“25. Restrictions on use and transfer of licences and certificates of exemption**

- (1) A person must not without the consent of the Director—
  - (a) transfer; or
  - (b) supply, permit or allow any other person to use, any licence or certificate of exemption issued under this Ordinance.
- (2) A person must not, without the consent of the Director, receive, obtain or use any licence or certificate of exemption issued to any other person under this Ordinance.
- (3) In granting the consent necessary under subsection (1) or (2), the Director must consider the case as if it were an application made under section 7 or 8.”.

**8. Schedule added**

At the end of the Ordinance—

**Add**

**“Schedule**

[s. 11A]

Item	Offences	Specified punishment
1.	Any offences under section 47 or 48 or Part XII of the Crimes Ordinance (Cap. 200)	Any punishment
2.	Any offences involving violence	Imprisonment”.



### Part 3

## Amendment to Residential Care Homes (Elderly Persons) Regulation

### 9. Section 2 amended (interpretation)

Section 2—

Repeal the definitions of *health worker*, *home manager* and *operator*.

---

### Explanatory Memorandum

The object of this Bill is to amend the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (*Ordinance*) and the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) (*Regulation*) to list specifically the licensing requirements for residential care homes.

2. The Bill has 3 parts with 9 clauses.
3. Clause 1 sets out the short title.
4. Clause 3 adds the definitions of *health worker*, *home manager*, *licensee* and *operator* to section 2 of the Ordinance.
5. Clauses 4 and 5(1) amend sections 7 and 8 of the Ordinance respectively to require the applicant of an application for a certificate of exemption or a licence to list a natural person as the licensee in the application.
6. Clause 5(2) and (3) amends section 8 of the Ordinance and sets out the Director's considerations for the issue of a licence.
7. Clause 6 adds a new Part 4A to the Ordinance to specify situations where the issue of a certificate of exemption or a licence is restricted.
8. Clause 7 adds a new section 25 to the Ordinance for the restrictions on the use and transfer of permits and licences.
9. Clause 8 adds a new Schedule to the Ordinance to specify the offences and corresponding punishments mentioned in the new section 11A(2)(a)(i) under clause 6.
10. Clause 9 repeals the definitions of *health worker*, *home manager* and *operator* in the Regulation.

《2018 年安老院(修訂)條例草案》

目錄

條次	頁次
<b>第 1 部</b>	
<b>導言</b>	
1.	簡稱 ..... 1
2.	修訂成文法則 ..... 1
<b>第 2 部</b>	
<b>修訂《安老院條例》</b>	
3.	修訂第 2 條(釋義)..... 2
4.	修訂第 7 條(豁免證明書的申請及發出)..... 2
5.	修訂第 8 條(牌照的申請及發出)..... 2
6.	加入第 4A 部 ..... 4
<b>第 4A 部</b>	
<b>發出豁免證明書或牌照的限制</b>	
11A.	有關發出豁免證明書或牌照的限制 ..... 4
7.	加入第 25 條..... 5
25.	使用和轉讓豁免證明書及牌照的限制 ..... 5
8.	加入附表 ..... 6
	附表 ..... 6

條次	頁次
<b>第 3 部</b>	
<b>修訂《安老院規例》</b>	
9.	修訂第 2 條(釋義)..... 7

## 本條例草案

### 旨在

修訂《安老院條例》及《安老院規例》，列明對安老院發牌的要求。

由立法會制定。

### 第 1 部

#### 導言

#### 1. 簡稱

本條例可引稱為《2018 年安老院(修訂)條例》。

#### 2. 修訂成文法則

- (1) 《安老院條例》(第 459 章)現予修訂，修訂方式列於第 2 部。
- (2) 《安老院規例》(第 459 章，附屬法例 A)現予修訂，修訂方式列於第 3 部。

### 第 2 部

#### 修訂《安老院條例》

#### 3. 修訂第 2 條(釋義)

##### 第 2 條 ——

按筆劃數目順序加入

“**主管** (home manager)指負責管理安老院的人；

**保健員** (health worker)指名列由署長根據《安老院規例》(第 459 章，附屬法例 A)第 5 條備存的註冊紀錄冊的人；

**持牌人** (licensee)指根據第 7 條獲發豁免證明書的人，或根據第 8 條獲發牌照的自然人；

**經營者** (operator)指根據第 7 條獲發豁免證明書，或根據第 8 條獲發牌照的法人或自然人；”。

#### 4. 修訂第 7 條(豁免證明書的申請及發出)

##### 第 7(1)條 ——

廢除(a)段

代以

“(a) 按署長指定的格式及方式向署長提出申請，包括在申請中訂明一位自然人為擬持牌人；及”。

#### 5. 修訂第 8 條(牌照的申請及發出)

##### (1) 第 8(1)條 ——

廢除(a)段

代以

“(a) 按署長指定的格式及方式向署長提出申請，包括在申請中訂明一位自然人為擬持牌人；及”。

(2) 第 8(3)條 ——

廢除(a)段

代以

“(a) 在顧及第(3A)款的條文下，申請人或其擬僱用在有關安老院工作的任何人並不是經營、參與管理或受僱在該安老院工作的適當人選；”。

(3) 在第 8(3)條之後 ——

加入

“(3A) 就第(3)(a)款而言，署長必須考慮 ——

- (a) 申請人的信譽、品格、可靠程度，以至該人士有相關的能力、資格和經驗稱職及誠實地營運該安老院；
- (b) 申請人是否屬未獲解除破產的破產人；
- (c) 申請人在提出有關申請前的 5 年內，是否曾與其債權人訂立債務重整協議或債務償還安排；
- (d) 申請人或其擬僱用在有關安老院工作的主管曾否就任何行業、業務或專業，被專業或監管機構譴責、施以紀律處分或撤銷資格；
- (e) 申請人曾否被裁定犯了任何可公訴罪行；
- (f) 其他第 10 條訂明的情況；及
- (g) 申請人如是或曾是本條例下的安老院或《殘疾人士院舍條例》(第 613 章)下的殘疾人士院舍的持牌人 ——
  - (i) 申請人曾否被裁定犯了本條例、《安老院規例》(第 459 章，附屬法例 A)、《殘疾人士院舍條例》(第 613 章)或《殘疾人士

院舍規例》(第 613 章，附屬法例 A)所訂罪行；

- (ii) 申請人曾否不遵從《安老院規例》(第 459 章，附屬法例 A)或《殘疾人士院舍規例》(第 613 章，附屬法例 A)所訂規例；及
- (iii) 申請人曾否不遵從署長或其授權人員根據本條例、《安老院規例》(第 459 章，附屬法例 A)、《殘疾人士院舍條例》(第 613 章)或《殘疾人士院舍規例》(第 613 章，附屬法例 A)提出或發出的要求、命令或指示。”。

6. 加入第 4A 部

在第 4 部之後 ——

加入

“第 4A 部

發出豁免證明書或牌照的限制

11A. 有關發出豁免證明書或牌照的限制

- (1) 除非署長信納申請人是獲得發牌的適當人選，並會對該院舍的經營作出充分監管，或會確保該院舍的經營獲充分監管，否則署長有責任拒絕就相關豁免證明書、牌照續期或牌照的申請發出豁免證明書或牌照。
- (2) 在下述情況下，署長不得就相關豁免證明書、牌照續期或牌照的申請發出豁免證明書或牌照 ——
  - (a) 豁免證明書或牌照申請人或其擬聘請的主管或保健員曾被裁定 ——

- (i) 干犯附表所訂明的任何一項罪行，並被判處附表第 3 欄所訂明的刑罰；
- (ii) 煽惑他人干犯任何上述罪行；
- (iii) 教唆、協助、慫恿或促致他人干犯任何上述罪行；
- (iv) 串謀干犯任何上述罪行；或
- (v) 企圖干犯任何上述罪行；
- (b) 該申請人如是或曾是本條例下的安老院或《殘疾人士院舍條例》(第 613 章)下的殘疾人士院舍的持牌人或主管，而該安老院或殘疾人士院舍曾被裁定 ——
  - (i) 干犯第 6 或 21(1)、(2)、(3)或(4)條；或
  - (ii) 干犯《殘疾人士院舍條例》(第 613 章)第 4 或 22(1)、(2)、(3)或(4)條；
- (c) 申請人如是或曾是本條例下的安老院或《殘疾人士院舍條例》(第 613 章)下的殘疾人士院舍的持牌人或主管，而該安老院或殘疾人士院舍的 ——
  - (i) 豁免證明書、牌照或牌照續期申請曾遭到拒絕；或
  - (ii) 豁免證明書或牌照曾遭到撤銷或暫時吊銷。”。

7. 加入第 25 條  
 在第 24 條之後 ——  
 加入

“25. 使用和轉讓豁免證明書及牌照的限制

- (1) 任何人沒有署長的同意，不得 ——
  - (a) 轉讓；或

- (b) 提供、准許或容許任何其他人使用，任何根據本條例發出的豁免證明書或牌照。
- (2) 任何人沒有署長的同意，不得收取、獲取或使用根據本條例發給任何其他人的豁免證明書或牌照。
- (3) 在給予第(1)或(2)款所需的同意時，署長必須考慮該個案，猶如該個案是根據第 7 或 8 條作出的申請一樣。”。

8. 加入附表  
 在條例的末處 ——  
 加入

“附表

[第 11A 條]

項	罪行	訂明刑罰
1.	任何違反《刑事罪行條例》(第 200 章)第 47 或 48 條或第 XII 部的罪行	任何刑罰
2.	任何涉及暴力的罪行	監禁”。

### 第 3 部

## 修訂《安老院規例》

#### 9. 修訂第 2 條(釋義)

##### 第 2 條 ——

廢除**主管、保健員及經營者**的定義。

### 摘要說明

本條例草案的目的，是修訂《安老院條例》(第 459 章)(《條例》)及《安老院規例》(第 459 章，附屬法例 A)(《規例》)，以列明對安老院發牌的要求。

2. 本條例草案共有 3 個部分、9 項條文。
3. 草案第 1 條列出簡稱。
4. 草案第 3 條在《條例》第 2 條中加入有關**主管、保健員、持牌人及經營者**的定義。
5. 草案第 4 及 5(1)條分別修訂《條例》第 7 及 8 條，要求申請人在豁免證明書或牌照申請中，列明一位自然人作為持牌人。
6. 草案第 5(2)及(3)條修訂《條例》第 8 條，以就署長發出牌照的考慮條件訂定條文。
7. 草案第 6 條在《條例》中加入新訂第 4A 部，訂明限制發出豁免證明書或牌照的情況。
8. 草案第 7 條在《條例》中加入新訂第 25 條，就使用和轉讓豁免證明書及牌照的限制訂定條文。
9. 草案第 8 條就草案第 6 條的考慮條件，在《條例》中加入新訂的附表，訂定新的第 11A(2)(a)(i)條中所指的罪行及相關刑罰。
10. 草案第 9 條廢除《規例》中有關**主管、保健員及經營者**的定義。

**Explanatory Notes**  
**Residential Care Homes (Persons with disabilities) (Amendment) Bill**  
**2018**

1. In the past five years, the Licensing Office of Residential Care Homes for the Elderly and the Licensing Office of Residential Care Homes for Persons with Disabilities (collectively referred to as "Licensing Offices") of the Social Welfare Department (SWD) received each year on average a total of about 300 complaints relating to residential care homes for the elderly (RCHEs) and residential care homes for persons with disabilities (RCHDs). In terms of subject matter, the above complaints received mainly involved care services (about 40 per cent), management (about 15 per cent), meals, environment and facilities (about 10 per cent), and manpower arrangements (about 10 per cent), etc.<sup>1</sup>
2. As at end-June 2018, there were 311 RCHDs issued with licences. There are 655 RCHDs which registered by Body Corporate<sup>2</sup>, the proportion is 97.4%. The remaining distribution of licensees are partnership (0.32%) and solo proprietorships (2.25%).
3. A majority of RCHEs are operated and registered in the name of body corporate, even if it is an accident which leads to revoke of license or CoE, the principal can continue to operate the business as long as they make change on the name of the residential care home or transfer of licence. Under the current ordinance, the principal does not own any liability and legal responsibility to manage or operate the residential care home.
4. In 2016, the bridge of rehabilitation company was found out 6 death incidents, including the suspect of improper care and lead to the cause of complications to death, and residents who died of suffocation during the meal. There were residents who committed suicide with belt. Besides, the co-finder of the nursing home was accused of sexually assaulting the female resident, who had a mental age of an eight-year-old<sup>3</sup>. The Department of Justice dropped charges against him

---

<sup>1</sup> Labour and Welfare Bureau-Replies to LegCo Questions: Improving service quality of private residential care homes for the elderly and for persons with disabilities:  
[https://www.lwb.gov.hk/eng/legco/11012017\\_3.htm](https://www.lwb.gov.hk/eng/legco/11012017_3.htm)

<sup>2</sup> The paper of 7th meeting of Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (20 July 2018):  
[https://www.swd.gov.hk/storage/asset/section/2970/en/2018\\_7\\_20\\_paper.pdf](https://www.swd.gov.hk/storage/asset/section/2970/en/2018_7_20_paper.pdf)

<sup>3</sup> Reference number: DCCC923/2014, source:  
[https://www.doj.gov.hk/chi/public/pdf/2016/pr20161027c1\\_Annex.pdf](https://www.doj.gov.hk/chi/public/pdf/2016/pr20161027c1_Annex.pdf)

after a thorough consideration of the law, evidence and the victim's medical reports. Later, the nursing home has had its Certificate of Exemption revoked by the SWD.

5. In United Kingdom, it adopted fit and proper persons as directors in section 5 of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 that set out the requirements including the individual is of good character, be able to properly perform tasks that are intrinsic to their role and have the necessary qualifications, competence, skills and experience. Besides, there are the grounds of unfitness specified apply to the individual.<sup>4</sup>
6. The draft Bill references to decisions of board and appeals to municipal services appeals board in section 17 of the Dutiable Commodities (Liquor) Regulations (Cap. 109B). The liquor licence is only issue to "the applicant is a fit and proper person to hold the licence which the application is only granted by a natural person. This provided for a clear liability and legal responsibility of the licensee to supervise and manage the licensed premises personally.
7. Thus, the draft Bill seeks to the enhancement measures of the granting licence, in order to provide better quality care and protection mechanism to the resident in RCHDs, by way of providing specific requirement to the application for and issue of certificates of exemption or licences. It sets out the Director's considerations for the issue of a licence. Besides, the amendment imposes the restrictions on the issue of CoE or licence. The director must consider the conviction record of the proposed employee (home manager or health worker) at the residential care home.
8. The draft bill is suggested to be enforce simultaneously with the Residential Care Homes (Elderly Persons) (Amendment) Bill 2018.

30 July 2018

---

<sup>4</sup> The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: <https://www.legislation.gov.uk/ukdsi/2014/9780111117613/schedule/4>



**Residential Care Homes (Persons with Disabilities)  
(Amendment) Bill 2018**

**Contents**

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Short title .....	1
2. Enactments amended .....	1
<b>Part 2</b>	
<b>Amendments to Residential Care Homes (Persons with Disabilities) Ordinance</b>	
3. Section 2 amended (interpretation).....	2
4. Section 7 amended (application for and issue of licence).....	2
5. Section 8 amended (renewal of licence) .....	4
6. Section 11 amended (application for and issue of certificate of exemption).....	5
7. Part 4A added .....	5
<b>Part 4A</b>	
<b>Restrictions on Issue of Certificate of Exemption or Licence</b>	
13A. Restrictions on issue of certificate of exemption or licence .....	5
8. Section 25A added.....	7

Clause	Page
25A. Restrictions on use and transfer of permits and licences .....	7
9. Schedule added .....	8
Schedule .....	8
<b>Part 3</b>	
<b>Amendment to Residential Care Homes (Persons with Disabilities) Regulation</b>	
10. Section 2 amended (interpretation).....	9

## A BILL

### To

Amend the Residential Care Homes (Persons with Disabilities) Ordinance and the Residential Care Homes (Persons with Disabilities) Regulation to list specifically the licensing requirements for residential care homes.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

**1. Short title**

This Ordinance may be cited as the Residential Care Homes (Persons with Disabilities) (Amendment) Ordinance 2018.

**2. Enactments amended**

- (1) The Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is amended as set out in Part 2.
- (2) The Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A) is amended as set out in Part 3.

### Part 2

#### Amendments to Residential Care Homes (Persons with Disabilities) Ordinance

**3. Section 2 amended (interpretation)**

Section 2—

**Add in alphabetical order**

*“health worker* (保健員) means any person whose name appears on the register maintained by the Director under section 5 of the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A);

*home manager* (主管) means any person responsible for the management of a residential care home for PWDs;

*licensee* (持牌人) means a natural person to whom a licence has been issued under section 7 or 8 or a person to whom a certificate of exemption has been issued under section 11 or 12;

*operator* (營辦人) means a legal or a natural person to whom a licence has been issued under section 7 or 8 or a person to whom a certificate of exemption has been issued under section 11 or 12;”.

**4. Section 7 amended (application for and issue of licence)**

(1) Section 7(1)—

**Repeal paragraph (a)**

**Substitute**

“(a) made to the Director in such form and manner as the Director may determine, which includes listing a natural person as the intended licensee; and”.

## (2) Section 7(3)—

**Repeal paragraph (a)****Substitute**

“(a) having regard to subsection (3A), 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;”.

## (3) After section 7(3)—

**Add**

“(3A) For subsection (3)(a), the Director must consider—

- (a) the applicant’s reputation, character, reliability, so that the person is capable of operating, qualified and experienced to operate the residential care home competently and honestly;
- (b) whether the applicant is an undischarged bankrupt;
- (c) whether, in the 5 years before the relevant application, the applicant has entered into a composition or scheme of arrangement with the individual’s creditors;
- (d) whether the applicant or any person the applicant proposes to employ at the residential care home has been censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
- (e) whether the applicant has been convicted of an indictable offence;
- (f) other conditions set out in section 13A; and
- (g) where the applicant is or was the licence holder of a residential care home for PWDs under this

Ordinance or a residential care home under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)—

- (i) whether the applicant has been convicted of an offence under this Ordinance, the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A), the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) or the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A);
- (ii) whether the applicant has failed to comply with the regulations under the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A) or the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A); and
- (iii) whether the applicant has failed to comply with any requirement, order or direction made or given by the Director under this Ordinance, the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A), the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) or the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A).”.

**5. Section 8 amended (renewal of licence)**

## (1) Section 8(2)—

**Repeal paragraph (b)****Substitute**

“(b) in such form and manner as the Director may determine, which includes listing a natural person as the intended licensee.”.

(2) Section 8(4)—

**Repeal paragraphs (b) and (c).**

**6. Section 11 amended (application for and issue of certificate of exemption)**

Section 11(1)—

**Repeal paragraph (a)**

**Substitute**

“(a) made to the Director in such form and manner as the Director may determine, which includes listing a natural person as the intended licensee; and”.

**7. Part 4A added**

After Part 4—

**Add**

**“Part 4A**

**Restrictions on Issue of Certificate of Exemption or Licence**

**13A. Restrictions on issue of certificate of exemption or licence**

(1) Unless the Director is satisfied that an applicant is a fit and proper person to hold a licence, and will adequately supervise or will ensure the adequate supervision of the operation of residential care homes for PWDs, the Director is obliged to refuse the issue of a certificate of

exemption or a licence in respect of the application to be exempted, licensed or renewed.

(2) Under the circumstances stated below, the Director must not issue a certificate of exemption or a licence in respect of the application to be exempted, licensed or renewed—

(a) the applicant or any person the applicant proposes to employ as a home manager or health worker at the residential care home has been convicted of—

(i) any of the offences listed in the Schedule, and has been awarded a punishment specified in column 3 of the Schedule;

(ii) inciting to commit any of those offences;

(iii) aiding, abetting, counselling or procuring the commission of any of those offences;

(iv) conspiring to commit any of those offences; or

(v) attempting to commit any of those offences;

(b) where the applicant is or was the licence holder or home manager of a residential care home for PWDs under this Ordinance or a residential care home under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), and the residential care home has been convicted of—

(i) an offence under section 4 or 22(1), (2), (3) or (4); or

(ii) an offence under section 6 or 21(1), (2), (3) or (4) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

- (c) where the applicant is or was the licence holder or home manager of a residential care home for PWDs under this Ordinance or a residential care home under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), and—
  - (i) the application for a certificate of exemption, a licence or renewal regarding the residential care home has once been refused; or
  - (ii) the certificate of exemption or licence of the residential care home has been cancelled or suspended.”.

**8. Section 25A added**

Part 7, after section 25—

**Add**

**“25A. Restrictions on use and transfer of permits and licences**

- (1) A person must not without the consent of the Director—
  - (a) transfer; or
  - (b) supply, permit or allow any other person to use, any licence or certificate of exemption issued under this Ordinance.
- (2) A person must not, without the consent of the Director, receive, obtain or use any licence or certificate of exemption issued to any other person under this Ordinance.
- (3) In granting the consent necessary under subsection (1) or (2), the Director must consider the case as if it were an application made under section 7 or 11.”.

**9. Schedule added**

At the end of the Ordinance—

**Add**

**“Schedule**

[s. 13A]

Item	Offences	Specified punishment
1.	Any offences under section 47 or 48 or Part XII of the Crimes Ordinance (Cap. 200)	Any punishment
2.	Any offences involving violence	Imprisonment”.

### Part 3

#### Amendment to Residential Care Homes (Persons with Disabilities) Regulation

10. Section 2 amended (interpretation)

Section 2—

Repeal the definitions of *health worker*, *home manager* and *operator*.

### Explanatory Memorandum

The object of this Bill is to amend the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) (*Ordinance*) and the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A) (*Regulation*) to list specifically the licensing requirements for residential care homes.

2. The Bill has 3 parts with 10 clauses.
3. Clause 1 sets out the short title.
4. Clause 3 adds the definitions of *health worker*, *home manager*, *licensee* and *operator* to section 2 of the Ordinance.
5. Clauses 4(1), 5(1) and 6 amend sections 7, 8 and 11 of the Ordinance respectively to require the applicant of an application for a certificate of exemption or a licence to list a natural person as the licensee in the application.
6. Clause 4(2) and (3) amends section 7 of the Ordinance and sets out the Director's considerations for the issue of a licence.
7. Clause 5(2) repeals section 8(4)(b) and (c) of the Ordinance, which has been included in the newly added section 7(3A) of the Ordinance.
8. Clause 7 adds a new Part 4A to the Ordinance to specify situations where the issue of a certificate of exemption or a licence is restricted.
9. Clause 8 adds a new section 25A to the Ordinance for the restrictions on the use and transfer of permits and licences.
10. Clause 9 adds a new Schedule to the Ordinance to specify the offences and corresponding punishments mentioned in the new section 13A(2)(a)(i) under clause 7.

11. Clause 10 repeals the definitions of *health worker*, *home manager* and *operator* in the Regulation.

## 《2018年殘疾人士院舍(修訂)條例草案》

### 目錄

條次	頁次
<b>第 1 部</b>	
<b>導言</b>	
1.	簡稱 ..... 1
2.	修訂成文法則 ..... 1
<b>第 2 部</b>	
<b>修訂《殘疾人士院舍條例》</b>	
3.	修訂第 2 條(釋義)..... 2
4.	修訂第 7 條(牌照的申請及發出)..... 2
5.	修訂第 8 條(牌照續期)..... 4
6.	修訂第 11 條(豁免證明書的申請及發出)..... 4
7.	加入第 4A 部 ..... 4
<b>第 4A 部</b>	
<b>發出豁免證明書或牌照的限制</b>	
13A.	有關發出豁免證明書或牌照的限制 ..... 5
8.	加入第 25A 條 ..... 6
25A.	使用和轉讓豁免證明書及牌照的限制 ..... 6
9.	加入附表 ..... 6

條次	頁次
附表	..... 7
<b>第 3 部</b>	
<b>修訂《殘疾人士院舍規例》</b>	
10.	修訂第 2 條(釋義)..... 8



## 本條例草案

### 旨在

修訂《殘疾人士院舍條例》及《殘疾人士院舍規例》，列明對殘疾人士院舍發牌的要求。

由立法會制定。

### 第1部

#### 導言

#### 1. 簡稱

本條例可引稱為《2018年殘疾人士院舍(修訂)條例》。

#### 2. 修訂成文法則

- (1) 《殘疾人士院舍條例》(第 613 章)現予修訂，修訂方式列於第 2 部。
- (2) 《殘疾人士院舍規例》(第 613 章，附屬法例 A)現予修訂，修訂方式列於第 3 部。

### 第2部

#### 修訂《殘疾人士院舍條例》

#### 3. 修訂第2條(釋義)

##### 第2條 ——

按筆劃數目順序加入

“**主管** (home manager)指負責一所殘疾人士院舍的人；

**保健員** (health worker)指任何名列由署長根據《殘疾人士院舍規例》(第 613 章，附屬法例 A)第 5 條備存的註冊紀錄冊的人；

**持牌人** (licensee)指根據第 7 或 8 條獲發牌照或予以續期，或根據第 11 或 12 條獲發豁免證明書或予以續期的自然人；

**營辦人** (operator)指根據第 7 或 8 條獲發牌照或予以續期，或根據第 11 或 12 條獲發豁免證明書或予以續期的法人或自然人；”。

#### 4. 修訂第7條(牌照的申請及發出)

##### (1) 第7(1)條 ——

廢除(a)段

代以

“(a) 按署長指定的格式及方式向署長提出，包括在申請中訂明一位自然人為擬持牌人；及”。

##### (2) 第7(3)條 ——

廢除(a)段

代以

“(a) 在顧及第(3A)款的條文下，申請人或其擬僱用在有關殘疾人士院舍工作的任何人並不是經營、參與管理或受僱在該殘疾人士院舍工作的適當人選；”。

(3) 在第7(3)條之後 ——  
加入

“(3A) 就第(3)(a)款而言，署長必須考慮 ——

- (a) 申請人的信譽、品格、可靠程度，以至該人士有相關的能力、資格和經驗稱職及誠實地營運該殘疾人士院舍；
- (b) 申請人是否屬未獲解除破產的破產人；
- (c) 申請人在提出有關申請前的5年內，是否曾與其債權人訂立債務重整協議或債務償還安排；
- (d) 申請人或其擬僱用在有關殘疾人士院舍工作的主管曾否就任何行業、業務或專業，被專業或監管機構譴責、施以紀律處分或撤銷資格；
- (e) 申請人曾否被裁定犯了任何可公訴罪行；
- (f) 其他第13A條訂明的情況；及
- (g) 申請人如是或曾是本條例下的殘疾人士院舍或《安老院條例》(第459章)下的安老院的持牌人 ——
  - (i) 申請人曾否被裁定犯了本條例、《殘疾人士院舍規例》(第613章，附屬法例A)、《安老院條例》(第459章)或《安老院規例》(第459章，附屬法例A)所訂罪行；
  - (ii) 申請人曾否不遵從《殘疾人士院舍規例》(第613章，附屬法例A)或《安老院規例》(第459章，附屬法例A)所訂規例；及
  - (iii) 申請人曾否不遵從署長根據本條例、《殘疾人士院舍規例》(第613章，附屬法例

A)、《安老院條例》(第459章)或《安老院規例》(第459章，附屬法例A)所訂規例；及申請人曾否被裁定犯了本條例或《安老院條例》(第459章)提出或發出的要求、命令或指示。”。

5. 修訂第8條(牌照續期)

(1) 第8(2)條 ——

廢除(b)段

代以

“(b) 按署長指定的格式及方式，包括在申請中訂明一位自然人為擬持牌人，”。

(2) 第8(4)條 ——

廢除(b)及(c)段。

6. 修訂第11條(豁免證明書的申請及發出)

第11(1)條 ——

廢除(a)段

代以

“(a) 按署長指定的格式及方式向署長提出，包括在申請中訂明一位自然人為擬持牌人；及”。

7. 加入第4A部

在第4部之後 ——

加入

## “第4A部

### 發出豁免證明書或牌照的限制

#### 13A. 有關發出豁免證明書或牌照的限制

- (1) 除非署長信納申請人是獲得發牌的適當人選，並會對該院舍的經營作出充分監管，或會確保該院舍的經營獲充分監管，否則署長有責任拒絕就相關豁免證明書、牌照續期或牌照的申請發出豁免證明書或牌照。
- (2) 在下述情況下，署長或其授權的人員不得就相關豁免證明書、牌照續期或牌照的申請發出豁免證明書或牌照 ——
  - (a) 豁免證明書或牌照申請人或其擬聘請的主管或保健員曾被裁定 ——
    - (i) 干犯附表所訂明的任何一項罪行，並被判處附表第3欄所訂明的刑罰；
    - (ii) 煽惑他人干犯任何上述罪行；
    - (iii) 教唆、協助、慫使或促致他人干犯任何上述罪行；
    - (iv) 串謀干犯任何上述罪行；或
    - (v) 企圖干犯任何上述罪行；
  - (b) 該申請人如是或曾是本條例下的殘疾人士院舍或《安老院條例》(第459章)下的安老院的持牌人或主管，而該殘疾人士院舍或安老院曾被裁定 ——
    - (i) 干犯第4或22(1)、(2)、(3)或(4)條；或
    - (ii) 干犯《安老院條例》(第459章)第6或21(1)、(2)、(3)或(4)條；

- (c) 申請人如是或曾是本條例下的殘疾人士院舍或《安老院條例》(第459章)下的安老院的持牌人或主管，而該殘疾人士院舍或安老院的 ——
  - (i) 豁免證明書、牌照或牌照續期申請曾遭到拒絕；或
  - (ii) 豁免證明書或牌照曾遭到撤銷或暫時吊銷。”。

#### 8. 加入第25A條

第7部，在第25條之後 ——

加入

#### “25A. 使用和轉讓豁免證明書及牌照的限制

- (1) 任何人沒有署長的同意，不得 ——
  - (a) 轉讓；或
  - (b) 提供、准許或容許任何其他人使用，任何根據本條例發出的豁免證明書或牌照。
- (2) 任何人沒有署長的同意，不得收取、獲取或使用根據本條例發給任何其他人的豁免證明書或牌照。
- (3) 在給予第(1)或(2)款所需的同意時，署長必須考慮該個案，猶如該個案是根據第7或11條作出的申請一樣。”。

#### 9. 加入附表

在條例的末處 ——

加入

“附表

[第 13A 條]

項	罪行	訂明刑罰
1.	任何違反《刑事罪行條例》(第 200 章)第 47 或 48 條或第 XII 部的罪行	任何刑罰
2.	任何涉及暴力的罪行	監禁”。

---

第 3 部

修訂《殘疾人士院舍規例》

10. 修訂第 2 條(釋義)

第 2 條 ——

廢除*主管、保健員及營辦人*的定義。

---

### 摘要說明

本條例草案的目的，是修訂《殘疾人士院舍條例》(第 613 章)(《條例》)及《殘疾人士院舍規例》(第 613 章，附屬法例 A)(《規例》)，以列明對殘疾人士院舍發牌的要求。

2. 本條例草案共有 3 個部分、10 項條文。
3. 草案第 1 條列出簡稱。
4. 草案第 3 條在《條例》第 2 條中加入有關**主管**、**保健員**、**持牌人**及**營辦人**的定義。
5. 草案第 4(1)、5(1)及 6 條分別修訂《條例》第 7、8 及 11 條，要求申請人在豁免證明書或牌照申請中，列明一位自然人作為持牌人。
6. 草案第 4(2)及(3)條修訂《條例》第 7 條，以就署長發出牌照的考慮條件訂定條文。
7. 草案第 5(2)條廢除已由新加入《條例》的第 7(3A)條包含的《條例》第 8(4)(b)及(c)條。
8. 草案第 7 條在《條例》中加入新訂第 4A 部，訂明限制發出豁免證明書或牌照的情況。
9. 草案第 8 條在《條例》中加入新訂第 25A 條，就限制使用和轉讓豁免證明書及牌照訂定條文。
10. 草案第 9 條就草案第 7 條的考慮條件，在《條例》中加入新訂的附表，訂定新的第 13A(2)(a)(i)條中所指的罪行及相關刑罰。
11. 草案第 10 條廢除《規例》中有關**主管**、**保健員**及**營辦人**的定義。