

# **立法會**

## ***Legislative Council***

LC Paper No. CB(2)492/18-19(02)

Ref : CB2/SS/5/18

### **Subcommittee on Private Healthcare Facilities Ordinance (Specification of Date for Section 135(1)(a)) Notice and Private Healthcare Facilities Ordinance (Specification of Date for Section 136(1)(a)) Notice**

#### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information and summarizes relevant discussions of the Bills Committee on Private Healthcare Facilities ("the Bills Committee") on issues relating to the transitional arrangements for application for licence in respect of an existing day procedure centre<sup>1</sup> and an existing clinic<sup>2</sup> under the Private Healthcare Facilities Ordinance (Cap. 633) ("the Ordinance").

#### **Background**

2. The Private Healthcare Facilities Bill ("the Bill") was passed by the Legislative Council ("LegCo") on 15 November 2018. The Ordinance, which provides for a new regulatory regime for four types of private healthcare facilities, namely hospitals, day procedure centres, clinics and health services

---

<sup>1</sup> Under section 5 of the Ordinance, a "day procedure centre" is any premises that do not form part of the premises of a hospital; and that are used, or intended to be used, for carrying out scheduled medical procedures that are described in Schedule 3 to the Ordinance on patients, without lodging, whether or not the premises are also used, or intended to be used, for providing medical services to patients, without lodging; or carrying out minor medical procedures on patients, without lodging.

<sup>2</sup> Under section 6 of the Ordinance, a "clinic" is any premises that do not form part of the premises of a hospital, a day procedure centre or an outreach facility; and that are used, or intended to be used, for providing medical services to patients, without lodging; or carrying out minor medical procedures on patients, without lodging.

establishments, was published in the Gazette on 30 November 2018 and will come into operation on a day to be appointed by the Secretary for Food and Health ("the Secretary") by notice published in the Gazette. The Ordinance covers, among others, a licensing scheme and transitional arrangements for those existing facilities which will fall into the new regulatory regime.

**Private Healthcare Facilities Ordinance (Specification of Date for Section 135(1)(a)) Notice (L.N. 261 of 2018) and Private Healthcare Facilities Ordinance (Specification of Date for Section 136(1)(a)) Notice (L.N. 262 of 2018)**

3. On 7 December 2018, L.Ns. 261 and 262 of 2018 were published in the Gazette. The two Notices are made by the Director of Health ("the Director") under sections 135 and 136 of the Ordinance which provide for the transitional arrangements for application for licence in respect of an existing day procedure centre and an existing clinic respectively. Under sections 135(6)(a) and 136(6)(a) of the Ordinance, the Director may, by notice published in the Gazette, specify the date for the application of these transitional arrangements ("the specified date"). By the two Notices, the Director specifies 30 November 2018 as the specified date.

4. The two Notices were tabled before LegCo at its meeting of 12 December 2018 and are subject to negative vetting by LegCo. They will come into operation on the day(s) on which sections 135 and 136 of the Ordinance come into operation.

**Deliberations of the Bills Committee**

5. The Bills Committee was briefed on the transitional arrangements for application for licence in respect of an existing day procedure centre and an existing clinic. The deliberations and concerns of members are summarized in the following paragraphs.

6. Members noted that under the new regulatory regime, a person was prohibited from operating a private healthcare facility without a licence except in the case of a small practice clinic for which an exemption was granted. As part of the transitional arrangements, the new regulatory regime provided that if an application for a day procedure centre licence or a clinic licence was made during the transitional period to be specified by the Director in respect of an existing day procedure centre or an existing clinic that was in operation on the specified date, the Director had to issue a provisional day procedure centre or

provisional clinic licence if certain conditions were satisfied<sup>3</sup> during the transitional period.<sup>4</sup> The effect of these arrangements was that all persons that operated a day procedure centre or a clinic after the specified date had to prepare themselves for the licensing scheme, and aim to obtain a full licence once the registration for day procedure centres and clinics began. Some members urged the Administration to ensure that operators of the private healthcare facilities concerned and the medical and dental professions had been fully prepared before the new regulatory regime came into force in full scale.

7. The Administration advised that the new regulatory regime would commence in phases based on the types of private healthcare facilities and their risk levels. It would commence registration for individual types of private healthcare facilities first, whereas provisions prohibiting the operation of the types of private healthcare facilities concerned without a licence and prescribing other related offences would be put in force when the Administration considered that both members of the public and the stakeholders were ready for full-scale regulation of the types of private healthcare facilities concerned (including, where appropriate, when they had obtained provisional licences or letters of exemption, as the case might be). Subject to the readiness of the stakeholders, the plan of the Administration was to commence registration of private hospitals in 2019, to be followed by day procedure centres and clinics in 2020 and 2021 respectively.

8. As a related matter, members noted that subject to the passage of the Bill and the relevant amendments to be proposed by the Administration to the Bill having taken into account the stakeholders' concern, the requirement on separate entrance (i.e. the facility had a direct and separate entrance not shared with, or involving passing through, any premises that served a purpose not reasonably incidental to the type of facility for which the licence was issued or the practice carried on in the exempted clinic as specified in the letter of exemption for the

---

<sup>3</sup> These conditions included: (a) the applicant was a fit and proper person to operate or exercise control over the facility; (b) a person was to be appointed as the chief medical executive for the facility as required under section 49 of the Ordinance and the person was a fit and proper person to administer the facility; and (c) the operation of the facility by the applicant would not be contrary to the public interest.

<sup>4</sup> The provisional licence would be valid for the period beginning on the date specified by the Director in the provisional licence and ending on the earlier of (a) the day a specified event occurred in relation to the premises, which included: (i) the issue of a licence under section 17 of the Ordinance to the licensee of the provisional licence; (ii) the refusal to issue a licence under section 17 of the Ordinance to the licensee of the provisional licence; and (iii) the application for a licence made under section 13 of the Ordinance was withdrawn, or deemed to be withdrawn, by the licensee of the provisional licence; and (b) the day which was appointed by the Secretary by notice published in the Gazette as the day for the expiry of these transitional arrangements.

facility, as the case might be) would not apply during the validity period of a provisional clinic licence issued by the Director for clinics already in operation on the specified date, subject to certain conditions. This provided room for existing clinics to continue their operation on the premises whilst looking for ways (such as relocating to new premises after the expiry of the current leases) to meet the new requirement.

### **Relevant papers**

9. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
20 December 2018

**Relevant papers on Private Healthcare Facilities Ordinance  
(Specification of Date for Section 135(1)(a)) Notice  
and Private Healthcare Facilities Ordinance  
(Specification of Date for Section 136(1)(a)) Notice**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Bills Committee on Private Healthcare Facilities Bill	--	<u>Report</u>

Council Business Division 2  
Legislative Council Secretariat  
20 December 2018