

LEGISLATIVE COUNCIL BRIEF

Residential Care Homes (Elderly Persons) Ordinance
(Chapter 459)
Residential Care Homes (Elderly Persons) Regulation
(Chapter 459A)
Residential Care Homes (Persons with Disabilities) Ordinance
(Chapter 613)
Residential Care Homes (Persons with Disabilities) Regulation
(Chapter 613A)

Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022

INTRODUCTION

A At the meeting of the Executive Council on 3 May 2022, the Council ADVISED and the Chief Executive ORDERED that the Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022 (“Bill”), at Annex A, should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes

2. Residential care homes for the elderly (“RCHEs”) and residential care homes for persons with disabilities (“RCHDs”) operating in Hong Kong are regulated by the licensing regimes of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the Residential Care Homes (Elderly Persons) Regulation (Cap. 459A), the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), and the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613A) respectively. The two licensing regimes are largely the same. As of 28 February 2022, statistics of licensed RCHEs and RCHDs in Hong Kong are as follows –

	Number of homes	Number of places	Number of residents
RCHEs	794	around 73 200	around 59 700
RCHDs	335	around 18 300	around 17 200
Total	1 129	around 91 500	around 76 900

3. In response to the public call for enhancing regulation and quality of residential care homes (“RCHs”), the Social Welfare Department (“SWD”) set up the Working Group on the Review of Ordinances and Codes of Practice for Residential Care Homes (“Working Group”) in June 2017 to review the aforementioned legislation and relevant codes of practice. The Working Group completed the review in May 2019 and put forward 19 recommendations. SWD took forward two of the recommendations¹ by revising the relevant codes of practice which took effect on 1 January 2020. Three other recommendations confirmed that the prevailing requirements did not require any changes². The remaining 14 recommendations involve staffing of RCHs, area of floor space per resident, accountability of the operators, registration systems for home managers and health workers, provision of care services, and penalties, which have to be implemented by amending Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A.

4. The recommendations of the Working Group should be seen in the light of the Government’s overall strategy to increase the sustainable supply of residential care services to meet the needs of a rapidly ageing population, which covers premises, manpower and financing. To provide premises for RCHs, we are taking forward 67 development projects which will provide about 11 800 places, through earmarking sites in various government projects for construction of RCHs, reserving about 5% of the domestic gross floor area in future suitable public housing projects for social welfare facilities including RCHs, as well as requiring developers to design and construct bare-shell premises for welfare facilities including

¹ The two recommendations were to tighten the ratio of residents of different care levels for classifying mixed RCHs (applicable to RCHEs and RCHDs) and to strengthen the regulation on care for children (under 18 years old) with disabilities (applicable to RCHDs only).

² These include maintaining the prevailing classification of high-, medium- and low-care level RCHs, continuing to permit natural persons, partnerships and bodies corporate to make licence applications, and maintaining the prevailing stipulation of the age of residents in respect of RCHEs and RCHDs.

RCHs by land sale conditions. We have also been purchasing an additional 5 000 places through the Enhanced Bought Place Scheme and about 700 places through the Bought Place Scheme for Private RCHDs starting from 2019-20. On the supply of manpower, we have been providing subsidised training places in nursing for the welfare sector, facilitating the importation of care workers by RCHs through the Supplementary Labour Scheme (“SLS”), and implementing other initiatives such as the Navigation Scheme for Young Persons in Care Services (“Navigation Scheme”) and the First-Hire-Then-Train Scheme (“FHTT Scheme”). On financing, the Government enhances the financial viability of subsidised residential care services through introduction and regularisation of the Pilot Scheme on Residential Care Service Voucher for the Elderly, which adopts the “users pay in accordance with affordability” principle³. We also enhance market competition as both non-governmental and private organisations are eligible to bid for the service contracts for operating purpose-built RCHE premises set up by the Government, in which a certain portion of places are run on a non-subsidised basis.

5. The Chief Executive announced in the 2021 Policy Address that we would introduce the Bill into the LegCo in 2022 to improve the quality of RCHEs and RCHDs.

THE LEGISLATIVE PROPOSALS

6. Having regard to the Working Group’s recommendations, SWD’s practical experience in regulating RCH operation and various stakeholders’ views, we propose legislative amendments to Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A to enhance the quality of RCHEs and RCHDs in eight aspects –

- (A) enhancing the minimum staffing requirements;
- (B) increasing the minimum area of floor space per resident;
- (C) strengthening the accountability of RCH operators;
- (D) introducing a registration system for home managers;
- (E) improving the registration system for health workers;
- (F) enhancing the regulation of medicine management, use of restraints and protection of residents’ dignity and privacy;
- (G) raising penalties; and

³ A sliding scale is used to determine the co-payment level of RCHE residents having regard to their financial circumstances. The more a voucher holder can afford, the less the Government subsidies.

(H) repealing the certificate of exemption (“CoE”) regime for RCHEs.

To allow the sector sufficient time for transition to the new regulatory regime, if the Bill is passed by the LegCo, the majority of the new requirements will be implemented starting from the first anniversary of gazettal of the amendment ordinance (“material date”), save for those requirements for enhancing staffing and area of floor space per resident which will have a longer transition period, as detailed in paragraphs 8 and 11.

(A) Enhancing the minimum staffing requirements

7. To improve the quality of care services and optimise the deployment of manpower resources, we propose to enhance the statutory staffing requirements as follows taking into account the practical circumstances in RCH operation and the Working Group’s recommendations –

(a) Nurses and health workers –

High Care Level RCH	<p>(i) There must be one nurse on duty for every 60 residents or one health worker on duty for every 30 residents for at least 13 hours daily, an increase of two hours over the prevailing requirement of 11 hours.</p> <p>(ii) There must be one nurse and one health worker on duty at the same time for at least eight hours daily (which is to be within the 13 hours mentioned in (i) above). According to the staffing ratio mentioned in (i) above, it is currently not required to have nurse and health worker on duty at the same time.</p>
Medium Care Level RCH	<p>(iii) Unless there is a nurse on duty, there must be one health worker on duty for every 60 residents for at least six hours daily. There is currently no requirement on the number of duty hours for the nurse or health worker.</p>

(b) Care workers and other staff –

High Care	(i) To extend the duration of the 1:20 manning ratio of
-----------	---------------------------------------------------------

Level RCH	<p>care workers to residents from the prevailing eight hours daily to ten hours.</p> <p>(ii) To extend the duration of the 1:40 manning ratio of care workers to residents from the prevailing seven hours daily to 14 hours, and repeal the 1:60 manning ratio of care workers to residents.</p>
Medium Care Level RCH	<p>(iii) To increase the manning ratio of ancillary workers⁴ to residents from the prevailing 1:40 to 1:30 for 11 hours daily. Ancillary workers and care workers can continue to be swapped after the legislative amendments.</p> <p>(iv) For RCHDs, at least one staff member must be on duty with another on-site from 6 pm daily to 7 am on the following day. A similar requirement is currently applicable to RCHEs.</p>

- (c) Based on the actual care needs and daily routine of their residents, RCHs will be required to draw up staffing plans for meeting the requirements set out in (a) and (b) above, and to submit these plans for approval by the Director of Social Welfare (“Director”) for implementation.

8. In view of the tight supply of nurses, we propose that the requirement in respect of nurses and health workers as mentioned in paragraph 7(a)(ii) above be implemented in phases. Specifically, RCHs with more than 60 residents must meet the requirement starting from the second anniversary of the material date, while RCHs with 60 residents or fewer must meet the requirement on a date to be appointed by the Secretary for Labour and Welfare (“Secretary”).

9. To meet the enhanced minimum staffing requirements, SWD estimated that around 160 existing RCHs would need to hire an additional 200 nurses within two years after the material date; and around 220 existing RCHs would need to hire yet an additional 280 nurses on or before a later

⁴ Ancillary workers refer to persons, other than nurses, health workers, or care workers, whose duties include those of a cook, domestic servant, driver, gardener, watchman, welfare worker or clerk.

date to be appointed by the Secretary. In addition, SWD estimated that around 350 existing RCHs would need to hire an additional 690 care workers to meet the new requirements.

(B) Increasing the minimum area of floor space per resident

10. The current statutory minimum area of floor space per resident is 6.5 m². To strike a balance between increasing the living space of the residents and the practical circumstances of RCHs, in accordance with the Working Group's recommendation, we propose to increase the requirements as follows –

- (a) High care level RCH: to increase the minimum area of floor space per resident to 9.5 m².
- (b) Medium care level RCH and low care level RCH: to increase the minimum area of floor space per resident to 8 m².

The Working Group highlighted in its Report that it had held nine meetings to deliberate the issue of minimum area of floor space per resident. It should be noted that in drawing up the above recommendation, the Working Group had duly taken into account the then vacancy rate of RCHs in the market and the need to put in place transitional arrangements to allow time for the RCHs to meet the new requirements step-by-step, as detailed in paragraph 11. In particular, the Working Group suggested that RCHs may reduce their places gradually and carry out necessary modification works in order to meet the new requirements in an eight-year transitional period.

11. To allow the existing RCHs a reasonable period of time to meet the new requirements, we propose the following transitional arrangements based on the Working Group's recommendations –

- (a) During the first four years starting from the material date, the existing statutory minimum area of floor space per resident will continue to be applicable to high care level RCHs already licensed or in relation to which licence applications have been made before the material date. These RCHs must meet the 8 m² requirement starting from the fourth anniversary of the material date, and meet the new requirement of 9.5 m² starting from the eighth anniversary of the material date.
- (b) During the first eight years starting from the material date, the

existing statutory minimum area of floor space per resident will continue to be applicable to medium care level RCHs and low care level RCHs already licensed or in relation to which licence applications have been made before the material date. These RCHs must meet the new requirement of 8 m² starting from the eighth anniversary of the material date.

12. SWD estimated that at present around 460 existing RCHs do not meet the increased minimum area of floor space per resident requirement. The majority of these RCHs are non-subsidised (86%) by nature of operation, provide high care level (90%) by level of care services, and have 60 places or fewer (59%) by scale. These RCHs need to reduce a total of around 6 300 places in order to meet the new requirement. We expect the reduction will mainly be offset by around 6 000 vacant places in these RCHs. Apart from natural attrition during the transitional period, some residents may move to other RCHs in the market with around 8 700 vacant places.

(C) Strengthening the accountability of RCH operators

13. Currently, RCHs operated by bodies corporate, partnerships and sole proprietors account for about 95% (1 070 homes), 3% (33 homes) and 2% (26 homes) respectively. Having considered the Working Group's recommendations and stakeholders' views, we propose to strengthen the accountability of RCH operators as follows –

- (a) An applicant for new licence or renewal of licence under Cap. 459 and Cap. 613 must be a “fit and proper person”. We propose to set out the key considerations in defining a “fit and proper person” in the legislation, which include –
 - (i) Whether the applicant has been convicted of an indictable offence in Hong Kong or sentenced to imprisonment in a place outside Hong Kong⁵; convicted of an offence involving fraud or dishonesty in any place; or convicted of an offence under Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A;
 - (ii) The applicant's previous application(s) for RCH licence or renewal of licence; and

⁵ For an applicant who is a body corporate, our consideration is whether the body corporate has been convicted of an offence in a place outside Hong Kong.

- (iii) Whether the applicant is an undischarged bankrupt⁶, a director of any body corporate that is in liquidation or is the subject of a winding-up order.

- (b) To strengthen the accountability of the operators, starting from the material date, any RCH applying for a new licence or renewal of its existing licence for the first time must propose a responsible person⁷ for the RCH (“RP”). The RP must also meet the “fit and proper person” test set out in (a) above. The statutory duties of the RP are to ensure that there is adequate supervision of the operation, keeping, management and control of the RCH for protecting the interest and safety of its residents, and that the RCH complies with the statutory requirements of Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A. If the Director is not satisfied that the RP is a “fit and proper person” to perform his or her statutory duties, or that the person has failed to perform his or her statutory duties, the Director may require the RCH operator (i.e. the person who holds the RCH licence) to propose another management officer to be the RP. If the operator fails to comply with the requirements, the Director may cancel or suspend the licence.

- (c) An operator who commits an offence under Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A shall bear legal liability. If it is proved that the said offence was committed with the consent or connivance of the RP, or was attributable to any neglect on the part of the RP in performing the statutory duties, the RP also commits the offence. In addition, if it is proved that an offence of a body corporate/any partner of a partnership/a sole proprietor was committed with the consent or connivance of its director(s), partner(s) or person(s) concerned in the management of the body corporate/partnership/sole proprietorship, such director(s),

⁶ For an applicant who is a body corporate, our consideration is whether the body corporate is in liquidation or is the subject of a winding-up order.

⁷ A RP must be a natural person. If the applicant is a body corporate, the RP must be one of its directors or an individual concerned in the management of the body corporate. If the applicant is a partnership, the RP must be one of its partners or an individual concerned in the management of the partnership. If the applicant is a sole proprietor, the RP must be the sole proprietor or an individual concerned in the management of the sole proprietorship.

partner(s) or person(s) also commits the offence.

(D) Introducing a registration system for home managers

14. The existing legislation does not provide for any registration system for home managers. To enhance daily management and operation of RCHs, and strengthen accountability, we will, in accordance with the Working Group's recommendation, introduce a registration system for home managers and require RCH operators to employ persons who are either registered home managers or registered home managers (provisional) to be the home managers of RCHs. Details of the proposed registration system are as follows –

- (a) Qualification requirements of the applicant: he or she has completed a training course specified by the Director; **and (i)** holds a professional or academic qualification⁸, and has at least one year of work experience in managing or assisting in the management of RCH(s)⁹; **or (ii)** has worked in RCH(s) as a health worker for at least five years; **or (iii)** is an existing home manager¹⁰;
- (b) Key considerations in defining whether the applicant is a “fit and proper person”: whether he or she has been convicted in any place of an offence involving fraud or dishonesty or of a sexual nature, convicted of an indictable offence in Hong Kong or sentenced to imprisonment in a place outside Hong Kong; and revocation of any professional or academic qualifications of the applicant.
- (c) Validity period of registration: not more than five years. An

⁸ A professional qualification relating to healthcare or social work specified by the Director. Relevant academic qualifications refer to a bachelor or higher degree, or equivalent.

⁹ An applicant who lacks relevant work experience may apply to be a registered home manager (provisional) and accumulate the relevant work experience within the registration period, which must not be more than two years.

¹⁰ An existing home manager must submit an application for becoming a registered home manager or registered home manager (provisional) within six months starting from the material date. A registered home manager (provisional) must complete the specified training course within the registration period, which must not be more than two years, subject to extension once for not more than two years.

applicant may apply for renewal before the expiry of the registration. The Director may impose conditions on the renewal, e.g. requiring the applicant to attend continuous learning course(s). On a cost recovery basis, the required fee for registration as registered home manager or registered home manager (provisional) is \$345, and for renewal of registration is \$235.

(E) Improving the registration system for health workers

15. The existing registration system for health workers does not specify a validity period. To enhance the professionalism of the sector and improve the service quality of RCHs, we will, in accordance with the Working Group's recommendation, put in place a renewal mechanism for the registration of health workers. The Director may impose conditions on the renewal, e.g. requiring the health workers to attend continuous learning course(s). On a cost recovery basis, the registration fee for health workers will increase from the prevailing \$164 to \$245, and the validity period of registration or renewed registration is not more than five years. The renewal fee is \$190.

(F) Enhancing the management of medicine, use of restraints and protection of residents' dignity and privacy

16. Residents of RCHs are generally frail elderly and persons with disabilities who cannot protect themselves. To strengthen protection for them, RCH must, in accordance with the Working Group recommendation, comply with requirements relating to medicine management, use of restraints and protection of residents' dignity and privacy. In this connection, we propose to stipulate the following requirements –

- (a) Proper storage of medicine and administration of medicine strictly on the prescription of registered medical practitioners, registered Chinese medicine practitioners or listed Chinese medicine practitioners.
- (b) Minimum, safe and proper use of restraints and compliance with the requirements for obtaining consent on the use of restraints in the codes of practice issued by the Director.
- (c) Provision of adequate facilities or appropriate measures to protect residents' dignity and privacy when personal care services are provided and nursing procedures are performed.

17. If an RCH violates the above requirements, the Director may issue a written direction under Cap. 459 or Cap. 613 requiring the RCH to rectify the non-compliance. It is an offence if the RCH fails to comply with the written direction.

(G) Raising penalties

18. The Working Group considered that while the penalties stipulated in the existing Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A are not lenient, past sentences handed down on non-compliant RCHs lacked a deterrent effect. To enhance deterrence, the Working Group recommends that the penalties of the following offences should be raised as follows –

- (a) Operating an RCH without licence: to increase the maximum fine from level 6 (\$100,000) to \$1 million.
- (b) RCH operators violating provisions on staffing requirements, maintenance of records, furnishing of plans, furnishing of details of fees, and ensuring that advertisement should contain certain information: to increase the maximum fine from level 4 (\$25,000) to level 5 (\$50,000).
- (c) Home managers violating provisions on submission of staff list, maintenance of records, information to be given, and reporting of scheduled infectious diseases: to increase the maximum fine from level 3 (\$10,000) to level 5 (\$50,000).
- (d) Obstructing members of the Fire Services Department from inspecting an RCH: to increase the maximum fine from level 3 (\$10,000) to level 5 (\$50,000).

(H) Repealing the CoE regime for RCHEs

19. According to the existing legislation, the Director may issue licences or CoEs to applicants for their RCHEs. The main purpose of CoE is to exempt operators from compliance with certain building and fire safety requirements for a specified period in respect of their RCHEs, which do not yet meet the statutory requirements of Cap. 459 and Cap. 459A. This would allow the operators time to complete the necessary improvement works while maintaining operation. Currently, there is no RCHE operating with a CoE. In fact, SWD has not issued any CoE in respect of RCHE in the past 20 years, and has no intention to do so in future.

While the Working Group has not put forward any recommendation relating to the CoE regime, considering that the CoE regime for RCHEs has become obsolete, we propose to repeal the relevant CoE provisions in Cap. 459 in this legislative exercise. For RCHDs, the current provisions of Cap. 613 on CoEs only cater for RCHDs which existed before 18 November 2011¹¹. No new CoE application is permitted. There remains only two RCHDs operating on CoEs, which are actively carrying out the necessary building and fire safety improvement works¹² for completion in 2022 to meet the full licensing requirements under Cap. 613. The current provisions of Cap. 613 on CoEs will therefore be retained to cater for these two RCHDs.

Commencement

20. If the Bill is passed by the LegCo, we will implement the various new requirements in phases. Relevant commencement dates are set out in Annex B.

B

OTHER OPTIONS

21. Amending Cap. 459, Cap. 459A, Cap. 613 and Cap. 613A is the only option to implement the remaining 14 recommendations put forward by the Working Group, with a view to improving the regulatory regime of the RCH sector and enhancing the quality of RCHEs and RCHDs.

THE BILL

22. The main provisions are –

- (a) **Clause 1** provides for commencement of the respective provisions of the Bill;
- (b) **Clauses 5 and 56** amend section 6 of Cap. 459 and section 4 of Cap. 613 respectively, to increase the fine for the offence of operating an RCH without licence to \$1 million;
- (c) **Clause 7** repeals Part 3 of Cap. 459 to abolish the CoE regime

¹¹ The date on which Cap. 613, except Part 2 - Restriction and Exception Relating to Operation of Residential Care Homes for Persons with Disabilities, came into operation.

¹² Including renovation works in new premises for relocation of one of the two RCHDs.

for RCHEs;

- (d) **Clauses 10 and 60** add a new section 8A to Cap. 459 and a new section 7A to Cap. 613 respectively, to require the Director to have regard to all relevant matters when considering whether a licence applicant is a fit and proper person to operate an RCH. Some specific matters to be considered are set out in the new Schedule 1 to Cap. 459 and the new Schedule 1 to Cap. 613;
- (e) **Clauses 14 and 64** add new Divisions 2 and 3 to Part 4 of Cap. 459, and new Divisions 2 and 3 to Part 3 of Cap. 613, respectively, to introduce an RP requirement and certain reporting requirements, which include the following main new provisions —
 - (i) The new sections 11A and 11B of Cap. 459, and the new sections 10A and 10B of Cap. 613, require a licence applicant or the operator of an RCH to propose a person to be the RP;
 - (ii) The new section 11D of Cap. 459, and the new section 10D of Cap. 613, set out the duties of an RP;
 - (iii) The new section 11E of Cap. 459, and the new section 10E of Cap. 613, require the Director to have regard to all relevant matters when considering whether a person is a fit and proper person to perform the duties of an RP. The specific matters to be considered are set out in the new Schedule 2 to Cap. 459 and the new Schedule 2 to Cap. 613;
 - (iv) The new sections 11F, 11G and 11H of Cap. 459, and the new sections 10F, 10G 10H of Cap. 613, deal with the change of RP in different circumstances; and
 - (v) The new Division 3 of Part 4 of Cap. 459, and the new Division 3 of Part 3 of Cap. 613, require the operator to report to the Director if certain events relating to the operator or the RP occur. Most of those events are relevant to whether the operator or the RP is a fit and proper person;
- (f) **Clauses 9 and 12, and Clauses 59 and 61** amend sections 8 and 10 of Cap. 459, and sections 7 and 8 of Cap. 613, respectively, to provide a ground for the Director to refuse to issue, refuse to

renew, cancel, suspend or vary a condition of a licence in respect of an RCH if the operator fails to comply with the new provisions added in (e) above;

- (g) **Clauses 19 and 71** add new sections 21A, 21B and 21C to Cap. 459, and new sections 22A, 22B and 22C to Cap. 613, respectively. Both the new section 21A of Cap. 459, and the new section 22A of Cap. 613, provide for the criminal liability of RPs. Both the new section 21B of Cap. 459, and the new section 22B of Cap. 613, provide for the criminal liability of directors, partners, and persons concerned in the management of sole proprietorships, bodies corporate and partnerships. Both the new section 21C of Cap. 459, and the new section of 22C of Cap. 613, set out the deadline for prosecuting offences;
- (h) **Clauses 20 and 72** amend section 23 of Cap. 459 and section 24 of Cap. 613 respectively, to empower the Secretary to provide for the duties and responsibilities of RPs by regulation;
- (i) **Clauses 26 and 77** add a new Part IIA to Cap. 459A and a new Part 2A to Cap. 613A respectively, to introduce a registration system for home managers. Both the new Part IIA of Cap. 459A and the new Part 2A of Cap. 613A contain four Divisions as follows –
 - (i) The new Divisions 1 and 2 deal with matters relating to registered home managers and registered home managers (provisional), such as the application, registration requirements, validity period, cancellation and appeal;
 - (ii) The new Division 3 requires registered home managers and registered home managers (provisional) to report to the Director if certain events relating to the managers occur; and
 - (iii) The new Division 4 provides for the keeping and inspection of the register of home managers;
- (j) **Clauses 27 to 35, and Clauses 78 to 86**, amend Part III of Cap. 459A and Part 3 of Cap. 613A respectively, to provide for the validity period of a registration as a registered health worker, the renewal mechanism, reporting requirements and transitional arrangements;

- (k) **Clauses 36 and 87** amend section 11 of Cap. 459A, and section 11 of Cap. 613A respectively, to require the operators to employ registered home managers or registered home managers (provisional);
- (l) **Clause 38** adds a new section 14A to Cap. 459A to require RCHE operators to ensure that certain information is contained in the advertisements published by or on behalf of the operators for promoting the RCHEs. A contravention of that requirement is an offence punishable by a fine at level 5 (\$50,000). **Clause 91** amends section 15 of Cap. 613A to increase the fine to level 5 (\$50,000) for the same offence for RCHD operators;
- (m) **Clauses 41 and 97** amend section 22 of Cap. 459A and section 23 of Cap. 613A respectively, to increase the minimum area of floor space per resident and to provide for the transitional arrangements;
- (n) **Clauses 44 and 101** replace the existing section 33 of Cap. 459A and the existing section 34 of Cap. 613A respectively, to regulate the administration of medicine;
- (o) **Clauses 45 and 102** add new sections 33A and 33B to Cap. 459A, and new sections 34A and 34B to Cap. 613A, respectively, to provide for the use of restraints and for the protection of residents' dignity and privacy;
- (p) **Clauses 47 and 48** amend sections 36 and 37 of Cap. 459A to increase the fine for the offences under Cap. 459A to level 5 (\$50,000). The fine for the same offences under sections 11 to 14, 16 to 19, 32 of Cap. 613A is also increased to level 5 (\$50,000) by **Clauses 87 to 90, 93 to 96 and 100**;
- (q) **Clauses 49 and 104** replace the existing section 38 of Cap. 459A and the existing section 37 of Cap. 613A respectively, to provide for the fees payable for various matters. The fees are specified in the new Schedule 3 to Cap. 459A and the new Schedule 2 to Cap. 613A;
- (r) **Clauses 50 and 51, and clauses 105 and 106** replace the existing Schedule 1 to Cap. 459A, and the existing Schedule to Cap. 613A, respectively, to raise, by phases, the minimum staffing requirements; and

- (s) **Clauses 109, 111, 113, 117 and 118** contain amendments to other enactments (including the Inland Revenue Ordinance (Cap. 112), the Registration of Persons (Application for New Identity Cards) Order 2018 (Cap. 177J), the Administrative Appeals Board Ordinance (Cap. 442), the Electronic Health Record Sharing System Ordinance (Cap. 625), and the Private Healthcare Facilities Ordinance (Cap. 633) respectively) consequential to the repeal of the CoE regime for RCHEs.

C 23. The existing provisions being amended are at Annex C.

LEGISLATIVE TIMETABLE

24. The legislative timetable will be –

Publication in the Gazette	13 May 2022
First Reading and commencement of Second Reading debate	25 May 2022
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

D 25. The proposal has economic, financial and civil service, sustainability, family, and gender implications as set out at Annex D. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments in the Bill will not affect the current binding effect of the Ordinances. It has no productivity or environmental implication.

PUBLIC CONSULTATION

26. We briefed the Panel on Welfare Services as well as the Panel on Welfare Services and Panel on Health Services Joint Subcommittee on Long-term Care Policy of the last LegCo on the Working Group's recommendations on 15 April 2019 and 23 June 2020 respectively. We also consulted the Elderly Commission ("EC"), the Rehabilitation Advisory Committee ("RAC") and the Social Welfare Advisory Committee in the second half of 2019 on the Working Group's

recommendations, and organised four engagement sessions with stakeholders in the first half of 2020. The advisory committees and stakeholders generally agreed on the need to enhance the quality of RCHs. On 14 February 2022, we consulted the Panel on Welfare Services, which generally supported the legislative proposals. A summary of the main views expressed by the LegCo members, advisory committees' members and stakeholders is at Annex E.

E

PUBLICITY

27. We will issue a press release before gazettal of the Bill. A spokesperson will be available to handle media and public enquiries.

BACKGROUND

28. The Working Group was chaired by the then-Director. Its members included the then-LegCo members; non-governmental and private organisations operating RCHs; EC and RAC; academics; service users/carers; independent members; and representatives of the Hong Kong Council of Social Service and the Labour and Welfare Bureau.

ENQUIRY

29. Any enquiry on this brief can be directed to Ms Linda LAW, Principal Assistant Secretary for Labour and Welfare (Welfare) 3, at 2810 3298.

Labour and Welfare Bureau
Social Welfare Department
11 May 2022

Residential Care Homes Legislation (Miscellaneous Amendments) Bill 2022

Contents

Clause	Page
Part 1	
Preliminary	
1. Short title and commencement.....	2
2. Enactments amended.....	3
Part 2	
Amendments to Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)	
3. Section 2 amended (interpretation)	4
4. Section 3 amended (application).....	5
5. Section 6 amended (restriction on operating residential care homes unless exempted or licensed)	6
6. Section 6A amended (certain residential care homes for PWDs excepted from application of section 6).....	7
7. Part 3 repealed (certificates of exemption).....	7
8. Part 4, Division 1 heading added	8
Division 1—Licence Applications	
9. Section 8 amended (application for and issue of licence)	8

Clause	Page
10. Section 8A added	11
8A. Fit and proper requirement for licence applicant	11
11. Section 9 amended (renewal of licence).....	12
12. Section 10 amended (cancellation and suspension of licence or refusal to renew and amendment or variation of conditions)	13
13. Section 11 amended (notice of refusal of licence or renewal and of cancellation or suspension, etc.).....	15
14. Part 4, Divisions 2 and 3 added.....	16
Division 2—Responsible Persons	
11A. Licence applicant to propose responsible person	17
11B. Certain operators to propose responsible person on renewal application	17
11C. How to propose responsible person	18
11D. Duties of responsible person	19
11E. Fit and proper requirement for responsible person	19
11F. Change of responsible person as required by Director	19
11G. Change of responsible person because of death, incapacity, etc.	20
11H. Change of responsible person in other circumstances.....	21

Clause	Page
11I. Director to specify date of becoming responsible person.....	22
Division 3—Reporting Requirements	
11J. Operator to report certain events.....	23
15. Section 12 amended (appeals against decisions of Director).....	25
16. Section 19 amended (Director may direct remedial measures).....	26
17. Section 20 amended (Director may order cessation of use of premises as a residential care home).....	26
18. Section 21 amended (offences in relation to certificates of exemption and licences).....	27
19. Sections 21A, 21B and 21C added.....	29
21A. Liability of responsible person.....	29
21B. Liability of directors, partners, etc.	30
21C. Prosecution deadline for offences	31
20. Section 23 amended (regulation).....	31
21. Section 24 amended (no fee payable in respect of certificate of exemption or licence).....	33
22. Schedules 1 and 2 added.....	33
Schedule 1 Fit and Proper Requirement for Licence Applicant.....	34
Schedule 2 Fit and Proper Requirement for Responsible Person.....	38

Clause	Page
23. “營辦” substituted for “經營”.....	39
Part 3	
Amendments to Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A)	
24. Section 2 amended (interpretation).....	41
25. Section 3 amended (types of residential care homes).....	42
26. Part IIA added.....	43
Part IIA	
Registration of Home Managers	
Division 1—Registered Home Managers	
3A. Application for registration as registered home manager.....	43
3B. Qualification requirement for registration as registered home manager	44
3C. Fit and proper requirement for registration as registered home manager	45
3D. Notice of decision on application for registration	46
3E. Renewal of registration as registered home manager.....	46
3F. Notice of decision on application for renewal of registration	47

Clause	Page
3G. Registration remains in effect pending determination of renewal application.....	47
3H. Validity period of registration as registered home manager.....	48
3I. Cancellation of registration as registered home manager.....	48
3J. Notice of cancellation of registration.....	49
3K. Appeals to Secretary.....	50
3L. Registration remains in effect pending determination of appeal.....	51
Division 2—Registered Home Managers (Provisional)	
3M. Application for registration as registered home manager (provisional).....	51
3N. Qualification requirement for registration as registered home manager (provisional).....	52
3O. Fit and proper requirement for registration as registered home manager (provisional).....	53
3P. Notice of decision on application for registration.....	53
3Q. Validity period of registration as registered home manager (provisional).....	53
3R. Extension of validity period.....	53

Clause	Page
3S. Registration remains in effect pending determination of certain application.....	54
3T. Cancellation of registration as registered home manager (provisional).....	54
3U. Notice of cancellation of registration.....	56
3V. Appeals to Secretary.....	56
Division 3—Reporting Requirements	
3W. Registered home manager or registered home manager (provisional) to report certain events.....	57
Division 4—Register of Home Managers	
3X. Register of home managers.....	58
3Y. Inspection of register of home managers.....	59
27. Section 4 amended (qualifications for registration as a health worker).....	59
28. Section 5 amended (register of health workers).....	60
29. Section 6 substituted.....	61
6. Application for registration as registered health worker.....	61
30. Section 7 substituted.....	62
7. Notice of decision on application for registration.....	62
31. Sections 7A to 7D added.....	62

Clause	Page
7A. Renewal of registration as registered health worker	62
7B. Notice of decision on application for renewal of registration	63
7C. Registration remains in effect pending determination of renewal application	64
7D. Validity period of registration as registered health worker	64
32. Section 8 substituted	64
8. Cancellation of registration as registered health worker	64
33. Section 9 amended (notice of cancellation of registration)	65
34. Section 10 substituted	66
10. Appeals to Secretary	66
35. Sections 10A to 10D added	67
10A. Registration remains in effect pending determination of appeal	67
10B. Registered health worker to report certain events	68
10C. Transitional provisions relating to registration before material date	68
10D. Application for registration as registered health worker pending on material date	69

Clause	Page
36. Section 11 amended (employment of staff by operator)	69
37. Section 14 amended (furnishing of details of fees by operator)	71
38. Section 14A added	71
14A. Operator to ensure advertisement contains certain information	72
39. Section 14B added	72
14B. Application of Part V	72
40. Section 16 amended (maintenance of records by home manager)	72
41. Section 22 amended (area of floor space per resident)	73
42. Part VII heading amended (precautions against fire and other risks)	75
43. Section 28 amended (precautions for health and safety)	75
44. Section 33 substituted	75
33. Storage and administration of medicine	76
45. Sections 33A and 33B added	76
33A. Use of restraints	76
33B. Protection of residents' dignity and privacy when providing care etc.	77
46. Section 34 amended (examination of residents)	77

Clause	Page
47. Section 36 amended (offences by operators and home managers).....	78
48. Section 37 amended (offence of obstruction).....	78
49. Section 38 substituted	78
38. Fees	79
50. Schedule 1 substituted.....	79
Schedule 1 Minimum Staffing Requirements	79
51. Schedule 1 amended (minimum staffing requirements).....	86
52. Schedule 2 repealed (minimum area of floor space for each resident).....	88
53. Schedule 3 added	88
Schedule 3 Fees.....	89
54. “營辦人” substituted for “經營者”	89
Part 4	
Amendments to Residential Care Homes (Persons with Disabilities)	
Ordinance (Cap. 613)	
55. Section 2 amended (interpretation).....	91
56. Section 4 amended (offence of operating residential care homes for PWDs without licence)	93
57. Section 6 amended (certain residential care homes for elderly persons excepted from application of section 4).....	94

Clause	Page
58. Part 3, Division 1 heading added	94
Division 1—Licence Applications	
59. Section 7 amended (application for and issue of licence).....	94
60. Section 7A added	96
7A. Fit and proper requirement for licence applicant	96
61. Section 8 amended (renewal of licence).....	96
62. Section 9 amended (cancellation or suspension; amendment or variation of conditions of licence)	98
63. Section 10 amended (notice of refusal of licence or renewal and of cancellation or suspension, etc.).....	98
64. Part 3, Divisions 2 and 3 added.....	99
Division 2—Responsible Persons	
10A. Licence applicant to propose responsible person.....	99
10B. Certain operators to propose responsible person on renewal application	100
10C. How to propose responsible person	101
10D. Duties of responsible person	102
10E. Fit and proper requirement for responsible person.....	102
10F. Change of responsible person as required by Director	102

Clause	Page
10G. Change of responsible person because of death, incapacity, etc.	103
10H. Change of responsible person in other circumstances.....	104
10I. Director to specify date of becoming responsible person.....	105
Division 3—Reporting Requirements	
10J. Operator to report certain events.....	106
65. Section 11 amended (application for and issue of certificate of exemption).....	108
66. Section 12 amended (renewal of certificate of exemption).....	109
67. Section 13 amended (notice of refusal of certificate of exemption or renewal and of revocation, etc.).....	109
68. Section 18 amended (Director may direct remedial measures).....	110
69. Section 19 amended (Director may order cessation of use of premises as residential care home for PWDs).....	110
70. Section 22 amended (offences in relation to licences and certificates of exemption).....	111
71. Sections 22A, 22B and 22C added.....	112
22A. Liability of responsible person.....	112
22B. Liability of directors, partners, etc.	112
22C. Prosecution deadline for offences	113

Clause	Page
72. Section 24 amended (regulation).....	113
73. Part 8 heading repealed (consequential and related amendments).....	114
74. Schedules 1 and 2 added	114
Schedule 1 Fit and Proper Requirement for Licence Applicant	114
Schedule 2 Fit and Proper Requirement for Responsible Person.....	118
Part 5	
Amendments to Residential Care Homes (Persons with Disabilities)	
Regulation (Cap. 613 sub. leg. A)	
75. Section 2 amended (interpretation).....	121
76. Section 3 amended (types of residential care homes for PWDs).....	122
77. Part 2A added.....	122
Part 2A	
Registration of Home Managers	
Division 1—Registered Home Managers	
3A. Application for registration as registered home manager.....	123
3B. Qualification requirement for registration as registered home manager	124

Clause	Page
3C. Fit and proper requirement for registration as registered home manager	125
3D. Notice of decision on application for registration	126
3E. Renewal of registration as registered home manager.....	126
3F. Notice of decision on application for renewal of registration	127
3G. Registration remains in effect pending determination of renewal application.....	127
3H. Validity period of registration as registered home manager.....	128
3I. Cancellation of registration as registered home manager.....	128
3J. Notice of cancellation of registration.....	129
3K. Appeals to Secretary	129
3L. Registration remains in effect pending determination of appeal.....	130
Division 2—Registered Home Managers (Provisional)	
3M. Application for registration as registered home manager (provisional)	131
3N. Qualification requirement for registration as registered home manager (provisional).....	132

Clause	Page
3O. Fit and proper requirement for registration as registered home manager (provisional).....	132
3P. Notice of decision on application for registration	132
3Q. Validity period of registration as registered home manager (provisional)	133
3R. Extension of validity period.....	133
3S. Registration remains in effect pending determination of certain application.....	133
3T. Cancellation of registration as registered home manager (provisional)	134
3U. Notice of cancellation of registration	135
3V. Appeals to Secretary	136
Division 3—Reporting Requirements	
3W. Registered home manager or registered home manager (provisional) to report certain events.....	137
Division 4—Register of Home Managers	
3X. Register of home managers.....	138
3Y. Inspection of register of home managers	139
78. Section 4 amended (qualifications for registration as health workers)	139
79. Section 5 amended (register of health workers).....	139
80. Section 6 substituted	140

Clause	Page
6.	Application for registration as registered health worker 141
81.	Section 7 substituted 141
7.	Notice of decision on application for registration 142
82.	Sections 7A to 7D added..... 142
7A.	Renewal of registration as registered health worker 142
7B.	Notice of decision on application for renewal of registration 143
7C.	Registration remains in effect pending determination of renewal application..... 143
7D.	Validity period of registration as registered health worker 144
83.	Section 8 substituted 144
8.	Cancellation of registration as registered health worker 144
84.	Section 9 amended (notice of cancellation of registration) 145
85.	Section 10 substituted 146
10.	Appeals to Secretary 146
86.	Sections 10A to 10D added..... 147
10A.	Registration remains in effect pending determination of appeal..... 147

Clause	Page
10B.	Registered health worker to report certain events 147
10C.	Transitional provisions relating to registration before material date..... 148
10D.	Application for registration as registered health worker pending on material date..... 148
87.	Section 11 amended (employment of staff by operators)..... 149
88.	Section 12 amended (maintenance of records by operators)..... 150
89.	Section 13 amended (operators to provide plans etc.)..... 150
90.	Section 14 amended (operators to provide details of fees)..... 151
91.	Section 15 amended (operators to ensure advertisement contains certain information) 151
92.	Section 15A added 152
15A.	Application of Part 5 152
93.	Section 16 amended (submission of staff list by home managers)..... 152
94.	Section 17 amended (maintenance of records by home managers)..... 153
95.	Section 18 amended (information to be provided by home managers)..... 154
96.	Section 19 amended (home managers to report scheduled infectious disease)..... 154
97.	Section 23 amended (area of floor space per resident)..... 154

Clause	Page
98. Part 7 heading amended (precautions against fire and other risks).....	155
99. Section 29 amended (precautions for health and safety).....	156
100. Section 32 amended (inspection of premises by members of Fire Services Department).....	156
101. Section 34 substituted	156
34. Storage and administration of medicine.....	156
102. Sections 34A and 34B added	157
34A. Use of restraints	157
34B. Protection of residents’ dignity and privacy when providing care etc.....	158
103. Section 35 heading amended (examination of residents).....	158
104. Section 37 substituted	158
37. Fees	158
105. Schedule substituted.....	158
Schedule 1 Minimum Staffing Requirements	159
106. Schedule 1 amended (minimum staffing requirements).....	165
107. Schedule 2 added	168
Schedule 2 Fees.....	168

Part 6

Consequential Amendments

Clause	Page
Division 1—Amendments to Waterworks Ordinance (Cap. 102)	
108. Section 15B amended (power of entry into non-domestic premises and power to question etc.)	170
Division 2—Amendment to Inland Revenue Ordinance (Cap. 112)	
109. Section 26D amended (elderly residential care expenses)	170
Division 3—Amendments to Building (Planning) Regulations (Cap. 123 sub. leg. F)	
110. Regulation 49B amended (cinemas)	171
Division 4—Amendments to Registration of Persons (Application for New Identity Cards) Order 2018 (Cap. 177 sub. leg. J)	
111. Section 2 amended (interpretation)	171
Division 5—Amendments to Smoking (Public Health) Ordinance (Cap. 371)	
112. Section 2 amended (interpretation)	172
Division 6—Amendment to Administrative Appeals Board Ordinance (Cap. 442)	
113. Schedule amended.....	172
Division 7—Amendments to Bedspace Apartments Ordinance (Cap. 447)	
114. Section 3 amended (application)	173
Division 8—Amendments to Fire Safety (Commercial Premises) Ordinance (Cap. 502)	
115. Section 3 amended (interpretation)	173

Clause	Page
Division 9—Amendments to Fire Safety (Buildings) Ordinance (Cap. 572)	
116. Section 3 amended (interpretation)	174
Division 10—Amendment to Electronic Health Record Sharing System Ordinance (Cap. 625)	
117. Section 19 amended (application by healthcare providers for registration)	174
Division 11—Amendment to Private Healthcare Facilities Ordinance (Cap. 633)	
118. Schedule 2 amended (premises excluded from definition of <i>hospital</i>)	175

A BILL

To

Amend the Residential Care Homes (Elderly Persons) Ordinance, the Residential Care Homes (Persons with Disabilities) Ordinance and their subsidiary legislation to enhance the accountability of operators of residential care homes for the elderly and residential care homes for persons with disabilities; to abolish the certificate of exemption regime for residential care homes for the elderly; to provide for the registration of home managers and the renewal of registration of health workers; to raise the minimum staffing requirements; to increase the minimum area of floor space per resident; to provide for the administration of medicine, the use of restraints and the protection of residents' dignity and privacy; to increase the penalties for certain offences; to set out the deadline for prosecuting offences; to provide for transitional and related matters; and to make miscellaneous and textual amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Residential Care Homes Legislation (Miscellaneous Amendments) Ordinance 2022.
- (2) Subject to subsections (3), (4), (5) and (6), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) The following provisions come into operation on the 1st anniversary of the date on which this Ordinance is published in the Gazette (*material date*)—
 - (a) Part 2;
 - (b) Part 3, except sections 36(5), 50 (in so far as it relates to the new section 6 of Schedule 1 to the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A)) and 51;
 - (c) Part 4;
 - (d) Part 5, except sections 87(3), 105 (in so far as it relates to the new section 6 of Schedule 1 to the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A)) and 106;
 - (e) Part 6.
- (4) Sections 36(5) and 87(3) come into operation on the 1st anniversary of the material date.
- (5) Sections 51(1) and 106(1) come into operation on the 2nd anniversary of the material date.

- (6) Sections 51(2) and 106(2) come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 6 are amended as set out in those Parts.

Part 2

Amendments to Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)

3. Section 2 amended (interpretation)

(1) Section 2—

Renumber the section as section 2(1).

(2) Section 2(1), English text, definition of *residential care home*—

Repeal the full stop

Substitute a semicolon.

(3) Section 2(1)—

Repeal the definition of *certificate of exemption*.

(4) Section 2(1)—

Add in alphabetical order

“*Cap. 613* (《第 613 章》) means the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613);

Cap. 613A (《第 613A 章》) means the Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A);

management officer (管理人員) means—

- (a) in relation to a sole proprietorship—an individual who is the sole proprietor or is concerned in the management of the sole proprietorship;
- (b) in relation to a body corporate—an individual who is a director of the body corporate or is concerned in its management; or

(c) in relation to a partnership—an individual who is a partner in the partnership or is concerned in its management;

material date (關鍵日期) means the 1st anniversary of the date on which the Residential Care Homes Legislation (Miscellaneous Amendments) Ordinance 2022 (of 2022) is published in the Gazette;

operator (營辦人), in relation to a residential care home, means a person who holds a licence issued in respect of the residential care home;

residential care home for PWDs (殘疾人士院舍) has the meaning given by section 2(1) of Cap. 613;

responsible person (負責人), in relation to a residential care home, means a person who—

- (a) has become the responsible person of the residential care home under section 11A(2), 11B(2) or 11I(4); and
- (b) has not ceased to be such a responsible person under section 11F(5), 11G(1) or 11H(4).”.

(5) After section 2(1)—

Add

“(2) To avoid doubt, in this Ordinance, a reference to this Ordinance includes any subsidiary legislation made under this Ordinance.”.

4. Section 3 amended (application)

(1) Section 3(1), English text—

Repeal

“shall”

Substitute

“does”.

- (2) After section 3(1)(b)—

Add

“(ba) a treatment centre as defined by section 2 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566); or”.

- (3) After section 3(2)—

Add

“(3) An order under subsection (1)(c) is subsidiary legislation.”.

5. Section 6 amended (restriction on operating residential care homes unless exempted or licensed)

- (1) Section 6, heading—

Repeal

“**Restriction on operating residential care homes unless exempted or licensed**”

Substitute

“**Residential care homes must be licensed**”.

- (2) Section 6(1)—

Repeal

everything after “who” and before “and imprisonment”

Substitute

“operates, keeps, manages or otherwise has control of a residential care home while no licence is in force in respect of the residential care home commits an offence and is liable to a fine of \$1,000,000”.

- (3) Section 6—

Repeal subsection (2).

- (4) Section 6—

Repeal subsection (3)

Substitute

“(3) It is not a defence for a person charged with an offence under subsection (1) to show that the person did not know that at the relevant time no licence was in force in respect of the residential care home.”.

- (5) Section 6(4)—

Repeal

everything after “also a”

Substitute

“residential care home for PWDs, the person did not know that at the relevant time neither a licence nor a certificate of exemption issued under Cap. 613 was in force in respect of the residential care home.”.

6. Section 6A amended (certain residential care homes for PWDs excepted from application of section 6)

Section 6A—

Repeal

everything after “also a”

Substitute

“residential care home for PWDs if a licence or certificate of exemption issued under Cap. 613 is in force in respect of the residential care home.”.

7. Part 3 repealed (certificates of exemption)

Part 3—

Repeal the Part.

8. Part 4, Division 1 heading added

Part 4, before section 8—

Add

“Division 1—Licence Applications”.

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

(1) Section 8(1), English text—

Repeal

“shall”

Substitute

“must”.

(2) Section 8(2), English text—

Repeal

“shall”

Substitute

“must”.

(3) Section 8(2)(a), English text—

Repeal

“he”

Substitute

“the Director”.

(4) Section 8(2)(a), Chinese text—

Repeal

“持牌人”

Substitute

“營辦人”.

(5) Section 8(3), English text—

Repeal

“him”

Substitute

“the Director”.

(6) Section 8(3)(a)—

Repeal

“he”

Substitute

“the applicant”.

(7) Section 8(3)(a), English text, after “fit”—

Add

“and proper”.

(8) After section 8(3)(a)—

Add

“(ab) that the applicant does not comply with section 11A(1);

(ac) that the person proposed to be the responsible person of the residential care home under section 11A(1) is not a fit and proper person to perform the duties mentioned in section 11D;”.

(9) Section 8(3)(c)—

Repeal

“structure”

Substitute

“construction”.

(10) Section 8(3)(d)—

Repeal subparagraphs (i), (ii) and (iii)

Substitute

- “(i) the name of a residential care home in respect of which a licence is in force or has been suspended, surrendered or cancelled;
- (ii) the name of a residential care home for PWDs in respect of which a licence issued under Cap. 613 is in force or has been suspended, surrendered or cancelled; or
- (iii) the name of a residential care home for PWDs in respect of which a certificate of exemption issued under Cap. 613 is in force.”.

(11) Section 8(3)(d)—

Repeal subparagraph (iv).

(12) Section 8(4), English text—

Repeal

“shall”

Substitute

“must”.

(13) Section 8(4A)—

Repeal

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

Substitute

“Cap. 613”.

(14) Section 8(5), English text—

Repeal

“shall be evidence”

Substitute

“is evidence”.

(15) Section 8(5), English text—

Repeal

“shall be received”

Substitute

“is to be received”.

(16) Section 8(6), English text—

Repeal

“shall be evidence”

Substitute

“is evidence”.

(17) Section 8(6), English text—

Repeal

“shall be received”

Substitute

“is to be received”.

10. Section 8A added

After section 8—

Add

“8A. Fit and proper requirement for licence applicant

For section 8(3)(a), in considering whether an applicant is a fit and proper person to operate a residential care home, the Director must have regard to all relevant matters, including—

- (a) if the applicant is a sole proprietor—the matters set out in section 1 of Schedule 1;

- (b) if the applicant is a body corporate—the matters set out in section 2 of Schedule 1; or
- (c) if the applicant is a partnership—the matters set out in section 3 of Schedule 1.”.

11. Section 9 amended (renewal of licence)

- (1) Section 9(1)—

Repeal

“A person holding a licence in respect”

Substitute

“The operator”.

- (2) Section 9(2), English text—

Repeal

“shall”

Substitute

“must”.

- (3) Section 9(3)—

Repeal

“by him”.

- (4) Section 9(4), English text—

Repeal

“shall take”

Substitute

“takes”.

- (5) Section 9(5)—

Repeal

“Any”

Substitute

“Subject to subsection (5A), any”.

- (6) Section 9(5)—

Repeal

everything after “and which”

Substitute

“, but for this subsection, would have expired before the determination of the application remains in effect until the determination by the Director of the application.”.

- (7) After section 9(5)—

Add

“(5A) Subsection (5) does not apply if—

- (a) the application is withdrawn; or
- (b) the licence is cancelled or suspended under section 10.”.

- (8) Section 9(6), English text—

Repeal

“shall have”

Substitute

“takes”.

12. Section 10 amended (cancellation and suspension of licence or refusal to renew and amendment or variation of conditions)

- (1) Section 10(1)(a), English text—

Repeal

“him”

Substitute

“the Director”.

- (2) After section 10(1)(a)—

Add

“(ab) on the ground that the operator of the residential care home fails to comply with section 11B(1), 11F(4), 11G(2), 11H or 11J;

(ac) on the ground that the Director is not satisfied that the person proposed to be the responsible person of the residential care home under section 11B(1), 11F(4), 11G(2) or 11H(3) is a fit and proper person to perform the duties mentioned in section 11D;”.

- (3) Section 10(1)(b)(i)—

Repeal

“person holding the licence”

Substitute

“operator”.

- (4) Section 10(1)(c)(ii) and (d)—

Repeal

everything after “by the”

Substitute

“operator;”.

- (5) Section 10(1)(e), English text—

Repeal

“if it appears to him”

Substitute

“on the ground that it appears to the Director”.

- (6) Section 10(1)(e)(ii)—

Repeal

“that such persons”

Substitute

“the operator”.

- (7) Section 10(1)(e)(ii), English text—

Repeal

“control,”

Substitute

“have control of”.

- (8) Section 10(4)—

Repeal

“under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)”

Substitute

“under Cap. 613”.

- (9) Section 10(4)—

Repeal

“of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)”

Substitute

“of that Ordinance”.

13. Section 11 amended (notice of refusal of licence or renewal and of cancellation or suspension, etc.)

- (1) Section 11, heading—

Repeal

“of licence or renewal”

Substitute

“to issue or renew licence”.

- (2) Section 11(1)—

Repeal

“person holding the licence in respect”

Substitute

“operator”.

- (3) Section 11(1)(b)—

Repeal

“person”

Substitute

“operator”.

- (4) Section 11(3)—

Repeal

“person holding the licence”

Substitute

“operator”.

- (5) Section 11(3)—

Repeal

“that person”

Substitute

“the operator”.

14. Part 4, Divisions 2 and 3 added

Part 4, after section 11—

Add

“Division 2—Responsible Persons

11A. Licence applicant to propose responsible person

- (1) For an application for a licence in respect of a residential care home under section 8, the applicant must propose a management officer of the applicant (*proposed responsible person*) to be the responsible person of the residential care home.
- (2) If, on the application, the Director issues a licence in respect of the residential care home, the proposed responsible person becomes the responsible person of the residential care home on the day on which the licence takes effect.
- (3) On issuing the licence, the Director must—
 - (a) by a written notice, inform the applicant of the effect of subsection (2); and
 - (b) send a copy of the notice to the proposed responsible person—
 - (i) by delivering it personally to the person; or
 - (ii) by registered post to the person at the person’s correspondence address mentioned in section 11C(a).

11B. Certain operators to propose responsible person on renewal application

- (1) For an application for the renewal of a licence in respect of a residential care home under section 9, the operator of the residential care home must propose a management officer of the operator (*proposed responsible person*) to be the responsible person of the residential care home if—

- (a) the application is the first application for the renewal of the licence made on or after the material date; and
- (b) the licence—
 - (i) was in force immediately before the material date; or
 - (ii) is issued on or after the material date on an application made before that date.
- (2) If, on the application, the Director renews the licence, the proposed responsible person becomes the responsible person of the residential care home—
 - (a) if section 9(4) applies—on the day on which the renewal takes effect; or
 - (b) if section 9(5) applies—on the day after the date on which the application is determined.
- (3) On renewing the licence, the Director must—
 - (a) by a written notice, inform the operator of the effect of subsection (2); and
 - (b) send a copy of the notice to the proposed responsible person—
 - (i) by delivering it personally to the person; or
 - (ii) by registered post to the person at the person's correspondence address mentioned in section 11C(a).

11C. How to propose responsible person

If an applicant or operator is required under this Division to propose a management officer of the applicant or operator (*proposed responsible person*) to be the responsible person of a residential care home, the proposal must—

- (a) contain the name and correspondence address of the proposed responsible person;
- (b) contain a statement made by the proposed responsible person indicating his or her consent to be the responsible person of the residential care home;
- (c) contain any other information specified by the Director; and
- (d) be made in the form and manner specified by the Director.

11D. Duties of responsible person

The duties of a responsible person of a residential care home are—

- (a) to ensure adequate supervision of the operation, keeping, management and control of the residential care home for protecting the interest and safety of the residents of the residential care home; and
- (b) to ensure that the residential care home is operated in compliance with this Ordinance.

11E. Fit and proper requirement for responsible person

For sections 8(3)(ac), 10(1)(ac), 11F(1) and 11I(1)(b), in considering whether a person is a fit and proper person to perform the duties mentioned in section 11D, the Director must have regard to all relevant matters, including the matters set out in Schedule 2.

11F. Change of responsible person as required by Director

- (1) The Director may, by a written notice given to the operator of a residential care home, direct that the responsible person of the residential care home (*outgoing*

responsible person) cease to be such a responsible person if satisfied that the person—

- (a) is no longer a fit and proper person to perform the duties mentioned in section 11D; or
 - (b) has failed to perform any of the duties.
- (2) The notice must—
- (a) state that—
 - (i) the Director is satisfied of the matter mentioned in subsection (1)(a) or (b); and
 - (ii) the outgoing responsible person ceases to be the responsible person of the residential care home on the date of the notice; and
 - (b) require the operator to propose another management officer of the operator to be the responsible person of the residential care home.
- (3) The Director must also send a copy of the notice to the outgoing responsible person.
- (4) The operator must, within 7 days after the date of the notice or a longer period that the Director permits, propose another management officer of the operator to be the responsible person of the residential care home.
- (5) The outgoing responsible person ceases to be the responsible person of the residential care home on the date of the notice.

11G. Change of responsible person because of death, incapacity, etc.

- (1) The responsible person of a residential care home ceases to be such a responsible person when he or she—
 - (a) dies;

- (b) becomes incapable of managing and administering his or her property and affairs because of mental or physical incapacity;
 - (c) ceases to be a management officer of the operator of the residential care home; or
 - (d) gives a written notice to the operator of the residential care home and the Director to withdraw his or her consent to be the responsible person of the residential care home.
- (2) If an event described in subsection (1)(a), (b), (c) or (d) (*relevant event*) occurs, the operator of the residential care home must, within the period specified in subsection (3)—
- (a) inform the Director of the relevant event in the form specified by the Director; and
 - (b) propose another management officer of the operator to be the responsible person of the residential care home.
- (3) The period specified for subsection (2) is—
- (a) 7 days after the date on which the operator becomes aware of the relevant event; or
 - (b) a longer period that the Director permits.

11H. Change of responsible person in other circumstances

- (1) The operator of a residential care home may change the responsible person of the residential care home in circumstances other than those set out in sections 11F and 11G by giving a written notice to the Director.
- (2) The notice must—
 - (a) state—

- (i) the operator's intention to change the responsible person of the residential care home; and
 - (ii) the date on which the responsible person of the residential care home (*outgoing responsible person*) will cease to be such a responsible person (*cessation date*);
- (b) be given at least 14 days before the cessation date; and
 - (c) be given in the form and manner specified by the Director.
- (3) When giving the notice, the operator must also propose another management officer of the operator to be the responsible person of the residential care home.
 - (4) The outgoing responsible person ceases to be the responsible person of the residential care home on the cessation date.

11I. Director to specify date of becoming responsible person

- (1) This section applies if—
 - (a) the operator of a residential care home proposes a management officer of the operator (*proposed responsible person*) to be the responsible person of the residential care home under section 11F(4), 11G(2) or 11H(3); and
 - (b) the Director is satisfied that the proposed responsible person is a fit and proper person to perform the duties mentioned in section 11D.
- (2) The Director must, by a written notice—
 - (a) inform the operator that the Director is satisfied of the matter mentioned in subsection (1)(b); and

- (b) specify a date (being one after the date of the notice) on which the proposed responsible person becomes the responsible person of the residential care home (*specified date*).
- (3) The Director must also send a copy of the notice to the proposed responsible person—
 - (a) by delivering it personally to the person; or
 - (b) by registered post to the person at the person's correspondence address mentioned in section 11C(a).
 - (4) The proposed responsible person becomes the responsible person of the residential care home on the specified date.

Division 3—Reporting Requirements

11J. Operator to report certain events

- (1) The operator of a residential care home must report to the Director if any of the events specified in subsection (3) occurs.
- (2) The report must—
 - (a) be given in writing within 7 days after the date on which the operator becomes aware of the event or a longer period that the Director permits; and
 - (b) contain the information specified by the Director.
- (3) The following events are specified for subsection (1)—
 - (a) for an operator that is a sole proprietor—
 - (i) a charge is laid against the operator or the responsible person of the residential care home for an offence in any place;

- (ii) the operator or the responsible person is convicted of an offence in any place;
 - (iii) the operator or the responsible person becomes an undischarged bankrupt;
 - (iv) the operator or the responsible person enters into a composition or scheme of arrangement with their creditors;
 - (v) a body corporate of which the operator or the responsible person is a director goes into liquidation or becomes the subject of a winding-up order;
 - (vi) there is a change in the name or correspondence address of the responsible person;
- (b) for an operator that is a body corporate—
- (i) a charge is laid against the operator or the responsible person of the residential care home for an offence in any place;
 - (ii) the operator or the responsible person is convicted of an offence in any place;
 - (iii) the operator goes into liquidation or becomes the subject of a winding-up order;
 - (iv) the operator or the responsible person enters into a composition or scheme of arrangement with their creditors;
 - (v) a body corporate of which the operator or the responsible person is a director goes into liquidation or becomes the subject of a winding-up order;

- (vi) the responsible person becomes an undischarged bankrupt;
 - (vii) there is a change in the name or correspondence address of the responsible person; or
- (c) for an operator that is a partnership—
- (i) a charge is laid against any partner in the partnership (*partner*) or the responsible person of the residential care home for an offence in any place;
 - (ii) any partner or the responsible person is convicted of an offence in any place;
 - (iii) any partner or the responsible person becomes an undischarged bankrupt;
 - (iv) any partner goes into liquidation or becomes the subject of a winding-up order;
 - (v) any partner or the responsible person enters into a composition or scheme of arrangement with their creditors;
 - (vi) a body corporate of which any partner or the responsible person is a director goes into liquidation or becomes the subject of a winding-up order;
 - (vii) there is a change in the name or correspondence address of the responsible person.”.

15. Section 12 amended (appeals against decisions of Director)

Section 12—

Repeal

“7.”.

16. Section 19 amended (Director may direct remedial measures)

- (1) Section 19(1)—

Repeal

“him”

Substitute

“the Director”.

- (2) Section 19(2)—

Repeal paragraph (a)

Substitute

“(a) must be served personally or by registered post on a person who operates, keeps, manages or otherwise has control of the residential care home; and”.

- (3) Section 19(2)(b), English text—

Repeal

“shall” (wherever appearing)

Substitute

“must”.

17. Section 20 amended (Director may order cessation of use of premises as a residential care home)

- (1) Section 20(1)(a), English text—

Repeal

“him”

Substitute

“the Director”.

- (2) Section 20(1), English text—

Repeal

“shall”.

- (3) Section 20(1)—

Repeal

“he”

Substitute

“the Director”.

- (4) Section 20(2)—

Repeal

everything after “section”

Substitute

“—

- (a) must be served on a person who operates, keeps, manages or otherwise has control of the residential care home concerned; and

- (b) takes effect from the date of service.”.

- (5) Section 20(3), English text—

Repeal

“shall be”

Substitute

“is”.

18. Section 21 amended (offences in relation to certificates of exemption and licences)

- (1) Section 21, heading—

Repeal

“certificates of exemption and”.

- (2) Section 21—
Repeal subsections (1) and (2).
- (3) Section 21(3)—
Repeal
“on any occasion”.
- (4) Section 21(3)(a), (b) and (c), English text—
Repeal
“so issued”.
- (5) Section 21(4)—
Repeal
everything before “of the residential”
Substitute
“(4) If a condition of a licence issued in respect of a residential care home is contravened, the operator”.
- (6) Section 21(4)—
Repeal
“he” (wherever appearing)
Substitute
“the operator”.
- (7) Section 21(5)—
Repeal
“Where an offence under subsection (1) or (3)”
Substitute
“If an offence under subsection (3)”.
- (8) Section 21(6)(a)—
Repeal

- “he”
Substitute
“the person”.
- (9) Section 21(6)(b)—
Repeal
everything after “of any”
Substitute
“power conferred on the Director, officer or inspector by this Ordinance;”.
- (10) Section 21(6)(c)—
Repeal
“he”
Substitute
“the person”.
- (11) Section 21(6)(e)—
Repeal
“him”
Substitute
“the person”.
- 19. Sections 21A, 21B and 21C added**
After section 21—
Add
“21A. Liability of responsible person
If the operator of a residential care home commits an offence under this Ordinance, and it is proved that the offence—

- (a) was committed with the consent or connivance of the responsible person of the residential care home; or
- (b) was attributable to any neglect on the part of the responsible person of the residential care home in performing the duties mentioned in section 11D,

the responsible person also commits the offence.

21B. Liability of directors, partners, etc.

- (1) If—
 - (a) a sole proprietor commits an offence under this Ordinance; and
 - (b) it is proved that the offence was committed with the consent or connivance of a person concerned in the management of the sole proprietorship,the person also commits the offence.
- (2) If—
 - (a) a body corporate commits an offence under this Ordinance; and
 - (b) it is proved that the offence was committed with the consent or connivance of a director of the body corporate, or of a person concerned in the management of the body corporate,the director or the person, as the case requires, also commits the offence.
- (3) If—
 - (a) a partner in a partnership commits an offence under this Ordinance; and
 - (b) it is proved that the offence was committed with the consent or connivance of another partner in the

partnership, or of a person concerned in the management of the partnership,
the other partner or the person, as the case requires, also commits the offence.

21C. Prosecution deadline for offences

- (1) A prosecution for an offence under this Ordinance may only be started before the end of 12 months after the date on which the offence is discovered by the Director.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (2) Subsection (1) does not apply in relation to an offence committed before the material date.”.

20. Section 23 amended (regulation)

- (1) Section 23(1)(c)—

Repeal

“persons holding the licences in respect thereof”

Substitute

“operators and responsible persons of residential care homes”.

- (2) Section 23(1)(g), Chinese text—

Repeal

“福利”

Substitute

“福祉”.

- (3) Section 23(1)(m)—

Repeal

everything after “design,”

Substitute

“construction, hygiene and sanitation of residential care homes;”.

- (4) Section 23(1)(ra)—

Repeal

“whether certificates of exemption or”

Substitute

“that”.

- (5) Section 23(3)—

Repeal

everything after “to” and before “control”

Substitute

“a person who operates, keeps, manages or otherwise has”.

- (6) Section 23(4), English text—

Repeal

“shall be”

Substitute

“is”.

- (7) Section 23(5), English text—

Repeal

“his”

Substitute

“the Director’s”.

- (8) Section 23(6)(a)(ii)—

Repeal

“certificate of exemption or the licence, as the case may be”

Substitute

“licence”.

21. Section 24 amended (no fee payable in respect of certificate of exemption or licence)

- (1) Section 24, heading—

Repeal

“certificate of exemption or”.

- (2) Section 24, English text—

Repeal

“shall be”

Substitute

“is”.

- (3) Section 24—

Repeal paragraph (a).

- (4) Section 24(b), after “licence;”—

Add

“or”.

- (5) Section 24—

Repeal paragraph (c).

22. Schedules 1 and 2 added

After section 24—

Add

“Schedule 1

[s. 8A]

Fit and Proper Requirement for Licence Applicant

1. Matters for sole proprietor

For section 8A(a), the matters are—

- (a) whether the sole proprietor has been—
 - (i) convicted of an offence involving fraud or dishonesty in any place;
 - (ii) convicted of an indictable offence in Hong Kong;
 - (iii) sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended; or
 - (iv) convicted of an offence under this Ordinance, Cap. 613 or Cap. 613A;
- (b) the record of the following matters in connection with the sole proprietor—
 - (i) any application for—
 - (A) a licence within the meaning of this Ordinance;
 - (B) a licence as defined by section 2(1) of Cap. 613; or
 - (C) a certificate of exemption as defined by section 2(1) of Cap. 613;

- (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
 - (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
 - (iv) compliance with this Ordinance, Cap. 613 or Cap. 613A; and
- (c) whether the sole proprietor—
- (i) is an undischarged bankrupt;
 - (ii) has entered into a composition or scheme of arrangement with the sole proprietor’s creditors; or
 - (iii) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.

2. Matters for body corporate

For section 8A(b), the matters are—

- (a) whether the body corporate has been convicted of—
 - (i) an offence involving fraud or dishonesty in any place;
 - (ii) an indictable offence in Hong Kong;
 - (iii) an offence in a place outside Hong Kong; or
 - (iv) an offence under this Ordinance, Cap. 613 or Cap. 613A;
- (b) the record of the following matters in connection with the body corporate—
 - (i) any application for—

- (A) a licence within the meaning of this Ordinance;
- (B) a licence as defined by section 2(1) of Cap. 613; or
- (C) a certificate of exemption as defined by section 2(1) of Cap. 613;
- (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
- (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
- (iv) compliance with this Ordinance, Cap. 613 or Cap. 613A; and
- (c) whether the body corporate—
 - (i) is in liquidation or is the subject of a winding-up order;
 - (ii) has entered into a composition or scheme of arrangement with the body corporate's creditors; or
 - (iii) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.

3. Matters for partnership

For section 8A(c), the matters are—

- (a) whether any partner in the partnership has been—
 - (i) convicted of an offence involving fraud or dishonesty in any place;

- (ii) convicted of an indictable offence in Hong Kong;
- (iii) if the partner is an individual—sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended;
- (iv) if the partner is a body corporate—convicted of an offence in a place outside Hong Kong; or
- (v) convicted of an offence under this Ordinance, Cap. 613 or Cap. 613A;
- (b) the record of the following matters in connection with any partner in the partnership—
 - (i) any application for—
 - (A) a licence within the meaning of this Ordinance;
 - (B) a licence as defined by section 2(1) of Cap. 613; or
 - (C) a certificate of exemption as defined by section 2(1) of Cap. 613;
 - (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
 - (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
 - (iv) compliance with this Ordinance, Cap. 613 or Cap. 613A; and
- (c) whether any partner in the partnership—
 - (i) is an undischarged bankrupt;

- (ii) is in liquidation or is the subject of a winding-up order;
- (iii) has entered into a composition or scheme of arrangement with the partner's creditors; or
- (iv) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.

Schedule 2

[s. 11E]

Fit and Proper Requirement for Responsible Person

For section 11E, the matters are—

- (a) whether the person has been—
 - (i) convicted of an offence involving fraud or dishonesty in any place;
 - (ii) convicted of an indictable offence in Hong Kong;
 - (iii) sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended; or
 - (iv) convicted of an offence under this Ordinance, Cap. 613 or Cap. 613A;

- (b) the record of the following matters in connection with the person—
 - (i) any application for—
 - (A) a licence within the meaning of this Ordinance;
 - (B) a licence as defined by section 2(1) of Cap. 613; or
 - (C) a certificate of exemption as defined by section 2(1) of Cap. 613;
 - (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
 - (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
 - (iv) compliance with this Ordinance, Cap. 613 or Cap. 613A; and
- (c) whether the person—
 - (i) is an undischarged bankrupt;
 - (ii) has entered into a composition or scheme of arrangement with the person's creditors; or
 - (iii) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.”.

23. “營辦” substituted for “經營”

- (1) The following provisions, Chinese text—
 - (a) section 8(2)(a), (3)(a) and (4)(c);
 - (b) section 9(3);

- (c) section 10(1)(e)(i), (ii) and (iii);
- (d) section 18(2)(b) and (e)(ii);
- (e) section 19(1)(a);
- (f) section 21(3) and (5);
- (g) section 22(1);
- (h) section 23(1)(a) and (d)—

Repeal

“經營” (wherever appearing)

Substitute

“營辦”.

- (2) The following provisions, Chinese text—

- (a) Part 2, heading;
- (b) section 22, heading—

Repeal

“經營” (wherever appearing)

Substitute

“營辦”.

Part 3

Amendments to Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A)

24. Section 2 amended (interpretation)

- (1) Section 2—

Repeal the definition of *health worker*

Substitute

“*health worker* (保健員) means a person who is responsible for providing health and care services to residents of a residential care home;”.

- (2) Section 2, English text, definition of *scheduled infectious disease*—

Repeal

“(Cap. 599).”

Substitute

“(Cap. 599);”.

- (3) Section 2, Chinese text, definition of 護理員—

Repeal the full stop

Substitute a semicolon.

- (4) Section 2—

Repeal the definitions of *nurse* and *operator*.

- (5) Section 2—

Add in alphabetical order

“*aged home* (中度照顧安老院) means a residential care home within the meaning of section 3(b);

applicable fee (適用費用), in relation to a matter, means the fee specified in Schedule 3 payable for that matter;

care and attention home (高度照顧安老院) means a residential care home within the meaning of section 3(a);

nursing home (護養院) means a residential care home within the meaning of section 3(aa);

pre-material-date home manager (關鍵日期前的主管) means a person who was employed as a home manager in a residential care home or a residential care home for PWDs immediately before the material date;

register of health workers (保健員註冊紀錄冊) means the register kept under section 5(1);

register of home managers (主管註冊紀錄冊) means the register kept under section 3X(1);

registered health worker (註冊保健員) means a person whose name appears on the register of health workers;

registered home manager (註冊主管) means a person whose name appears on the list of persons registered as registered home managers in the register of home managers;

registered home manager (provisional) (註冊主管(臨時)) means a person whose name appears on the list of persons registered as registered home managers (provisional) in the register of home managers;

Secretary (局長) means the Secretary for Labour and Welfare;

self-care hostel (低度照顧安老院) means a residential care home within the meaning of section 3(c).”

25. Section 3 amended (types of residential care homes)

Section 3—

Repeal

“sections 7(3)(c) and 8(4)(c) of the Ordinance”

Substitute

“section 8(4)(c) of the Ordinance and this Regulation”.

26. Part IIA added

After Part II—

Add

“Part IIA

Registration of Home Managers

Division 1—Registered Home Managers

3A. Application for registration as registered home manager

- (1) An application for registration as a registered home manager must—
 - (a) be made to the Director in the form and manner specified by the Director; and
 - (b) contain the information specified by the Director.
- (2) On the application, the Director may register the applicant as a registered home manager if—
 - (a) the Director is satisfied that the applicant—
 - (i) meets the qualification requirement specified in section 3B;
 - (ii) is competent to perform the duties of a home manager; and
 - (iii) is fit and proper to be so registered; and

- (b) the applicant has paid the applicable fee for the registration.
 - (3) The Director may impose on the registration any condition that the Director considers appropriate, including any condition relating to continuous learning.
- 3B. Qualification requirement for registration as registered home manager**
- (1) For section 3A(2)(a)(i), the qualification requirement is that—
 - (a) the person—
 - (i) is one specified in subsection (2)(a), (b), (c) or (d); and
 - (ii) has completed a training course specified by the Director; or
 - (b) the person is a registered home manager as defined by section 2 of Cap. 613A.
 - (2) The following persons are specified for subsection (1)(a)(i)—
 - (a) a person who—
 - (i) holds—
 - (A) a professional qualification relating to healthcare or social work specified by the Director; or
 - (B) a bachelor or higher degree, or an academic qualification regarded by the Director as equivalent; and
 - (ii) has, within 3 years before making the application, worked in one or more residential care homes or residential care homes for

- PWDs for a total of at least 1 year in a position involving or assisting in the management of the residential care homes or residential care homes for PWDs;
- (b) a person who—
 - (i) is a registered health worker within the meaning of this Regulation, or a registered health worker as defined by section 2 of Cap. 613A; and
 - (ii) has worked in one or more residential care homes or residential care homes for PWDs as a health worker for a total of at least 5 years;
 - (c) a pre-material-date home manager who applies for registration as a registered home manager under section 3A during the 6-month period beginning on the material date;
 - (d) a pre-material-date home manager who is—
 - (i) a registered home manager (provisional) within the meaning of this Regulation; or
 - (ii) a registered home manager (provisional) as defined by section 2 of Cap. 613A.
- 3C. Fit and proper requirement for registration as registered home manager**
- For section 3A(2)(a)(iii), in considering whether a person is fit and proper to be registered as a registered home manager, the Director must have regard to all relevant matters, including—
- (a) whether the person has been—
 - (i) convicted of an offence involving fraud or dishonesty, or of a sexual nature, in any place;

- (ii) convicted of an indictable offence in Hong Kong;
 - (iii) sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended; or
 - (iv) convicted of an offence under the Ordinance, this Regulation, Cap. 613 or Cap. 613A; and
- (b) if any professional or academic qualification of the person (whether or not relating to healthcare or social work) has been revoked—the reason for the revocation.

3D. Notice of decision on application for registration

- (1) On determining an application under section 3A, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 3K.

3E. Renewal of registration as registered home manager

- (1) A registered home manager may apply for the renewal of the registration.
- (2) The application must—
 - (a) be made to the Director at least 3 months before, but not earlier than 6 months before, the expiry of the registration;

- (b) be made in the form and manner specified by the Director; and
 - (c) contain the information specified by the Director.
- (3) On the application, the Director may renew the registration if—
- (a) the Director is satisfied that the registered home manager—
 - (i) still meets the requirements for registration under section 3A(2)(a)(ii) and (iii); and
 - (ii) complies with all conditions imposed on the registration; and
 - (b) the manager has paid the applicable fee for the renewal.
- (4) The Director may impose on the renewed registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

3F. Notice of decision on application for renewal of registration

- (1) On determining an application under section 3E, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the renewed registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 3K.

3G. Registration remains in effect pending determination of renewal application

- (1) This section applies if—

- (a) a registered home manager applies for the renewal of the registration under section 3E; and
 - (b) the registration would, but for this section, have expired before the application is determined.
- (2) The registration remains in effect until—
- (a) the Director determines the application; or
 - (b) the registered home manager withdraws the application.

3H. Validity period of registration as registered home manager

The validity period of a registration or renewed registration as a registered home manager is to be decided by the Director and must not exceed 5 years.

3I. Cancellation of registration as registered home manager

- (1) The Director may cancel a person's registration as a registered home manager if satisfied that—
- (a) the registration was obtained by fraudulent means;
 - (b) the person no longer meets the requirement for registration under section 3A(2)(a)(ii) or (iii); or
 - (c) the person contravenes—
 - (i) a condition imposed on the registration under section 3A(3) or 3E(4); or
 - (ii) section 3W.
- (2) The Director must cancel a person's registration as a registered home manager—
- (a) if the person makes a written request to the Director for cancelling the registration; or
 - (b) if—

- (i) the person was also registered as a registered home manager or registered home manager (provisional) under Cap. 613A; and
 - (ii) that registration under Cap. 613A is cancelled under section 3I(1)(a) or (b) or 3T(1)(a) or (b) of Cap. 613A.
- (3) The cancellation takes effect—
- (a) for a cancellation under subsection (1)—subject to section 3K(3), on the expiry of 21 days after the day on which the Director gives the notice under section 3J; or
 - (b) for a cancellation under subsection (2)—on the expiry of 21 days after the day on which the Director gives the notice under section 3J.

3J. Notice of cancellation of registration

- (1) If the Director decides to cancel a person's registration under section 3I, the Director must give a written notice of the decision to—
- (a) the person; and
 - (b) if the person is employed in a residential care home when the decision is made—the operator of the residential care home.
- (2) The notice must state—
- (a) the date on which the cancellation takes effect under section 3I(3);
 - (b) the reason for cancelling the registration; and
 - (c) if the registration is cancelled under section 3I(1)—that the person may appeal under section 3K.

3K. Appeals to Secretary

- (1) If the Director—
 - (a) decides to refuse to register a person under section 3A;
 - (b) decides to refuse to renew a person's registration under section 3E; or
 - (c) decides to cancel a person's registration under section 3I(1),the person may, by written notice, appeal to the Secretary against the decision.
- (2) The notice must—
 - (a) state the grounds of appeal; and
 - (b) be delivered to the Director within 21 days after the day on which the Director gives the notice of the decision.
- (3) If an appeal is made against a decision described in subsection (1)(c), the decision does not have effect pending the determination of the appeal by the Secretary.
- (4) When considering an appeal against a decision of the Director, the Secretary—
 - (a) must give the appellant and the Director an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (5) On the determination of the appeal by the Secretary, the Director must give a written notice of the determination to—
 - (a) the appellant; and

- (b) if the appellant is employed in a residential care home when the appeal is determined—the operator of the residential care home.

3L. Registration remains in effect pending determination of appeal

- (1) This section applies if—
 - (a) a person appeals against a decision described in section 3K(1)(b) or (c); and
 - (b) the person's registration as a registered home manager would, but for this section, have expired before the appeal is determined.
- (2) The registration remains in effect until—
 - (a) the Secretary determines the appeal; or
 - (b) the person withdraws the appeal.

Division 2—Registered Home Managers (Provisional)

3M. Application for registration as registered home manager (provisional)

- (1) An application for registration as a registered home manager (provisional) must—
 - (a) be made to the Director in the form and manner specified by the Director; and
 - (b) contain the information specified by the Director.
- (2) On the application, the Director may register the applicant as a registered home manager (provisional) if—
 - (a) the Director is satisfied that the applicant—
 - (i) meets the qualification requirement specified in section 3N;

- (ii) is competent to perform the duties of a home manager;
 - (iii) is fit and proper to be so registered; and
 - (iv) if the applicant is not a pre-material-date home manager—on being so registered, will be employed as a home manager in a residential care home under section 11(1)(a) or (1A)(a); and
- (b) the applicant has paid the applicable fee for the registration.
- (3) The Director may impose on the registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

3N. Qualification requirement for registration as registered home manager (provisional)

For section 3M(2)(a)(i), the qualification requirement is that the person—

- (a) holds a professional qualification relating to healthcare or social work specified by the Director;
- (b) holds a bachelor or higher degree, or an academic qualification regarded by the Director as equivalent; or
- (c) is a pre-material-date home manager who applies for registration as a registered home manager (provisional) under section 3M during the 6-month period beginning on the material date.

3O. Fit and proper requirement for registration as registered home manager (provisional)

For section 3M(2)(a)(iii), in considering whether a person is fit and proper to be registered as a registered home manager (provisional), the Director must have regard to all relevant matters, including the matters mentioned in section 3C(a) and (b).

3P. Notice of decision on application for registration

- (1) On determining an application under section 3M, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 3V.

3Q. Validity period of registration as registered home manager (provisional)

The validity period of a registration as a registered home manager (provisional) is to be decided by the Director and must not exceed 2 years.

3R. Extension of validity period

- (1) A person who is registered as a registered home manager (provisional) because of meeting the qualification requirement specified in section 3N(c) may apply for the extension of the validity period of the registration once.
- (2) The application must—

- (a) be made to the Director before the expiry of the registration;
 - (b) be made in the form and manner specified by the Director; and
 - (c) contain the information specified by the Director.
- (3) The Director may extend the validity period of the registration for a period of not more than 2 years only if satisfied that there are exceptional circumstances that justify the extension.

3S. Registration remains in effect pending determination of certain application

- (1) This section applies if—
- (a) a registered home manager (provisional) applies—
 - (i) for registration under section 3A; or
 - (ii) for the extension of the validity period of the registration under section 3R; and
 - (b) the registration would, but for this section, have expired before the application is determined.
- (2) The registration remains in effect until—
- (a) the Director determines the application; or
 - (b) the registered home manager (provisional) withdraws the application.

3T. Cancellation of registration as registered home manager (provisional)

- (1) The Director may cancel a person's registration as a registered home manager (provisional) if satisfied that—
- (a) the registration was obtained by fraudulent means;

- (b) the person no longer meets the requirement for registration under section 3M(2)(a)(ii) or (iii); or
 - (c) the person contravenes—
 - (i) a condition imposed on the registration under section 3M(3); or
 - (ii) section 3W.
- (2) The Director must cancel a person's registration as a registered home manager (provisional)—
- (a) if the person is registered as a registered home manager under section 3A;
 - (b) if the person makes a written request to the Director for cancelling the registration; or
 - (c) if—
 - (i) the person was also registered as a registered home manager or registered home manager (provisional) under Cap. 613A; and
 - (ii) that registration under Cap. 613A is cancelled under section 3I(1)(a) or (b) or 3T(1)(a) or (b) of Cap. 613A.
- (3) The cancellation takes effect—
- (a) for a cancellation under subsection (1)—subject to section 3V(3), on the expiry of 21 days after the day on which the Director gives the notice under section 3U;
 - (b) for a cancellation under subsection (2)(a)—on the day on which the registration under section 3A takes effect; or
 - (c) for a cancellation under subsection (2)(b) or (c)—on the expiry of 21 days after the day on which the Director gives the notice under section 3U.

3U. Notice of cancellation of registration

- (1) If the Director decides to cancel a person's registration under section 3T, the Director must give a written notice of the decision to—
 - (a) the person; and
 - (b) if the person is employed in a residential care home when the decision is made—the operator of the residential care home.
- (2) The notice must state—
 - (a) the date on which the cancellation takes effect under section 3T(3);
 - (b) the reason for cancelling the registration; and
 - (c) if the registration is cancelled under section 3T(1)—that the person may appeal under section 3V.

3V. Appeals to Secretary

- (1) If the Director—
 - (a) decides to refuse to register a person under section 3M; or
 - (b) decides to cancel a person's registration under section 3T(1),the person may, by written notice, appeal to the Secretary against the decision.
- (2) The notice must—
 - (a) state the grounds of appeal; and
 - (b) be delivered to the Director within 21 days after the day on which the Director gives the notice of the decision.

- (3) If an appeal is made against a decision described in subsection (1)(b), the decision does not have effect pending the determination of the appeal by the Secretary.
- (4) When considering an appeal against a decision of the Director, the Secretary—
 - (a) must give the appellant and the Director an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (5) On the determination of the appeal by the Secretary, the Director must give a written notice of the determination to—
 - (a) the appellant; and
 - (b) if the appellant is employed in a residential care home when the appeal is determined—the operator of the residential care home.

Division 3—Reporting Requirements

3W. Registered home manager or registered home manager (provisional) to report certain events

- (1) A registered home manager or a registered home manager (provisional) must report to the Director if—
 - (a) a charge is laid against the manager for an offence in any place;
 - (b) the manager is convicted of an offence in any place;
 - (c) any professional or academic qualification of the manager (whether or not relating to healthcare or social work) is revoked; or
 - (d) there is a change in the name or correspondence address of the manager.

- (2) The report must—
 - (a) be given in writing—
 - (i) for an event described in subsection (1)(a), (b) or (c)—as soon as reasonably practicable after the event occurs; or
 - (ii) for a change described in subsection (1)(d)—within 3 months after the change occurs; and
 - (b) contain the information specified by the Director.

Division 4—Register of Home Managers

3X. Register of home managers

- (1) The Director must keep a register containing—
 - (a) a list of persons registered as registered home managers under Division 1; and
 - (b) a list of persons registered as registered home managers (provisional) under Division 2.
- (2) The purpose of the register is to enable the public to ascertain—
 - (a) whether a person is a registered home manager or registered home manager (provisional); and
 - (b) the particulars of the registration.
- (3) Each list in the register—
 - (a) must contain the name and correspondence address of each person on the list; and
 - (b) may contain other particulars that the Director considers appropriate.
- (4) The Director may make any amendment to the register that the Director considers necessary for securing its accuracy or keeping it up-to-date.

- (5) The Director must remove from the register the name of a person if—
 - (a) it has come to the notice of the Director that the person has died; or
 - (b) the person’s registration ceases to have effect on expiry or cancellation.

3Y. Inspection of register of home managers

The Director must make the register of home managers available for public inspection—

- (a) free of charge;
- (b) at offices of the Government that the Director directs; and
- (c) during the hours when those offices are open to the public.”.

27. Section 4 amended (qualifications for registration as a health worker)

- (1) Section 4, heading—

Repeal

“a”

Substitute

“registered”.

- (2) Section 4—

Repeal

everything after paragraph (a) and before “health worker for”

Substitute

- “(b) by reason of the person’s education, training, professional experience and skill in health work,

satisfies the Director that the person is a suitable person to be registered as a registered health worker, is qualified to be registered as a registered”.

28. Section 5 amended (register of health workers)

(1) Section 5—

Repeal subsection (1)

Substitute

“(1) The Director must keep a register containing a list of persons registered as registered health workers under this Part.

(1A) The purpose of the register is to enable the public to ascertain—

- (a) whether a person is a registered health worker; and
- (b) the particulars of the registration.

(1B) The register—

- (a) must contain the name and correspondence address of each person in the register; and
- (b) may contain other particulars that the Director considers appropriate.”.

(2) Section 5(2), English text—

Repeal

“shall”

Substitute

“must”.

(3) Section 5—

Repeal subsections (3) and (4)

Substitute

“(3) The Director may make any amendment to the register that the Director considers necessary for securing its accuracy or keeping it up-to-date.

(4) The Director must remove from the register the name of a person if—

- (a) it has come to the notice of the Director that the person has died; or
- (b) the person’s registration ceases to have effect on expiry or cancellation.”.

29. Section 6 substituted

Section 6—

Repeal the section

Substitute

“6. Application for registration as registered health worker

(1) An application for registration as a registered health worker must—

- (a) be made to the Director in the form and manner specified by the Director; and
- (b) contain the information specified by the Director.

(2) On the application, the Director may register the applicant as a registered health worker if—

- (a) the Director is satisfied that the applicant—
 - (i) is qualified under section 4 to be so registered;
 - (ii) is competent to perform the duties of a health worker; and
 - (iii) is fit and proper to be so registered; and

(b) the applicant has paid the applicable fee for the registration.

(3) The Director may impose on the registration any condition that the Director considers appropriate, including any condition relating to continuous learning.”.

30. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Notice of decision on application for registration

(1) On determining an application under section 6, the Director must give a written notice of the decision to the applicant.

(2) If the application is approved, the notice must state the validity period of the registration.

(3) If the application is refused, the notice must state—

(a) the reason for the refusal; and

(b) that the applicant may appeal under section 10.”.

31. Sections 7A to 7D added

After section 7—

Add

“7A. Renewal of registration as registered health worker

(1) A registered health worker may apply for the renewal of the registration.

(2) The application must—

(a) be made to the Director at least 3 months before, but not earlier than 6 months before, the expiry of the registration;

(b) be made in the form and manner specified by the Director; and

(c) contain the information specified by the Director.

(3) On the application, the Director may renew the registration if—

(a) the Director is satisfied that the registered health worker—

(i) still meets the requirements for registration under section 6(2)(a); and

(ii) complies with all conditions imposed on the registration; and

(b) the health worker has paid the applicable fee for the renewal.

(4) The Director may impose on the renewed registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

7B. Notice of decision on application for renewal of registration

(1) On determining an application under section 7A, the Director must give a written notice of the decision to the applicant.

(2) If the application is approved, the notice must state the validity period of the renewed registration.

(3) If the application is refused, the notice must state—

(a) the reason for the refusal; and

(b) that the applicant may appeal under section 10.

7C. Registration remains in effect pending determination of renewal application

- (1) This section applies if—
 - (a) a registered health worker applies for the renewal of the registration under section 7A; and
 - (b) the registration would, but for this section, have expired before the application is determined.
- (2) The registration remains in effect until—
 - (a) the Director determines the application; or
 - (b) the registered health worker withdraws the application.

7D. Validity period of registration as registered health worker

The validity period of a registration or renewed registration as a registered health worker is to be decided by the Director and must not exceed 5 years.”.

32. Section 8 substituted

Section 8—

Repeal the section

Substitute

“8. Cancellation of registration as registered health worker

- (1) The Director may cancel a person’s registration as a registered health worker if satisfied that—
 - (a) the registration was obtained by fraudulent means;
 - (b) the person no longer meets the requirement for registration under section 6(2)(a)(i), (ii) or (iii); or
 - (c) the person contravenes—

- (i) a condition imposed on the registration under section 6(3) or 7A(4); or
 - (ii) section 10B.
- (2) The Director must cancel a person’s registration as a registered health worker—
 - (a) if the person makes a written request to the Director for cancelling the registration; or
 - (b) if—
 - (i) the person was also registered as a registered health worker under Cap. 613A; and
 - (ii) that registration under Cap. 613A is cancelled under section 8(1)(a) or (b) of Cap. 613A.
- (3) The cancellation takes effect—
 - (a) for a cancellation under subsection (1)—subject to section 10(3), on the expiry of 21 days after the day on which the Director gives the notice under section 9; or
 - (b) for a cancellation under subsection (2)—on the expiry of 21 days after the day on which the Director gives the notice under section 9.”.

33. Section 9 amended (notice of cancellation of registration)

Section 9—

Repeal subsections (1) and (2)

Substitute

- “(1) If the Director decides to cancel a person’s registration under section 8, the Director must give a written notice of the decision to—
- (a) the person; and

- (b) if the person is employed in a residential care home when the decision is made—the operator of the residential care home.
- (2) The notice must state—
 - (a) the date on which the cancellation takes effect under section 8(3);
 - (b) the reason for cancelling the registration; and
 - (c) if the registration is cancelled under section 8(1)—that the person may appeal under section 10.”.

34. Section 10 substituted

Section 10—

Repeal the section

Substitute

“10. Appeals to Secretary

- (1) If the Director—
 - (a) decides to refuse to register a person under section 6;
 - (b) decides to refuse to renew a person’s registration under section 7A; or
 - (c) decides to cancel a person’s registration under section 8(1),the person may, by written notice, appeal to the Secretary against the decision.
- (2) The notice must—
 - (a) state the grounds of appeal; and

- (b) be delivered to the Director within 21 days after the day on which the Director gives the notice of the decision.
- (3) If an appeal is made against a decision described in subsection (1)(c), the decision does not have effect pending the determination of the appeal by the Secretary.
- (4) When considering an appeal against a decision of the Director, the Secretary—
 - (a) must give the appellant and the Director an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (5) On the determination of the appeal by the Secretary, the Director must give a written notice of the determination to—
 - (a) the appellant; and
 - (b) if the appellant is employed in a residential care home when the appeal is determined—the operator of the residential care home.”.

35. Sections 10A to 10D added

Part III, after section 10—

Add

“10A. Registration remains in effect pending determination of appeal

- (1) This section applies if—
 - (a) a person appeals against a decision described in section 10(1)(b) or (c); and

- (b) the person's registration as a registered health worker would, but for this section, have expired before the appeal is determined.
- (2) The registration remains in effect until—
 - (a) the Secretary determines the appeal; or
 - (b) the person withdraws the appeal.

10B. Registered health worker to report certain events

- (1) A registered health worker must report to the Director if—
 - (a) a charge is laid against the health worker for an offence in any place;
 - (b) the health worker is convicted of an offence in any place; or
 - (c) there is a change in the name or correspondence address of the health worker.
- (2) The report must—
 - (a) be given in writing—
 - (i) for an event described in subsection (1)(a) or (b)—as soon as reasonably practicable after the event occurs; or
 - (ii) for a change described in subsection (1)(c)—within 3 months after the change occurs; and
 - (b) contain the information specified by the Director.

10C. Transitional provisions relating to registration before material date

- (1) Unless renewed under section 7A, a registration under section 6 that has effect immediately before the material date expires at midnight on the last day of the 5-year period beginning on the material date (*expiry date*).

- (2) Despite section 7A(2)(a), an application for the renewal of the registration—
 - (a) may be made at any time on or after the material date; but
 - (b) must be made at least 6 months before the expiry date.

10D. Application for registration as registered health worker pending on material date

If an application for registration under section 6—

- (a) was made before the material date; but
- (b) has not been determined by the Director before that date,

this Part, as amended by the Residential Care Homes Legislation (Miscellaneous Amendments) Ordinance 2022 (of 2022), applies in relation to the application.”.

36. Section 11 amended (employment of staff by operator)

- (1) Section 11, heading—

Repeal

“Employment of staff by operator”

Substitute

“Staffing requirements”.

- (2) Section 11—

Repeal subsection (1)

Substitute

- “(1) The operator of a residential care home (other than a nursing home) must—

- (a) employ a home manager for the residential care home; and
 - (b) ensure that Schedule 1 is complied with in relation to the residential care home.”.
- (3) Section 11(2), English text—
Repeal
“shall”
Substitute
“must”.
- (4) Section 11(2)(a), before “for”—
Add
“, subject to subsection (1A)(a),”.
- (5) Section 11(2)—
Repeal paragraph (a)
Substitute
“(a) a home manager—
(i) unless that person is a registered home manager or a registered home manager (provisional); and
(ii) subject to subsection (1A)(a), for any purpose other than employment as a home manager;”.
- (6) Section 11(2)(d)(i)—
Repeal
“registered under section 6”
Substitute
“a registered health worker”.
- (7) Section 11(2)(e)(i)—
Repeal

- everything after “enrolled nurse”
Substitute
“; and”.
- (8) Section 11(2)(e)(ii), before “for”—
Add
“subject to subsection (1A)(a),”.
- (9) Section 11(3)—
Repeal
“An operator shall”
Substitute
“The operator of a residential care home (other than a nursing home) must”.
- (10) Section 11(4), English text—
Repeal
“An”
Substitute
“The”.
37. **Section 14 amended (furnishing of details of fees by operator)**
Section 14(1) and (3), Chinese text—
Repeal
“繳交”
Substitute
“繳付”.
38. **Section 14A added**
Part IV, after section 14—

Add

“14A. Operator to ensure advertisement contains certain information

- (1) The operator of a residential care home must ensure that every advertisement published by or on behalf of the operator for promoting the residential care home contains information to the effect that a licence is in force in respect of the residential care home.

- (2) In subsection (1)—

advertisement (廣告) includes any advertisement in the form of any words (written or spoken), picture, drawing, visual image, figure or article—

- (a) appearing in any publication; or
(b) brought to the notice of the general public or any section of the general public in any other way;

publish (發布) includes issue, circulate, display, distribute and broadcast.”.

39. Section 14B added

Part V, before section 15—

Add

“14B. Application of Part V

This Part applies to a person who is employed by the operator of a residential care home as a home manager of the residential care home in compliance with section 11(1)(a) or (1A)(a).”.

40. Section 16 amended (maintenance of records by home manager)

- (1) Section 16, English text—

Repeal

“shall”

Substitute

“must”.

- (2) Section 16(g), English text—

Repeal

“mechanical”.

- (3) Section 16(g), English text—

Repeal

“injuring himself or”

Substitute

“self-injury or injuring”.

- (4) Section 16(g), Chinese text—

Repeal

“物品”

Substitute

“措施”.

- (5) Section 16(i), Chinese text—

Repeal

“經營”

Substitute

“營辦”.

41. Section 22 amended (area of floor space per resident)

- (1) Section 22—

Repeal subsection (1)

Substitute

- “(1) The minimum area of floor space required for each resident of a residential care home is—
- (a) for a nursing home or a care and attention home—
9.5 m²; or
 - (b) for an aged home or a self-care hostel—8 m².
- (1A) Despite subsection (1)—
- (a) for a care and attention home to which this subsection applies, the minimum area of floor space required for each resident is—
 - (i) during the 4-year period beginning on the material date—6.5 m²; and
 - (ii) during the 4-year period immediately after the period mentioned in subparagraph (i)—8 m²; or
 - (b) for an aged home or a self-care hostel to which this subsection applies, during the 8-year period beginning on the material date, the minimum area of floor space required for each resident is 6.5 m².
- (1B) Subsection (1A) applies to a residential care home if—
- (a) a licence was in force in respect of the residential care home immediately before the material date; or
 - (b) a licence is issued in respect of the residential care home on or after the material date on an application made before that date.”.

(2) Section 22(2), English text—

Repeal
“shall”

Substitute
“is to”.

42. **Part VII heading amended (precautions against fire and other risks)**
- Part VII, heading—
- Repeal**
“Precautions against Fire and Other Risks”
- Substitute**
“Residents’ Health, Safety and Well-being”.
43. **Section 28 amended (precautions for health and safety)**
- (1) Section 28—
- Repeal**
everything after “construction” and before “be such”
- Substitute**
“(including the fire resistance of the elements of construction) and the properties of the materials must”.
- (2) Section 28, English text—
- Repeal**
“shall, to the satisfaction of the Director, be”
- Substitute**
“are, to the satisfaction of the Director,”.
44. **Section 33 substituted**
- Section 33—
- Repeal the section**
Substitute

“33. Storage and administration of medicine

- (1) All medicine kept in a residential care home must, to the satisfaction of the Director, be kept in a secure and locked place.
- (2) A medicine may only be administered to a resident in a residential care home in accordance with the prescription given for the resident by a registered medical practitioner, a registered Chinese medicine practitioner or a listed Chinese medicine practitioner.
- (3) In this section—

listed Chinese medicine practitioner (表列中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549);

registered Chinese medicine practitioner (註冊中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).”

45. Sections 33A and 33B added

After section 33—

Add

“33A. Use of restraints

- (1) A restraint must not be used on a resident in a residential care home unless—
 - (a) the safety, health or well-being of the resident or other persons is endangered;
 - (b) no other less restrictive means to avoid the danger are available in the circumstances; and
 - (c) the requirements relating to obtaining consent to the use of restraint as set out in the Codes of Practice

issued under section 22 of the Ordinance are complied with.

- (2) A restraint may only be used—
 - (a) in the safe and proper manner as set out in the Codes of Practice; and
 - (b) for no longer than is necessary.
- (3) The use of a restraint must be closely monitored and reviewed to ensure that subsections (1) and (2) are complied with in relation to the continued use of the restraint.

33B. Protection of residents’ dignity and privacy when providing care etc.

When a personal care service is provided to, or a nursing care procedure is performed on, a resident in a residential care home, adequate facilities or measures must be provided or taken, to the satisfaction of the Director, to avoid improper exposure of body parts and protect the dignity and privacy of the resident.”

46. Section 34 amended (examination of residents)

- (1) Section 34, English text, heading—

Repeal

“Examination”

Substitute

“Medical examination”.

- (2) Section 34(1), (2) and (3), English text—

Repeal

“shall” (wherever appearing)

Substitute

“must”.

47. Section 36 amended (offences by operators and home managers)

(1) Section 36(1)—

Repeal

everything after “with”

Substitute

“section 11, 12, 13(2), 14(2) or (3) or 14A(1) commits an offence and is liable to a fine at level 5.”.

(2) Section 36(2)—

Repeal

everything after “with”

Substitute

“section 15, 16, 17(2) or 18 commits an offence and is liable to a fine at level 5.”.

48. Section 37 amended (offence of obstruction)

Section 37—

Repeal

everything after “who”

Substitute

“contravenes section 31(2) commits an offence and is liable to a fine at level 5.”.

49. Section 38 substituted

Section 38—

Repeal the section

Substitute

“38. Fees

A fee specified in column 3 of Schedule 3 is payable to the Director for the matter described, opposite the fee, in column 2 of that Schedule.”.

50. Schedule 1 substituted

Schedule 1—

Repeal the Schedule

Substitute

“Schedule 1

[s. 11]

Minimum Staffing Requirements

Part 1

Preliminary

1. Interpretation of Schedule 1

In this Schedule—

on call (候命) means standing by and being ready to be on duty as soon as practicable after being called on;

on-site (在場), in relation to a residential care home, means being present in the residential care home;

specified period (指明期間), in relation to a day, means the period from 6 a.m. to 10 p.m. on that day;

staff member (員工) means a home manager, a nurse, a health worker, a care worker or an ancillary worker.

2. Number of residents to be rounded up to next multiple

If, in relation to a residential care home (other than a nursing home)—

- (a) this Schedule requires at least 1 staff member for every specified number of residents (*specified number*); and
- (b) the number of residents of the residential care home is not a multiple of the specified number,

then, for the purpose of determining the number of staff members required, the number of residents of the residential care home is to be rounded up to the next multiple of the specified number.

Part 2

Minimum Staffing Requirements

3. Care and attention home

For a care and attention home, during or at the time specified in column 2 of Table 1 on every day, there must be at least the number of staff members that is specified in column 3 of Table 1 opposite the time.

Table 1

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
Nurse and Health Worker		
1.	13 hours within the specified period	1 health worker (on-site and on duty) for every 30 residents, and for this purpose, 1 nurse (on-site and on duty) is considered equivalent to 2 health workers (on-site and on duty)
Care Worker		
2.	10 hours within the specified period	1 care worker (on duty) for every 20 residents
3.	Any time other than the 10 hours mentioned in item 2	1 care worker (on duty) for every 40 residents
Ancillary Worker		
4.	11 hours within the specified period	1 ancillary worker (on duty) for every 40 residents

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
Any Staff Member		
5.	From 6 p.m. on a day to 7 a.m. on the next day	2 staff members (on duty) (who may be persons engaged for complying with a requirement specified in any other item of this Table)
6.	Any time when a resident is in the care and attention home	1 staff member (on-site and on duty) (who may be a person engaged for complying with a requirement specified in any other item of this Table)

4. Aged home

For an aged home, during or at the time specified in column 2 of Table 2 on every day, there must be at least the number of staff members that is specified in column 3 of Table 2 opposite the time.

Table 2

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
Nurse and Health Worker		
1.	6 hours within the specified period	(a) 1 nurse (on-site and on duty); or (b) 1 health worker (on-site and on duty) for every 60 residents
Care Worker and Ancillary Worker		
2.	11 hours within the specified period	1 care worker (on duty) or ancillary worker (on duty) for every 30 residents
Any Staff Member		
3.	From 6 p.m. on a day to 7 a.m. on the next day	2 staff members (on duty) (who may be persons engaged for complying with a requirement specified in any other item of this Table)
4.	Any time when a resident is in the aged home	1 staff member (on-site and on duty) (who may be a person engaged for complying with a requirement specified in any other item of this Table)

5. Self-care hostel

For a self-care hostel, during or at the time specified in column 2 of Table 3 on every day, there must be at least the number of staff members that is specified in column 3 of Table 3 opposite the time.

Table 3

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
------------------	------------------	------------------------------------------

Care Worker and Ancillary Worker

1.	11 hours within the specified period	1 care worker (on duty) or ancillary worker (on duty) for every 60 residents
----	--------------------------------------	------------------------------------------------------------------------------

Any Staff Member

2.	Any time between 7 a.m. and 6 p.m. when a resident is in the self-care hostel	1 staff member (on-site and on duty) (who may be a person engaged for complying with the requirement specified in item 1)
3.	From 6 p.m. on a day to 7 a.m. on the next day	Both of the following staff members (who may be persons engaged for complying with

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
------------------	------------------	------------------------------------------

the requirement specified in item 1)—

- (a) 1 staff member on-site (whether or not on duty);
- (b) 1 staff member on call (whether or not on-site)

6. Certain staffing requirements must be complied with during specific hours approved by Director

- (1) If, in relation to a residential care home (other than a nursing home), this Schedule requires at least a certain number of staff members during a certain number of hours within the specified period on every day (*requirement*), the requirement must be complied with during a specific period of, or specific periods totalling, that number of hours (*specific hours*) on every day as approved by the Director under this section in relation to the residential care home.
- (2) For the requirement, the operator of the residential care home—
 - (a) must apply to the Director for approval of the specific hours proposed by the operator; and
 - (b) may propose in the application different specific hours for different days.
- (3) The application must—
 - (a) be made in the form and manner specified by the Director; and

- (b) contain the information specified by the Director.
- (4) The Director may approve the specific hours proposed by the operator if satisfied that the proposal is appropriate having regard to all relevant circumstances, including—
 - (a) the schedule of activities of the residents of the residential care home; and
 - (b) the rest hours of the residents of the residential care home.”.

51. Schedule 1 amended (minimum staffing requirements)

- (1) Schedule 1, section 3, Table 1—

Repeal item 1

Substitute

- “1. 8 hours within the specified period
- (a) if the care and attention home has not more than 30 residents—
 - (i) 1 nurse (on-site and on duty); or
 - (ii) 1 health worker (on-site and on duty);
 - (b) if the care and attention home has more than 30, but not more than 60, residents—
 - (i) 1 nurse (on-site and on duty); or
 - (ii) 2 health workers (on-site and on duty); or

- (c) if the care and attention home has more than 60 residents—
 - (i) for the first 60 residents—1 nurse (on-site and on duty); and
 - (ii) for every 30 residents after the first 60 residents—1 health worker (on-site and on duty), and for this purpose, 1 nurse (on-site and on duty) is considered equivalent to 2 health workers (on-site and on duty)

- 1A. 5 hours (other than the 8 hours mentioned in item 1) within the specified period
- 1 health worker (on-site and on duty) for every 30 residents, and for this purpose, 1 nurse (on-site and on duty) is considered equivalent to 2 health workers (on-site and on duty)”.

- (2) Schedule 1, section 3, Table 1—

Repeal item 1

Substitute

- “1. 8 hours within the specified
- (a) if the care and attention home has not more than 90 residents—

- period
- (i) 1 nurse and 1 health worker (both of them are on-site and on duty); or
 - (ii) 2 nurses (on-site and on duty); or
- (b) if the care and attention home has more than 90 residents—
- (i) for the first 60 residents—1 nurse (on-site and on duty); and
 - (ii) for every 30 residents after the first 60 residents—1 health worker (on-site and on duty), and for this purpose, 1 nurse (on-site and on duty) is considered equivalent to 2 health workers (on-site and on duty)”.

52. Schedule 2 repealed (minimum area of floor space for each resident)

Schedule 2—

Repeal the Schedule.

53. Schedule 3 added

At the end of the Regulation—

Add

“Schedule 3

[ss. 2 & 38]

Fees

Column 1 Item	Column 2 Matter	Column 3 Fee
1.	Registration as a registered home manager under section 3A	\$345
2.	Renewal of a registration as a registered home manager under section 3E	\$235
3.	Registration as a registered home manager (provisional) under section 3M	\$345
4.	Registration as a registered health worker under section 6	\$245
5.	Renewal of a registration as a registered health worker under section 7A	\$190”.

54. “營辦人” substituted for “經營者”

- (1) The following provisions, Chinese text—
 - (a) section 2, definition of 助理員;

- (b) section 2, definition of 護理員;
- (c) section 11(1A), (2) and (4);
- (d) section 12;
- (e) section 13(1) and (2);
- (f) section 14(1), (2) and (3);
- (g) section 15(1) and (2);
- (h) section 20(2);
- (i) section 34(1), (2) and (3);
- (j) section 35;
- (k) section 36(1)—

Repeal

“經營者” (wherever appearing)

Substitute

“營辦人”.

- (2) The following provisions, Chinese text—
 - (a) Part IV, heading;
 - (b) section 12, heading;
 - (c) section 13, heading;
 - (d) section 14, heading;
 - (e) section 35, heading;
 - (f) section 36, heading—

Repeal

“經營者” (wherever appearing)

Substitute

“營辦人”.

Part 4

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

55. Section 2 amended (interpretation)

- (1) Section 2—

Renumber the section as section 2(1).

- (2) Section 2(1), definition of *existing home*—

Repeal

everything after “before”

Substitute

“18 November 2011;”.

- (3) Section 2(1), English text, definition of *residential care home for PWDs*—

Repeal the full stop

Substitute a semicolon.

- (4) Section 2(1), Chinese text, definition of 豁免證明書—

Repeal the full stop

Substitute a semicolon.

- (5) Section 2(1)—

Add in alphabetical order

“*Cap. 459* (《第 459 章》) means the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

Cap. 459A (《第 459A 章》) means the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A);

management officer (管理人員) means—

- (a) in relation to a sole proprietorship—an individual who is the sole proprietor or is concerned in the management of the sole proprietorship;
- (b) in relation to a body corporate—an individual who is a director of the body corporate or is concerned in its management; or
- (c) in relation to a partnership—an individual who is a partner in the partnership or is concerned in its management;

material date (關鍵日期) means the 1st anniversary of the date on which the Residential Care Homes Legislation (Miscellaneous Amendments) Ordinance 2022 (of 2022) is published in the Gazette;

operator (營辦人), in relation to a residential care home for PWDs, means a person who holds a licence or certificate of exemption issued in respect of the residential care home;

residential care home for the elderly (安老院) means a residential care home as defined by section 2(1) of Cap. 459;

responsible person (負責人), in relation to a residential care home for PWDs, means a person who—

- (a) has become the responsible person of the residential care home under section 10A(2), 10B(2) or 10I(4); and
- (b) has not ceased to be such a responsible person under section 10F(5), 10G(1) or 10H(4).”.

(6) After section 2(1)—

Add

“(2) To avoid doubt, in this Ordinance, a reference to this Ordinance includes any subsidiary legislation made under this Ordinance.”.

56. Section 4 amended (offence of operating residential care homes for PWDs without licence)

(1) Section 4(2)(a)—

Repeal

everything after “that”

Substitute

“at the relevant time no licence was in force in respect of the residential care home for PWDs;”.

(2) Section 4(2)—

Repeal paragraphs (b) and (c)

Substitute

“(b) if the residential care home for PWDs is an existing home—the person did not know that at the relevant time no certificate of exemption was in force in respect of the residential care home; or

(c) if the residential care home for PWDs is also a residential care home for the elderly—the person did not know that at the relevant time no licence issued under Cap. 459 was in force in respect of the residential care home.”.

(3) Section 4(3)(a)—

Repeal

“at level 6”

Substitute

“of \$1,000,000”.

57. Section 6 amended (certain residential care homes for elderly persons excepted from application of section 4)

- (1) Section 6, English text, heading—

Repeal

“elderly persons”

Substitute

“the elderly”.

- (2) Section 6—

Repeal

everything after “also a”

Substitute

“residential care home for the elderly if a licence issued under Cap. 459 is in force in respect of the residential care home.”.

58. Part 3, Division 1 heading added

- Part 3, before section 7—

Add

“Division 1—Licence Applications”.

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

- (1) Section 7(2)(a), after “fit”—

Add

“to impose”.

- (2) Section 7(2)(a), Chinese text—

Repeal

“牌照持有人”

Substitute

“營辦人”.

- (3) Section 7(3)(a), English text, after “fit”—

Add

“and proper”.

- (4) After section 7(3)(a)—

Add

“(ab) the applicant does not comply with section 10A(1);

(ac) the person proposed to be the responsible person of the residential care home under section 10A(1) is not a fit and proper person to perform the duties mentioned in section 10D;”.

- (5) Section 7(3)(d)—

Repeal subparagraphs (ii) and (iii)

Substitute

“(ii) the name of a residential care home for PWDs in respect of which a licence is in force or has been suspended, surrendered or cancelled; or

(iii) the name of a residential care home for the elderly in respect of which a licence issued under Cap. 459 is in force or has been suspended, surrendered or cancelled.”.

- (6) Section 7(3)(d)—

Repeal subparagraphs (iv) and (v).

- (7) Section 7(5)—

Repeal

“the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)”

Substitute

“Cap. 459”.

60. Section 7A added

After section 7—

Add

“7A. Fit and proper requirement for licence applicant

For section 7(3)(a), in considering whether an applicant is a fit and proper person to operate a residential care home for PWDs, the Director must have regard to all relevant matters, including—

- (a) if the applicant is a sole proprietor—the matters set out in section 1 of Schedule 1;
- (b) if the applicant is a body corporate—the matters set out in section 2 of Schedule 1; or
- (c) if the applicant is a partnership—the matters set out in section 3 of Schedule 1.”.

61. Section 8 amended (renewal of licence)

(1) Section 8(1)—

Repeal

“A person holding a licence in respect”

Substitute

“The operator”.

(2) After section 8(4)(a)—

Add

- “(ab) on the ground that the operator of the residential care home fails to comply with section 10B(1), 10F(4), 10G(2), 10H or 10J;
- (ac) on the ground that the Director is not satisfied that the person proposed to be the responsible person of the

residential care home under section 10B(1), 10F(4), 10G(2) or 10H(3) is a fit and proper person to perform the duties mentioned in section 10D;”.

(3) Section 8(4)(b)(i)—

Repeal

“person holding the licence”

Substitute

“operator”.

(4) Section 8(4)(c)(ii) and (d)—

Repeal

“person”

Substitute

“operator”.

(5) Section 8(4)(e), English text—

Repeal

“if”

Substitute

“on the ground that”.

(6) Section 8(4)(e)(ii)—

Repeal

“person”

Substitute

“operator”.

(7) Section 8(6), Chinese text—

Repeal

“牌照持有人”

Substitute

“營辦人”.

62. Section 9 amended (cancellation or suspension; amendment or variation of conditions of licence)

(1) Section 9(3)—

Repeal

“under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)”

Substitute

“under Cap. 459”.

(2) Section 9(3)—

Repeal

“of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)”

Substitute

“of that Ordinance”.

63. Section 10 amended (notice of refusal of licence or renewal and of cancellation or suspension, etc.)

(1) Section 10, heading—

Repeal

“of licence or renewal”

Substitute

“to issue or renew licence”.

(2) Section 10(1)—

Repeal

“person holding the licence in respect”

Substitute

“operator”.

(3) Section 10(1)(b)—

Repeal

“person”

Substitute

“operator”.

(4) Section 10(3)—

Repeal

“person holding the licence”

Substitute

“operator”.

(5) Section 10(3)—

Repeal

“that person”

Substitute

“the operator”.

64. Part 3, Divisions 2 and 3 added

Part 3, after section 10—

Add

“Division 2—Responsible Persons

10A. Licence applicant to propose responsible person

(1) For an application for a licence in respect of a residential care home for PWDs under section 7, the applicant must propose a management officer of the applicant (*proposed*

responsible person) to be the responsible person of the residential care home.

- (2) If, on the application, the Director issues a licence in respect of the residential care home, the proposed responsible person becomes the responsible person of the residential care home on the day on which the licence takes effect.
- (3) On issuing the licence, the Director must—
 - (a) by a written notice, inform the applicant of the effect of subsection (2); and
 - (b) send a copy of the notice to the proposed responsible person—
 - (i) by delivering it personally to the person; or
 - (ii) by registered post to the person at the person's correspondence address mentioned in section 10C(a).

10B. Certain operators to propose responsible person on renewal application

- (1) For an application for the renewal of a licence in respect of a residential care home for PWDs under section 8, the operator of the residential care home must propose a management officer of the operator (*proposed responsible person*) to be the responsible person of the residential care home if—
 - (a) the application is the first application for the renewal of the licence made on or after the material date; and
 - (b) the licence—
 - (i) was in force immediately before the material date; or

(ii) is issued on or after the material date on an application made before that date.

- (2) If, on the application, the Director renews the licence, the proposed responsible person becomes the responsible person of the residential care home—
 - (a) if section 8(5) applies—on the day on which the renewal takes effect; or
 - (b) if section 8(6) applies—on the day after the date on which the application is determined.
- (3) On renewing the licence, the Director must—
 - (a) by a written notice, inform the operator of the effect of subsection (2); and
 - (b) send a copy of the notice to the proposed responsible person—
 - (i) by delivering it personally to the person; or
 - (ii) by registered post to the person at the person's correspondence address mentioned in section 10C(a).

10C. How to propose responsible person

If an applicant or operator is required under this Division to propose a management officer of the applicant or operator (*proposed responsible person*) to be the responsible person of a residential care home for PWDs, the proposal must—

- (a) contain the name and correspondence address of the proposed responsible person;
- (b) contain a statement made by the proposed responsible person indicating his or her consent to be the responsible person of the residential care home;

- (c) contain any other information specified by the Director; and
- (d) be made in the form and manner specified by the Director.

10D. Duties of responsible person

The duties of a responsible person of a residential care home for PWDs are—

- (a) to ensure adequate supervision of the operation, keeping, management and control of the residential care home for protecting the interest and safety of the residents of the residential care home; and
- (b) to ensure that the residential care home is operated in compliance with this Ordinance.

10E. Fit and proper requirement for responsible person

For sections 7(3)(ac), 8(4)(ac), 10F(1) and 10I(1)(b), in considering whether a person is a fit and proper person to perform the duties mentioned in section 10D, the Director must have regard to all relevant matters, including the matters set out in Schedule 2.

10F. Change of responsible person as required by Director

- (1) The Director may, by a written notice given to the operator of a residential care home for PWDs, direct that the responsible person of the residential care home (*outgoing responsible person*) cease to be such a responsible person if satisfied that the person—
 - (a) is no longer a fit and proper person to perform the duties mentioned in section 10D; or
 - (b) has failed to perform any of the duties.

- (2) The notice must—
 - (a) state that—
 - (i) the Director is satisfied of the matter mentioned in subsection (1)(a) or (b); and
 - (ii) the outgoing responsible person ceases to be the responsible person of the residential care home on the date of the notice; and
 - (b) require the operator to propose another management officer of the operator to be the responsible person of the residential care home.
- (3) The Director must also send a copy of the notice to the outgoing responsible person.
- (4) The operator must, within 7 days after the date of the notice or a longer period that the Director permits, propose another management officer of the operator to be the responsible person of the residential care home.
- (5) The outgoing responsible person ceases to be the responsible person of the residential care home on the date of the notice.

10G. Change of responsible person because of death, incapacity, etc.

- (1) The responsible person of a residential care home for PWDs ceases to be such a responsible person when he or she—
 - (a) dies;
 - (b) becomes incapable of managing and administering his or her property and affairs because of mental or physical incapacity;
 - (c) ceases to be a management officer of the operator of the residential care home; or

- (d) gives a written notice to the operator of the residential care home and the Director to withdraw his or her consent to be the responsible person of the residential care home.
- (2) If an event described in subsection (1)(a), (b), (c) or (d) (*relevant event*) occurs, the operator of the residential care home must, within the period specified in subsection (3)—
 - (a) inform the Director of the relevant event in the form specified by the Director; and
 - (b) propose another management officer of the operator to be the responsible person of the residential care home.
- (3) The period specified for subsection (2) is—
 - (a) 7 days after the date on which the operator becomes aware of the relevant event; or
 - (b) a longer period that the Director permits.

10H. Change of responsible person in other circumstances

- (1) The operator of a residential care home for PWDs may change the responsible person of the residential care home in circumstances other than those set out in sections 10F and 10G by giving a written notice to the Director.
- (2) The notice must—
 - (a) state—
 - (i) the operator's intention to change the responsible person of the residential care home; and
 - (ii) the date on which the responsible person of the residential care home (*outgoing responsible*

- person*) will cease to be such a responsible person (*cessation date*);
- (b) be given at least 14 days before the cessation date; and
- (c) be given in the form and manner specified by the Director.
- (3) When giving the notice, the operator must also propose another management officer of the operator to be the responsible person of the residential care home.
- (4) The outgoing responsible person ceases to be the responsible person of the residential care home on the cessation date.

10I. Director to specify date of becoming responsible person

- (1) This section applies if—
 - (a) the operator of a residential care home for PWDs proposes a management officer of the operator (*proposed responsible person*) to be the responsible person of the residential care home under section 10F(4), 10G(2) or 10H(3); and
 - (b) the Director is satisfied that the proposed responsible person is a fit and proper person to perform the duties mentioned in section 10D.
- (2) The Director must, by a written notice—
 - (a) inform the operator that the Director is satisfied of the matter mentioned in subsection (1)(b); and
 - (b) specify a date (being one after the date of the notice) on which the proposed responsible person becomes the responsible person of the residential care home (*specified date*).

- (3) The Director must also send a copy of the notice to the proposed responsible person—
 - (a) by delivering it personally to the person; or
 - (b) by registered post to the person at the person's correspondence address mentioned in section 10C(a).
- (4) The proposed responsible person becomes the responsible person of the residential care home on the specified date.

Division 3—Reporting Requirements

10J. Operator to report certain events

- (1) The operator of a residential care home for PWDs must report to the Director if any of the events specified in subsection (3) occurs.
- (2) The report must—
 - (a) be given in writing within 7 days after the date on which the operator becomes aware of the event or a longer period that the Director permits; and
 - (b) contain the information specified by the Director.
- (3) The following events are specified for subsection (1)—
 - (a) for an operator that is a sole proprietor—
 - (i) a charge is laid against the operator or the responsible person of the residential care home for an offence in any place;
 - (ii) the operator or the responsible person is convicted of an offence in any place;
 - (iii) the operator or the responsible person becomes an undischarged bankrupt;

- (iv) the operator or the responsible person enters into a composition or scheme of arrangement with their creditors;
 - (v) a body corporate of which the operator or the responsible person is a director goes into liquidation or becomes the subject of a winding-up order;
 - (vi) there is a change in the name or correspondence address of the responsible person;
- (b) for an operator that is a body corporate—
- (i) a charge is laid against the operator or the responsible person of the residential care home for an offence in any place;
 - (ii) the operator or the responsible person is convicted of an offence in any place;
 - (iii) the operator goes into liquidation or becomes the subject of a winding-up order;
 - (iv) the operator or the responsible person enters into a composition or scheme of arrangement with their creditors;
 - (v) a body corporate of which the operator or the responsible person is a director goes into liquidation or becomes the subject of a winding-up order;
 - (vi) the responsible person becomes an undischarged bankrupt;
 - (vii) there is a change in the name or correspondence address of the responsible person; or

- (c) for an operator that is a partnership—
- (i) a charge is laid against any partner in the partnership (*partner*) or the responsible person of the residential care home for an offence in any place;
 - (ii) any partner or the responsible person is convicted of an offence in any place;
 - (iii) any partner or the responsible person becomes an undischarged bankrupt;
 - (iv) any partner goes into liquidation or becomes the subject of a winding-up order;
 - (v) any partner or the responsible person enters into a composition or scheme of arrangement with their creditors;
 - (vi) a body corporate of which any partner or the responsible person is a director goes into liquidation or becomes the subject of a winding-up order;
 - (vii) there is a change in the name or correspondence address of the responsible person.”.

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

- (1) Section 11(2)(a), after “fit”—
Add
“to impose”.
- (2) Section 11(2)(a), Chinese text—
Repeal
“持有人”

Substitute

“營辦人”.

66. Section 12 amended (renewal of certificate of exemption)

- (1) Section 12(1)—

Repeal

everything before “expires”

Substitute

“(1) The operator of an existing home may, before the certificate of exemption”.

- (2) Section 12(5), Chinese text—

Repeal

“豁免證明書的持有人根據本條申請將”

Substitute

“的營辦人根據本條申請將豁免”.

67. Section 13 amended (notice of refusal of certificate of exemption or renewal and of revocation, etc.)

- (1) Section 13, heading—

Repeal

“of certificate of exemption or renewal”

Substitute

“to issue or renew certificate of exemption”.

- (2) Section 13(2) and (3)—

Repeal

“person holding the certificate”

Substitute

“operator of the existing home”.

- (3) Section 13(4)—
Repeal
“the person”
Substitute
“the operator”.
- (4) Section 13(4)—
Repeal
“that person”
Substitute
“the operator”.
- 68. Section 18 amended (Director may direct remedial measures)**
Section 18(2)(a)—
Repeal
everything before “of”
Substitute
“(a) must be sent to a person who operates, keeps, manages or otherwise has control”.
- 69. Section 19 amended (Director may order cessation of use of premises as residential care home for PWDs)**
Section 19(2)(a), English text—
Repeal
everything before “of”
Substitute
“(a) must be sent to a person who operates, keeps, manages or otherwise has control”.

- 70. Section 22 amended (offences in relation to licences and certificates of exemption)**
- (1) Section 22(1)—
Repeal
“on any occasion”.
- (2) Section 22(2)—
Repeal
everything before “of the residential”
Substitute
“(2) If a condition of a licence issued in respect of a residential care home for PWDs is contravened, the operator”.
- (3) Section 22(2)—
Repeal
“person” (wherever appearing)
Substitute
“operator”.
- (4) Section 22(3)—
Repeal
“on any occasion”.
- (5) Section 22(4)—
Repeal
everything before “of the existing”
Substitute
“(4) If a condition of a certificate of exemption issued in respect of an existing home is contravened, the operator”.
- (6) Section 22(4)—
Repeal

“person” (wherever appearing)

Substitute

“operator”.

71. Sections 22A, 22B and 22C added

After section 22—

Add

“22A. Liability of responsible person

If the operator of a residential care home for PWDs commits an offence under this Ordinance, and it is proved that the offence—

- (a) was committed with the consent or connivance of the responsible person of the residential care home; or
- (b) was attributable to any neglect on the part of the responsible person of the residential care home in performing the duties mentioned in section 10D,

the responsible person also commits the offence.

22B. Liability of directors, partners, etc.

(1) If—

- (a) a sole proprietor commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of a person concerned in the management of the sole proprietorship,

the person also commits the offence.

(2) If—

- (a) a body corporate commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of a director of the body corporate, or of a person concerned in the management of the body corporate,

the director or the person, as the case requires, also commits the offence.

(3) If—

- (a) a partner in a partnership commits an offence under this Ordinance; and
- (b) it is proved that the offence was committed with the consent or connivance of another partner in the partnership, or of a person concerned in the management of the partnership,

the other partner or the person, as the case requires, also commits the offence.

22C. Prosecution deadline for offences

- (1) A prosecution for an offence under this Ordinance may only be started before the end of 12 months after the date on which the offence is discovered by the Director.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (2) Subsection (1) does not apply in relation to an offence committed before the material date.”.

72. Section 24 amended (regulation)

- (1) Section 24(1)(c)—

Repeal

“persons holding the licences in respect”

Substitute

“operators and responsible persons”.

- (2) Section 24(3), English text—

Repeal

everything after “to” and before “of a”

Substitute

“a person who operates, keeps, manages or otherwise has control”.

73. Part 8 heading repealed (consequential and related amendments)

Part 8, heading—

Repeal the heading.

74. Schedules 1 and 2 added

At the end of the Ordinance—

Add

“Schedule 1

[s. 7A]

Fit and Proper Requirement for Licence Applicant

1. Matters for sole proprietor

For section 7A(a), the matters are—

- (a) whether the sole proprietor has been—

- (i) convicted of an offence involving fraud or dishonesty in any place;
 - (ii) convicted of an indictable offence in Hong Kong;
 - (iii) sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended; or
 - (iv) convicted of an offence under this Ordinance, Cap. 459 or Cap. 459A;
- (b) the record of the following matters in connection with the sole proprietor—
- (i) any application for—
 - (A) a licence within the meaning of this Ordinance;
 - (B) a licence as defined by section 2(1) of Cap. 459; or
 - (C) a certificate of exemption;
 - (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
 - (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
 - (iv) compliance with this Ordinance, Cap. 459 or Cap. 459A; and
- (c) whether the sole proprietor—
- (i) is an undischarged bankrupt;
 - (ii) has entered into a composition or scheme of arrangement with the sole proprietor’s creditors; or

- (iii) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.

2. Matters for body corporate

For section 7A(b), the matters are—

- (a) whether the body corporate has been convicted of—
 - (i) an offence involving fraud or dishonesty in any place;
 - (ii) an indictable offence in Hong Kong;
 - (iii) an offence in a place outside Hong Kong; or
 - (iv) an offence under this Ordinance, Cap. 459 or Cap. 459A;
- (b) the record of the following matters in connection with the body corporate—
 - (i) any application for—
 - (A) a licence within the meaning of this Ordinance;
 - (B) a licence as defined by section 2(1) of Cap. 459; or
 - (C) a certificate of exemption;
 - (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
 - (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
 - (iv) compliance with this Ordinance, Cap. 459 or Cap. 459A; and

- (c) whether the body corporate—
 - (i) is in liquidation or is the subject of a winding-up order;
 - (ii) has entered into a composition or scheme of arrangement with the body corporate's creditors; or
 - (iii) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.

3. Matters for partnership

For section 7A(c), the matters are—

- (a) whether any partner in the partnership has been—
 - (i) convicted of an offence involving fraud or dishonesty in any place;
 - (ii) convicted of an indictable offence in Hong Kong;
 - (iii) if the partner is an individual—sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended;
 - (iv) if the partner is a body corporate—convicted of an offence in a place outside Hong Kong; or
 - (v) convicted of an offence under this Ordinance, Cap. 459 or Cap. 459A;
- (b) the record of the following matters in connection with any partner in the partnership—
 - (i) any application for—
 - (A) a licence within the meaning of this Ordinance;

- (B) a licence as defined by section 2(1) of Cap. 459; or
- (C) a certificate of exemption;
- (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
- (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and
- (iv) compliance with this Ordinance, Cap. 459 or Cap. 459A; and
- (c) whether any partner in the partnership—
 - (i) is an undischarged bankrupt;
 - (ii) is in liquidation or is the subject of a winding-up order;
 - (iii) has entered into a composition or scheme of arrangement with the partner's creditors; or
 - (iv) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.

Schedule 2

[s. 10E]

Fit and Proper Requirement for Responsible Person

For section 10E, the matters are—

- (a) whether the person has been—
 - (i) convicted of an offence involving fraud or dishonesty in any place;
 - (ii) convicted of an indictable offence in Hong Kong;
 - (iii) sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended; or
 - (iv) convicted of an offence under this Ordinance, Cap. 459 or Cap. 459A;
- (b) the record of the following matters in connection with the person—
 - (i) any application for—
 - (A) a licence within the meaning of this Ordinance;
 - (B) a licence as defined by section 2(1) of Cap. 459; or
 - (C) a certificate of exemption;
 - (ii) any application for the renewal of a licence or certificate of exemption mentioned in subparagraph (i);
 - (iii) compliance with the conditions of a licence or certificate of exemption mentioned in subparagraph (i); and

- (iv) compliance with this Ordinance, Cap. 459 or Cap. 459A; and
- (c) whether the person—
 - (i) is an undischarged bankrupt;
 - (ii) has entered into a composition or scheme of arrangement with the person’s creditors; or
 - (iii) is a director of any body corporate that is in liquidation or is the subject of a winding-up order.”.

Part 5

Amendments to Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A)

75. Section 2 amended (interpretation)

- (1) Section 2—

Repeal the definition of *health worker*

Substitute

“*health worker* (保健員) means a person who is responsible for providing health and care services to residents;”.

- (2) Section 2, English text, definition of *particulars of identity*—

Repeal

“(Cap. 177).”

Substitute

“(Cap. 177);”.

- (3) Section 2—

Repeal the definitions of *nurse* and *operator*.

- (4) Section 2—

Add in alphabetical order

“*applicable fee* (適用費用), in relation to a matter, means the fee specified in Schedule 2 payable for that matter;

high care level home (高度照顧院舍) means a residential care home for PWDs within the meaning of section 3(a);

low care level home (低度照顧院舍) means a residential care home for PWDs within the meaning of section 3(c);

medium care level home (中度照顧院舍) means a residential care home for PWDs within the meaning of section 3(b);

pre-material-date home manager (關鍵日期前的主管) means a person who was employed as a home manager in a residential care home for PWDs or a residential care home for the elderly immediately before the material date;

register of health workers (保健員註冊紀錄冊) means the register kept under section 5(1);

register of home managers (主管註冊紀錄冊) means the register kept under section 3X(1);

registered health worker (註冊保健員) means a person whose name appears on the register of health workers;

registered home manager (註冊主管) means a person whose name appears on the list of persons registered as registered home managers in the register of home managers;

registered home manager (provisional) (註冊主管(臨時)) means a person whose name appears on the list of persons registered as registered home managers (provisional) in the register of home managers;

Secretary (局長) means the Secretary for Labour and Welfare.”.

76. **Section 3 amended (types of residential care homes for PWDs)**

Section 3, after “Ordinance”—

Add

“and this Regulation”.

77. **Part 2A added**

After Part 2—

Add

“Part 2A

Registration of Home Managers

Division 1—Registered Home Managers

3A. Application for registration as registered home manager

- (1) An application for registration as a registered home manager must—
 - (a) be made to the Director in the form and manner specified by the Director; and
 - (b) contain the information specified by the Director.
- (2) On the application, the Director may register the applicant as a registered home manager if—
 - (a) the Director is satisfied that the applicant—
 - (i) meets the qualification requirement specified in section 3B;
 - (ii) is competent to perform the duties of a home manager; and
 - (iii) is fit and proper to be so registered; and
 - (b) the applicant has paid the applicable fee for the registration.
- (3) The Director may impose on the registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

3B. Qualification requirement for registration as registered home manager

- (1) For section 3A(2)(a)(i), the qualification requirement is that—
 - (a) the person—
 - (i) is one specified in subsection (2)(a), (b), (c) or (d); and
 - (ii) has completed a training course specified by the Director; or
 - (b) the person is a registered home manager as defined by section 2 of Cap. 459A.
- (2) The following persons are specified for subsection (1)(a)(i)—
 - (a) a person who—
 - (i) holds—
 - (A) a professional qualification relating to healthcare or social work specified by the Director; or
 - (B) a bachelor or higher degree, or an academic qualification regarded by the Director as equivalent; and
 - (ii) has, within 3 years before making the application, worked in one or more residential care homes for PWDs or residential care homes for the elderly for a total of at least 1 year in a position involving or assisting in the management of the residential care homes for PWDs or residential care homes for the elderly;
 - (b) a person who—

- (i) is a registered health worker within the meaning of this Regulation, or a registered health worker as defined by section 2 of Cap. 459A; and
 - (ii) has worked in one or more residential care homes for PWDs or residential care homes for the elderly as a health worker for a total of at least 5 years;
- (c) a pre-material-date home manager who applies for registration as a registered home manager under section 3A during the 6-month period beginning on the material date;
 - (d) a pre-material-date home manager who is—
 - (i) a registered home manager (provisional) within the meaning of this Regulation; or
 - (ii) a registered home manager (provisional) as defined by section 2 of Cap. 459A.

3C. Fit and proper requirement for registration as registered home manager

For section 3A(2)(a)(iii), in considering whether a person is fit and proper to be registered as a registered home manager, the Director must have regard to all relevant matters, including—

- (a) whether the person has been—
 - (i) convicted of an offence involving fraud or dishonesty, or of a sexual nature, in any place;
 - (ii) convicted of an indictable offence in Hong Kong;
 - (iii) sentenced to imprisonment (however described) in a place outside Hong Kong, whether or not the sentence is suspended; or

- (iv) convicted of an offence under the Ordinance, this Regulation, Cap. 459 or Cap. 459A; and
- (b) if any professional or academic qualification of the person (whether or not relating to healthcare or social work) has been revoked—the reason for the revocation.

3D. Notice of decision on application for registration

- (1) On determining an application under section 3A, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 3K.

3E. Renewal of registration as registered home manager

- (1) A registered home manager may apply for the renewal of the registration.
- (2) The application must—
 - (a) be made to the Director at least 3 months before, but not earlier than 6 months before, the expiry of the registration;
 - (b) be made in the form and manner specified by the Director; and
 - (c) contain the information specified by the Director.
- (3) On the application, the Director may renew the registration if—

- (a) the Director is satisfied that the registered home manager—
 - (i) still meets the requirements for registration under section 3A(2)(a)(ii) and (iii); and
 - (ii) complies with all conditions imposed on the registration; and
- (b) the manager has paid the applicable fee for the renewal.
- (4) The Director may impose on the renewed registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

3F. Notice of decision on application for renewal of registration

- (1) On determining an application under section 3E, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the renewed registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 3K.

3G. Registration remains in effect pending determination of renewal application

- (1) This section applies if—
 - (a) a registered home manager applies for the renewal of the registration under section 3E; and
 - (b) the registration would, but for this section, have expired before the application is determined.
- (2) The registration remains in effect until—

- (a) the Director determines the application; or
- (b) the registered home manager withdraws the application.

3H. Validity period of registration as registered home manager

The validity period of a registration or renewed registration as a registered home manager is to be decided by the Director and must not exceed 5 years.

3I. Cancellation of registration as registered home manager

- (1) The Director may cancel a person's registration as a registered home manager if satisfied that—
 - (a) the registration was obtained by fraudulent means;
 - (b) the person no longer meets the requirement for registration under section 3A(2)(a)(ii) or (iii); or
 - (c) the person contravenes—
 - (i) a condition imposed on the registration under section 3A(3) or 3E(4); or
 - (ii) section 3W.
- (2) The Director must cancel a person's registration as a registered home manager—
 - (a) if the person makes a written request to the Director for cancelling the registration; or
 - (b) if—
 - (i) the person was also registered as a registered home manager or registered home manager (provisional) under Cap. 459A; and
 - (ii) that registration under Cap. 459A is cancelled under section 3I(1)(a) or (b) or 3T(1)(a) or (b) of Cap. 459A.

- (3) The cancellation takes effect—
 - (a) for a cancellation under subsection (1)—subject to section 3K(3), on the expiry of 21 days after the day on which the Director gives the notice under section 3J; or
 - (b) for a cancellation under subsection (2)—on the expiry of 21 days after the day on which the Director gives the notice under section 3J.

3J. Notice of cancellation of registration

- (1) If the Director decides to cancel a person's registration under section 3I, the Director must give a written notice of the decision to—
 - (a) the person; and
 - (b) if the person is employed in a residential care home for PWDs when the decision is made—the operator of the residential care home.
- (2) The notice must state—
 - (a) the date on which the cancellation takes effect under section 3I(3);
 - (b) the reason for cancelling the registration; and
 - (c) if the registration is cancelled under section 3I(1)—that the person may appeal under section 3K.

3K. Appeals to Secretary

- (1) If the Director—
 - (a) decides to refuse to register a person under section 3A;
 - (b) decides to refuse to renew a person's registration under section 3E; or

- (c) decides to cancel a person's registration under section 3I(1),
the person may, by written notice, appeal to the Secretary against the decision.
- (2) The notice must—
- (a) state the grounds of appeal; and
 - (b) be delivered to the Director within 21 days after the day on which the Director gives the notice of the decision.
- (3) If an appeal is made against a decision described in subsection (1)(c), the decision does not have effect pending the determination of the appeal by the Secretary.
- (4) When considering an appeal against a decision of the Director, the Secretary—
- (a) must give the appellant and the Director an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (5) On the determination of the appeal by the Secretary, the Director must give a written notice of the determination to—
- (a) the appellant; and
 - (b) if the appellant is employed in a residential care home for PWDs when the appeal is determined—the operator of the residential care home.

3L. Registration remains in effect pending determination of appeal

- (1) This section applies if—
- (a) a person appeals against a decision described in section 3K(1)(b) or (c); and

- (b) the person's registration as a registered home manager would, but for this section, have expired before the appeal is determined.
- (2) The registration remains in effect until—
- (a) the Secretary determines the appeal; or
 - (b) the person withdraws the appeal.

Division 2—Registered Home Managers (Provisional)

3M. Application for registration as registered home manager (provisional)

- (1) An application for registration as a registered home manager (provisional) must—
- (a) be made to the Director in the form and manner specified by the Director; and
 - (b) contain the information specified by the Director.
- (2) On the application, the Director may register the applicant as a registered home manager (provisional) if—
- (a) the Director is satisfied that the applicant—
 - (i) meets the qualification requirement specified in section 3N;
 - (ii) is competent to perform the duties of a home manager;
 - (iii) is fit and proper to be so registered; and
 - (iv) if the applicant is not a pre-material-date home manager—on being so registered, will be employed as a home manager in a residential care home for PWDs under section 11(1)(a); and

- (b) the applicant has paid the applicable fee for the registration.
- (3) The Director may impose on the registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

3N. Qualification requirement for registration as registered home manager (provisional)

For section 3M(2)(a)(i), the qualification requirement is that the person—

- (a) holds a professional qualification relating to healthcare or social work specified by the Director;
- (b) holds a bachelor or higher degree, or an academic qualification regarded by the Director as equivalent; or
- (c) is a pre-material-date home manager who applies for registration as a registered home manager (provisional) under section 3M during the 6-month period beginning on the material date.

3O. Fit and proper requirement for registration as registered home manager (provisional)

For section 3M(2)(a)(iii), in considering whether a person is fit and proper to be registered as a registered home manager (provisional), the Director must have regard to all relevant matters, including the matters mentioned in section 3C(a) and (b).

3P. Notice of decision on application for registration

- (1) On determining an application under section 3M, the Director must give a written notice of the decision to the applicant.

- (2) If the application is approved, the notice must state the validity period of the registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 3V.

3Q. Validity period of registration as registered home manager (provisional)

The validity period of a registration as a registered home manager (provisional) is to be decided by the Director and must not exceed 2 years.

3R. Extension of validity period

- (1) A person who is registered as a registered home manager (provisional) because of meeting the qualification requirement specified in section 3N(c) may apply for the extension of the validity period of the registration once.
- (2) The application must—
 - (a) be made to the Director before the expiry of the registration;
 - (b) be made in the form and manner specified by the Director; and
 - (c) contain the information specified by the Director.
- (3) The Director may extend the validity period of the registration for a period of not more than 2 years only if satisfied that there are exceptional circumstances that justify the extension.

3S. Registration remains in effect pending determination of certain application

- (1) This section applies if—

- (a) a registered home manager (provisional) applies—
 - (i) for registration under section 3A; or
 - (ii) for the extension of the validity period of the registration under section 3R; and
 - (b) the registration would, but for this section, have expired before the application is determined.
- (2) The registration remains in effect until—
- (a) the Director determines the application; or
 - (b) the registered home manager (provisional) withdraws the application.

3T. Cancellation of registration as registered home manager (provisional)

- (1) The Director may cancel a person's registration as a registered home manager (provisional) if satisfied that—
- (a) the registration was obtained by fraudulent means;
 - (b) the person no longer meets the requirement for registration under section 3M(2)(a)(ii) or (iii); or
 - (c) the person contravenes—
 - (i) a condition imposed on the registration under section 3M(3); or
 - (ii) section 3W.
- (2) The Director must cancel a person's registration as a registered home manager (provisional)—
- (a) if the person is registered as a registered home manager under section 3A;
 - (b) if the person makes a written request to the Director for cancelling the registration; or
 - (c) if—

- (i) the person was also registered as a registered home manager or registered home manager (provisional) under Cap. 459A; and
 - (ii) that registration under Cap. 459A is cancelled under section 3I(1)(a) or (b) or 3T(1)(a) or (b) of Cap. 459A.
- (3) The cancellation takes effect—
- (a) for a cancellation under subsection (1)—subject to section 3V(3), on the expiry of 21 days after the day on which the Director gives the notice under section 3U;
 - (b) for a cancellation under subsection (2)(a)—on the day on which the registration under section 3A takes effect; or
 - (c) for a cancellation under subsection (2)(b) or (c)—on the expiry of 21 days after the day on which the Director gives the notice under section 3U.

3U. Notice of cancellation of registration

- (1) If the Director decides to cancel a person's registration under section 3T, the Director must give a written notice of the decision to—
- (a) the person; and
 - (b) if the person is employed in a residential care home for PWDs when the decision is made—the operator of the residential care home.
- (2) The notice must state—
- (a) the date on which the cancellation takes effect under section 3T(3);
 - (b) the reason for cancelling the registration; and

- (c) if the registration is cancelled under section 3T(1)—
that the person may appeal under section 3V.

3V. Appeals to Secretary

- (1) If the Director—
 - (a) decides to refuse to register a person under section 3M; or
 - (b) decides to cancel a person's registration under section 3T(1),the person may, by written notice, appeal to the Secretary against the decision.
- (2) The notice must—
 - (a) state the grounds of appeal; and
 - (b) be delivered to the Director within 21 days after the day on which the Director gives the notice of the decision.
- (3) If an appeal is made against a decision described in subsection (1)(b), the decision does not have effect pending the determination of the appeal by the Secretary.
- (4) When considering an appeal against a decision of the Director, the Secretary—
 - (a) must give the appellant and the Director an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (5) On the determination of the appeal by the Secretary, the Director must give a written notice of the determination to—
 - (a) the appellant; and

- (b) if the appellant is employed in a residential care home for PWDs when the appeal is determined—the operator of the residential care home.

Division 3—Reporting Requirements

3W. Registered home manager or registered home manager (provisional) to report certain events

- (1) A registered home manager or a registered home manager (provisional) must report to the Director if—
 - (a) a charge is laid against the manager for an offence in any place;
 - (b) the manager is convicted of an offence in any place;
 - (c) any professional or academic qualification of the manager (whether or not relating to healthcare or social work) is revoked; or
 - (d) there is a change in the name or correspondence address of the manager.
- (2) The report must—
 - (a) be given in writing—
 - (i) for an event described in subsection (1)(a), (b) or (c)—as soon as reasonably practicable after the event occurs; or
 - (ii) for a change described in subsection (1)(d)—within 3 months after the change occurs; and
 - (b) contain the information specified by the Director.

Division 4—Register of Home Managers

3X. Register of home managers

- (1) The Director must keep a register containing—
 - (a) a list of persons registered as registered home managers under Division 1; and
 - (b) a list of persons registered as registered home managers (provisional) under Division 2.
- (2) The purpose of the register is to enable the public to ascertain—
 - (a) whether a person is a registered home manager or registered home manager (provisional); and
 - (b) the particulars of the registration.
- (3) Each list in the register—
 - (a) must contain the name and correspondence address of each person on the list; and
 - (b) may contain other particulars that the Director considers appropriate.
- (4) The Director may make any amendment to the register that the Director considers necessary for securing its accuracy or keeping it up-to-date.
- (5) The Director must remove from the register the name of a person if—
 - (a) it has come to the notice of the Director that the person has died; or
 - (b) the person’s registration ceases to have effect on expiry or cancellation.

3Y. Inspection of register of home managers

The Director must make the register of home managers available for public inspection—

- (a) free of charge;
- (b) at offices of the Government that the Director directs; and
- (c) during the hours when those offices are open to the public.”.

78. Section 4 amended (qualifications for registration as health workers)

- (1) Section 4, heading—

Repeal

“health workers”

Substitute

“registered health worker”.

- (2) Section 4—

Repeal

“health worker” (wherever appearing)

Substitute

“registered health worker”.

79. Section 5 amended (register of health workers)

- (1) Section 5—

Repeal subsection (1)

Substitute

“(1) The Director must keep a register containing a list of persons registered as registered health workers under this Part.

(1A) The purpose of the register is to enable the public to ascertain—

- (a) whether a person is a registered health worker; and
- (b) the particulars of the registration.

(1B) The register—

- (a) must contain the name and correspondence address of each person in the register; and
- (b) may contain other particulars that the Director considers appropriate.”.

(2) Section 5—

Repeal subsections (3) and (4)

Substitute

“(3) The Director may make any amendment to the register that the Director considers necessary for securing its accuracy or keeping it up-to-date.

(4) The Director must remove from the register the name of a person if—

- (a) it has come to the notice of the Director that the person has died; or
- (b) the person’s registration ceases to have effect on expiry or cancellation.”.

(3) Section 5—

Repeal subsection (5).

80. Section 6 substituted

Section 6—

Repeal the section

Substitute

“6. Application for registration as registered health worker

(1) An application for registration as a registered health worker must—

- (a) be made to the Director in the form and manner specified by the Director; and
- (b) contain the information specified by the Director.

(2) On the application, the Director may register the applicant as a registered health worker if—

- (a) the Director is satisfied that the applicant—
 - (i) is qualified under section 4 to be so registered;
 - (ii) is competent to perform the duties of a health worker; and
 - (iii) is fit and proper to be so registered; and
- (b) the applicant has paid the applicable fee for the registration.

(3) The Director may impose on the registration any condition that the Director considers appropriate, including any condition relating to continuous learning.”.

81. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Notice of decision on application for registration

- (1) On determining an application under section 6, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 10.”.

82. Sections 7A to 7D added

After section 7—

Add

“7A. Renewal of registration as registered health worker

- (1) A registered health worker may apply for the renewal of the registration.
- (2) The application must—
 - (a) be made to the Director at least 3 months before, but not earlier than 6 months before, the expiry of the registration;
 - (b) be made in the form and manner specified by the Director; and
 - (c) contain the information specified by the Director.
- (3) On the application, the Director may renew the registration if—
 - (a) the Director is satisfied that the registered health worker—

(i) still meets the requirements for registration under section 6(2)(a); and

(ii) complies with all conditions imposed on the registration; and

(b) the health worker has paid the applicable fee for the renewal.

(4) The Director may impose on the renewed registration any condition that the Director considers appropriate, including any condition relating to continuous learning.

7B. Notice of decision on application for renewal of registration

- (1) On determining an application under section 7A, the Director must give a written notice of the decision to the applicant.
- (2) If the application is approved, the notice must state the validity period of the renewed registration.
- (3) If the application is refused, the notice must state—
 - (a) the reason for the refusal; and
 - (b) that the applicant may appeal under section 10.

7C. Registration remains in effect pending determination of renewal application

- (1) This section applies if—
 - (a) a registered health worker applies for the renewal of the registration under section 7A; and
 - (b) the registration would, but for this section, have expired before the application is determined.
- (2) The registration remains in effect until—
 - (a) the Director determines the application; or

- (b) the registered health worker withdraws the application.

7D. Validity period of registration as registered health worker

The validity period of a registration or renewed registration as a registered health worker is to be decided by the Director and must not exceed 5 years.”.

83. Section 8 substituted

Section 8—

Repeal the section

Substitute

“8. Cancellation of registration as registered health worker

- (1) The Director may cancel a person’s registration as a registered health worker if satisfied that—
 - (a) the registration was obtained by fraudulent means;
 - (b) the person no longer meets the requirement for registration under section 6(2)(a)(i), (ii) or (iii); or
 - (c) the person contravenes—
 - (i) a condition imposed on the registration under section 6(3) or 7A(4); or
 - (ii) section 10B.
- (2) The Director must cancel a person’s registration as a registered health worker—
 - (a) if the person makes a written request to the Director for cancelling the registration; or
 - (b) if—
 - (i) the person was also registered as a registered health worker under Cap. 459A; and

- (ii) that registration under Cap. 459A is cancelled under section 8(1)(a) or (b) of Cap. 459A.

(3) The cancellation takes effect—

- (a) for a cancellation under subsection (1)—subject to section 10(3), on the expiry of 21 days after the day on which the Director gives the notice under section 9; or
- (b) for a cancellation under subsection (2)—on the expiry of 21 days after the day on which the Director gives the notice under section 9.”.

84. Section 9 amended (notice of cancellation of registration)

Section 9—

Repeal subsections (1) and (2)

Substitute

- “(1) If the Director decides to cancel a person’s registration under section 8, the Director must give a written notice of the decision to—
- (a) the person; and
 - (b) if the person is employed in a residential care home for PWDs when the decision is made—the operator of the residential care home.
- (2) The notice must state—
- (a) the date on which the cancellation takes effect under section 8(3);
 - (b) the reason for cancelling the registration; and
 - (c) if the registration is cancelled under section 8(1)—that the person may appeal under section 10.”.

85. Section 10 substituted

Section 10—

Repeal the section**Substitute****“10. Appeals to Secretary**

- (1) If the Director—
 - (a) decides to refuse to register a person under section 6;
 - (b) decides to refuse to renew a person’s registration under section 7A; or
 - (c) decides to cancel a person’s registration under section 8(1),
 the person may, by written notice, appeal to the Secretary against the decision.
- (2) The notice must—
 - (a) state the grounds of appeal; and
 - (b) be delivered to the Director within 21 days after the day on which the Director gives the notice of the decision.
- (3) If an appeal is made against a decision described in subsection (1)(c), the decision does not have effect pending the determination of the appeal by the Secretary.
- (4) When considering an appeal against a decision of the Director, the Secretary—
 - (a) must give the appellant and the Director an opportunity of being heard; and
 - (b) may confirm or reverse the decision.

- (5) On the determination of the appeal by the Secretary, the Director must give a written notice of the determination to—
 - (a) the appellant; and
 - (b) if the appellant is employed in a residential care home for PWDs when the appeal is determined—the operator of the residential care home.”.

86. Sections 10A to 10D added

Part 3, after section 10—

Add**“10A. Registration remains in effect pending determination of appeal**

- (1) This section applies if—
 - (a) a person appeals against a decision described in section 10(1)(b) or (c); and
 - (b) the person’s registration as a registered health worker would, but for this section, have expired before the appeal is determined.
- (2) The registration remains in effect until—
 - (a) the Secretary determines the appeal; or
 - (b) the person withdraws the appeal.

10B. Registered health worker to report certain events

- (1) A registered health worker must report to the Director if—
 - (a) a charge is laid against the health worker for an offence in any place;
 - (b) the health worker is convicted of an offence in any place; or

- (c) there is a change in the name or correspondence address of the health worker.
- (2) The report must—
 - (a) be given in writing—
 - (i) for an event described in subsection (1)(a) or (b)—as soon as reasonably practicable after the event occurs; or
 - (ii) for a change described in subsection (1)(c)—within 3 months after the change occurs; and
 - (b) contain the information specified by the Director.

10C. Transitional provisions relating to registration before material date

- (1) Unless renewed under section 7A, a registration under section 6 that has effect immediately before the material date expires at midnight on the last day of the 5-year period beginning on the material date (*expiry date*).
- (2) Despite section 7A(2)(a), an application for the renewal of the registration—
 - (a) may be made at any time on or after the material date; but
 - (b) must be made at least 6 months before the expiry date.

10D. Application for registration as registered health worker pending on material date

If an application for registration under section 6—

- (a) was made before the material date; but
- (b) has not been determined by the Director before that date,

this Part, as amended by the Residential Care Homes Legislation (Miscellaneous Amendments) Ordinance 2022 (of 2022), applies in relation to the application.”.

87. Section 11 amended (employment of staff by operators)

- (1) Section 11, heading—

Repeal

“**Employment of staff by operators**”

Substitute

“**Staffing requirements**”.

- (2) Section 11—

Repeal subsection (1)

Substitute

“(1) An operator of a residential care home for PWDs must—

- (a) employ a home manager for the residential care home; and
- (b) ensure that Schedule 1 is complied with in relation to the residential care home.”.

- (3) Section 11(2)—

Repeal paragraph (a)

Substitute

“(a) a home manager—

- (i) unless the person is a registered home manager or a registered home manager (provisional); and
- (ii) for any purpose other than employment as a home manager;”.

- (4) Section 11(2)(d)(i)—

Repeal

everything after “person”

Substitute

“is a registered health worker; and”.

- (5) Section 11(2)(e)(i)—

Repeal

everything after “person”

Substitute

“is a registered nurse, or an enrolled nurse, as defined by section 2(1) of the Nurses Registration Ordinance (Cap. 164); and”.

- (6) Section 11(4)—

Repeal

“level 4”

Substitute

“level 5”.

88. Section 12 amended (maintenance of records by operators)

Section 12(2)—

Repeal

“level 4”

Substitute

“level 5”.

89. Section 13 amended (operators to provide plans etc.)

Section 13(3)—

Repeal

“level 4”

Substitute

“level 5”.

90. Section 14 amended (operators to provide details of fees)

- (1) Section 14(1) and (3), Chinese text—

Repeal

“繳交”

Substitute

“繳付”.

- (2) Section 14(4)—

Repeal

“level 4”

Substitute

“level 5”.

91. Section 15 amended (operators to ensure advertisement contains certain information)

- (1) Section 15, Chinese text, heading—

Repeal

“若干”

Substitute

“某些”.

- (2) Section 15(1)—

Repeal

“an advertisement”

Substitute

“every advertisement published by or on behalf of the operator”.

- (3) Section 15—

Repeal subsection (2).

- (4) Section 15(3)—

Repeal

“level 4”

Substitute

“level 5”.

- (5) After section 15(3)—

Add

“(4) In subsection (1)—

advertisement (廣告) includes any advertisement in the form of any words (written or spoken), picture, drawing, visual image, figure or article—

- (a) appearing in any publication; or
- (b) brought to the notice of the general public or any section of the general public in any other way;

publish (發布) includes issue, circulate, display, distribute and broadcast.”.

92. Section 15A added

Part 5, before section 16—

Add**“15A. Application of Part 5**

This Part applies to a person who is employed by an operator of a residential care home for PWDs as a home manager of the residential care home in compliance with section 11(1)(a).”.

93. Section 16 amended (submission of staff list by home managers)

Section 16(3)—

Repeal

“level 3”

Substitute

“level 5”.

94. Section 17 amended (maintenance of records by home managers)

- (1) Section 17(1)(g), English text—

Repeal

“mechanical”.

- (2) Section 17(1)(g), English text—

Repeal

“self injury”

Substitute

“self-injury”.

- (3) Section 17(1)(g), Chinese text—

Repeal

“物品”

Substitute

“措施”.

- (4) Section 17(2)—

Repeal

“level 3”

Substitute

“level 5”.

95. Section 18 amended (information to be provided by home managers)

Section 18(3)—

Repeal

“level 3”

Substitute

“level 5”.

96. Section 19 amended (home managers to report scheduled infectious disease)

Section 19(2)—

Repeal

“level 3”

Substitute

“level 5”.

97. Section 23 amended (area of floor space per resident)

Section 23—

Repeal subsection (1)**Substitute**

“(1) The minimum area of floor space required for each resident of a residential care home for PWDs is—

- (a) for a high care level home—9.5 m²; or
- (b) for a medium care level home or a low care level home—8 m².

(1A) Despite subsection (1)—

(a) for a high care level home to which this subsection applies, the minimum area of floor space required for each resident is—

- (i) during the 4-year period beginning on the material date—6.5 m²; and
- (ii) during the 4-year period immediately after the period mentioned in subparagraph (i)—8 m²; or

(b) for a medium care level home or a low care level home to which this subsection applies, during the 8-year period beginning on the material date, the minimum area of floor space required for each resident is 6.5 m².

(1B) Subsection (1A) applies to a residential care home for PWDs if—

- (a) a licence was in force in respect of the residential care home immediately before the material date; or
- (b) a licence is issued in respect of the residential care home on or after the material date on an application made before that date.”.

98. Part 7 heading amended (precautions against fire and other risks)

Part 7, heading—

Repeal

“Precautions against Fire and Other Risks”

Substitute

“Residents’ Health, Safety and Well-being”.

99. Section 29 amended (precautions for health and safety)

Section 29, Chinese text—

Repeal

“建造組成部分”

Substitute

“建築構件”.

100. Section 32 amended (inspection of premises by members of Fire Services Department)

Section 32(3)—

Repeal

“level 3”

Substitute

“level 5”.

101. Section 34 substituted

Section 34—

Repeal the section

Substitute

“34. Storage and administration of medicine

- (1) All medicine kept in a residential care home for PWDs must, to the satisfaction of the Director, be kept in a secure and locked place.
- (2) A medicine may only be administered to a resident in a residential care home for PWDs in accordance with the prescription given for the resident by a registered medical practitioner, a registered Chinese medicine practitioner or a listed Chinese medicine practitioner.

(3) In this section—

listed Chinese medicine practitioner (表列中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549);

registered Chinese medicine practitioner (註冊中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).”.

102. Sections 34A and 34B added

After section 34—

Add

“34A. Use of restraints

- (1) A restraint must not be used on a resident in a residential care home for PWDs unless—
 - (a) the safety, health or well-being of the resident or other persons is endangered;
 - (b) no other less restrictive means to avoid the danger are available in the circumstances; and
 - (c) the requirements relating to obtaining consent to the use of restraint as set out in the Codes of Practice issued under section 23 of the Ordinance are complied with.
- (2) A restraint may only be used—
 - (a) in the safe and proper manner as set out in the Codes of Practice; and
 - (b) for no longer than is necessary.
- (3) The use of a restraint must be closely monitored and reviewed to ensure that subsections (1) and (2) are

complied with in relation to the continued use of the restraint.

34B. Protection of residents' dignity and privacy when providing care etc.

When a personal care service is provided to, or a nursing care procedure is performed on, a resident in a residential care home for PWDs, adequate facilities or measures must be provided or taken, to the satisfaction of the Director, to avoid improper exposure of body parts and protect the dignity and privacy of the resident.”.

103. Section 35 heading amended (examination of residents)

Section 35, English text, heading—

Repeal

“Examination”

Substitute

“Medical examination”.

104. Section 37 substituted

Section 37—

Repeal the section

Substitute

“37. Fees

A fee specified in column 3 of Schedule 2 is payable to the Director for the matter described, opposite the fee, in column 2 of that Schedule.”.

105. Schedule substituted

The Schedule—

Repeal the Schedule

Substitute

“Schedule 1

[s. 11]

Minimum Staffing Requirements

Part 1

Preliminary

1. Interpretation of Schedule 1

In this Schedule—

on call (候命) means standing by and being ready to be on duty as soon as practicable after being called on;

on-site (在場), in relation to a residential care home for PWDs, means being present in the residential care home;

specified period (指明期間), in relation to a day, means the period from 6 a.m. to 10 p.m. on that day;

staff member (員工) means a home manager, a nurse, a health worker, a care worker or an ancillary worker.

2. Number of residents to be rounded up to next multiple

If, in relation to a residential care home for PWDs—

- (a) this Schedule requires at least 1 staff member for every specified number of residents (*specified number*); and

(b) the number of residents of the residential care home is not a multiple of the specified number,

then, for the purpose of determining the number of staff members required, the number of residents of the residential care home is to be rounded up to the next multiple of the specified number.

Part 2

Minimum Staffing Requirements

3. High care level home

For a high care level home, during or at the time specified in column 2 of Table 1 on every day, there must be at least the number of staff members that is specified in column 3 of Table 1 opposite the time.

Table 1

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
------------------	------------------	------------------------------------------

Nurse and Health Worker

1.	13 hours within the specified period	1 health worker (on duty) for every 30 residents, and for this purpose, 1 nurse (on duty) is considered equivalent to 2 health workers (on duty)
----	--------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

Care Worker

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
2.	10 hours within the specified period	1 care worker (on duty) for every 20 residents
3.	Any time other than the 10 hours mentioned in item 2	1 care worker (on duty) for every 40 residents

Ancillary Worker

4.	11 hours within the specified period	1 ancillary worker (on duty) for every 40 residents
----	--------------------------------------	-----------------------------------------------------

Any Staff Member

5.	From 6 p.m. on a day to 7 a.m. on the next day	2 staff members (on duty) (who may be persons engaged for complying with a requirement specified in any other item of this Table)
6.	Any time when a resident is in	1 staff member (on-site and on duty) (who may be a person engaged for complying with a

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
	the high care level home	requirement specified in any other item of this Table)

4. Medium care level home

For a medium care level home, during or at the time specified in column 2 of Table 2 on every day, there must be at least the number of staff members that is specified in column 3 of Table 2 opposite the time.

Table 2

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
------------------	------------------	------------------------------------------

Nurse and Health Worker

- | | | |
|----|-------------------------------------|-----------------------------------------------------------------------------------|
| 1. | 6 hours within the specified period | (a) 1 nurse (on duty); or
(b) 1 health worker (on duty) for every 60 residents |
|----|-------------------------------------|-----------------------------------------------------------------------------------|

Care Worker and Ancillary Worker

- | | | |
|----|--------------------------------------|------------------------------------------------------------------------------|
| 2. | 11 hours within the specified period | 1 care worker (on duty) or ancillary worker (on duty) for every 30 residents |
|----|--------------------------------------|------------------------------------------------------------------------------|

Any Staff Member

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
------------------	------------------	------------------------------------------

- | | | |
|----|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3. | From 6 p.m. on a day to 7 a.m. on the next day | Both of the following staff members (who may be persons engaged for complying with a requirement specified in any other item of this Table)—
(a) 1 staff member (on duty);
(b) 1 staff member on-site (whether or not on duty) |
|----|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- | | | |
|----|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | Any time when a resident is in the medium care level home | 1 staff member (on-site and on duty) (who may be a person engaged for complying with a requirement specified in any other item of this Table) |
|----|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|

5. Low care level home

For a low care level home, during or at the time specified in column 2 of Table 3 on every day, there must be at least the number of staff members that is specified in column 3 of Table 3 opposite the time.

Table 3

Column 1 Item	Column 2 Time	Column 3 Minimum staffing requirement
------------------	------------------	------------------------------------------

Care Worker and Ancillary Worker

1.	11 hours within the specified period	1 care worker (on duty) or ancillary worker (on duty) for every 60 residents
----	--------------------------------------	------------------------------------------------------------------------------

Any Staff Member

2.	Any time between 7 a.m. and 6 p.m. when a resident is in the low care level home	1 staff member (on-site and on duty) (who may be a person engaged for complying with the requirement specified in item 1)
3.	From 6 p.m. on a day to 7 a.m. on the next day	Both of the following staff members (who may be persons engaged for complying with the requirement specified in item 1)— (a) 1 staff member on-site (whether or not on duty); (b) 1 staff member on call (whether or not on-site)

6. Certain staffing requirements must be complied with during specific hours approved by Director

- (1) If, in relation to a residential care home for PWDs, this Schedule requires at least a certain number of staff members during a certain number of hours within the specified period on every day (*requirement*), the requirement must be complied with during a specific period of, or specific periods totalling, that number of hours (*specific hours*) on every day as approved by the Director under this section in relation to the residential care home.
- (2) For the requirement, the operator of the residential care home—
 - (a) must apply to the Director for approval of the specific hours proposed by the operator; and
 - (b) may propose in the application different specific hours for different days.
- (3) The application must—
 - (a) be made in the form and manner specified by the Director; and
 - (b) contain the information specified by the Director.
- (4) The Director may approve the specific hours proposed by the operator if satisfied that the proposal is appropriate having regard to all relevant circumstances, including—
 - (a) the schedule of activities of the residents of the residential care home; and
 - (b) the rest hours of the residents of the residential care home.”.

106. Schedule 1 amended (minimum staffing requirements)

- (1) Schedule 1, section 3, Table 1—

Repeal item 1

Substitute

- “1. 8 hours within the specified period
- (a) if the high care level home has not more than 30 residents—
 - (i) 1 nurse (on duty); or
 - (ii) 1 health worker (on duty);
 - (b) if the high care level home has more than 30, but not more than 60, residents—
 - (i) 1 nurse (on duty); or
 - (ii) 2 health workers (on duty); or
 - (c) if the high care level home has more than 60 residents—
 - (i) for the first 60 residents—1 nurse (on duty); and
 - (ii) for every 30 residents after the first 60 residents—1 health worker (on duty), and for this purpose, 1 nurse (on duty) is considered equivalent to 2 health workers (on duty)

- 1A. 5 hours (other than the 8 hours mentioned in item 1) within the specified period
- 1 health worker (on duty) for every 30 residents, and for this purpose, 1 nurse (on duty) is considered equivalent to 2 health workers (on duty)”.

- (2) Schedule 1, section 3, Table 1—

Repeal item 1

Substitute

- “1. 8 hours within the specified period
- (a) if the high care level home has not more than 90 residents—
 - (i) 1 nurse and 1 health worker (both of them are on duty); or
 - (ii) 2 nurses (on duty); or
 - (b) if the high care level home has more than 90 residents—
 - (i) for the first 60 residents—1 nurse (on duty); and
 - (ii) for every 30 residents after the first 60 residents—1 health worker (on duty), and for this purpose, 1 nurse (on duty) is considered equivalent

to 2 health workers (on duty)".

107. Schedule 2 added
 After Schedule 1—
Add

“Schedule 2

[ss. 2 & 37]

Fees

Column 1 Item	Column 2 Matter	Column 3 Fee
1.	Registration as a registered home manager under section 3A	\$345
2.	Renewal of a registration as a registered home manager under section 3E	\$235
3.	Registration as a registered home manager (provisional) under section 3M	\$345
4.	Registration as a registered health worker under section 6	\$245

Column 1 Item	Column 2 Matter	Column 3 Fee
5.	Renewal of a registration as a registered health worker under section 7A	\$190".

Part 6

Consequential Amendments

Division 1—Amendments to Waterworks Ordinance (Cap. 102)

108. Section 15B amended (power of entry into non-domestic premises and power to question etc.)

- (1) Section 15B(9), definition of *home for elderly persons*—

Repeal

“section 2”

Substitute

“section 2(1)”.

- (2) Section 15B(9), definition of *home for persons with disabilities*—

Repeal

“section 2”

Substitute

“section 2(1)”.

Division 2—Amendment to Inland Revenue Ordinance (Cap. 112)

109. Section 26D amended (elderly residential care expenses)

Section 26D(5), definition of *residential care home*—

Repeal paragraph (b).

Division 3—Amendments to Building (Planning) Regulations (Cap. 123 sub. leg. F)

110. Regulation 49B amended (cinemas)

- (1) Regulation 49B(6), definition of *home for elderly persons*—

Repeal

“section 2”

Substitute

“section 2(1)”.

- (2) Regulation 49B(6), definition of *home for persons with disabilities*—

Repeal

“section 2”

Substitute

“section 2(1)”.

Division 4—Amendments to Registration of Persons (Application for New Identity Cards) Order 2018 (Cap. 177 sub. leg. J)

111. Section 2 amended (interpretation)

- (1) Section 2, definition of *residential care home*, paragraph (a)—

Repeal

everything after “licence”

Substitute

“as defined by section 2(1) of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is in force;”.

- (2) Section 2, definition of *residential care home*, paragraph (b)—

Repeal

everything after “by”

Substitute

“section 2(1) of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is in force; or”.

**Division 5—Amendments to Smoking (Public Health)
Ordinance (Cap. 371)**

112. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *residential care home*, paragraph (a)—

Repeal

“section 2”

Substitute

“section 2(1)”.

- (2) Section 2(1), definition of *residential care home*, paragraph (b)—

Repeal

“section 2”

Substitute

“section 2(1)”.

**Division 6—Amendment to Administrative Appeals Board
Ordinance (Cap. 442)**

113. Schedule amended

The Schedule, item 69, column 3—

Repeal

“7.”.

**Division 7—Amendments to Bedspace Apartments
Ordinance (Cap. 447)**

114. Section 3 amended (application)

- (1) Section 3(4), definition of *home for elderly persons*—

Repeal

“section 2”

Substitute

“section 2(1)”.

- (2) Section 3(4), definition of *home for persons with disabilities*—

Repeal

“section 2”

Substitute

“section 2(1)”.

**Division 8—Amendments to Fire Safety (Commercial
Premises) Ordinance (Cap. 502)**

115. Section 3 amended (interpretation)

- (1) Section 3(1), definition of *home for elderly persons*—

Repeal

“section 2”

Substitute

“section 2(1)”.

- (2) Section 3(1), definition of *home for persons with disabilities*—

Repeal

“section 2”

Substitute

“section 2(1)”.

**Division 9—Amendments to Fire Safety (Buildings)
Ordinance (Cap. 572)**

116. Section 3 amended (interpretation)

- (1) Section 3(1), definition of *home for elderly persons*—

Repeal

“section 2”

Substitute

“section 2(1)”.

- (2) Section 3(1), definition of *home for persons with disabilities*—

Repeal

“section 2”

Substitute

“section 2(1)”.

**Division 10—Amendment to Electronic Health Record
Sharing System Ordinance (Cap. 625)**

**117. Section 19 amended (application by healthcare providers for
registration)**

Section 19(5)(d)—

Repeal

everything after “holds a” and before “of the”

Substitute

“licence issued under section 8(2)(a)”.

**Division 11—Amendment to Private Healthcare Facilities
Ordinance (Cap. 633)**

**118. Schedule 2 amended (premises excluded from definition of
hospital)**

Schedule 2, item 1—

Repeal

“or a certificate of exemption”.

Explanatory Memorandum

The main object of this Bill is to amend the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) (*Cap. 459*), the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) (*Cap. 613*) and their subsidiary legislation to—

- (a) enhance the accountability of operators of residential care homes for the elderly and residential care homes for persons with disabilities;
 - (b) abolish the certificate of exemption regime for residential care homes for the elderly;
 - (c) provide for the registration of home managers and the renewal of registration of health workers;
 - (d) raise the minimum staffing requirements;
 - (e) increase the minimum area of floor space per resident;
 - (f) provide for the administration of medicine, the use of restraints and the protection of residents' dignity and privacy;
 - (g) increase the penalties for certain offences; and
 - (h) set out the deadline for prosecuting offences.
2. The Bill contains 6 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Cap. 459

4. Clause 3 amends section 2 of Cap. 459 to add several definitions and an interpretive provision.

5. Clause 4 amends section 3 of Cap. 459 so that Cap. 459 and its subsidiary legislation do not apply to treatment and rehabilitation centres for drug dependent persons. Clause 4 also makes clear that an order of the Director of Social Welfare (*Director*) to exclude certain residential care homes for the elderly from the application of Cap. 459 and its subsidiary legislation is subsidiary legislation.
6. Clause 5 amends section 6 of Cap. 459. The main purpose is to increase the fine for the offence of operating unlicensed residential care homes for the elderly to \$1,000,000.
7. Clause 7 repeals Part 3 of Cap. 459 to abolish the certificate of exemption regime for residential care homes for the elderly. Certain consequential amendments are made by clauses 3, 5, 9, 15, 18, 20, 21, 25, 56 and 57.
8. Clause 10 adds a new section 8A to Cap. 459 to require the Director to have regard to all relevant matters when considering whether a licence applicant is a fit and proper person to operate a residential care home for the elderly. Some specific matters to be considered are set out in the new Schedule 1 to Cap. 459 (added by clause 22).
9. Clause 14 adds new Divisions 2 and 3 to Part 4 of Cap. 459 to introduce a responsible person requirement and certain reporting requirements.
10. The new Division 2 of Part 4 of Cap. 459—
- (a) requires a licence applicant or the operator of a residential care home for the elderly to propose a person to be the responsible person of the residential care home;
 - (b) sets out the duties of a responsible person;
 - (c) requires the Director to have regard to all relevant matters when considering whether a person is a fit and proper person to perform the duties of a responsible person (with specific matters to be considered set out in the new Schedule 2 to Cap. 459 added by clause 22); and

(d) deals with the change of a responsible person in different circumstances.

11. The new Division 3 of Part 4 of Cap. 459 requires the operator of a residential care home for the elderly to report to the Director if certain events relating to the operator or the responsible person of the residential care home occur. Most of those events are relevant to whether the operator or the responsible person is a fit and proper person.
12. A failure to comply with the new Division 2 or 3 is a ground on which the Director may refuse to issue, refuse to renew, cancel, suspend or vary a condition of a licence in respect of a residential care home for the elderly (see clauses 9 and 12 that amend sections 8 and 10 of Cap. 459 respectively).
13. Clause 19 adds new sections 21A, 21B and 21C to Cap. 459. The new section 21A provides for the criminal liability of responsible persons. The new section 21B provides for the criminal liability of directors, partners, and persons concerned in the management of sole proprietorships, bodies corporate and partnerships. The new section 21C sets out the deadline for prosecuting offences.
14. Clause 20 amends section 23 of Cap. 459 to empower the Secretary for Labour and Welfare to provide for the duties and responsibilities of responsible persons by regulation.

Part 3—Amendments to Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) (Cap. 459A)

15. Clause 24 amends section 2 of Cap. 459A to amend, repeal and add certain definitions.
16. Clause 26 adds a new Part IIA to Cap. 459A to introduce a registration system for home managers. There are 2 types of registration, namely registration as registered home managers and registration as registered home managers (provisional). The former

is subject to higher qualification requirements. It enjoys a longer validity period and is renewable.

17. The new Part IIA of Cap. 459A contains 4 Divisions. Division 1 deals with matters relating to registered home managers, such as the application, registration requirements, validity period, cancellation and appeal. Division 2 covers similar matters for registered home managers (provisional). Division 3 requires registered home managers and registered home managers (provisional) to report to the Director if certain events relating to the managers occur. Division 4 provides for the keeping and inspection of the register of home managers.
18. Clauses 27 to 35 amend Part III of Cap. 459A, which relates to the registration of health workers. Currently, a registration as a health worker does not expire. The amended Part III provides for the validity period of such a registration and the renewal mechanism. It also requires registered health workers to report to the Director if certain events relating to the health workers occur and provides for the transitional arrangements.
19. Clause 36 amends section 11 of Cap. 459A. The main purpose is to require the operator of a residential care home for the elderly to employ a registered home manager or registered home manager (provisional) as the home manager of the residential care home.
20. Clause 38 adds a new section 14A to Cap. 459A to require operators of residential care homes for the elderly to ensure that certain information is contained in the advertisements published by or on behalf of the operators for promoting the residential care homes. A contravention of that requirement is an offence punishable by a fine at level 5.
21. Clause 39 adds a new section 14B to Cap. 459A to make clear who are to perform the duties of home managers under Part V of Cap. 459A.

22. Clause 41 amends section 22 of Cap. 459A to increase the minimum area of floor space per resident and to provide for the transitional arrangements.
23. Clause 44 replaces the existing section 33 of Cap. 459A to regulate the administration of medicine.
24. Clause 45 adds new sections 33A and 33B to Cap. 459A to provide for the use of restraints and for the protection of residents' dignity and privacy when providing personal care services or performing nursing care procedures.
25. Clauses 47 and 48 respectively amend sections 36 and 37 of Cap. 459A to increase the fines for the offences under Cap. 459A to level 5.
26. Clause 49 replaces the existing section 38 of Cap. 459A to provide for the fees payable for various matters. The fees are specified in the new Schedule 3 to Cap. 459A (added by clause 53).
27. Clauses 50 and 51 replace the existing Schedule 1 to Cap. 459A to raise, by phases, the minimum staffing requirements for residential care homes for the elderly (other than nursing homes).

Part 4—Amendments to Cap. 613

28. Clause 55 amends section 2 of Cap. 613 to amend a definition and add several definitions and an interpretive provision.
29. Clause 56 amends section 4 of Cap. 613. The main purpose is to increase the fine for the offence of operating unlicensed residential care homes for persons with disabilities (*PWDs*) to \$1,000,000.
30. Clause 60 adds a new section 7A to Cap. 613 to require the Director to have regard to all relevant matters when considering whether a licence applicant is a fit and proper person to operate a residential care home for *PWDs*. Some specific matters to be considered are set out in the new Schedule 1 to Cap. 613 (added by clause 74).

31. Clause 64 adds new Divisions 2 and 3 to Part 3 of Cap. 613 to introduce a responsible person requirement and certain reporting requirements. Those requirements are substantially the same as those introduced under Cap. 459 (see paragraphs 9 to 12 above).
32. Clause 71 adds new sections 22A, 22B and 22C to Cap. 613. The new section 22A provides for the criminal liability of responsible persons. The new section 22B provides for the criminal liability of directors, partners, and persons concerned in the management of sole proprietorships, bodies corporate and partnerships. The new section 22C sets out the deadline for prosecuting offences.
33. Clause 72 amends section 24 of Cap. 613 to empower the Secretary for Labour and Welfare to provide for the duties and responsibilities of responsible persons by regulation.

Part 5—Amendments to Residential Care Homes (Persons with Disabilities) Regulation (Cap. 613 sub. leg. A) (Cap. 613A)

34. Clause 75 amends section 2 of Cap. 613A to amend, repeal and add certain definitions.
35. Clause 77 adds a new Part 2A to Cap. 613A to introduce a registration system for home managers. The registration system is substantially the same as the one introduced under Cap. 459A (see paragraphs 16 and 17 above).
36. Clauses 78 to 86 amend Part 3 of Cap. 613A, which relates to the registration of health workers. Similar to the amended Part III of Cap. 459A, the amended Part 3 of Cap. 613A provides for the validity period of a registration as a registered health worker, the renewal mechanism, reporting requirements and transitional arrangements (see paragraph 18 above).
37. Clause 87 amends section 11 of Cap. 613A. The main purpose is to require the operator of a residential care home for *PWDs* to employ a registered home manager or registered home manager (provisional)

- as the home manager of the residential care home. Clause 87 also increases the fine for the offences under section 11 to level 5.
38. Clauses 88 to 91 amend sections 12 to 15 of Cap. 613A to increase the fines for the offences under those sections to level 5.
 39. Clause 92 adds a new section 15A to Cap. 613A to make clear who are to perform the duties of home managers under Part 5 of Cap. 613A.
 40. Clauses 93 to 96 and 100 amend sections 16 to 19 and 32 of Cap. 613A to increase the fines for the offences under those sections to level 5.
 41. Clause 97 amends section 23 of Cap. 613A to increase the minimum area of floor space per resident and to provide for the transitional arrangements.
 42. Clause 101 replaces the existing section 34 of Cap. 613A to regulate the administration of medicine.
 43. Clause 102 adds new sections 34A and 34B to Cap. 613A to provide for the use of restraints and for the protection of residents' dignity and privacy when providing personal care services or performing nursing care procedures.
 44. Clause 104 replaces the existing section 37 of Cap. 613A to provide for the fees payable for various matters. The fees are specified in the new Schedule 2 to Cap. 613A (added by clause 107).
 45. Clauses 105 and 106 replace the existing Schedule to Cap. 613A to raise, by phases, the minimum staffing requirements for residential care homes for PWDs.

Part 6—Consequential Amendments

46. Clauses 109, 111, 113, 117 and 118 contain amendments to other enactments consequential to the abolition of the certificate of exemption regime for residential care homes for the elderly.

COMMENCEMENT DATES OF THE NEW REQUIREMENTS

If the amendment bill is passed by the Legislative Council, the various new requirements will be implemented in phases. Relevant commencement dates are as follows –

COMMENCEMENT DATE	LEGISLATIVE PROPOSALS
The gazettal date of the amendment ordinance	(a) Residential care homes (“RCHs”) apply to the Social Welfare Department for approval on their proposed staffing plans (paragraph 7(c) of the paper).
The first anniversary of the gazettal of the amendment ordinance (“material date”)	(b) Staffing requirements in respect of nurses and health workers (paragraphs 7(a)(i) and (iii) of the paper); and those in respect of care workers and other staff (paragraph 7(b) of the paper). (c) Minimum area of floor space per resident (paragraphs 10 and 11 of the paper) (Note). (d) Requirements on licence applicants and RCH operators (paragraph 13 of the paper). (e) Registration systems for home managers and health workers (paragraphs 14 and 15 of the paper). (f) Requirements of medicine management, use of restraints and protection of residents’ dignity and privacy (paragraphs 16 and 17 of the paper). (g) Penalties (paragraph 18 of the paper). (h) Repeal of certificate of exemption regime for residential care homes for the elderly (paragraph 19 of the paper).
The first anniversary of the material date	(i) RCH operators must employ registered home managers or registered home managers

COMMENCEMENT DATE	LEGISLATIVE PROPOSALS
	(provisional) (paragraph 14 of the paper).
The second anniversary of the material date	(j) Staffing requirement in respect of nurses and health workers for high care level RCHs with more than 60 residents (paragraphs 7(a)(ii) and 8 of the paper).
A date to be appointed by the Secretary for Labour and Welfare	(k) Staffing requirement in respect of nurses and health workers for high care level RCHs with 60 residents or fewer (paragraphs 7(a)(ii) and 8 of the paper).

Note:

The following transitional arrangements are applicable to the existing RCHs –

- (A) During the first four years starting from the material date, the existing statutory minimum area of floor space per resident will continue to be applicable to high care level RCHs already licensed or in relation to which licence applications have been made before the material date. These RCHs must meet the 8 m² requirement starting from the fourth anniversary of the material date, and meet the new requirement of 9.5 m² starting from the eighth anniversary of the material date.
- (B) During the first eight years starting from the material date, the existing statutory minimum area of floor space per resident will continue to be applicable to medium care level RCHs and low care level RCHs already licensed or in relation to which licence applications have been made before the material date. These RCHs must meet the new requirement of 8 m² starting from the eighth anniversary of the material date.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

certificate of exemption (豁免證明書) means a certificate of exemption issued under section 7(2) or renewed under section 7(5);

Director (署長) means the Director of Social Welfare;

inspector (督察) means a person appointed under section 17 to be an inspector of residential care homes;

licence (牌照、牌) means a licence issued under section 8(2)(a) or renewed under section 9;

premises (處所) includes any building, enclosure, ground or open air space;

residential care home (安老院) means any premises at which more than 5 persons who have attained the age of 60 years are habitually received for the purposes of care while resident therein.

(Amended 12 of 2011 s. 33)

3. Application

(1) This Ordinance shall not apply to—

- (a) any residential care home maintained and controlled by—
 - (i) the Government;
 - (ii) the Housing Authority;
- (b) any residential care home used or intended for use solely for the purpose of the medical treatment of persons requiring medical treatment;
- (c) any residential care home or type or description of residential care home excluded by the Director by order published in the Gazette.

(2) An order under subsection (1)(c) may—

- (a) be made subject to such conditions;
- (b) be made subject to such geographical limitations;
- (c) have effect for such period; or
- (d) have such partial application,

as may be indicated in the order.

Part 2

Restriction on Operation of Residential Care Homes

6. Restriction on operating residential care homes unless exempted or licensed

- (1) Any person who on any occasion operates, keeps, manages or otherwise has control of a residential care home in respect of which neither of the conditions indicated in subsection (2) has been satisfied commits an offence and is liable to a fine at level 6 and imprisonment for 2 years and to a fine of \$10,000 for each day during which the offence continues.
- (2) The conditions referred to in subsection (1) are—
 - (a) that a certificate of exemption has been issued under section 7(2) or renewed under section 7(5) in respect of the residential care home and is for the time being in force; or
 - (b) that a licence has been issued under section 8(2)(a) or renewed under section 9 in respect of the residential care home and is for the time being in force.
- (3) It shall not be a defence that a person charged with an offence under subsection (1) did not know that neither of the conditions specified in subsection (2) had been satisfied.
- (4) It is not a defence for a person charged with an offence under subsection (1) to show that, if the residential care home is also a *residential care home for PWDs* as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), the person did not know that a licence or a certificate of exemption issued under that Ordinance was not at the relevant time in force in respect of the residential care home. (*Added 12 of 2011 s. 36*)

6A. Certain residential care homes for PWDs excepted from application of section 6

Section 6 does not apply to a residential care home that is also a *residential care home for PWDs* as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) if a licence or a certificate of exemption issued under

that Ordinance is for the time being in force in respect of the residential care home.

(Added 12 of 2011 s. 37)

Part 3

Certificates of Exemption

7. Application for and issue of certificate of exemption

- (1) An application by a person for a certificate of exemption in respect of a residential care home shall be—
 - (a) made to the Director in such form and manner as the Director may determine; and
 - (b) accompanied by such information, particulars and plans as the Director may require.
- (2) The Director may issue a certificate of exemption and impose such conditions, in relation to the operation, keeping, management or other control of a residential care home, as he thinks fit.
- (3) A certificate of exemption issued under this section shall—
 - (a) be in such form as the Director may determine;
 - (b) be endorsed with the conditions, if any, imposed under subsection (2); and
 - (c) authorize the person in whose name it is issued to operate, keep, manage or otherwise have control of a residential care home of a type prescribed for the purposes of this section, for a period of 36 months or such lesser period as may be indicated therein.
- (4) The Director may revoke a certificate of exemption issued under this section by notice in writing served either personally or by registered post on the person to whom it was issued.
- (5) The Director may, upon application made to him in such form and manner as he may determine, renew a certificate of exemption.
- (6) A certificate of exemption or a copy thereof purporting to be certified under the hand of the Director shall be evidence of the facts stated therein as at the date of such certificate of exemption or such copy thereof and shall be received in evidence without further proof.

- (7) A certificate purporting to be certified under the hand of the Director that a certificate of exemption has or has not been issued in respect of a residential care home shall be evidence of the facts stated therein as at the date of such certificate and shall be received in evidence without further proof.

8. Application for and issue of licence

- (1) An application by a person for a licence in respect of a residential care home shall be—
- (a) made to the Director in such form and manner as the Director may determine; and
 - (b) accompanied by such information, particulars and plans as the Director may require.
- (2) The Director shall, on receipt of an application under subsection (1), determine the application—
- (a) by issuing to and in the name of the applicant, a licence imposing such conditions, in relation to the operation, keeping, management or other control of the residential care home, as he thinks fit; or
 - (b) by refusing to issue a licence to the applicant.
- (3) The Director may refuse to issue a licence to the applicant if it appears to him—
- (a) that the applicant or any person he 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; (*Amended 12 of 2011 s. 38*)
 - (b) that for reasons connected with the situation, means of ingress and egress, design, construction, size, type of building, staffing or equipment, the premises to be used for the residential care home are not fit to be used for the purposes of a residential care home;
 - (c) that such premises do not comply with any requirements relating to design, structure, fire precautions, health, sanitation and safety set out in—
 - (i) any regulation made under section 38 of the Buildings Ordinance (Cap. 123);
 - (ii) any Code of Practice published by the Director of Fire Services under section 16(1)(b) of the Buildings Ordinance (Cap. 123);
 - (iii) any Code of Practice issued by the Director under section 22; or
 - (iv) any regulation made under section 23;

- (d) that the proposed name of the residential care home is unsuitable or is the same as or similar to—
 - (i) the name of a residential care home in respect of which a certificate of exemption is for the time being in force; (*Amended 12 of 2011 s. 38*)
 - (ii) the name of a residential care home in respect of which a licence is for the time being in force or the name of a residential care home for PWDs regulated by the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613); (*Amended 12 of 2011 s. 38*)
 - (iii) the name of a residential care home in respect of which the licence has been suspended, surrendered or cancelled; or (*Amended 12 of 2011 s. 38*)
 - (iv) the name of a residential care home for PWDs under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) in respect of which a licence issued under that Ordinance has been suspended, surrendered or cancelled. (*Added 12 of 2011 s. 38*)
- (4) A licence issued under this section shall—
 - (a) be in such form as the Director may determine;
 - (b) be endorsed with the conditions, if any, imposed under subsection (2)(a); and
 - (c) authorize the person in whose name it is issued to operate, keep, manage or otherwise have control of a residential care home of a type prescribed for the purposes of this section, for a period of 36 months or such lesser period as may be indicated therein.
- (4A) If a licence issued under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is for the time being in force in respect of the residential care home, the applicant must, after being advised by the Director that the application under subsection (1) is successful, surrender the first-mentioned licence to the Director on the issue of a licence under this section. (*Added 12 of 2011 s. 38*)
- (5) A licence or a copy thereof purporting to be certified under the hand of the Director shall be evidence of the facts stated therein as at the date of such licence or such copy thereof and shall be received in evidence without further proof.

- (6) A certificate purporting to be certified under the hand of the Director that a residential care home is licensed or is not licensed shall be evidence of the facts stated therein as at the date of such certificate and shall be received in evidence without further proof.

9. Renewal of licence

- (1) A person holding a licence in respect of a residential care home may, before the expiration of the licence, apply for the licence to be renewed for a period of not more than 36 months.
- (2) An application for renewal of a licence shall be made to the Director—
 - (a) not more than 4 months and not less than 2 months prior to the expiration of the licence or within such other period prior to the expiration thereof as the Director may in writing permit;
 - (b) in such form and manner as the Director may determine.
- (3) The Director may in respect of the renewed licence impose any condition, in relation to the operation, keeping, management or other control of the residential care home, in addition to or instead of any condition previously imposed by him under section 8(2)(a).
- (4) A renewal of a licence under this section before the expiration of the licence shall take effect on the day following the day of its expiration.
- (5) Any licence in respect of which an application for renewal is made under this section and which expires prior to the determination of such application shall, unless such application is withdrawn or the licence is cancelled or suspended under section 10, remain in effect until the determination by the Director of such application.
- (6) A renewal of a licence granted under this section shall have effect on the day following the day upon which the licence would have expired but for subsection (5), for a period of 36 months or such lesser period as may be indicated by the Director at the time of renewal.

10. Cancellation and suspension of licence or refusal to renew and amendment or variation of conditions

- (1) The Director may cancel, suspend or refuse to renew the licence in respect of a residential care home, or amend or vary any condition of the licence— (*Amended 12 of 2011 s. 39*)

- (a) on any ground specified in section 8(3)(a), (b) or (c) which would have entitled him to refuse an application for the licensing of that residential care home;
 - (b) on the ground that—
 - (i) the person holding the licence has been convicted of an offence against this Ordinance or an indictable offence; or (*Amended 12 of 2011 s. 39*)
 - (ii) any other person has been convicted of an offence against this Ordinance or an indictable offence in respect of that residential care home;
 - (c) on the ground that, in respect of that residential care home or the residents thereof—
 - (i) any of the provisions of this Ordinance have been or are being contravened; or
 - (ii) any requirement, order or direction made or given under this Ordinance has not been complied with by the person holding the licence in respect of the residential care home;
 - (d) on the ground that any condition of the licence has not been or is not being complied with by the person holding the licence in respect of the residential care home;
 - (e) if it appears to him that—
 - (i) that residential care home has ceased to be operated as such or to exist;
 - (ii) that such persons has ceased to operate, keep, manage or otherwise control, that residential care home; or
 - (iii) that residential care home has, on any occasion since the date on which it was licensed, been operated in a manner contrary to the public interest.
- (2) A decision under subsection (1) (other than a decision to refuse to renew a licence) that is appealed against under section 12 is suspended in its operation as from the day on which the appeal is made until the appeal is disposed of, withdrawn or abandoned unless—
- (a) the suspension would, in the opinion of the Director, be contrary to the public interest; and
 - (b) the order on the decision contains a statement to that effect. (*Added 12 of 2011 s. 39*)

- (3) If a decision to refuse to renew a licence under subsection (1) is appealed against under section 12 and the licence would, but for this subsection, expire before the determination of the appeal, the licence remains in force until the appeal is disposed of, withdrawn or abandoned unless—
 - (a) it would, in the opinion of the Director, be contrary to the public interest for the licence to remain in force; and
 - (b) the order on the decision contains a statement to that effect. *(Added 12 of 2011 s. 39)*
- (4) If a licence is for the time being in force in respect of a residential care home and an application for the issue of a licence in respect of the same residential care home premises is successful under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), the Director must cancel the licence issued under this Ordinance immediately before issuing a licence under section 7 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613). *(Added 12 of 2011 s. 39)*

11. Notice of refusal of licence or renewal and of cancellation or suspension, etc.

- (1) The Director must, before refusing an application for a licence or for the renewal of a licence, or before exercising the power under section 10(1), give notice to the applicant or the person holding the licence in respect of a residential care home of the intention to do so—
 - (a) stating the grounds on which the Director intends to refuse the application or exercise the power under that section; and
 - (b) stating that the applicant or the person may make written representations to the Director.
- (2) If the Director decides to refuse an application for a licence or for the renewal of a licence, or if the Director decides to exercise the power under section 10(1), the Director must make a written order, properly dated and signed, to that effect.
- (3) The Director must send a copy of the written order under subsection (2) to the applicant or the person holding the licence by delivering it personally or by registered post to the applicant or that person, at the address last known to the Director.

(Replaced 12 of 2011 s. 40)

12. Appeals against decisions of Director

A person who is aggrieved by any decisions made in respect of the person under section 7, 8, 9 or 10(1) may appeal to the Administrative Appeals Board.

18. Inspection of residential care homes

- (1) In this section, *specified person* (指明人士) means—
 - (a) the Director;
 - (b) an officer of the Fire Services Department; or
 - (c) an inspector.
- (2) If a specified person produces, if so required, proof of identity as the specified person, and the specified person's identity card issued under the Registration of Persons Ordinance (Cap. 177), the specified person may—
 - (a) at all reasonable times enter and inspect any residential care home or any premises which the specified person has reason to suspect are used as or for the purposes of a residential care home (*suspected premises*);
 - (b) require any person taking part in the operation or management of the residential care home or suspected premises to—
 - (i) produce any book, document or other article relating to the operation or management of the residential care home or suspected premises, or to any other activity in respect of the residential care home or suspected premises; or
 - (ii) give any information relating to the operation, management or activity mentioned in subparagraph (i);
 - (c) remove for further examination from the residential care home or suspected premises any book, document or other article which the specified person has reason to suspect is evidence of the commission of an offence against this Ordinance;
 - (d) remove for further examination from the residential care home any book, document or other article which the specified person has reason to suspect is evidence of a ground for the cancellation of the licence issued in respect of it; and
 - (e) do any other things that are necessary for—
 - (i) the inspection of the residential care home; or

- (ii) the inspection or testing of any equipment, works or system used for or in connection with the operation, keeping, management or other control of the residential care home.

(Replaced 12 of 2011 s. 42)

19. Director may direct remedial measures

- (1) The Director may, in respect of any residential care home, by notice in writing, give such directions as appear to him to be required to secure that—
 - (a) it is operated and managed satisfactorily;
 - (b) the welfare of its residents is promoted in a proper manner;
 - (c) adequate apparatus and equipment required as safeguards against fire or other hazard likely to endanger the lives or health of residents are provided in the residential care home; and
 - (d) the provisions of this Ordinance are complied with.
- (2) A notice under subsection (1)—
 - (a) shall be served personally or by registered post on the person being the operator, keeper, manager or otherwise having control of the residential care home; and
 - (b) shall indicate a period within which the directions shall be complied with.

20. Director may order cessation of use of premises as a residential care home

- (1) The Director may—
 - (a) if it appears to him that there is any danger or risk of danger to persons in residence in a residential care home; or
 - (b) if, in respect of any such residential care home, the requirements of a direction given under section 19(1) are not complied with within the period indicated in the notice served under that section,by order in writing direct that the premises used as a residential care home shall cease to be used as a residential care home for such period as he thinks fit or until further notice.

- (2) An order under this section shall be served on the person being the operator, keeper, manager or otherwise having control of the residential care home concerned and shall take effect from the date of service.
- (3) It shall be sufficient service of an order under this section if—
 - (a) it is delivered personally to the person on whom it is to be served;
 - (b) it is sent by registered post to the last known address of that person; or
 - (c) a copy thereof is posted in a conspicuous place upon or in the premises to which it relates.

21. Offences in relation to certificates of exemption and licences

- (1) Any person who on any occasion operates, keeps, manages or otherwise has control of a residential care home in respect of which a certificate of exemption has been issued—
 - (a) in contravention of any condition of the certificate of exemption so issued;
 - (b) in any premises other than the residential care home premises indicated in the certificate of exemption so issued; or
 - (c) under any name other than the name of the residential care home indicated in the certificate of exemption so issued,commits an offence.
- (2) Where any condition of a certificate of exemption is contravened, the person in whose name the certificate of exemption was issued commits an offence unless he proves that—
 - (a) he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and
 - (b) he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.
- (3) Any person who on any occasion operates, keeps, manages or otherwise has control of a residential care home in respect of which a licence has been issued—
 - (a) in contravention of any condition of the licence so issued;

- (b) in any premises other than premises indicated in the licence so issued; or
- (c) under any name other than the name indicated in the licence so issued,

commits an offence.

- (4) Where any condition of a licence is contravened, the person holding the licence in respect of the residential care home commits an offence unless he proves that—

- (a) he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and

- (b) he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.

- (5) Where an offence under subsection (1) or (3) is alleged to have been committed, proof that a defendant did any act in connection with the operation, keeping, management or other control of a residential care home is, in the absence of evidence to the contrary, proof that the defendant operated, kept, managed or otherwise had control of a residential care home.

- (6) Any person who—

- (a) in or in connection with any application under this Ordinance makes any statement or furnishes any information, whether such statement be oral or written, which is false in any material particular and which he knows or reasonably ought to know is false in such particular;

- (b) obstructs the Director, any officer of the Fire Services Department or any inspector in the exercise of any of his powers under this Ordinance;

- (c) refuses to produce any book, document or other article upon being so required under section 18 or furnishes any information which is false in a material particular and which he knows or reasonably ought to know is false in such particular;

- (d) fails to comply with the requirements of a direction given under section 19 within the period indicated in the notice served thereunder;

- (e) fails to comply with the requirements of an order served on him under section 20,

commits an offence.

- (7) Any person who commits an offence under this section is liable to a fine at level 6 and to imprisonment for 2 years and to a fine of \$10,000 for each day during which the offence continues.

22. Codes of Practice relating to operation of residential care homes

- (1) The Director may issue from time to time Codes of Practice setting out principles, procedures, guidelines and standards for the operation, keeping, management or other control of residential care homes.
- (2) A copy of every Code of Practice issued from time to time under subsection (1) shall be made available during the hours of business by the Director for inspection by the public free of charge at such offices of the Government as the Director may direct.

23. Regulation

- (1) The Secretary for Labour and Welfare may by regulation provide for or in relation to residential care homes for — (*Amended 17 of 1999 s. 3; 12 of 2011 s. 44*)
- (a) the operation, management, supervision and inspection thereof;
 - (b) the classes or description thereof;
 - (c) the duties and responsibilities of persons holding the licences in respect thereof;
 - (d) the qualifications, experience, appointment, duties, responsibilities and discipline of persons employed for the purposes of the operation, management and supervision, including the number of persons to be so employed in relation to the number of residents cared for therein and the registration by the Director of any such person for the purposes of that employment;
 - (e) the admission of residents thereto having regard to the age of residents who may be admitted to any class or description thereof;
 - (f) the medical examination of the residents cared for and the persons employed therein;
 - (g) the exclusion therefrom of any resident or employee and measures to preserve the health and well-being of residents or employees;

- (h) the discharge of residents therefrom and the procedure to be adopted for the discharge, including the period of notice to be given for the discharge of any resident cared for therein;
 - (i) the control and supervision of activities therein;
 - (j) the adequacy, suitability and use of equipment therein;
 - (k) the keeping, in respect thereof, of records, time-tables, menus and books of account;
 - (l) the reports and information to be supplied to the Director in respect thereof;
 - (m) the design, structure, hygiene and sanitation thereof;
 - (n) the precautions to be taken against fire or other peril likely to endanger the lives or health of residents cared for therein;
 - (o) the provision of and control of entrances to and exits therefrom;
 - (p) the disclosure of and provision of information relating to the level or amount of fees and other charges that may be charged or imposed in respect of the services provided therein or otherwise on account of the care of residents thereat;
 - (q) *(Repealed 12 of 2011 s. 44)*
 - (r) subject to section 24, the fees to be charged for any matter prescribed or permitted by this Ordinance;
 - (ra) the promotion, including the advertising or marketing, of residential care homes by specifying whether certificates of exemption or licences are for the time being in force in respect of the residential care homes; *(Added 12 of 2011 s. 44)*
 - (s) generally, carrying into effect the provisions of this Ordinance.
- (2) Any regulation made under this section may—
- (a) prohibit the performance of particular acts without the consent of the Director;
 - (b) authorize the Director to require or prohibit the performance of particular acts; and
 - (c) require particular acts to be performed to the satisfaction of Director.

- (3) The Director may, by notice in writing to the person being the operator, keeper, manager or otherwise having control of a residential care home, waive wholly, partly or conditionally the requirements of any regulation in respect of that residential care home and may amend or withdraw any such notice.
- (4) Regulations made under this section may provide that a contravention thereof shall be an offence punishable by a fine not exceeding level 6 and a term of imprisonment not exceeding 2 years and punishable by a fine not exceeding \$10,000 for each day during which the offence continues.
- (5) The amount of fees provided for under subsection (1)(r) need not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Director in the discharge of his functions under this Ordinance.
- (6) Without affecting the generality of subsection (5), any regulation made under subsection (1)(r) may provide for—
 - (a) a different fee to be payable having regard to—
 - (i) type or description of any residential care home or of any matter prescribed or permitted under this Ordinance;
 - (ii) the period indicated in the certificate of exemption or the licence, as the case may be; and
 - (b) the waiver, remission, reduction or refund of any fee.

24. No fee payable in respect of certificate of exemption or licence

No fee shall be payable—

- (a) on an application for the issue or renewal of a certificate of exemption;
- (b) on an application for the issue or renewal of a licence;
- (c) for the issue or renewal of a certificate of exemption; or
- (d) for the issue or renewal of a licence.

2. Interpretation

In this Regulation—

ancillary worker (助理員) means any person, other than a care worker, health worker or nurse, employed by an operator whose duties include those of a cook, domestic servant, driver, gardener, watchman, welfare worker or clerk;

care staff (護理人員) includes a care worker, health worker and nurse but does not include a home manager or nurse-in-charge; (34 of 2018 s. 145)

care worker (護理員) means any person, other than an ancillary worker, health worker or nurse, employed by an operator to render personal care to residents;

enrolled nurse (登記護士) means any person whose name appears on the roll of enrolled nurses maintained under section 11 of the Nurses Registration Ordinance (Cap. 164); (34 of 2018 s. 145)

health worker (保健員) means any person whose name appears on the register maintained by the Director under section 5;

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

nurse (護士) means—

- (a) a registered nurse; or
- (b) an enrolled nurse; (34 of 2018 s. 145)

nurse-in-charge (主管護士), in relation to a nursing home, means any person who is a registered nurse and who is responsible for supervising the nursing care of the residents in the nursing home; (34 of 2018 s. 145)

operator (經營者) means a person to whom a certificate of exemption has been issued under section 7 of the Ordinance or a person to whom a licence has been issued under section 8 of the Ordinance;

particulars of identity (身分詳情) means the particulars set out on an identity card issued under the Registration of Persons Ordinance (Cap. 177); (14 of 2008 s. 18)

registered nurse (註冊護士) means any person whose name appears on the register of nurses maintained under section 5 of

the Nurses Registration Ordinance (Cap. 164); (34 of 2018 s. 145)

scheduled infectious disease (表列傳染病) has the same meaning as in the Prevention and Control of Disease Ordinance (Cap. 599). (14 of 2008 s. 18)

(14 of 2008 s. 18)

3. **Types of residential care homes**

For the purposes of sections 7(3)(c) and 8(4)(c) of the Ordinance, a residential care home may be classified as—

- (aa) a ***nursing home*** (護養院) namely, an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years, and who are suffering from a functional disability to the extent that they require personal care and attention in the course of daily living activities, and a high degree of professional nursing care, but do not require continuous medical supervision; or (34 of 2018 s. 146)
- (a) a ***care and attention home*** (高度照顧安老院) namely, an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years and who are generally weak in health and are suffering from a functional disability to the extent that they require personal care and attention in the course of daily living activities but do not require a high degree of professional medical or nursing care; or
- (b) an ***aged home*** (中度照顧安老院) namely, an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years and who are capable of observing personal hygiene but have a degree of difficulty in performing household duties related to cleaning, cooking, laundering, shopping and other domestic tasks; or
- (c) a ***self-care hostel*** (低度照顧安老院) namely, an establishment providing residential care, supervision and guidance for persons who have attained the age of 60 years and who are capable of observing personal hygiene and performing household duties related to cleaning, cooking, laundering, shopping and other domestic tasks.

4. **Qualifications for registration as a health worker**

A person who—

- (a) has completed a course of training approved by the Director in writing either generally or in any particular case; or
- (b) by reason of his education, training, professional experience and skill in health work satisfies the Director that he is a suitable person to be registered as a health worker under section 6,

shall be qualified to be registered as a health worker for the purposes of employment at a residential care home.

5. Register of health workers

- (1) The Director shall establish and maintain a register in which he shall cause to be kept particulars of the names and addresses of all persons registered as health workers under this Regulation and such other matters, if any, as he thinks fit.
- (2) The register shall be available for inspection by the public free of charge at such offices of the Government as the Director may direct, during the hours when those offices are open to the public.
- (3) The Director shall enter in the register any amendment as he may consider necessary for the purposes of preserving the accuracy of the register in respect of the address or any other particulars relating to a person whose name appears therein.
- (4) The Director shall remove from the register the name of a person—
 - (a) who dies;
 - (b) who requests in writing that his name be removed; or
 - (c) whose registration is cancelled under section 8.

6. Application for and registration as a health worker

- (1) An application by a person for registration as a health worker shall be made in such form and manner and be accompanied by such particulars as the Director may determine.
- (2) Subject to subsection (3) and on payment of the fee prescribed in section 38, the Director may, in his discretion, register a person as a health worker, and may impose such conditions in relation to that registration as he thinks fit.
- (3) The Director shall not register an applicant as a health worker unless he is satisfied that the applicant is a person who is—
 - (a) qualified;
 - (b) competent; and

- (c) fit and proper,
to be registered as a health worker.

7. Director to serve notice of decision on applicant

- (1) Where the Director registers or refuses to register a person as a health worker under section 6, he shall forthwith serve notice in writing of his decision on that person.
- (2) Where the Director refuses to register a person as a health worker the notice referred to in subsection (1) shall include—
 - (a) an adequate statement of the reasons for his refusal; and
 - (b) an endorsement setting out the relevant provisions of section 10.

8. Cancellation of registration

The Director may cancel the registration of a person registered as a health worker under section 6(2) if—

- (a) he is of the opinion that registration was obtained by fraudulent means; or
- (b) he ceases to be satisfied of any matter in respect of which he is required to be satisfied under section 6(3).

9. Notice of cancellation of registration

- (1) Where the Director cancels registration under section 8, he shall forthwith serve notice in writing of his decision on—
 - (a) the person whose registration is cancelled; and
 - (b) the operator of the residential care home where that person is employed.
- (2) Every notice referred to in subsection (1) shall include—
 - (a) an adequate statement of the reasons for cancelling the registration; and
 - (b) an endorsement setting out the relevant provisions of section 10.

10. Appeals to Secretary for Labour and Welfare

(L.N. 130 of 2007)

- (1) A person—
 - (a) whom the Director refuses to register under section 6; or
 - (b) whose registration is cancelled under section 8,may, by notice in writing which states the grounds of appeal and is delivered to the Director within 21 days of being

notified by him of any such decision, appeal to the Secretary for Labour and Welfare.

- (2) A decision that is appealed against under subsection (1) shall not have effect pending the determination of the appeal by the Secretary for Labour and Welfare.
- (3) The Secretary for Labour and Welfare when considering any appeal against a decision of the Director— (*L.N. 106 of 2002; L.N. 130 of 2007*)
 - (a) shall give the person appealing against the decision an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (4) On the confirmation or reversal of a decision under subsection (3)(b), the Director shall forthwith serve notice in writing thereof on—
 - (a) the person who appealed against the decision; and
 - (b) the operator of the residential care home where that person is employed.

(L.N. 106 of 2002; L.N. 130 of 2007)

Part IV

Duties of Operator

11. Employment of staff by operator

- (1) The operator of a residential care home (other than a nursing home) must, according to the particular type of residential care home, employ a person as— (*34 of 2018 s. 147*)
 - (a) a home manager;
 - (b) an ancillary worker;
 - (c) a care worker;
 - (d) a health worker; and
 - (e) a nurse,in the manner indicated in Schedule 1.
- (1A) The operator of a nursing home must employ—
 - (a) a person as a home manager (who may also be the nurse-in-charge);
 - (b) a person (who is a registered nurse) as a nurse-in-charge; and

- (c) a number of persons as care staff in the following way—
 - (i) at least 1 registered nurse being on duty in the nursing home at any time;
 - (ii) at least 1 member of the care staff for every 3 (or less than 3) beds in the nursing home;
 - (iii) at least 1 nurse among every 3 (or less than 3) members of care staff in the nursing home. *(34 of 2018 s. 147)*
- (2) An operator shall not employ any person as—
 - (a) a home manager for any purpose other than employment as a home manager;
 - (b) an ancillary worker for any purpose other than employment as an ancillary worker;
 - (c) a care worker for any purpose other than employment as a care worker;
 - (d) a health worker—
 - (i) unless that person is registered under section 6; and
 - (ii) for any purpose other than employment as a health worker; or
 - (e) a nurse—
 - (i) unless that person is a registered nurse or an enrolled nurse within the meaning of the Nurses Registration Ordinance (Cap. 164); and
 - (ii) for any purpose other than employment as a nurse.
- (3) An operator shall inform the Director, in writing within 14 days, of any change in the employment of a home manager under subsection (1)(a).
- (4) An operator of a nursing home must inform the Director, in writing within 14 days, of any change in the employment of a home manager or a nurse-in-charge under subsection (1A). *(34 of 2018 s. 147)*

12. Maintenance of records by operator

An operator shall maintain a record of the name, address and particulars of identity of every person employed in a residential care home.

13. Furnishing of plans by operator

- (1) The Director may by notice in writing served on an operator, require the operator to furnish him with a plan or diagram, with dimensions of the residential care home premises before the expiry of such time being not less than 14 days as shall be indicated in the notice.
- (2) An operator on whom a notice is served under subsection (1) shall, before the expiry of the time indicated in the notice, furnish the plan or diagram required by the Director.

14. Furnishing of details of fees by operator

- (1) The Director may by notice in writing served on an operator, require the operator to furnish him with details of any fees or charges payable by residents for the purposes of care at the residential care home, before the expiry of such time being not less than 14 days as shall be indicated in the notice.
- (2) An operator on whom a notice is served under subsection (1) shall, before the expiry of the time indicated in the notice, furnish the details of the fees and charges required by the Director.
- (3) An operator shall inform the Director, in writing within 14 days, of any change in the fees and charges so payable.

15. Submission of staff list by home manager

- (1) A home manager shall, if so required by the Director in writing, submit to the Director a list of staff employed by an operator under section 11, within 14 days of being so required.
- (2) A home manager shall at least once every 3 months inform the Director in writing of any change in the list of staff employed by an operator under section 11.

16. Maintenance of records by home manager

A home manager shall maintain a record of—

- (a) the name, address and particulars of identity of every resident;
- (b) the name, address and particulars of identity of at least 1 relative or 1 contact person of every resident;
- (c) where or how any such relative or contact person may be contacted in an emergency;
- (d) the date of admission and discharge of every resident;
- (e) any accident or illness suffered by a resident and of any remedial action taken in that behalf;
- (f) any death of a resident;

- (g) any action taken, including the use of force or mechanical restraint, to prevent or restrain a resident from injuring himself or others, or damaging property, or creating a disturbance;
- (h) possessions or property stored or held on behalf of every resident;
- (i) any complaint made by a resident or any other person relating to the management or operation of the residential care home and any remedial action taken in that behalf.

20. Height

- (1) Subject to subsection (2), no part of a residential care home shall be situated at a height more than 24 m above the ground floor, measuring vertically from the ground of the building to the floor of the premises in which the residential care home is to be situated.
- (2) The Director may by notice in writing served on an operator authorize that any part of such residential care home may be situated at a height more than 24 m above the ground floor as may be indicated in the notice.

22. Area of floor space per resident

- (1) The minimum area of floor space required for each resident in a residential care home shall be as indicated in Schedule 2.
- (2) In determining the area of floor space for the purposes of this section the area of any open space, podium, garden and any other area in the residential care home which the Director is satisfied is unsuitable for the purposes of a residential care home shall be disregarded.

Part VII

Precautions against Fire and Other Risks

28. Precautions for health and safety

In every residential care home the design, the construction, the fire resistance of the elements of the structure and the properties of the materials, shall be such that the health and safety of the residents, and in particular their safe escape in the event of fire, shall, to the satisfaction of the Director, be reasonably assured.

33. Storage of medicine

All medicine and drugs shall, to the satisfaction of the Director, be kept in a secure place.

34. Examination of residents

- (1) The operator of a residential care home shall ensure that each resident is medically examined at least once in every 12 months.
- (2) The examination shall be conducted by a registered medical practitioner, who shall report in writing to the operator on the health of each resident.
- (3) A copy of such report shall be kept by the operator and made available at all reasonable times for inspection by the Director or any inspector.

35. Discharge of resident by operator

An operator may, by notice in writing served on any resident and on a relative or contact person of such resident, discharge that resident and require him to quit the residential care home before the expiry of such period being not less than 30 days as shall be indicated in the notice.

36. Offences by operators and home managers

- (1) An operator who fails to comply with any of the provisions of section 11, 12, 13 or 14 commits an offence and is liable to a fine at level 4.
- (2) A home manager who fails to comply with any of the provisions of section 15, 16, 17 or 18 commits an offence and is liable to a fine at level 3.

37. Offence of obstruction

Any person who obstructs a member of the Fire Services Department in the exercise of his powers under section 31(2) commits an offence and is liable to a fine at level 3.

38. Fee for registration as health worker

A fee of \$164 shall be payable for registration as a health worker under section 6(2).

(L.N. 160 of 1996)

Schedule 1

[s. 11]

Employment of Staff

Item	Type of staff	Type of residential care home		
		Care and attention home	Aged home	Self-care hostel
1.	Home manager	1 home manager	1 home manager	1 home manager
2.	Ancillary worker	1 ancillary worker for every 40 residents or part thereof, between 7 a.m. and 6 p.m.	1 ancillary worker for every 40 residents or part thereof, between 7 a.m. and 6 p.m.	1 ancillary worker for every 60 residents or part thereof, between 7 a.m. and 6 p.m.
3.	Care worker	(i) 1 care worker for every 20 residents or part thereof, between 7 a.m. and 3 p.m.; (ii) 1 care worker for every 40 residents or part thereof, between 3 p.m. and 10 p.m.; (iii) 1 care worker for every 60 residents or part thereof, between 10 p.m. and 7 a.m.	No care worker required	No care worker required

Type of residential care home

Item	Type of staff	Type of residential care home		
		Care and attention home	Aged home	Self-care hostel
4.	Health worker	Unless a nurse is present, 1 health worker for every 30 residents or part thereof, between 7 a.m. and 6 p.m.	Unless a nurse is present, 1 health worker for every 60 residents or part thereof	No health worker required
5.	Nurse	Unless a health worker is present, 1 nurse for every 60 residents or part thereof, between 7 a.m. and 6 p.m.	Unless a health worker is present, 1 nurse	No nurse required

Note: As an additional requirement for a care and attention home or an aged home, any 2 persons being a home manager, an ancillary worker, a care worker, a health worker or a nurse shall be on duty between 6 p.m. and 7 a.m.

Schedule 2

[s. 22]

Minimum Area of Floor Space for Each Resident

Item	Type of residential care home	Minimum area per resident
1.	Care and attention home	6.5 m ²
2.	Aged home	6.5 m ²
3.	Self-care hostel	6.5 m ²

2. Interpretation

In this Ordinance—

certificate of exemption (豁免證明書) means a certificate of exemption issued under section 11(2)(a) or renewed under section 12(3)(a);

Director (署長) means the Director of Social Welfare;

existing home (原有院舍) means a residential care home for PWDs that exists immediately before the date on which this Ordinance, except Part 2, comes into operation;

inspector (督察) means a person appointed under section 15 to be an inspector of residential care homes for PWDs;

licence (牌照、牌) means a licence issued under section 7(2)(a) or renewed under section 8(3)(a);

person with disabilities and ***PWD*** (殘疾人士) mean a person who suffers from one or more of the following disabilities—

- (a) total or partial loss of the bodily or mental functions;
- (b) total or partial loss of a part of the body;
- (c) the malfunction, malformation or disfigurement of a part of the body;
- (d) a disorder, illness or disease that affects the thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour;

premises (處所) includes any building, enclosure, ground or open air space;

resident (住客) means a person who is admitted to reside in any residential care home for PWDs;

residential care home for PWDs (殘疾人士院舍) means any premises at which more than 5 PWDs, who have attained the age of 6 years, are habitually received for the purpose of residential accommodation with the provision of care.

4. Offence of operating residential care homes for PWDs without licence

- (1) Subject to sections 5, 6 and 6A, a person must not operate, keep, manage or in any other way have control of a residential care home for PWDs otherwise than under a licence for the time being in force. (*Amended 34 of 2018 s. 194*)
- (2) It is not a defence for a person charged with an offence under subsection (1) to show that—
 - (a) the person did not know that a licence was not at the relevant time in force in respect of the residential care home;
 - (b) if the residential care home is an existing home, the person did not know that a certificate of exemption was not at the relevant time in force in respect of the residential care home; or
 - (c) if the residential care home is also a ***residential care home*** as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the person did not know that a certificate of exemption or a licence issued under that Ordinance was not at the relevant time in force in respect of the residential care home.
- (3) A person who contravenes subsection (1) commits an offence and is liable—
 - (a) to a fine at level 6 and to imprisonment for 2 years; and
 - (b) in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues.

6. Certain residential care homes for elderly persons excepted from application of section 4

Section 4 does not apply to a residential care home for PWDs that is also a ***residential care home*** as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) if a certificate of exemption or a licence issued under that Ordinance is for the time being in force in respect of the residential care home.

7. Application for and issue of licence

- (1) An application by a person for the issue of a licence in respect of a residential care home for PWDs must be—
 - (a) made to the Director in the form and manner determined by the Director; and
 - (b) accompanied by the information, particulars and plans required by the Director.

- (2) The Director must, on receipt of an application under subsection (1), determine the application—
 - (a) by issuing to, and in the name of, the applicant a licence subject to any conditions that the Director thinks fit in relation to the operation, keeping, management or other control of the residential care home; or
 - (b) by refusing to issue a licence to the applicant.
- (3) Without limiting subsection (2)(b), the Director may refuse to issue a licence to the applicant if it appears to the Director that—
 - (a) 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;
 - (b) the premises used or intended to be used for the residential care home are not fit to be used for the purposes of a residential care home for PWDs for reasons connected with the situation, means of ingress and egress, design, construction, size, type of building, staffing or equipment;
 - (c) the premises used or intended to be used for the residential care home do not comply with any requirements relating to design, construction, fire precautions, health, sanitation and safety set out in—
 - (i) any regulation made by the Secretary for Development under section 38 of the Buildings Ordinance (Cap. 123);
 - (ii) any Code of Practice published by the Director of Fire Services and referred to in section 16(1)(b) of the Buildings Ordinance (Cap. 123);
 - (iii) any Code of Practice issued by the Director under section 23; or
 - (iv) any regulation made by the Secretary for Labour and Welfare under section 24; or
 - (d) the proposed name of the residential care home is unsuitable or is the same as or similar to—
 - (i) the name of an existing home in respect of which a certificate of exemption is for the time being in force;
 - (ii) the name of a residential care home for PWDs in respect of which a licence is for the time being in force;

- (iii) the name of a residential care home regulated by the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);
 - (iv) the name of a residential care home for PWDs in respect of which a licence has been suspended, surrendered or cancelled; or
 - (v) the name of a residential care home under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) in respect of which a licence issued under that Ordinance has been suspended, surrendered or cancelled.
- (4) A licence issued under this section must—
 - (a) be in the form determined by the Director;
 - (b) specify the conditions, if any, imposed under subsection (2)(a);
 - (c) include an endorsement authorizing the person to whom it is issued to operate, keep, manage or otherwise have control of a residential care home for PWDs of a type prescribed for the purposes of this section; and
 - (d) specify the validity period of the licence, not being a period of more than 36 months.
- (5) If a licence issued under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is for the time being in force in respect of the residential care home, the applicant must, after being advised by the Director that the application under subsection (1) is successful, surrender the first-mentioned licence to the Director on the issue of a licence under this section.
- (6) A licence or a copy of it purporting to be signed by the Director—
 - (a) is evidence of the facts stated in it as at the date of the licence or the copy; and
 - (b) is to be received in evidence without further proof.
- (7) A certificate purporting to be signed by the Director that a residential care home for PWDs is licensed or is not licensed —
 - (a) is evidence of the facts stated in it as at the date of the certificate; and
 - (b) is to be received in evidence without further proof.

8. Renewal of licence

- (1) A person holding a licence in respect of a residential care home for PWDs may, before the licence expires, apply for the licence to be renewed for a period of not more than 36 months.
- (2) An application for the renewal of a licence must be made to the Director—
 - (a) not more than 4 months and not less than 2 months before the licence expires or within any other period before its expiry as permitted by the Director in writing; and
 - (b) in the form and manner determined by the Director.
- (3) The Director may, on receipt of an application under subsection (1)—
 - (a) renew the licence and impose any conditions in relation to the operation, keeping, management or other control of the residential care home in respect of the renewed licence, in addition to or instead of any conditions previously imposed under section 7(2)(a); or
 - (b) refuse to renew the licence.
- (4) Without limiting subsection (3)(b), the Director may refuse to renew the licence in respect of a residential care home for PWDs—
 - (a) on any ground specified in section 7(3)(a), (b) or (c) that would have entitled the Director to refuse an application for the licensing of the residential care home;
 - (b) on the ground that—
 - (i) the person holding the licence has been convicted of an offence against this Ordinance or an indictable offence; or
 - (ii) any other person has been convicted of an offence against this Ordinance or an indictable offence in respect of the residential care home;
 - (c) on the ground that, in respect of the residential care home or its residents—
 - (i) this Ordinance has been or is being contravened; or
 - (ii) any requirement, order or direction made or given under this Ordinance has not been complied with by the person;
 - (d) on the ground that any condition of the licence has not been or is not being complied with by the person; or
 - (e) if it appears to the Director that—

- (i) the residential care home has ceased to be operated or to exist;
 - (ii) the person has ceased to operate, keep, manage or otherwise have control of the residential care home; or
 - (iii) the residential care home has, on any occasion since the date on which the licence is issued in respect of it, been operated in a manner contrary to the public interest.
- (5) A renewal of a licence under this section before the expiry of the licence takes effect on the day following the day of its expiry.
- (6) Subject to subsection (7), any licence in respect of which an application for renewal is made under this section and which, but for this subsection, would expire before the determination of the application remains in force until the determination by the Director of the application.
- (7) Subsection (6) does not apply if—
- (a) the application is withdrawn; or
 - (b) the licence is cancelled or suspended under section 9.
- (8) A renewal of a licence under this section takes effect on the day following the day on which the licence would have expired but for subsection (6), for the period (not being more than 36 months) indicated by the Director at the time of renewal.
- (9) If a decision to refuse to renew a licence under subsection (3) (b) is appealed against under section 14(d) and the licence would, but for this subsection, expire before the determination of the appeal, the licence remains in force until the appeal is disposed of, withdrawn or abandoned unless—
- (a) it would, in the opinion of the Director, be contrary to the public interest for the licence to remain in force; and
 - (b) the order on the decision contains a statement to that effect.

9. Cancellation or suspension; amendment or variation of conditions of licence

- (1) The Director may cancel or suspend the licence in respect of a residential care home for PWDs, or amend or vary any condition of the licence, on any ground specified in section 8(4) that would have entitled the Director to refuse an application for the renewal of a licence.

- (2) A decision under subsection (1) that is appealed against under section 14(e) is suspended in its operation as from the day on which the appeal is made until the appeal is disposed of, withdrawn or abandoned unless—
 - (a) the suspension would, in the opinion of the Director, be contrary to the public interest; and
 - (b) the order on the decision contains a statement to that effect.
- (3) If a licence is for the time being in force in respect of a residential care home for PWDs and an application for the issue of a licence in respect of the same residential care home premises is successful under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459), the Director must cancel the licence issued under this Ordinance immediately before issuing a licence under section 8 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459).

10. Notice of refusal of licence or renewal and of cancellation or suspension, etc.

- (1) The Director must, before refusing an application for a licence or for the renewal of a licence, or before exercising the power under section 9(1), give notice to the applicant or the person holding the licence in respect of a residential care home for PWDs of the intention to do so—
 - (a) stating the grounds on which the Director intends to refuse the application or exercise the power under that section; and
 - (b) stating that the applicant or the person may make written representations to the Director.
- (2) If the Director decides to refuse an application for a licence or for the renewal of a licence, or if the Director decides to exercise the power under section 9(1), the Director must make a written order, properly dated and signed, to that effect.
- (3) The Director must send a copy of the written order under subsection (2) to the applicant or the person holding the licence by delivering it personally or by registered post to the applicant or that person, at the address last known to the Director.

11. Application for and issue of certificate of exemption

- (1) An application by a person for the issue of a certificate of exemption in respect of an existing home must be—

- (a) made to the Director in the form and manner determined by the Director; and
 - (b) accompanied by the information, particulars and plans required by the Director.
- (2) The Director may, on receipt of an application under subsection (1), determine the application—
 - (a) by issuing to, and in the name of, the applicant a certificate of exemption subject to any conditions that the Director thinks fit in relation to the operation, keeping, management or other control of the existing home; or
 - (b) by refusing to issue a certificate of exemption to the applicant.
- (3) A certificate of exemption issued under this section must—
 - (a) be in the form determined by the Director;
 - (b) specify the conditions, if any, imposed under subsection (2)(a);
 - (c) include an endorsement authorizing the person to whom it is issued to operate, keep, manage or otherwise have control of an existing home of a type prescribed for the purposes of this section; and
 - (d) specify the validity period of the certificate, not being a period of more than 36 months.
- (4) The Director may revoke a certificate of exemption.
- (5) A certificate of exemption or a copy of it purporting to be signed by the Director—
 - (a) is evidence of the facts stated in it as at the date of the certificate or the copy; and
 - (b) is to be received in evidence without further proof.
- (6) A certificate purporting to be signed by the Director that a certificate of exemption has or has not been issued in respect of an existing home—
 - (a) is evidence of the facts stated in it as at the date of the first-mentioned certificate; and
 - (b) is to be received in evidence without further proof.

12. Renewal of certificate of exemption

- (1) A person holding a certificate of exemption in respect of an existing home may, before the certificate expires, apply for the certificate to be renewed for a period of not more than 36 months.

- (2) An application for the renewal of a certificate of exemption must be made to the Director—
 - (a) not more than 4 months and not less than 2 months before the certificate expires or within any other period before its expiry as permitted by the Director in writing; and
 - (b) in the form and manner determined by the Director.
- (3) The Director may, on receipt of an application under subsection (1)—
 - (a) renew the certificate and impose any conditions in relation to the operation, keeping, management or other control of the existing home in respect of the renewed certificate of exemption, in addition to or instead of any conditions previously imposed under section 11(2)(a); or
 - (b) refuse to renew the certificate.
- (4) A renewal of a certificate of exemption under this section before the expiry of the certificate takes effect on the day following the day of its expiry.
- (5) Subject to subsection (6), any certificate of exemption in respect of which an application for renewal is made under this section and which, but for this subsection, would expire before the determination of the application remains in force until the determination by the Director of the application.
- (6) Subsection (5) does not apply if—
 - (a) the application is withdrawn; or
 - (b) the certificate is revoked under section 11(4).
- (7) A renewal of a certificate of exemption under this section takes effect on the day following the day on which the certificate would have expired but for subsection (5), for the period (not being more than 36 months) indicated by the Director at the time of renewal.

13. Notice of refusal of certificate of exemption or renewal and of revocation, etc.

- (1) If the Director decides to refuse an application for a certificate of exemption under section 11(2)(b), the Director must give notice of the decision to the applicant stating the grounds for the refusal.
- (2) If the Director decides to revoke a certificate of exemption under section 11(4), the Director must give notice of the decision to the person holding the certificate stating the grounds for the revocation.

- (3) If the Director decides to refuse an application for the renewal of a certificate of exemption under section 12(3)(b), or to grant an application subject to conditions imposed in respect of the renewed certificate of exemption under section 12(3)(a), the Director must give notice of the decision to the applicant or the person holding the certificate stating the grounds for the refusal or conditions.
- (4) A notice given under this section must be in writing and be sent to the applicant or the person referred to in subsection (1), (2) or (3) respectively by delivering it personally or by registered post to the applicant or that person, at the address last known to the Director.

18. Director may direct remedial measures

- (1) The Director may, in respect of any residential care home for PWDs, by notice in writing, give any directions that appear to the Director to be required to ensure that—
 - (a) the residential care home is operated and managed satisfactorily;
 - (b) the welfare of the residents is promoted in a proper manner;
 - (c) it is provided with adequate apparatus and equipment to safeguard the residential care home against fire or other hazards likely to endanger the lives or health of residents; and
 - (d) this Ordinance is complied with.
- (2) A notice under subsection (1)—
 - (a) may be sent to the person who is the operator, keeper or manager, or who otherwise has control, of the residential care home by delivering it personally or by registered post to that person at the address last known to the Director; and
 - (b) must indicate a period within which the directions are to be complied with.

19. Director may order cessation of use of premises as residential care home for PWDs

- (1) The Director may by a written order direct that the premises used as a residential care home for PWDs cease to be used as a residential care home for PWDs for the period that the Director thinks fit or until further notice—

- (a) if it appears to the Director that there is any danger or risk of danger to the residents in the residential care home; or
 - (b) if, in respect of the residential care home, the requirements of a direction given under section 18(1) are not complied with within the period indicated in the notice sent under section 18(2).
- (2) An order under this section—
- (a) is to be sent to the person who is the operator, keeper or manager, or who otherwise has control, of the residential care home concerned; and
 - (b) takes effect at the following time—
 - (i) if it is delivered personally to the person to whom it is to be sent, when it is so delivered;
 - (ii) if it is sent by registered post to the last known address of the person, when it would in the ordinary course of post be delivered to that address; or
 - (iii) if it is posted in a conspicuous place inside or outside the premises to which it relates, when it is so posted.

22. Offences in relation to licences and certificates of exemption

- (1) A person commits an offence if the person on any occasion operates, keeps, manages or otherwise has control of a residential care home for PWDs in respect of which a licence is for the time being in force—
- (a) in contravention of any condition of the licence;
 - (b) in any premises other than the residential care home premises indicated in the licence; or
 - (c) under any name other than the name of the residential care home indicated in the licence.
- (2) If any condition of a licence is contravened, the person holding the licence in respect of the residential care home commits an offence unless the person proves that—
- (a) the person did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and
 - (b) the person could not have prevented those circumstances arising by the exercise of reasonable supervision and reasonable diligence.

- (3) A person commits an offence if the person on any occasion operates, keeps, manages or otherwise has control of an existing home in respect of which a certificate of exemption is for the time being in force—
 - (a) in contravention of any condition of the certificate of exemption;
 - (b) in any premises other than the existing home premises indicated in the certificate of exemption; or
 - (c) under any name other than the name of the existing home indicated in the certificate of exemption.
- (4) If any condition of a certificate of exemption is contravened, the person holding the certificate in respect of the existing home commits an offence unless the person proves that—
 - (a) the person did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and
 - (b) the person could not have prevented those circumstances arising by the exercise of reasonable supervision and reasonable diligence.
- (5) If an offence under subsection (1) or (3) is alleged to have been committed, proof that a defendant did any act in connection with the operation, keeping, management or other control of a residential care home for PWDs is, in the absence of evidence to the contrary, proof that the defendant operated, kept, managed or otherwise had control of the residential care home.
- (6) A person commits an offence if the person—
 - (a) in or in connection with any application under this Ordinance makes any statement or gives any information, whether in oral or written form, which is false in any material particular and which the person knows or reasonably ought to know is false in the material particular;
 - (b) obstructs the Director, any officer of the Fire Services Department or any inspector in the exercise of any functions under this Ordinance;
 - (c) refuses to produce any book, document or other article when so required under section 16 or gives any information which is false in a material particular and which the person knows or reasonably ought to know is false in the material particular;

- (d) fails to comply with the requirements of a direction given under section 18 within the period indicated in the notice sent under it; or
 - (e) fails to comply with the requirements of an order sent to the person under section 19.
- (7) A person who commits an offence under this section is liable —
- (a) to a fine at level 6 and to imprisonment for 2 years; and
 - (b) in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues

24. Regulation

- (1) The Secretary for Labour and Welfare may by regulation provide for or in relation to residential care homes for PWDs for—
- (a) their operation, management, supervision and inspection;
 - (b) their classes or description;
 - (c) the duties and responsibilities of persons holding the licences in respect of residential care homes for PWDs;
 - (d) the qualifications, experience, appointment, duties, responsibilities and discipline of persons employed for the purposes of the operation, management and supervision of residential care homes for PWDs, including the number of persons to be so employed in relation to the number of residents and the registration of their employment by the Director;
 - (e) the admission of residents having regard to the age of residents who may be admitted to any class or description of residential care homes for PWDs;
 - (f) the medical examination of the residents and the persons employed;
 - (g) the exclusion from residential care homes for PWDs of any resident or employee and measures to preserve the health and well-being of residents or employees;
 - (h) the discharge of residents from residential care homes for PWDs and the procedure to be adopted for the discharge, including the period of notice to be given for the discharge of any resident;
 - (i) the control and supervision of activities in residential care homes for PWDs;

- (j) the adequacy, suitability and use of equipment in residential care homes for PWDs;
 - (k) the keeping of records, timetables, menus and books of account;
 - (l) the reports and information to be supplied to the Director;
 - (m) the design, construction, hygiene and sanitation of residential care homes for PWDs;
 - (n) the precautions to be taken against fire or other hazards likely to endanger the lives or health of residents;
 - (o) the provision of and control of entrances to and exits from residential care homes for PWDs;
 - (p) the disclosure and provision of information relating to the level or amount of fees and other charges that may be charged or imposed in respect of the services provided or otherwise on account of the care of residents;
 - (q) subject to section 25, the fees to be charged for any matter prescribed or permitted by this Ordinance;
 - (r) the promotion, including the advertising or marketing, of residential care homes for PWDs by specifying whether licences or certificates of exemption are for the time being in force in respect of the residential care homes;
 - (s) generally, carrying into effect this Ordinance.
- (2) Any regulation made under this section may—
- (a) prohibit the performance of particular acts without the consent of the Director;
 - (b) authorize the Director to require or prohibit the performance of particular acts; and
 - (c) require particular acts to be performed to the satisfaction of the Director.
- (3) The Director may, by notice in writing sent to the person who is the operator, keeper or manager, or who otherwise has control, of a residential care home for PWDs—
- (a) waive wholly, partly or conditionally the requirements of any regulation made under this section in respect of the residential care home; and
 - (b) amend or withdraw the notice.
- (4) Regulations made under this section may provide that any contravention of the regulations is an offence punishable by—

- (a) a fine not exceeding level 6 and a term of imprisonment not exceeding 2 years; and
 - (b) a fine not exceeding \$10,000 for each day during which the offence continues.
- (5) The amount of fees provided for under subsection (1)(q) need not be limited by reference to the amount of administrative or other costs incurred, or likely to be incurred, by the Director in the exercise of the Director's functions under this Ordinance.
- (6) Without affecting subsection (5), any regulation made under subsection (1)(q) may provide for—
- (a) a different fee to be payable having regard to—
 - (i) the type or description of any residential care home for PWDs or of any matter prescribed or permitted by this Ordinance; or
 - (ii) the period indicated in the licence or the certificate of exemption; and
 - (b) the waiver, remission, reduction or refund of any fee.

Part 8

Consequential and Related Amendments

2. Interpretation

In this Regulation—

ancillary worker (助理員) means any person, other than a care worker, health worker or nurse, employed by an operator whose duties include those of a cook, domestic servant, driver, gardener, watchman, welfare worker or clerk;

care worker (護理員) means any person, other than an ancillary worker, health worker or nurse, employed by an operator to render personal care to residents;

health worker (保健員) means any person whose name appears on the register maintained by the Director under section 5;

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

nurse (護士) means any person whose name appears on—

- (a) the register of nurses maintained under section 5 of the Nurses Registration Ordinance (Cap. 164); or
- (b) the roll of enrolled nurses maintained under section 11 of that Ordinance;

operator (營辦人) means a person holding a licence in respect of a residential care home for PWDs or a certificate of exemption in respect of an existing home;

particulars of identity (身分詳情) means the particulars set out on an identity card issued under the Registration of Persons Ordinance (Cap. 177).

3. Types of residential care homes for PWDs

For the purposes of sections 7(4)(c) and 11(3)(c) of the Ordinance, a residential care home for PWDs may be classified as—

- (a) a “high care level home”, namely, an establishment providing residential care for PWDs who are generally weak in health and lack basic self-care skill to the extent that they require personal care, attention and assistance in the course of daily living activities but do not require a high degree of professional medical or nursing care;

- (b) a “medium care level home”, namely, an establishment providing residential care for PWDs who are capable of basic self-care but have a degree of difficulty in daily living activities; or
- (c) a “low care level home”, namely, an establishment providing residential care for PWDs who are capable of basic self-care and require only minimal assistance in daily living activities.

4. Qualifications for registration as health workers

A person who meets either of the following requirements is qualified to be registered as a health worker for the purposes of employment at a residential care home for PWDs—

- (a) the person has completed a course of training approved by the Director in writing either generally or in any particular case;
- (b) by reason of the person’s education, training, professional experience and skill in health work, the Director is satisfied that the person is a suitable person to be registered as a health worker.

5. Register of health workers

- (1) The Director must establish and maintain a register and cause to be kept in the register particulars of the names and addresses of all persons registered as health workers and any other matters that the Director thinks fit.
- (2) The register must be available for inspection by the public free of charge at any offices of the Government that the Director directs, during the hours when those offices are open to the public.
- (3) The Director must enter in the register any amendment that the Director considers necessary for the purposes of preserving the accuracy of the register in respect of the address or any other particulars relating to a person whose name appears in it.
- (4) Subject to subsection (5), the Director must remove from the register the name of a person—
 - (a) who dies;
 - (b) who requests in writing that the person’s name be removed;
 - (c) whose registration is cancelled under section 8; or

- (d) who is also registered as a health worker under the Residential Care Homes (Elderly Persons) Regulation (Cap. 459 sub. leg. A) and whose name has been removed under section 5(4)(a) or (c) of that Regulation. *(L.N. 153 of 2011)*
- (5) The Director must not remove from the register the name of a person under subsection (4)(c)—
 - (a) until the period specified in section 10(1) expires without an appeal having been made; or
 - (b) if an appeal has been made, until after the final determination of the appeal or, in case the appeal is withdrawn, until after the withdrawal.

6. Application for and registration as health workers

- (1) An application by a person for registration as a health worker must be made in the form and manner and be accompanied by the particulars that the Director determines.
- (2) Subject to subsection (3) and on payment of the fee prescribed in section 37, the Director may register a person as a health worker, and may impose any conditions in relation to the registration that the Director thinks fit.
- (3) The Director must not register an applicant as a health worker unless the Director is satisfied that the applicant is a person who is qualified, competent, and fit and proper to be registered as a health worker.

7. Director to give notice of decision on applicant

- (1) If the Director registers or refuses to register a person as a health worker under section 6, the Director must immediately give a notice in writing of the decision to the person.
- (2) If the Director refuses to register a person as a health worker, the notice mentioned in subsection (1) must include—
 - (a) an adequate statement of the reasons for the refusal; and
 - (b) an endorsement setting out the relevant provisions of section 10.

8. Cancellation of registration

The Director may cancel the registration of a person registered as a health worker if—

- (a) the Director is of the opinion that the registration was obtained by fraudulent means; or

- (b) the Director ceases to be satisfied of any matter in respect of which the Director is required to be satisfied under section 6(3).

9. Notice of cancellation of registration

- (1) If the Director cancels any registration under section 8, the Director must immediately give a notice in writing of the decision to—
 - (a) the person whose registration is cancelled; and
 - (b) the operator of the residential care home for PWDs where the person is employed.
- (2) A notice mentioned in subsection (1) must include—
 - (a) an adequate statement of the reasons for cancelling the registration; and
 - (b) an endorsement setting out the relevant provisions of section 10.

10. Appeals to Secretary for Labour and Welfare

- (1) A person—
 - (a) whom the Director refuses to register as a health worker under section 6; or
 - (b) whose registration as a health worker is cancelled under section 8,may, by notice in writing that states the grounds of appeal and is delivered to the Director within 21 days after being notified by the Director of the decision, appeal to the Secretary for Labour and Welfare against the decision of the Director.
- (2) A decision that is appealed against under subsection (1) is not to have effect pending the determination of the appeal by the Secretary for Labour and Welfare.
- (3) The Secretary for Labour and Welfare when considering any appeal against a decision of the Director—
 - (a) must give the person who appeals against the decision an opportunity of being heard; and
 - (b) may confirm or reverse the decision.
- (4) On the confirmation or reversal of a decision under subsection (3)(b), the Director must immediately give a notice in writing relating to it to—
 - (a) the person who appeals against the decision; and
 - (b) the operator of the residential care home for PWDs where the person is employed.

11. Employment of staff by operators

- (1) An operator of a residential care home for PWDs must, according to the particular type of the residential care home, employ persons in the manner indicated in the Schedule to occupy the following posts in the residential care home—
 - (a) home manager;
 - (b) ancillary worker;
 - (c) care worker;
 - (d) health worker;
 - (e) nurse.
- (2) An operator of a residential care home for PWDs must not employ any person as—
 - (a) a home manager for any purpose other than employment as a home manager;
 - (b) an ancillary worker for any purpose other than employment as an ancillary worker;
 - (c) a care worker for any purpose other than employment as a care worker;
 - (d) a health worker—
 - (i) unless the person falls within the definition of *health worker* in section 2; and
 - (ii) for any purpose other than employment as a health worker; or
 - (e) a nurse—
 - (i) unless the person falls within the definition of *nurse* in section 2; and
 - (ii) for any purpose other than employment as a nurse.
- (3) An operator of a residential care home for PWDs must inform the Director in writing within 14 days after any change in the employment of a home manager of the residential care home under subsection (1)(a) has occurred.
- (4) An operator who contravenes subsection (1), (2) or (3) commits an offence and is liable to a fine at level 4.

12. Maintenance of records by operators

- (1) An operator of a residential care home for PWDs must maintain a record of the name, address and particulars of identity of every person employed in the residential care home.

- (2) An operator who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

13. Operators to provide plans etc.

- (1) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, require the operator to provide to the Director a plan or diagram, with dimensions of the premises of the residential care home, before the expiry of the time, being not less than 14 days, indicated in the notice.
- (2) An operator to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the plan or diagram required by the Director.
- (3) An operator who contravenes subsection (2) commits an offence and is liable to a fine at level 4.

14. Operators to provide details of fees

- (1) The Director may, by a notice in writing given to an operator of a residential care home for PWDs, require the operator to provide to the Director details of any fees or charges payable by the residents of the residential care home, before the expiry of the time, being not less than 14 days, indicated in the notice.
- (2) An operator to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the details of the fees and charges required by the Director.
- (3) An operator must inform the Director in writing within 14 days after any change in the fees and charges payable by the residents.
- (4) An operator who contravenes subsection (2) or (3) commits an offence and is liable to a fine at level 4.

15. Operators to ensure advertisement contains certain information

- (1) An operator of a residential care home for PWDs must ensure that an advertisement for promoting the residential care home contains information to the effect that a licence or a certificate of exemption is for the time being in force in respect of the residential care home.
- (2) For the purposes of subsection (1), an advertisement may be constituted by any words, whether written or spoken, or any picture, drawing, visual image, figure or article—
 - (a) appearing in any publication; or

- (b) brought to the notice of the general public or any section of the general public in any other way.
- (3) An operator who contravenes subsection (1) commits an offence and is liable to a fine at level 4.

16. Submission of staff list by home managers

- (1) A home manager must, in relation to a residential care home for PWDs and if required by the Director in writing, submit to the Director a list of staff employed by the operator of the residential care home under section 11, within 14 days of being required to do so.
- (2) A home manager must, in relation to a residential care home for PWDs, at least once every 3 months inform the Director in writing of any change in the list of staff employed by the operator of the residential care home under section 11.
- (3) A home manager who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 3.

17. Maintenance of records by home managers

- (1) A home manager of a residential care home for PWDs must maintain a record of—
 - (a) the name, address and particulars of identity of every resident;
 - (b) the name, address and particulars of identity of at least one relative or one contact person of every resident;
 - (c) where or how the relative or contact person may be contacted in an emergency;
 - (d) the date of admission and discharge of every resident;
 - (e) any accident or illness suffered by a resident and of any remedial action taken in relation to that accident or illness;
 - (f) any death of a resident;
 - (g) any action taken, including the use of force or mechanical restraint, to prevent or restrain a resident from self injury or injuring others, or damaging property, or creating a disturbance;
 - (h) possessions or property stored or held on behalf of every resident; and
 - (i) any complaint made by a resident or any other person relating to the management or operation of the residential care home and of any remedial action taken in relation to that complaint.

- (2) A home manager who contravenes subsection (1) commits an offence and is liable to a fine at level 3.

18. Information to be provided by home managers

- (1) The Director may, by a notice in writing given to a home manager of a residential care home for PWDs, require the home manager to provide any information concerning the residential care home that the Director may require, before the expiry of the time, being not less than 14 days, indicated in the notice.
- (2) A home manager to whom a notice is given under subsection (1) must, before the expiry of the time indicated in the notice, provide the information required by the Director.
- (3) A home manager who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

19. Home managers to report scheduled infectious disease

- (1) If a home manager of a residential care home for PWDs reasonably suspects or knows of a case of a scheduled infectious disease amongst the residents or staff of the residential care home or reasonably suspects or knows that a resident or staff member has been in contact with a case of a scheduled infectious disease, the home manager must immediately so report to the Director.
- (2) A home manager who contravenes subsection (1) commits an offence and is liable to a fine at level 3.
- (3) In this section—

scheduled infectious disease (表列傳染病) has the meaning given by section 2 of the Prevention and Control of Disease Ordinance (Cap. 599).

23. Area of floor space per resident

- (1) The minimum area of floor space required for each resident in a residential care home for PWDs is 6.5 m².
- (2) In determining the area of floor space for the purposes of this section, the area of any open space, podium, garden or any other area in the residential care home which the Director is satisfied is unsuitable for the purposes of a residential care home for PWDs is to be disregarded.

Precautions against Fire and Other Risks

29. Precautions for health and safety

In a residential care home for PWDs, the design, the construction (including the fire resistance of the elements of construction) and the properties of the materials must be such that the health and safety of the residents, and in particular their safe escape in the event of fire, are, to the satisfaction of the Director, reasonably assured.

32. Inspection of premises by members of Fire Services Department

(1) Any member of the Fire Services Department may, without warrant and on production if so required, of proof of the person's membership and particulars of identity, at all reasonable times enter and inspect—

- (a) a residential care home for PWDs;
- (b) a building where a residential care home for PWDs is situated, if it appears to the member that a risk of fire to the residential care home may arise in the building; or
- (c) a building, place or premises adjacent or near to a residential care home for PWDs, if it appears to the member that a risk of fire to the residential care home may arise in the building, place or premises.

(2) A person must not obstruct a member of the Fire Services Department in the exercise of the powers of the member under subsection (1).

(3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 3.

34. Storage of medicine

All medicine and drugs in a residential care home for PWDs must, to the satisfaction of the Director, be kept in a secure place.

35. Examination of residents

(1) An operator of a residential care home for PWDs must ensure that every resident of the residential care home who has attained the age of 60 years is medically examined at least once in every 12 months.

(2) The examination must be conducted by a registered medical practitioner, who must report in writing to the operator on the health of every resident mentioned in subsection (1).

- (3) A copy of the report must be kept by the operator and made available at all reasonable times for inspection by the Director or any inspector.

37. Fee for registration as health workers

A fee of \$164 is payable for registration as a health worker under section 6(2).

Schedule

[s. 11]

Employment of Staff

Item	Type of Staff	Type of residential care home for PWDs		
		High care level home	Medium care level home	Low care level home
1.	Home manager	1 home manager	1 home manager	1 home manager
2.	Ancillary worker	1 ancillary worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 40 residents or part of 40 residents, between 7 a.m. and 6 p.m.	1 ancillary worker or 1 care worker for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.
3.	Care worker	(a) 1 care worker for every 20 residents or part of 20 residents, between 7 a.m. and 3 p.m.;		

Item	Type of Staff	Type of residential care home for PWDs		
		High care level home	Medium care level home	Low care level home
		(b) 1 care worker for every 40 residents or part of 40 residents, between 3 p.m. and 10 p.m.;		
		(c) 1 care worker for every 60 residents or part of 60 residents, between 10 p.m. and 7 a.m.		
4.	Health worker	1 health worker for every 30 residents or part of 30 residents, or 1 nurse for every 60 residents or part of 60 residents, between 7 a.m. and 6 p.m.	1 health worker for every 60 residents or part of 60 residents, or 1 nurse	No health worker or nurse required
5.	Nurse			

Notes:

1. In these Notes—
designated person (指定人士) means a home manager, an ancillary worker, a care worker, a health worker or a nurse.
2. As an additional requirement for a high care level home, at least 2 designated persons must be on duty between 6 p.m. and 7 a.m.
3. As an additional requirement for a medium care level home with a capacity of—
 - (a) more than 60 residents, at least 1 designated person must be on duty and 1 other designated person must be on site (whether or not on duty) between 6 p.m. and 7 a.m.;

- (b) not more than 60 residents, at least 1 designated person must be on site (whether or not on duty) and 1 other designated person must be on call (whether or not on site) between 6 p.m. and 7 a.m.
- 4. As an additional requirement for a low care level home, at least 1 designated person must be on site (whether or not on duty) and 1 other designated person must be on call (whether or not on site) between 6 p.m. and 7 a.m.

15B. Power of entry into non-domestic premises and power to question etc.

- (1) An authorized officer may at any reasonable time—
 - (a) enter any non-domestic premises to ascertain whether specified plumbing works are being, or have been, carried out on the premises in contravention of section 15; or
 - (b) enter any other non-domestic premises for exercising the power under paragraph (a).
- (2) After entering any premises under subsection (1)(a), an authorized officer may exercise any or all of the following powers—
 - (a) take photographs or make video recordings of the premises and the fire service or inside service on the premises;
 - (b) require a person found on the premises to answer a question as to—
 - (i) whether the person is carrying out or has carried out specified plumbing works on the premises; and
 - (ii) whether the person is a licensed plumber, registered plumbing worker or registered plumbing worker (provisional) (*qualified person*);
 - (c) if a person found on the premises states that the person is a qualified person—
 - (i) require the person to produce documentary proof in support of the statement; or
 - (ii) if the person is not able to produce the documentary proof immediately—require the person to produce the proof at a place and within a reasonable time required by the officer;
 - (d) if a person found on the premises states that the person is not a qualified person—
 - (i) require the person to answer a question as to whether the person is carrying out or has carried out specified plumbing works on the premises under the instruction and supervision of a licensed plumber or registered plumbing worker; and

- (ii) if the person answers the question in the affirmative—require the person to provide to the officer the name and contact details of the person who provided the instruction and supervision;
 - (e) if the officer reasonably suspects that there is or has been a contravention of section 15 on the premises, require a person found on the premises to provide to the officer any information that the officer reasonably believes—
 - (i) is relevant for ascertaining whether there is or has been a contravention of section 15; and
 - (ii) is within the person’s knowledge;
 - (f) if the officer reasonably suspects that a person found on the premises is contravening or has contravened section 15, after informing the person of the act or omission that may constitute the suspected contravention—
 - (i) detain the person in the premises for a reasonable time for further enquiries about the suspected contravention; and
 - (ii) require the person to provide to the officer the person’s name, address, telephone number, proof of identity and any other personal particulars the officer may reasonably require.
- (3) A person who fails to comply with a requirement under subsection (2) commits an offence.
 - (4) A person who, in purported compliance with a requirement under subsection (2), makes any statement or provides any information that is false or misleading in a material particular commits an offence.
 - (5) It is a defence for a person charged with an offence under subsection (3) if the person establishes that at the time of the alleged offence the person had a reasonable excuse for failing to comply with the requirement.
 - (6) It is a defence for a person charged with an offence under subsection (4) if the person establishes that at the time of the alleged offence the person did not know, had no reason to suspect, and could not with reasonable diligence have ascertained, that the statement or information concerned was false or misleading in a material particular.
 - (7) A person is not excused from complying with a requirement under subsection (2) only on the ground that to do so might tend to incriminate the person.

(8) The power under this section is in addition to, and not in derogation of, the power under section 12.

(9) In this section—

authorized officer (獲授權人員) means the Water Authority or a public officer authorized by the Water Authority in writing;

home for elderly persons (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

home for persons with disabilities (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613);

non-domestic premises (非住用處所) means premises other than those used for human habitation (including those used as a hotel, guesthouse, serviced apartment, dormitory, home for elderly persons, home for persons with disabilities, child care centre, nursery or similar premises).

(Added 11 of 2018 s. 8)

26D. Elderly residential care expenses

- (1) Subject to the other provisions of this section, where a person or his or her spouse, not being a spouse living apart from the person, pays during any year of assessment any residential care expenses in respect of a parent or grandparent of the person who at any time in that year of assessment is aged 60 or more or, being under the age of 60, is eligible to claim an allowance under the Government's Disability Allowance Scheme, a deduction in respect of the residential care expenses shall be allowable to that person for that year of assessment.
- (2) A deduction under subsection (1) is allowable to a person in respect of each parent or grandparent of the person, in so far as any residential care expenses described in that subsection have been paid by the person or his or her spouse in respect of that parent or grandparent.
- (3) A deduction allowable to a person under subsection (1) in respect of each parent or grandparent of the person for any year of assessment shall not exceed the amount specified in Schedule 3C in relation to that year of assessment.
- (4)
 - (a) Subject to paragraph (b), a deduction in respect of any residential care expenses shall not be allowable under this section to more than one person for any year of assessment in respect of the same parent or grandparent.
 - (b) Where a deduction in respect of any residential care expenses is claimed by or allowed to more than one person for any year of assessment in respect of the same parent or grandparent, section 33(2) to (4) shall apply with the necessary modifications to such a deduction as it does to a dependent parent allowance, a dependent grandparent allowance, a dependent brother or dependent sister allowance, a child allowance or a disabled dependant allowance; and section 33 shall, where this paragraph applies, be construed as if a reference therein to such an allowance included, in the case of any residential care expenses so claimed, a reference to an allowance to which section 33(2) applies and, in the case of any residential care expenses so allowed, a reference to an allowance to which section 33(3) applies.
- (5) In this section—

parent or grandparent (父母或祖父母), in relation to any person, means—

- (a) a parent or parent of his or her spouse; or
- (b) a grandparent or grandparent of his or her spouse;

residential care expenses (住宿照顧開支) means any expenses payable in respect of the residential care received at a residential care home and paid to that residential care home or any other person acting on its behalf;

residential care home (院舍) means any premises— (*Amended 12 of 2011 s. 26*)

- (a) in respect of which a licence issued or renewed under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is for the time being in force;
- (b) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) is for the time being in force; (*Amended 12 of 2011 s. 26*)
- (c) to which the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) does not apply by virtue of section 3 of that Ordinance; (*Replaced 12 of 2011 s. 26*)
- (d) which is a scheduled nursing home within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) for which an exemption granted under section 128 of that Ordinance is in force; (*Replaced 34 of 2018 s. 153 and E.R. 5 of 2018*)
- (e) in respect of which a licence issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is for the time being in force; or (*Added 12 of 2011 s. 26*)
- (f) in respect of which a certificate of exemption issued or renewed under the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) is for the time being in force. (*Added 12 of 2011 s. 26*)

49B. Cinemas

- (1) Notwithstanding regulation 49A but subject to paragraphs (2), (3), (4) and (5), a cinema may be situated in a building which is used for any purposes other than those of such cinema.
- (2) A cinema shall be situated in a non-domestic building or the non-domestic part of a composite building.
- (3) Where a cinema or cinemas is or are situated in a building which is used for any purposes other than those of such cinema or cinemas, the accommodation provided shall not—
 - (a) in case there is only 1 cinema so situated, be more than that required to accommodate 2 000 persons;
 - (b) in case there are 2 or more cinemas so situated, be in the aggregate more than that required to accommodate 2 000 persons.
- (4)
 - (a) A cinema shall not be situated in a building in, or in any part of, which any of the operations mentioned in subparagraph (c) is for the time being carried on.
 - (b) Any of the operations mentioned in subparagraph (c) shall not be carried on in a building or in any part of a building in which a cinema is for the time being situated.
 - (c) The operations referred to in subparagraphs (a) and (b) are—
 - (i) a motor vehicle repair workshop;
 - (ii) a petrol filling station;
 - (iii) a godown or warehouse;
 - (iv) a factory or an industrial undertaking;
 - (v) a school;
 - (vi) a child care centre; (*12 of 2011 s. 27*)
 - (vii) a home for elderly persons; or (*12 of 2011 s. 27*)
 - (viii) a home for persons with disabilities. (*12 of 2011 s. 27*)
- (5)
 - (a) A cinema may share all or any of the facilities mentioned in subparagraph (b) with any other cinema or other place of public entertainment situated in the same building if, and only if, each such facility which is so shared is provided to the satisfaction of the Building Authority.

(b) The facilities referred to in subparagraph (a) are a means of escape, an entrance, a foyer and a waiting space.

(6) In this regulation—

home for elderly persons (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

home for persons with disabilities (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613). (12 of 2011 s. 27)

2. Interpretation

In this Order—

Regulations (《規例》) means the Registration of Persons Regulations (Cap. 177 sub. leg. A);

replacement centre (換證中心), subject to section 7, means a smart identity card replacement centre specified in Part 1 of Schedule 1;

residential care home (護理院舍) means—

- (a) a residential care home in respect of which a licence, or a certificate of exemption, as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) issued or renewed under that Ordinance is in force;
- (b) a residential care home for persons with disabilities in respect of which a licence, or a certificate of exemption, as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) issued or renewed under that Ordinance is in force; or
- (c) an institution specified in Schedule 3;

specified period (指明限期) means a period specified in column 2 of Schedule 2; (*L.N. 63 of 2020*)

target identity card (待換身分證) means a valid identity card that is prepared under regulation 5(1)(a) of the Regulations and—

- (a) issued before 26 November 2018; or
- (b) issued on or after that date as a result of an application made before that date.

(*L.N. 163 of 2020*)

2. Interpretation

In this Ordinance, unless the context otherwise requires—

advertisement (廣告) means any announcement to the public made or to be made in any manner;

amusement game centre (遊戲機中心) means—

- (a) an amusement game centre within the meaning of section 2(1) of the Amusement Game Centres Ordinance (Cap. 435);
- (b) any place that is the subject of an order under section 3(1)(a) of that Ordinance; or
- (c) any area that is specified in an order under section 3(1)(b) of that Ordinance; (*Replaced 21 of 2006 s. 4*)

approved institution (核准院舍) means an approved institution within the meaning of section 2(1) of the Probation of Offenders Ordinance (Cap. 298); (*Added 21 of 2006 s. 4*)

bar (酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap. 109); (*Added 21 of 2006 s. 4*)

bathhouse (浴室) means a bathhouse—

- (a) that is within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I); and
- (b) in respect of which a licence granted under that Regulation is in force; (*Added 21 of 2006 s. 4*)

bathing beach (泳灘) means any bathing beach specified in the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

brand (牌子), except in section 14(3), includes a brand product, that is to say a variety of a brand marketed as having qualities differing from another variety of that brand;

child care centre (幼兒中心) means a child care centre within the meaning of section 2(1) of the Child Care Services Ordinance (Cap. 243); (*Added 21 of 2006 s. 4*)

cigar (雪茄) means tobacco rolled up in tobacco, in such form as to be capable of immediate use for smoking; (*Added 91 of 1994*)

s. 3)

cigarette (香煙) means tobacco rolled up in paper or in any other material except tobacco, in such form as to be capable of immediate use for smoking;

cigarette tobacco (香煙煙草) means tobacco packaged as being suitable for the making by the purchaser of cigarettes for his own use;

cinema (電影院), **theatre** (劇院) and **concert hall** (音樂廳) mean—

- (a) any building or part of a building used primarily as a cinema, theatre or concert hall, as the case may be, whether or not it is being so used at the material time, other than the premises of any club, association or other body in which films are exhibited, or plays or music performed for the benefit primarily of the members thereof and their guests;
- (b) any place of public entertainment licensed under the Places of Public Entertainment Ordinance (Cap. 172) while open to the public on account of any concert, stage play, stage performance or other musical, dramatic or theatrical entertainment or any cinematograph display;
(*Added 9 of 1992 s. 2*)

correctional facility (懲教機構) means—

- (a) any of the sites and buildings specified in the Schedule to the Prisons Order (Cap. 234 sub. leg. B);
- (b) any of the buildings specified in the Schedule to the Prisons (Hostel) Order (Cap. 234 sub. leg. C); or
- (c) an addiction treatment centre within the meaning of section 2 of the Drug Addiction Treatment Centres Ordinance (Cap. 244); (*Added 21 of 2006 s. 4*)

domestic premises (住宅) means any premises that have been constructed to be used, and are used, as a private dwelling;
(*Added 21 of 2006 s. 4*)

escalator (自動梯) means an escalator as defined by section 2(1) of the Lifts and Escalators Ordinance (Cap. 618); (*Replaced 8 of 2012 ss. 156 & 160*)

hospital (醫院) means any establishment for the care of the sick, injured or infirm or those who require medical treatment—
(*Amended 34 of 2018 s. 181*)

- (a) for which a licence for a hospital within the meaning of the Private Healthcare Facilities Ordinance (Cap. 633) under that Ordinance is in force; or (*Replaced 34 of 2018 s. 181 and E.R. 5 of 2018*)

- (b) whether or not it is a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113); (*Added 21 of 2006 s. 4*)

indoor (室內) means—

- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door; (*Added 21 of 2006 s. 4*)

inspector (督察) means an inspector appointed under section 15F; (*Added 21 of 2006 s. 4*)

karaoke establishment (卡拉OK場所) means—

- (a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance (Cap. 573); or
- (b) a karaoke establishment referred to in section 3(1) of that Ordinance; (*Added 21 of 2006 s. 4*)

mahjong-tin kau premises (麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap. 148) for—

- (a) the playing therein of games in which mahjong tiles are used; or
- (b) the playing therein of games in which tin kau tiles are used; (*Added 21 of 2006 s. 4*)

manager (管理人), in relation to a no smoking area or a public transport carrier, means—

- (a) any person who is responsible for the management or is in charge or control of the no smoking area or public transport carrier, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or
- (b) in the case where there is no such person in relation to any premises, the owner of the premises; (*Replaced 21 of 2006 s. 4*)

massage establishment (按摩院) means a massage establishment—

- (a) that is within the meaning of section 2 of the Massage Establishments Ordinance (Cap. 266); and
- (b) in respect of which a licence granted under that Ordinance is in force; (*Added 21 of 2006 s. 4*)

maternity home (留產院) means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth—

(a) *(Repealed 34 of 2018 s. 181)*

(b) whether or not it is a maternity home that is run as part of a public hospital within the meaning of section 2(1) of the Hospital Authority Ordinance (Cap. 113), or managed or controlled by the Hospital Authority established under that Ordinance; *(Added 21 of 2006 s. 4)*

newspaper (報刊), **local newspaper** (本地報刊) and **printed document** (印刷文件) have the same meaning as in the Registration of Local Newspapers Ordinance (Cap. 268); *(Amended 15 of 1987 s. 19)*

nicotine yield (尼古丁量) means the nicotine yield per cigarette rounded off to one decimal place and expressed in milligrams; *(Added 93 of 1997 s. 2)*

no smoking area (禁止吸煙區) means an area designated as a no smoking area under section 3; *(Replaced 9 of 1992 s. 2. Amended 93 of 1997 s. 2; 21 of 2006 s. 4)*

pipe (煙斗) means a receptacle or other device designed for use for smoking tobacco in a form other than as a cigarette or cigar; *(Added 91 of 1994 s. 3)*

pipe tobacco (煙斗煙草) means tobacco packaged as being suitable for smoking in a pipe; *(Added 91 of 1994 s. 3)*

place of detention (拘留地方) means—

(a) a place of detention specified in Schedule 2 to the Immigration (Places of Detention) Order (Cap. 115 sub. leg. B); or

(b) a place of detention within the meaning of section 2(1) of the Juvenile Offenders Ordinance (Cap. 226); *(Added 21 of 2006 s. 4)*

place of refuge (收容所) means a place of refuge within the meaning of section 2 of the Protection of Children and Juveniles Ordinance (Cap. 213); *(Added 21 of 2006 s. 4)*

proof of identity (身分證明文件) means proof of identity for the purposes of Part IVA of the Immigration Ordinance (Cap. 115);

public lift (公共升降機) means a lift to which the public have access and includes any lift giving access to separately occupied flats, offices or other units of accommodation and a hotel lift;

public place (公眾地方) means—
₆₅

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or
- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises; (*Added 21 of 2006 s. 4*)

public pleasure ground (公眾遊樂場地) means a public pleasure ground within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

public swimming pool (公眾泳池) means a public swimming pool within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

public transport carrier (公共交通工具) means any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1; (*Added 9 of 1992 s. 2. Amended 21 of 2006 s. 4*)

publish (刊登) in relation to an advertisement means making known an advertisement in any manner;

reformatory school (感化院) means a reformatory school within the meaning of section 2 of the Reformatory Schools Ordinance (Cap. 225); (*Added 21 of 2006 s. 4*)

regulations (規例) means regulations under section 18;

residential care home (院舍) means—

- (a) a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459); or
- (b) a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613); (*Replaced 12 of 2011 s. 29*)

restaurant premises (食肆處所) means any premises on or from which there is carried on—

- (a) a factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X); or

- (b) any other trade or business the purpose of which is for the sale or supply of meals or unbottled non-alcoholic drinks (including Chinese herb tea) for human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap. 132 sub. leg. AI)); (*Added 21 of 2006 s. 4*)

retail container (零售盛器)—

- (a) in relation to any cigarette, means a container suitable for the retail marketing of cigarette packets; or
- (b) in relation to any cigar, pipe tobacco or cigarette tobacco, means a container suitable for the retail marketing of cigar, pipe tobacco or cigarette tobacco; (*Replaced 21 of 2006 s. 4*)

sale, sell (出售、售賣、銷售、售) includes the disposal by barter or raffling but excludes the disposal of confiscated cigarettes without health warnings through auctions by the Government; (*Added 93 of 1997 s. 2*)

school (學校) means a school within the meaning of section 3 of the Education Ordinance (Cap. 279); (*Added 21 of 2006 s. 4*)

Secretary (局長) means the Secretary for Food and Health; (*Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007*)

smoke (吸煙、吸用) means inhaling and expelling the smoke of tobacco or other substance;

specified educational establishment (指明教育機構) means any establishment specified in section 2 of the Education Ordinance (Cap. 279); (*Added 21 of 2006 s. 4*)

stadium (體育場) means a stadium within the meaning of section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132); (*Added 21 of 2006 s. 4*)

tar yield (焦油量) means the tar yield per cigarette rounded off to the nearest milligram; (*Added 93 of 1997 s. 2*)

tobacco advertisement (煙草廣告) has the meaning assigned to it by section 14; (*Added 91 of 1994 s. 3*)

tobacco product (煙草產品) means any cigarette, cigarette tobacco, cigar or pipe tobacco; (*Added 93 of 1997 s. 2*)

trade mark (商標) has the same meaning as in section 3 of the Trade Marks Ordinance (Cap. 559); (*Added 93 of 1997 s. 2. Amended 35 of 2000 s. 98*)

treatment centre (治療中心) means a treatment centre within the meaning of section 2 of the Drug Dependent Persons

Treatment and Rehabilitation Centres (Licensing) Ordinance
(Cap. 566); (*Added 21 of 2006 s. 4*)

workplace (工作地方) means a place—

- (a) that is occupied for conducting a business or non-profit making undertaking; and
- (b) in which natural persons work in the course of any self-employment, employment or engagement (whether for income or not),

including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest. (*Added 21 of 2006 s. 4*)

(*Amended 9 of 1992 s. 2; 91 of 1994 s. 3; 21 of 2006 s. 4; E.R. 1 of 2013*)

Schedule

[ss. 3, 4 & 22]

Item	Ordinance	Decision
1.	Apprenticeship Ordinance (Cap. 47)	A decision of the Director of Apprenticeship or any public officer in the performance or exercise of any function, duty or power under the Ordinance.
2.	Boilers and Pressure Vessels Ordinance (Cap. 56)	<p>(a) The revocation or suspension of an appointment as a boiler inspector, air receiver inspector or pressurized fuel container inspector under section 5A. (<i>Amended 15 of 2002 s. 8</i>)</p> <p>(b) A decision of the Boilers and Pressure Vessels Authority on the issue or endorsement of a certificate of competency under section 6(1)(a) or (3A)(a). (<i>Added 15 of 2002 s. 8</i>)</p> <p>(c) A decision of the Boilers and Pressure Vessels Authority to revoke or amend a certificate of competency under section 6(4)(a) or (b), as the case may be. (<i>Added 15 of 2002 s. 8</i>)</p>
3.	Employment Ordinance (Cap. 57)	A decision of the Commissioner for Labour under section 53(1) to refuse to issue or renew or to revoke a licence to operate an employment agency.
4.	Factories and Industrial Undertakings Ordinance (Cap. 59)	<p>(a) An exemption by the Commissioner for Labour under section 7(4) of an industrial undertaking from any regulation.</p> <p>(b) An order by the Commissioner for Labour under section 7(4), for an industrial undertaking to adopt special precautions in addition to any precautions required by any regulation.</p> <p>(c) Under section 9A—</p> <p>(i) the issue by the Commissioner for Labour of a prohibition notice in respect of a notifiable workplace;</p> <p>(ii) a refusal by the Commissioner for Labour to cancel a prohibition notice;</p>

Item	Ordinance	Decision
		(iii) the giving by the Commissioner for Labour of any direction upon the cancellation of a prohibition notice.
		(d) <i>(Repealed 39 of 1997 s. 49)</i>
5.	Quarries (Safety) Regulations (Cap. 59 sub. leg. F)	<p>(a) A refusal by the Commissioner for Labour to approve any person as a supervisor or deputy supervisor under regulation 4(1) or 6(1).</p> <p>(b) A withdrawal by the Commissioner for Labour of his approval of a supervisor or deputy supervisor under regulation 10(1).</p>
6.	Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59 sub. leg. Z)	<p>(a) A refusal by the Commissioner for Labour to register a person as a safety officer under regulation 7.</p> <p>(b) The cancellation by the Commissioner for Labour of a person's registration as a safety officer under regulation 9.</p> <p>(c) The suspension by the Commissioner for Labour of a person's registration as a safety officer under regulation 10.</p> <p>(d) A refusal by the Commissioner for Labour to renew or revalidate a person's registration as a safety officer under regulation 7B. <i>(Added L.N. 100 of 2002)</i></p>
7.	Weights and Measures Ordinance (Cap. 68)	A decision of the Commissioner, as defined in section 2, or of an authorized officer which is taken in the exercise or performance of any function under the Ordinance.
8.	Miscellaneous Licences Ordinance (Cap. 114)	The decision under section 5 of any officer authorized to issue a licence under the Ordinance as to the grant of a licence, the renewal of a licence or the revocation of a licence.
9.	Control of Chemicals Ordinance (Cap. 145) <i>(Amended 23 of 2002 s. 14)</i>	<p>A decision of the Commissioner, as defined in section 2(1), under the Ordinance, relating to—</p> <p>(a) the issue of a licence or permit;</p> <p>(b) the refusal to issue a licence or permit;</p> <p>(c) the cancellation or suspension of a licence or permit;</p> <p>(d) the cancellation or variation of any condition or the specification of a new condition in a licence or permit.</p>

Item	Ordinance	Decision
10.	Gambling Ordinance (Cap. 148)	The decision under section 22 of the public officer appointed by the Secretary for Home Affairs as to the grant of a licence, the renewal of a licence, the imposition of conditions of a licence or the cancellation of a licence. (<i>Amended 17 of 2011 s. 28</i>)
11.	Chinese Temples Ordinance (Cap. 153)	(a) The refusal by the Chinese Temples Committee under section 4 to grant an exemption from section 4(1). (b) The withdrawal by the Chinese Temples Committee under section 4 of an exemption granted under section 4(1).
12.	Weapons Ordinance (Cap. 217)	A decision of the Commissioner of Police under section 9(1) to order the delivery up to him or seizure of any martial arts weapon.
13.	Travel Agents Ordinance (Cap. 218)	A decision of the Registrar of Travel Agents — (a) to refuse to grant a licence under section 12(1); (b) to impose conditions on a licence under section 11(1) or 18; (c) to refuse consent to a change of ownership or control under section 18(c); (d) to suspend or revoke a licence under section 19.
14.	Firearms and Ammunition Ordinance (Cap. 238)	(a) A decision of the Commissioner of Police refusing to grant a licence under section 30 or to renew a licence under section 32. (b) A decision of the Commissioner of Police, under section 33, cancelling a licence or varying or revoking any condition attached thereto or adding any further condition or deleting any premises from a dealer's licence at which business may be carried on. (c) The imposition of a condition of licence which is considered to be unreasonable. (d) A decision of the Commissioner referred to in section 34(1AA). (<i>Added 14 of 2000 s. 33</i>) (e) The imposition of a term or condition under section 4(3), 12(4), 12A(3), 27A(1), 29 or 46C(3), which is considered to be unreasonable. (<i>Added 14 of 2000 s. 33</i>)

Item	Ordinance	Decision
15.	Massage Establishments Ordinance (Cap. 266)	A decision of the licensing authority under section 6, 7, 8 or 9.
16.	Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C)	A question of interpretation or application of the Rules.
17.	Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D)	A decision of the Board under the Rules.
18.	Mining Ordinance (Cap. 285)	The cancellation of an Authorized Buyer's Licence under section 41.
19.	Mining (General) Regulations (Cap. 285 sub. leg. A)	A decision of the Commissioner of Mines under regulation 30(4A)(a) specifying the rate per tonne at which royalty shall be payable in respect of minerals and the period for which it shall be payable.
20.	Dangerous Goods Ordinance (Cap. 295)	A decision under section 9 of an officer authorized under the Ordinance to issue a licence— <ul style="list-style-type: none"> (a) to refuse to grant a licence; (b) to refuse to renew a licence; or (c) to revoke a licence.
21.	Dangerous Goods (Control) Regulation (Cap. 295 sub. leg. G)	<ul style="list-style-type: none"> (a) Prohibiting or imposing conditions on, under section 103(1), the use of a licensed tank for the storage of certain dangerous goods. (b) Prohibiting or imposing conditions on, under section 125(1), the use of a tank on a licensed tank vehicle for containing certain dangerous goods. <i>(Replaced 29 of 2021 s. 44)</i>
22.	Business Registration Ordinance (Cap. 310)	<ul style="list-style-type: none"> (a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business. (b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business. (c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to notify a change to a different name. <i>(Replaced 13 of 2010 s. 28)</i>

Item	Ordinance	Decision
		(d) The service of a notice under section 9(5) by the Commissioner of Inland Revenue that an exemption is not granted. <i>(Added 23 of 2002 s. 14)</i>
23.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)	A decision of the Commissioner for Transport under the Ordinance.
24.	Animals (Control of Experiments) Ordinance (Cap. 340)	A refusal to issue a licence, endorsement or permit under section 7, 8, 9, 10 or 14.
25.	Chinese Permanent Cemeteries Rules (Cap. 1112 sub. leg. A)	A decision of the Board of Management of the Chinese Permanent Cemeteries not to withdraw a notice in rule 12(2) regarding reversion of a subscriber lot to the Board. Note: The Board of Management of the Chinese Permanent Cemeteries is specified for the purposes of section 22(5) of this Ordinance.
26.	Sewage Services Ordinance (Cap. 463)	A decision of the Drainage Authority under the Ordinance. <i>(Added 105 of 1994 s. 15)</i>
27.	Timber Stores Ordinance (Cap. 464)	A decision of the Director relating to— (a) an application for a licence under section 4; (b) an application for transfer of a licence under section 5; (c) the revocation, suspension, refusal to renew or transfer; amendment or variation of conditions of a licence under section 8. <i>(Added 11 of 1995 s. 23)</i>
28.	Marine Parks Ordinance (Cap. 476)	A decision of the Country and Marine Parks Authority under section 11 or 22 of the Ordinance. <i>(Added 37 of 1995 s. 36)</i>
29.	Personal Data (Privacy) Ordinance (Cap. 486)	A decision of the Privacy Commissioner for Personal Data— (a) to impose conditions on his consent to the carrying out of a matching procedure under section 32(1)(b)(i); (b) to refuse to consent to the carrying out of a matching procedure under section 32(1)(b)(ii); (c) to refuse under section 39(3) to carry out an investigation initiated by a complaint; <i>(Amended 18 of 2012 s. 44)</i>

Item	Ordinance	Decision
		<ul style="list-style-type: none"> (ca) to terminate under section 39(3A) an investigation initiated by a complaint; <i>(Added 18 of 2012 s. 44)</i> (d) not to delete under section 46(5) a matter from a report under the Ordinance; (e) not to serve an enforcement notice under section 47; (f) to serve an enforcement notice under section 50; <i>(Added 81 of 1995 s. 73. Amended 32 of 2021 s. 14)</i> (g) to serve a cessation notice under section 66M. <i>(Added 32 of 2021 s. 14)</i>
30.	Dutiable Commodities Ordinance (Cap. 109)	A decision of the Commissioner of Customs and Excise under section 7, 26, 26A or 29. <i>(Added 46 of 1996 s. 43)</i>
31.	Dogs and Cats Ordinance (Cap. 167)	<ul style="list-style-type: none"> (a) A decision by a police officer or an authorized officer under section 6(1)(c) (i) or (ii) to destroy a dog. (b) A decision by an authorized officer under section 9 in specifying the place or period of detention of a dog or cat or any other thing under this Ordinance. (c) A decision by an authorized officer under section 10 to vary the period of detention of a dog or cat or any other thing under this Ordinance. (d) A decision by an authorized officer under section 11(1) to refuse an application for the removal from detention under this Ordinance of a dog or cat or any other thing. (e) A decision by the Director under section 11(2) to order the forfeiture of a dog or cat or any other thing. (f) A decision by the Director under section 17(2) to impose any condition in granting an exemption under section 17. <i>(Added 97 of 1997 s. 11)</i>
32.	Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E)	A decision of the Commissioner for Transport under regulation 12L(1). <i>(Added 25 of 2005 s. 40)</i>
33.	Child Care Services Ordinance (Cap. 243)	A decision of the Director of Social Welfare —

Item	Ordinance	Decision
		<ul style="list-style-type: none"> (a) under section 7(2), refusing an application for registration; (b) under section 9, cancelling a registration; (c) under section 11B(3), refusing an application for exemption from registration; (d) under section 11D, revoking an exemption from registration; (e) under section 15B(2), determining a person to be unsuited to act as a childminder; (f) under section 15C(4), refusing a request for the issue of a certificate; (g) under section 15D(4), refusing to make a declaration that a person should no longer be deemed unsuited to act as a childminder. <i>(Added 38 of 1997 s. 19)</i>
34.	Wild Animals Protection Ordinance (Cap. 170)	<p>A decision of the Director in relation to—</p> <ul style="list-style-type: none"> (a) the granting of or the refusal to grant a permit or a special permit pursuant to section 13 or 15; or (b) the cancellation of a permit or a special permit under section 15A. <i>(Added 77 of 1996 s. 22)</i>
35.	Occupational Safety and Health Ordinance (Cap. 509)	A decision of the Commissioner for Labour under Part III. <i>(Added 39 of 1997 s. 49)</i>
36.	Ozone Layer Protection Ordinance (Cap. 403)	A decision of the Director of Environmental Protection under section 5, 6 or 7 or under provisions of the regulations that may be specified to be subject to an appeal under section 8. <i>(Added 6 of 1997 s. 10)</i>
37.	Human Reproductive Technology Ordinance (Cap. 561)	<ul style="list-style-type: none"> (a) A determination of the Council on Human Reproductive Technology referred to in section 28(5) to which section 28(6) applies. (b) The suspension of a licence under section 29. <i>(Added 47 of 2000 s. 48)</i>
38.	Freight Containers (Safety) Ordinance (Cap. 506)	<p>A decision of the Director—</p> <ul style="list-style-type: none"> (a) <i>(Repealed 14 of 2006 s. 20)</i> (b) under section 9, that an approval shall no longer be valid; (c) under section 12 or 13, in an application for approval of an examination procedure; (d) under sections 14 to 16, in relation to control of the use of a container;

Item	Ordinance	Decision
		<ul style="list-style-type: none"> (e) under section 23, in relation to an application for the review of a decision of an authorized person; (f) under section 25, in relation to any request for exemption under that section. <i>(Added 32 of 1997 s. 29)</i>
39.	Volunteer and Naval Volunteer Pensions Ordinance (Cap. 202)	A decision in a review under section 22. <i>(Added 56 of 1997 s. 7)</i>
40.	Child Care Services Regulations (Cap. 243 sub. leg. A)	A decision of the Director of Social Welfare under regulation 4 refusing an application for inclusion in a register or removing the name of a person from a register. <i>(Added L.N. 272 of 1997. Amended 32 of 2000 s. 37)</i>
41.	Prevention of Copyright Piracy Ordinance (Cap. 544)	A decision of the Commissioner of Customs and Excise under section 11 or 12 of the Ordinance. <i>(Added 22 of 1998 s. 43)</i>
42.	Education Ordinance (Cap. 279)	<ul style="list-style-type: none"> (a) An attendance order made under section 74(1). (b) A variation of an attendance order made under section 74(2). <i>(Added 8 of 2001 s. 31)</i>
43.	Merchant Shipping (Local Vessels) Ordinance (Cap. 548)	<p>A decision of the Director of Marine—</p> <ul style="list-style-type: none"> (a) to refuse to authorize under section 7 a person as a surveyor; (b) to attach conditions to an authorization under section 7; (c) to revoke an authorization under section 7; (d) to serve a detention order; (e) to give a direction under section 53(1)(a); (f) to refuse to comply with a request under section 54(2); (g) to refuse to grant permission under section 66; (h) to attach conditions to a permission under section 66; (i) to revoke a permission under section 66; (j) to give a direction specified in an improvement notice under section 73(1). <i>(Added 43 of 1999 s. 91)</i>
44.	Dangerous Dogs Regulation (Cap. 167 sub. leg. D)	A direction by an authorized officer under section 14 of the Regulation. <i>(Added L.N. 185 of 2000)</i>

Item	Ordinance	Decision
45.	Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59 sub. leg. AF)	(a) A decision of the Commissioner for Labour to refuse to register a person under section 6 or to register a person under that section subject to conditions. (b) A decision of the Commissioner for Labour under section 24(1) to require the appointment of a new safety review officer. (c) A decision of the disciplinary board under section 29(2) to reprimand a registered person, cancel the registration of a registered person or suspend the registration of a registered person. <i>(Added L.N. 298 of 1999)</i>
46.	Port Control (Cargo Working Areas) Regulations (Cap. 81 sub. leg. A)	A decision of the Director or the supervisor under regulation 4A(4), 5B, 6AA, 7, 7A, 7B, 7C, 7D, 7E, 13 or 21. <i>(Added L.N. 280 of 1999)</i>
47.	Karaoke Establishments Ordinance (Cap. 573)	A decision of the Secretary for Home Affairs or the Director of Food and Environmental Hygiene (as the case may be) under section 5, 6, 8, 9 or 10. <i>(Added 22 of 2002 s. 22)</i>
48.	Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566)	A determination or decision of the Director of Social Welfare under section 6(2)(b), 8(3)(b), 9(3)(b) or 14. <i>(Added 10 of 2001 s. 33)</i>
49.	Road Traffic Ordinance (Cap. 374)	A decision of the Commissioner of Police under section 55(3). <i>(Added 3 of 2002 s. 17)</i>
50.	Dutiable Commodities Regulations (Cap. 109 sub. leg A)	A forfeiture of security under regulation 27(2). <i>(Added 23 of 2002 s. 14)</i>
51.	Security and Guarding Services Ordinance (Cap. 460)	A decision under section 14(5), 15(3), 16(4), 18(4), 21(2), 23(4), 24(4), 24A(13) or 25(4). <i>(Added 23 of 2002 s. 14)</i>
52.	Merchant Shipping (Seafarers) Ordinance (Cap. 478)	A decision of the Superintendent of the Mercantile Marine Office— (a) to refuse to grant a permit; (b) to impose any condition under section 52(3); or <i>(Amended 16 of 2013 s. 84)</i> (c) <i>(Repealed 16 of 2013 s. 84)</i>

Item	Ordinance	Decision
		(d) to cancel a permit under section 56(1). <i>(Added 23 of 2002 s. 14. Amended 16 of 2013 s. 84)</i>
53.	Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J)	A decision of the Seafarers' Authority— <i>(Amended L.N. 143 of 2016)</i> (a) to refuse to issue or renew a certificate of competency under section 7B; or (b) to refuse to issue a licence under section 10(2). <i>(Added 23 of 2002 s. 14. Amended L.N. 143 of 2016)</i>
54.	<i>(Repealed L.N. 143 of 2016)</i>	
55.	Merchant Shipping (Seafarers) (Engine Room Watch Ratings and Electro-technical Ratings) Regulation (Cap. 478 sub. leg. V)	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 4A. <i>(Added 23 of 2002 s. 14. Amended L.N. 143 of 2016)</i>
56.-58.	<i>(Repealed L.N. 143 of 2016)</i>	
58A.	Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority— (a) to require a deficiency to be rectified under section 100(2); or (b) to direct that a ship must not proceed to sea under section 100(3). <i>(Added L.N. 143 of 2016)</i>
58B.	Merchant Shipping (Seafarers) (Safety, Security and Designated Duties Training) Regulation (Cap. 478 sub. leg. AJ) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority to refuse to issue or renew a certificate of proficiency under section 9. <i>(Added L.N. 143 of 2016)</i>
58C.	Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation (Cap. 478 sub. leg. AI) <i>(Amended E.R. 4 of 2017)</i>	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 8. <i>(Added L.N. 143 of 2016)</i>

Item	Ordinance	Decision
58D.	Merchant Shipping (Seafarers) (Navigational Watch) Regulation (Cap. 478 sub. leg. AH) (<i>Amended E.R. 4 of 2017</i>)	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency under section 6. (<i>Added L.N. 143 of 2016</i>)
58E.	Merchant Shipping (Seafarers) (Tankers) Regulation (Cap. 478 sub. leg. AG) (<i>Amended E.R. 4 of 2017</i>)	A decision of the Seafarers' Authority to refuse to issue a certificate of proficiency or an endorsement, or to refuse to renew an endorsement, under section 6. (<i>Added L.N. 143 of 2016</i>)
58F.	Merchant Shipping (Seafarers) (Ships Using Low-flashpoint Fuels) Regulation (Cap. 478 sub. leg. AK) (<i>Amended E.R. 2 of 2019</i>)	A decision of the Seafarers' Authority to refuse to issue or renew a certificate of proficiency under section 6. (<i>Added L.N. 18 of 2019</i>)
58G.	Merchant Shipping (Seafarers) (Ships Operating in Polar Waters) Regulation (Cap. 478 sub. leg. AL) (<i>Amended E.R. 2 of 2019</i>)	A decision of the Seafarers' Authority to refuse to issue or renew a certificate of proficiency under section 6. (<i>Added L.N. 18 of 2019</i>)
59.	Marine Fish Culture Ordinance (Cap. 353)	A decision of the Director of Agriculture, Fisheries and Conservation— <ul style="list-style-type: none"> (a) to refuse to grant or renew a licence under section 8(6); (b) to refuse to approve the transfer of a licence under section 8A(3)(b); (c) to cancel a licence under section 9(1); (d) to refuse to grant a permit under section 14(1); (e) to cancel or refuse to renew a permit under section 14(2). (<i>Added 10 of 2005 s. 230</i>)
60.	Land (Miscellaneous Provisions) Ordinance (Cap. 28)	A decision of the Director of Highways under section 10M(13) relating to an assessment made under section 10M(1)(d), (g), (h) or (i). (<i>Added 17 of 2003 s. 15</i>)
61.	Adoption Ordinance (Cap. 290)	A decision of the Director of Social Welfare —

Item	Ordinance	Decision
		<ul style="list-style-type: none"> (a) on the assessment of a person's suitability to be an adoptive parent; (b) to terminate a placement; (c) on a person's application to become or continue to be an accredited body; or (d) to suspend or revoke a person's status as an accredited body, <p>as referred to in section 30. (<i>Added 28 of 2004 s. 35</i>)</p>
62.	Medical Clinics Ordinance (Cap. 343)	<ul style="list-style-type: none"> (a) A refusal by the Registrar of Clinics under section 8 to grant or renew an exemption in respect of a clinic. (b) A cancellation by the Registrar of Clinics under section 8 of an exemption granted in respect of a clinic. (c) An order by the Registrar of Clinics under section 11 to refuse an application for the registration of a clinic or to cancel the registration of a clinic. (<i>Added 10 of 2005 s. 7</i>)
63.	Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)	<p>A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation relating to—</p> <ul style="list-style-type: none"> (a) the refusal to issue a licence under section 23; (b) an application to extend or renew a licence under section 24; (c) an application to vary a licence under section 24; (d) any condition specified in a licence issued under section 23 or extended, renewed or varied under section 24; or (e) the cancellation of a licence under section 26. (<i>Added 3 of 2006 s. 58</i>)
64.	Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582)	A decision of the Director of Marine under section 7(1)(a) or (c) or 8(2). (<i>Added 13 of 2004 s. 18</i>)
65.	Merchant Shipping (Security of Ships and Port Facilities) Rules (Cap. 582 sub. leg. A)	A decision of the Director of Marine under rule 27(1). (<i>Added L.N. 130 of 2004</i>)

Item	Ordinance	Decision
66.	Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 592)	<p>A decision of the Secretary for Education — (<i>Amended L.N. 130 of 2007</i>)</p> <ul style="list-style-type: none"> (a) not to re-appoint an assessment agency under section 8(1); (b) on the length of a term of re-appointment specified under section 8(1)(b); (c) to impose any conditions or restrictions under section 8(1)(c) in re-appointing an assessment agency; and (d) to cancel an appointment or re-appointment under section 8(5). (<i>Added 6 of 2007 s. 51</i>)
67.	Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607)	<ul style="list-style-type: none"> (a) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation— <ul style="list-style-type: none"> (i) under section 10(1)(a) on an application for approval of a genetically modified organism; (ii) under section 11(5)(a) on a request to vary a prior decision on an application for approval of a genetically modified organism; (iii) under section 12(1) to vary a prior decision on an application for approval of a genetically modified organism or on a request to vary such a prior decision. (b) A direction of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation— <ul style="list-style-type: none"> (i) under section 12(7) on the safekeeping or disposal of a genetically modified organism or a container containing the organism; (ii) under section 41(2) to dispose of a forfeited thing through repatriation or destruction.

Item	Ordinance	Decision
68.	Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605)	<p>(c) A decision of the Director of Agriculture, Fisheries and Conservation, the Deputy Director of Agriculture, Fisheries and Conservation or an Assistant Director of Agriculture, Fisheries and Conservation under section 16(3)(a) to enter certain information submitted for the approval of a genetically modified organism in the register. <i>(Added 7 of 2010 s. 55)</i></p> <p>(a) A decision of the Director of Marine or a person authorized under section 25(1) to refuse to issue an insurance certificate under section 16.</p> <p>(b) A decision of the Director of Marine or a person authorized under section 25(1) to impose any condition under section 16.</p> <p>(c) A decision of the Director of Marine or a person authorized under section 25(1) to cancel an insurance certificate under section 17.</p> <p>(d) A decision of the Director of Marine to refuse to grant an exemption under section 23.</p> <p>(e) A decision of the Director of Marine to impose any condition under section 23. <i>(Added 14 of 2009 s. 40)</i></p>
69.	Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)	A decision of the Director of Social Welfare under section 7, 8, 9 or 10(1). <i>(Added 12 of 2011 s. 31)</i>
70.	Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613)	A decision of the Director of Social Welfare under section 7, 8, 9(1), 11 or 12. <i>(Added 12 of 2011 s. 31)</i>
71.	Companies Ordinance (Cap. 622)	<p>(a) A direction of the Registrar of Companies under section 109(1) to change a company name.</p> <p>(b) A decision of the Registrar of Companies to serve a notice under section 780(1)(b). <i>(Added 28 of 2012 ss. 912 & 920)</i></p>
72.	Fisheries Protection Ordinance (Cap. 171)	<p>A decision of the Director of Agriculture, Fisheries and Conservation—</p> <p>(a) to refuse to register a vessel on application made under section 14(1), 14A(2), 14B(8), 19(1), 21(1) or 21A(8); <i>(Amended 22 of 2020 s.</i></p>

Item	Ordinance	Decision
73.	Pesticides Ordinance (Cap. 133)	<p data-bbox="743 125 1305 1010"> (ab) to refuse to issue a provisional approval under section 14B(2); <i>(Added 22 of 2020 s. 14)</i> (b) to impose conditions under section 16; (c) to add, remove or amend any conditions or refuse to do so under section 17; (ca) to refuse to issue a certificate of eligibility under section 21A(2); <i>(Added 22 of 2020 s. 14)</i> (d) to cancel a registration under section 24; (e) to refuse to issue or renew a research fishing permit under section 25; (f) to impose conditions in respect of a research fishing permit under section 25(3); and (g) to cancel a research fishing permit under section 29. <i>(Added 13 of 2012 s. 20)</i> </p> <p data-bbox="683 1021 1305 1093">A decision of the Director of Agriculture, Fisheries and Conservation—</p> <p data-bbox="743 1104 1305 2110"> (a) to refuse to register a pesticide under section 5(3)(b); (b) to register a pesticide subject to conditions under section 5(5); (c) to cancel or suspend the registration of a pesticide, or to modify, add to or cancel any condition, under section 6; (d) to refuse to issue a licence or permit under section 9(2)(b); (e) to issue a licence subject to conditions under section 9(5); (f) to issue a permit subject to conditions under section 9(7); (g) to vary the particulars of a licence or permit, or to modify, add to or cancel the conditions of a licence or permit, under section 9(8); (h) to cancel or suspend a licence under section 10; (i) to cancel a permit under section 11; (j) to confirm or vary under section 13(3)(b) the directions given under section 13(1). <i>(Added 14 of 2013 s. 28)</i> </p>

Item	Ordinance	Decision
74.	Electronic Health Record Sharing System Ordinance (Cap. 625)	<p>A decision of the Commissioner for the Electronic Health Record—</p> <ul style="list-style-type: none"> (a) to refuse to register a healthcare recipient under section 8(1); (b) to suspend the registration of a healthcare recipient under section 10(1); (c) to cancel the registration of a healthcare recipient under section 11(1); (d) to refuse to register a healthcare provider as a healthcare provider for the Electronic Health Record Sharing System under section 20(1); (e) to suspend a registration of a registered healthcare provider under section 24(1); (f) to cancel a registration of a registered healthcare provider under section 25(1). (<i>Added 15 of 2015 s. 63 and E.R. 3 of 2015</i>)
75.	Private Healthcare Facilities Ordinance (Cap. 633)	<p>A decision of the Director of Health—</p> <ul style="list-style-type: none"> (a) to refuse to issue a licence under section 17(1)(b); (b) to issue a licence subject to particular conditions under section 17(3); (c) to refuse to renew a licence under section 21(2); (d) to impose particular conditions on renewing a licence under section 21(3); (e) to approve an application for variation of the scale or scope of services subject to particular conditions under section 23(3); (f) to refuse an application for variation of the scale or scope of services under section 23(4) or (5); (g) to approve an application for variation of the class of specialized service subject to particular conditions under section 24(3); (h) to refuse an application for variation of the class of specialized service under section 24(4) or (5); (i) to suspend or cancel a licence under section 28(1); (j) to suspend a facility service under section 29(1); or

Item	Ordinance	Decision
		(k) to amend the conditions of a licence under section 37(1). (<i>Added 34 of 2018 s. 141 and E.R. 5 of 2018</i>)
76.	Conservation of Antarctic Marine Living Resources (Toothfish Catch Documentation Scheme) Regulation (Cap. 635 sub. leg. A) (<i>Amended E.R. 5 of 2020</i>)	A decision of the Director of Agriculture, Fisheries and Conservation— (a) to attach a condition to a licence under section 14(1); (b) to refuse an application for a licence under section 15(1); or (c) to cancel a licence under section 16(1)(b), (c), (d) or (e). (<i>Added L.N. 152 of 2019</i>)
77.	Limited Partnership Fund Ordinance (Cap. 637) (<i>Amended E.R. 5 of 2020</i>)	A direction of the Registrar of Companies to change the name of a limited partnership fund under section 42 or 43. (<i>Added 14 of 2020 s. 121</i>)
78.	Mercury Control Ordinance (Cap. 640) (<i>Amended E.R. 5 of 2021</i>)	A decision of the Director of Environmental Protection— (a) to refuse to issue a permit under section 18, 20 or 22; (b) to impose conditions under section 18, 20, 22 or 27; (c) to refuse to renew a permit under section 27; (d) to refuse to issue a duplicate of a permit under section 28; (e) under section 30 to vary a condition imposed under Part 3 in respect of a permit; (f) under section 31 to refuse to vary a condition imposed under Part 3 in respect of a permit; (g) to suspend a permit under section 34; (h) to cancel a permit under section 35; (i) to give a disposal direction under section 39; or (j) to refuse to vary a disposal direction under section 40. (<i>Added 19 of 2021 s. 88</i>) (<i>Amended E.R. 1 of 2012; E.R. 1 of 2015</i>)

Note:

The following enactments also give a right of appeal to the Administrative Appeals Board—
s. 19 of the Merchant Shipping (Local Vessels)(Dwelling Vessels) Regulation (Cap. 548 sub. leg. A);
s. 53 of the Merchant Shipping (Local Vessels)(Certification and Licensing) Regulation (Cap. 548 sub. leg. D);

- s. 11 of the Merchant Shipping (Local Vessels)(Typhoon Shelters) Regulation (Cap. 548 sub. leg. E);
- s. 47 of the Merchant Shipping (Local Vessels)(General) Regulation (Cap. 548 sub. leg. F);
- s. 86 of the Merchant Shipping (Local Vessels)(Safety and Survey) Regulation (Cap. 548 sub. leg. G);
- s. 10 of the Merchant Shipping (Local Vessels)(Compulsory Third Party Risks Insurance) Regulation (Cap. 548 sub. leg. H);
- s. 72 of the Merchant Shipping (Local Vessels)(Works) Regulation (Cap. 548 sub. leg. I);
- s. 42 of the Hazardous Chemicals Control Ordinance (Cap. 595).

3. Application

- (1) This Ordinance shall not apply to—
- (a) any premises to which the provisions of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) apply;
 - (b) any premises to which the provisions of the Child Care Services Ordinance (Cap. 243) apply; (*Amended 32 of 2000 s. 38*)
 - (c) any dormitory, hostel or similar accommodation which is managed by a school registered under the Education Ordinance (Cap. 279), or which is maintained by any university or any institution that provides post secondary education within the meaning of section 3 of the Education Ordinance (Cap. 279);
 - (d) any premises used for the provision of sleeping accommodation by any employer to his employees and their families, whether or not any monetary consideration is received by the employer therefor; or
 - (e) any hospital or nursing home, or any home for convalescents or for elderly persons or for persons with disabilities, or any other premises used for the provision of sleeping accommodation to any class of persons under authority given by or with the recognition of the Secretary for Labour and Welfare. (*Amended L.N. 106 of 2002; L.N. 130 of 2007; 12 of 2011 s. 32*)
- (2) The Authority may—
- (a) for reasons connected with the means of ingress or egress, design, construction, structure or size of, or the equipment, installations or facilities in, any bedspace apartment or the location of any bedspace apartment in the building in which it is situated; or
 - (b) for reasons connected with the type or description of any premises,
- by order exclude any such bedspace apartment or any such type or description of premises from the application of this Ordinance.
- (3) Any order made under subsection (2)—
- (a) shall be published in the Gazette;

- (b) may be made subject to such conditions or take effect for such period of time as the Authority considers fit; and
- (c) shall specify the conditions (if any) and the period (if any) mentioned in paragraph (b).

(4) In this section—

home for elderly persons (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459);

home for persons with disabilities (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613). (*Added 12 of 2011 s. 32*)

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

authorized officer (獲授權人員) means a public officer authorized under section 14 or a person taken to be an authorized officer because of that section;

commercial building (商業建築物) means the whole of a non-domestic building—

- (a) which contains any number of units therein comprising one or more levels including basements or underground parking areas, and which was constructed to be used or is being used for the purposes of an office, business, trade or any entertainment, and does not include the whole of a non-domestic building which was constructed to be used or is being used exclusively for the purposes of a—
 - (i) hotel, serviced apartment, guest-house or similar establishment;
 - (ii) kindergarten, school, college, university or similar educational establishment;
 - (iii) hospital, clinic, medical centre, rehabilitation centre or similar establishment;
 - (iv) carpark;
 - (v) home for elderly persons, home for persons with disabilities, child care centre, nursery or social services centre; (*Amended 12 of 2011 s. 46*)
 - (vi) factory or industrial undertaking;
 - (vii) godown, warehouse or place of bulk storage;
 - (viii) utilities building or power station or sub-station; or
 - (ix) cinema or theatre; and
- (b) being a building—
 - (i) the plans of the building works of which were first submitted to the Building Authority for his approval under regulation 29 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) on or before 1 March 1987; or

- (ii) which was constructed on or before 1 March 1987 where no plans of the building works of the building were submitted to the Building Authority for his approval under regulation 29 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) on or before that date,

and excludes a building which was partly constructed to be used or is being partly used for domestic or industrial purposes; (*Added 15 of 1998 s. 4*)

domestic (住用), for the purposes of the definition of **commercial building** and in relation to a part or the whole of a building, means the use of such part or the whole of the building for human habitation or family dwelling, but excludes the use of such part or the whole of the building for hotel, serviced apartment, guest-house, dormitory, home for elderly persons, home for persons with disabilities, child care centre, nursery or similar establishment; (*Added 15 of 1998 s. 4. Amended 12 of 2011 s. 46*)

enforcement authority (執行當局)—

- (a) in relation to the planning, design and construction of prescribed commercial premises or a specified commercial building, means the Director of Buildings; and (*Amended 15 of 1998 s. 4*)
- (b) in relation to any fire service installation or equipment, means the Director of Fire Services;

fire safety compliance order (符合消防安全令) means a fire safety compliance order made under section 6;

fire safety direction (消防安全指示) means a fire safety direction given under section 5;

fire safety improvement compliance order (改善消防安全令) means a fire safety improvement compliance order made under section 6; (*Added 15 of 1998 s. 4*)

fire safety improvement direction (改善消防安全指示) means a fire safety improvement direction given under section 5; (*Added 15 of 1998 s. 4*)

fire service installation or equipment (消防裝置或設備) means any installation or equipment manufactured, used or designed to be used for the purpose of—

- (a) extinguishing, attacking, preventing or limiting a fire; or
- (b) giving warning of a fire; or

- (c) providing access to any premises or place for the purpose of extinguishing, attacking, preventing or limiting a fire; or (*Amended 7 of 2003 s. 23*)
- (d) facilitating the evacuation from any premises or place in case of fire; or (*Added 7 of 2003 s. 23*)
- (e) providing a stand-by power supply to an installation or equipment the purposes of which are mentioned in paragraphs (a) to (d) in the event of the loss of normal power supply; (*Added 7 of 2003 s. 23*)

function (職能) includes a power and a duty;

home for elderly persons (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459); (*Added 12 of 2011 s. 46*)

home for persons with disabilities (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613); (*Added 12 of 2011 s. 46*)

mechanical ventilating system (機械通風系統) includes an air conditioning system;

occupier (佔用人)—

- (a) in relation to prescribed commercial premises, means the person who is occupying the premises (whether as owner or under any form of lease or licence), and in particular means—
 - (i) any person who is carrying on or managing a prescribed commercial activity on the premises; and
 - (ii) any person who is controlling and managing the premises as the agent of the person so occupying the premises; or
- (b) in relation to a specified commercial building, means—
 - (i) the person who is occupying the building (whether as owner or under any form of lease or licence); or
 - (ii) (if no person is occupying the specified commercial building) the owner of the building; (*Replaced 15 of 1998 s. 4*)

owner (擁有人), in relation to prescribed commercial premises or a specified commercial building, has the same meaning as in the Buildings Ordinance (Cap. 123); (*Replaced 15 of 1998 s. 4*)

prescribed commercial activity (訂明商業活動) means an activity of a kind specified in Schedule 1;

prescribed commercial premises (訂明商業處所) means a building, or a part of a building, of a kind specified in subsection (2);

prohibition order (禁止令) means an order made under section 7A;
(Added 15 of 1998 s. 4)

shopping arcade (商場) includes the passageway between the shops that form the arcade and any ceiling above the passageway;

specified commercial building (指明商業建築物) means any commercial building specified in Schedule 4 and includes a unit or part thereof; (Added 15 of 1998 s. 4)

use restriction order (限制使用令) means an order made under section 7.

(2) A building or part of a building is prescribed commercial premises for the purposes of this Part if—

(a) the building or part is used, or is proposed to be used, for carrying on a commercial activity specified in Schedule 1; and

(b) the total floor area of the building or part exceeds 230 square metres.

(3) For the purposes of subsection (2), in the case of a building, or a part of a building, that is used or designed to be used as a shopping arcade, the building or part is taken to be prescribed commercial premises for the purposes of this Part if the total floor areas of all the shops and any passageway between the shops exceed 230 square metres.

(4) For the purpose of subsection (2)(b), the total floor area of a building or part of a building is to be calculated by reference to—

(a) the area contained within the external walls of the building or part measured at each floor level (including any floor below ground level); and

(b) the area of any balcony of the building or part; and

(c) the area of the thickness of the external walls of the building or part and any such balcony.

(5) For the purposes of subsection (2), in calculating the total floor area of a building or part of a building, a part of the floor area is to be disregarded if it is— (Amended 15 of 1998 s. 4)

(a) used or is to be used only for parking motor vehicles or for loading or unloading them; or

- (b) occupied only by machinery or equipment comprising or forming part of a lift or escalator, or an air conditioning, heating or cooling system or any other system that serves the building or part.
- (6) A part of a building is not to be regarded as prescribed commercial premises for the purposes of this Ordinance if—
- (a) members of the public have access to that part only by express invitation; and
 - (b) that part—
 - (i) is physically separated by a fire resistant wall, floor or ceiling from the parts to which members of the public generally have access; and
 - (ii) has a means of egress that is separated from the means of egress provided for those parts; and
 - (c) the separate means of egress does not pass through those parts.

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

authorized officer (獲授權人員) means a public officer authorized under section 15 or a person taken to be an authorized officer because of that section;

composite building (綜合用途建築物) means a building that is constructed, or intended to be used, partly for domestic purposes and partly for non-domestic purposes—

- (a) the plans of the building works of which were first submitted to the Building Authority for his approval under regulation 29 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) on or before 1 March 1987; or
- (b) which was constructed on or before 1 March 1987 where no plans of the building works of the building were submitted to the Building Authority for his approval under regulation 29 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) on or before that date,

but excludes a building where the part intended for non-domestic purposes consists wholly of a factory or industrial undertaking, godown, warehouse or place of bulk storage;

domestic building (住用建築物) means a building that is constructed, or intended to be used, for domestic purposes, with more than 3 storeys used principally for such purposes—

- (a) the plans of the building works of which were first submitted to the Building Authority for his approval under regulation 29 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) on or before 1 March 1987; or
- (b) which was constructed on or before 1 March 1987 where no plans of the building works of the building were submitted to the Building Authority for his approval under regulation 29 of the Building (Administration) Regulations (Cap. 123 sub. leg. A) on or before that date,

and includes ancillary club house, carpark and recreation facilities that are provided for the exclusive use of residents of the building and persons invited to use them by such residents;

domestic purposes (住用用途), in respect of a composite building or domestic building, means use for human habitation, but does not include a building or part of a building that is used for a hotel, guesthouse, home for elderly persons, home for persons with disabilities, child care centre or nursery;
(Amended 12 of 2011 s. 47)

enforcement authority (執行當局)—

- (a) in relation to the planning, design and construction of a composite building or domestic building, means the Director of Buildings; and
- (b) in relation to any fire service installation or equipment, means the Director of Fire Services;

fire safety compliance order (符合消防安全令) means a fire safety compliance order made under section 6;

fire safety direction (消防安全指示) means a fire safety direction given under section 5;

fire service installation or equipment (消防裝置或設備) means any installation or equipment manufactured, used or designed to be used for the purpose of—

- (a) extinguishing, attacking, preventing or limiting a fire;
- (b) giving warning of a fire; (Amended 7 of 2003 s. 24)
- (c) providing access to any premises or place for the purpose of extinguishing, attacking, preventing or limiting a fire;
- (d) facilitating the evacuation from any premises or place in case of fire; or (Added 7 of 2003 s. 24)
- (e) providing a stand-by power supply to an installation or equipment the purposes of which are mentioned in paragraphs (a) to (d) in the event of the loss of normal power supply; (Added 7 of 2003 s. 24)

function (職能) includes a power and a duty;

home for elderly persons (安老院) means a residential care home as defined by section 2 of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459); (Added 12 of 2011 s. 47)

home for persons with disabilities (殘疾人士院舍) means a residential care home for PWDs as defined by section 2 of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613); (Added 12 of 2011 s. 47)

mechanical ventilating system (機械通風系統) includes an air conditioning system;

non-domestic purposes (非住用用途), in respect of a composite building, means use for a purpose other than domestic

purposes;

occupier (佔用人) means the person who is occupying a building or part of a building (whether as owner or under any form of lease or licence);

owner (擁有人) has the same meaning as in the Buildings Ordinance (Cap. 123);

prohibition order (禁止令) means an order made under section 7.

- (2) For the purposes of this Ordinance, where a building or part of a building is unoccupied, the owner shall be deemed to be the occupier and the enforcement authority may exercise any of his powers in relation to an occupier by exercising them with respect to the owner, and the owner shall continue to be liable in respect of any exercise of such powers under this subsection notwithstanding that the building or part of a building in respect of which the powers were exercised are subsequently occupied.
- (3) For the avoidance of doubt, **non-domestic purposes** (非住用用途) includes use as a hotel, guesthouse, home for elderly persons, home for persons with disabilities, child care centre or nursery. (*Amended 12 of 2011 s. 47*)

19. Application by healthcare providers for registration

- (1) A healthcare provider that provides healthcare at one service location in Hong Kong may apply to the Commissioner to be registered as a healthcare provider for the System for that location.
- (2) A healthcare provider that provides healthcare at more than one service location in Hong Kong may apply to the Commissioner to be registered as a healthcare provider for the System for those locations as provided in subsection (3).
- (3) For the purposes of subsection (2), a healthcare provider may apply for—
 - (a) a single registration for all of the locations; or
 - (b) a separate registration for each location that the healthcare provider chooses to register.
- (4) An application—
 - (a) must be made in the form and manner specified by the Commissioner; and
 - (b) must be accompanied by the information specified by the Commissioner.
- (5) For the purposes of this section, a healthcare provider provides healthcare at one service location if the healthcare provider—
 - (a) is licensed under the Private Healthcare Facilities Ordinance (Cap. 633) in respect of one private healthcare facility; (*Replaced 34 of 2018 s. 196 and E.R. 5 of 2018*)
 - (b) is registered under section 5(2) of the Medical Clinics Ordinance (Cap. 343) in respect of one clinic;
 - (c) carries on the business of dentistry under section 12 of the Dentists Registration Ordinance (Cap. 156) at one premises;
 - (d) holds a certificate of exemption issued under section 7(2), or a licence issued under section 8(2)(a), of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) in respect of one residential care home, and engages a healthcare professional to perform healthcare at that home;

- (e) holds a licence issued under section 7(2)(a), or a certificate of exemption issued under section 11(2)(a), of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) in respect of one residential care home for persons with disabilities, and engages a healthcare professional to perform healthcare at that home; or
- (f) is a specified entity that engages a healthcare professional to perform healthcare at one premises.

(6) In subsection (5)—

specified entity (指明實體) means—

- (a) an individual;
- (b) a company;
- (c) a partnership;
- (d) a statutory body;
- (e) a body corporate other than a company; or
- (f) a society, or a branch of a society, registered under section 5A(1), or exempted from registration under section 5A(2), of the Societies Ordinance (Cap. 151).

Schedule 2

[ss. 4, 12 & 123]

Premises Excluded from Definition of *Hospital*

1. A residential care home within the meaning of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) for which a licence or a certificate of exemption under that Ordinance is in force.
2. A treatment centre within the meaning of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566) for which a licence or a certificate of exemption under that Ordinance is in force.
3. A residential care home for PWDs within the meaning of the Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613) for which a licence or a certificate of exemption under that Ordinance is in force.
4. A boarding school within the meaning of the Education Regulations (Cap. 279 sub. leg. A).

**ECONOMIC, FINANCIAL AND CIVIL SERVICE,
SUSTAINABILITY, FAMILY, AND GENDER IMPLICATIONS****Economic Implications**

The proposals will enhance the regulatory regime, help raise the standards of staff and improve the quality of residential care services for elderly persons and persons with disabilities. In the longer term, the proposals would have a positive impact on promoting market development of quality residential care services and supporting carers of frail elders and persons with disabilities.

2. The Social Welfare Department (“SWD”) estimated that around 460 existing residential care homes (“RCHs”) (or about two-fifths of all RCHs in Hong Kong) do not meet the new area of floor space requirement, and they would need to reduce around 6 300 places (or about 7% of the total current places). The transitional period would provide time for the affected RCHs to cope with the new requirements. Operating costs per resident place will increase for those RCHs which need to scale down their operation after absorbing their vacant places. RCHs that cannot raise the price or absorb the cost increase may need to close down, adversely affecting the overall supply of RCH places to a certain extent. As SWD roughly estimated that there are around 14 600 vacant RCH places currently in the market, more than the aforementioned number of places of reduction to achieve compliance, the Labour and Welfare Bureau/SWD consider that the residents of RCHs that cease operation will be taken up by RCHs which still have vacant places.

3. On enhanced minimum staffing requirements, as mentioned in paragraph 9 of the paper, SWD estimated that the RCH sector as a whole would need to hire an additional around 690 care workers and 480 nurses. Apart from increases in staffing costs arising from additional hires of nurses and care workers, the resulting increase in demand for these RCH staff might impose upward pressures on their wages. The per-resident operating costs are thus expected to increase. Nevertheless, the proposed phased approach, coupled with existing initiatives to attract more labour force to join the RCH sector, should allow operators a smoother transition to meet the new staffing requirements.

4. As majority of the affected RCHs are run by private operators, some affected operators may transfer the higher operating costs to residents by raising the price of RCH places. Nevertheless, other concurrent initiatives to increase the supply of RCH places should provide some offset.

Financial and Civil Service Implications

5. At the moment, the Government supports around 620 RCHs to provide a total of around 44 000 subsidised places. Amongst them, around 70 RCHs providing 2 800 subsidised places do not meet the new statutory requirements in full. Out of these 2 800 places, around 2 200 are EA2 places “bought” from private residential care homes for the elderly by the Government through the Enhanced Bought Place Scheme and around 100 are BH2 places “bought” from private residential care homes for persons with disabilities by the Government through the Bought Place Scheme for Private Residential Care Homes for Persons with Disabilities¹. SWD has secured around \$80 million per annum additional resources to upgrade all existing EA2/BH2 places to EA1/BH1 places (the standard of which is on par with the new requirement on area of floor space per resident, and over and above the new requirements on staffing). The remaining subsidised places that do not meet the new requirements in full are provided by non-governmental organisations subvented through the Lump Sum Grant Subvention System. We do not expect any recurrent financial implication to the Government for bringing them into compliance with the new requirements.

6. With the introduction of a new registration system and renewal mechanism for home managers and a renewal mechanism in the existing registration system for health workers, fees for registration and renewal of

¹ The contractual area of floor space per resident requirement on an EA2/ BH2 home (which is a high care level RCH) is 8m², falling short of the new minimum requirement of 9.5m². On minimum staffing requirements, while the number of care workers already employed by EA2 / BH2 homes would meet the new statutory requirement in respect of care workers, these homes are not required to hire nurses in their service agreements with SWD and therefore would need to do so to meet the new statutory requirement in respect of nurses.

registration will be collected from home managers and health workers on a full-cost recovery basis, which will be credited to the General Revenue Account in accordance with the established practice. The estimated revenue generated from the registration of home managers and health workers will be about \$400,000 and \$1.6 million respectively in 2023-24².

7. SWD will, in due course, need to incur resources to give advice to and monitor the measures to be taken by the concerned RCHs in complying with the new requirements. Any additional resources for SWD in preparing for and taking forward the enhanced regulatory regime, such as stepping up inspections and law enforcement actions, setting up a new registration system of home manager, and a new checking mechanism on the fit and proper requirements of licence applicants and responsible persons of RCHs, if required, will be sought with justifications in accordance with the established resources allocation mechanism.

Sustainability Implications

8. The proposals will improve the overall quality of the RCH sector by enhancing the service quality and professionalism of operators and staff. The proposals will contribute to the sustainable and healthy development of the RCH sector.

Family Implications

9. The proposals will improve the quality of RCHs, and bring about better service options for those with family members who are elderly persons and/or persons with disabilities in need of out-of-home care. This would help relieve families which opt for quality RCH services from the commitment and heavy stress of taking care of their concerned family members, and improve family relationships.

Gender Implications

10. The proposals will service elderly persons and persons with disabilities of both genders, whose carers are usually women. The

² The revenue in subsequent years will depend on the actual number of applications.

proposals should therefore be conducive to relieving the burden of carers and facilitating their participation in the work force.

**MAIN VIEWS OF LEGISLATIVE COUNCIL MEMBERS,
ADVISORY COMMITTEES' MEMBERS, AND STAKEHOLDERS
ON THE WORKING GROUP'S RECOMMENDATIONS
AND THE GOVERNMENT'S LEGISLATIVE PROPOSALS**

(1) Enhancing the minimum staffing requirements

- (a) The statutory staffing requirements should be further enhanced (for example, residential care homes (“RCHs”) must have nurse(s) on duty 24 hours daily) to provide appropriate services;
- (b) Statutory staffing requirements for rehabilitation professionals, social workers, dispensers/pharmacists, etc. should be stipulated;
- (c) In view of manpower shortage in the sector, the ratio of care workers that RCHs may import should be increased, and other approaches to increasing manpower should be explored;
- (d) RCHs (especially small RCHs) will face difficulties in recruiting nurses; and
- (e) RCHs should be encouraged to make good use of technology to deliver service.

(2) Increasing the minimum area of floor space per resident

- (a) The statutory minimum area of floor space per resident should be further increased. For example, the statutory requirement for high care level RCHs should be increased from the existing 6.5 m² to 16 m²;
- (b) Consideration should be given to increasing the statutory requirement for medium care level RCHs to 9.5 m² in the long run; and
- (c) The transitional arrangements are agreeable, and the grace period for the arrangements should be flexibly extended when necessary.

(3) Strengthening the accountability of RCH operators

- (a) Concerned about the detailed requirements for the responsible person of the RCH (“RP”), including whether a same person can be responsible for multiple RCHs;
- (b) It is suggested that the RP must be one of the directors of the organisation/company operating the RCH;
- (c) It is suggested that the RP must be a professional if the licence applicant is a body corporate or a partnership;
- (d) Concerned whether both the RP and the RCH operator would be held responsible for the non-compliant acts of the RCH; and

- (e) Since some staff members of non-governmental organisations will take part in RCH management on a voluntary basis, it may discourage them to take up such work if they have to bear the responsibility as RPs.

(4) Introducing a registration system for home managers

- (a) Concerned about the details of the registration system, including the arrangement of continuous learning; and
- (b) Concerned about the arrangements for existing home managers to transition to the new system.

(5) Improving the registration system for health workers

- (a) Concerned about the arrangement of continuous learning for health workers.

(6) Enhancing the regulation of medicine management, use of restraints and protection of residents' dignity and privacy

- (a) Concerned about the penalties for violating the requirements; and
- (b) Clear guidelines on medicine distribution should be drawn up.

(7) Raising penalties

Nil

(8) Others

- (a) Regulation on private RCHs should be strengthened;
- (b) Consideration should be given to imposing profit control on private RCHs;
- (c) Appropriate support should be given to RCHs for a smooth transition to the new regulatory regime;
- (d) Training and continuous learning courses should be provided for RCH staff;
- (e) Planning of subsidised residential care services should be expedited to increase the supply of subsidised places;
- (f) The new statutory requirements may increase the operating cost of RCHs and hence the fees for residents, which will increase the burden on the elderly and their families; and
- (g) Relaxation of the existing height restriction on RCHs should be examined for better utilisation of taller buildings with more

functions as RCH premises.