

## **LEGISLATIVE COUNCIL BRIEF**

Hotel Proprietors Ordinance (Chapter 158)

Hotel Accommodation Tax Ordinance (Chapter 348)

Hotel and Guesthouse Accommodation Ordinance (Chapter 349)

### **HOTEL ACCOMMODATION (MISCELLANEOUS PROVISIONS) BILL 1998**

#### **INTRODUCTION**

At the meeting of the Executive Council on 1 September 1998, the Council ADVISED and the Chief Executive ORDERED that the Hotel Accommodation (Miscellaneous Provisions) Bill 1998 (the Bill), at Annex A, should be re-introduced into the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

2. There are deficiencies in the Hotel Proprietors Ordinance, the Hotel Accommodation Tax Ordinance and the Hotel and Guesthouse Accommodation Ordinance. To rectify the deficiencies, the Bill was introduced into the former Legislative Council on 29 May 1996. However, the resumption of Second Reading debate did not take place due to other legislative priorities. It is necessary to re-introduce the Bill into the Legislative Council to address the deficiencies in the three Ordinances related to the control of hotels and guesthouses.

#### **Hotel and Guesthouse Accommodation Ordinance**

3. The Ordinance was enacted in May 1991 to provide for the regulation, control and safety of hotel and guesthouse accommodation. It empowers the Secretary for Home Affairs to establish a licensing scheme for such

accommodation to ensure that the establishments comply with requirements on fire and building safety, health and hygiene.

4. The licensing scheme is implemented by the Licensing Authority of the Home Affairs Department. Several deficiencies in the Ordinance have been identified -

- B
- (a) The definition of "hotel" and "guesthouse" (at Annex B) has allowed establishments which offer accommodation to limited categories of persons (e.g. persons of a particular nationality or clients of one tourist agency) to operate outside the ambit of the Ordinance because these premises are not offering accommodation to 'any person'. These establishments are in substance hotels and guesthouses and should be licensed so that their safety is under control.
- C
- (b) In the judgement on the case of **The Queen V Triview Limited** (at Annex C) delivered by Judge J M Duffy in the High Court on 1 March 1996, the interpretation of the term "any person presenting himself" in the definition of "hotel" and "guesthouse" restricts the scope of application of the Ordinance. Judge Duffy ruled that hotels which accepted guests with prior reservations were not within the purview of the Ordinance. From an enforcement angle, this judgement has created a loophole whereby establishments offering accommodation could claim that they let rooms in response to prior reservations (e.g. telephone booking) and should not be subject to licensing. This loophole should be plugged.
  - (c) Most hotels have been issued with annual licences with schedules containing major safety works and timetables for completion. The Licensing Authority is prepared to consider, on a case by case basis, issuing to hotels which have completed the scheduled works licences valid for up to three years in order to obviate the need for annual licence renewal. In principle, such approval will be granted only for establishments which have good records of compliance with the fire and building safety standards and would not abuse the licensing control. Guesthouses may also be considered for the issue of three-year licences provided that the above conditions are fulfilled. However, three-year licences cannot be issued without amending the Ordinance as it only provides for the issue and renewal of licences for validity of not more than 12 months.
  - (d) Presently, notices may be served to the responsible person of a hotel or

guesthouse personally or by registered post to direct remedial works under section 19 and to notify the Administration's intention to apply from the District Court for closure order under section 20. Serving of these notices is difficult in cases where the whereabouts or identity of the responsible persons are not known. It would facilitate enforcement of the Ordinance if these notices could be served by posting them in a conspicuous part of the premises without the need to state the name of the addressee.

- (e) Section 20 which provides for closure order and cessation of use of the premises as a hotel or guesthouse is flawed in that the premises, once closed by order, may not be re-entered even for the purpose of carrying out remedial works. Without these works, the premises cannot be made safe and cannot be reopened as a hotel or guesthouse.

D

- (f) Under section 26 of the Magistrates Ordinance (at Annex D), the Licensing Authority is time-barred from prosecution if an offence (e.g. breach of licence conditions) has been committed more than six months before the Authority issues the summons. This is unsatisfactory because an offence may occur immediately after an inspection of the premises by the Licensing Authority at the time of renewal of the licence and in these circumstances the offence will not be discovered promptly. As a result, many offences may be time-barred from prosecution.

5. We propose that the Ordinance should be amended to address the problems, as follows -

- (a) the definition of "hotel" and "guesthouse" be amended so that its scope covers establishments which offer accommodation only to limited categories of persons; and that a person can present himself in person or through an agent or a representative, with or without prior booking;
- (b) licences of up to three years' validity may be issued under section 8 or renewed under section 9;
- (c) notices under sections 19 and 20 can be served by posting them in a conspicuous part of the premises without stating the name of the addressee;
- (d) under section 20, any person authorized in writing by the Secretary for Home Affairs may enter into a hotel or guesthouse to carry out remedial

works while a closure order is in force; and

- (e) a new section be included in the Ordinance to specify that the time bar for prosecution of offences shall be either six months from the commission of the offence or six months from the offence being discovered by or being brought to the notice of the Licensing Authority, whichever is the later.

### **Hotel Accommodation Tax Ordinance**

6. As "hotel" is similarly defined in the Hotel Accommodation Tax Ordinance, the loopholes described in paragraphs 4(a) and 4(b) have also presented problems on the charging of Hotel Accommodation Tax on such establishments which are in substance hotels. There are currently three such establishments and they are not subject to Hotel Accommodation Tax. There would be serious revenue implications if other hotels follow their mode of operation and accept only guests of certain categories or guests with prior booking. We propose to make similar amendments to the Hotel Accommodation Tax Ordinance to include establishments as described in paragraph 5(a) and plug the loophole. The three establishments in question will then be covered by the Hotel Accommodation Tax Ordinance after the amendment.

### **Hotel Proprietors Ordinance**

7. The definition of "hotel" also appears in the Hotel Proprietors Ordinance. In order to ensure consistency in the definition of "hotel" in various ordinances and to plug the same loopholes mentioned in paragraphs 4(a) and 4(b), we propose to amend the definition of "hotel" in the Hotel Proprietors Ordinance.

## **THE BILL**

8. The Bill has the following principal clauses -

### **Hotel Proprietors Ordinance**

- (a) **clause 2** amends the definition of "hotel" in section 2 of the Ordinance to achieve the results specified in paragraph 5(a);

## Hotel Accommodation Tax Ordinance

- (b) **clause 4** amends the definition of "hotel" in section 2 of the Ordinance to achieve similar results;

## Hotel and Guesthouse Accommodation Ordinance

- (c) **clause 5** amends the definition of "hotel" and "guesthouse" in section 2 of the Ordinance to achieve similar results. It further amends the definition by deleting the exclusion of premises which are subject to the Bedspace Apartments Ordinance. Exclusion from the Ordinance of such premises and some other types of premises will instead be more tidily effected by an exclusion order by the Secretary for Home Affairs under section 3 of the Ordinance (paragraph 9);
- (d) **clauses 6 and 7** extend the period of licences issued under section 8 and renewed under section 9 of the Ordinance to a maximum period of 36 months (paragraph 5(b));
- (e) **clauses 8 and 9** allow notices under sections 19 and 20 of the Ordinance to be served by posting them in a conspicuous part of the premises (paragraph 5(c));
- (f) **clause 9** allows any person authorised by the Secretary for Home Affairs in writing to enter into a hotel or guesthouse to execute remedial works while a closure order is in force (paragraph 5(d)); and **clause 10** provides that it shall not be an offence for a person who is so authorised to enter into such premises; and
- (g) **clause 11** extends the time limit for prosecution of offences under the Ordinance (paragraph 5(e)).

B

The affected sections of the three Ordinances are copied at Annex B.

## Exclusion Order

9. We intend to exclude the following types of premises from the application of the Hotel and Guesthouse Accommodation Ordinance by an exclusion order by the Secretary for Home Affairs -

- (a) premises which are subject to the Child Care Services Ordinance;

- (b) premises which are subject to the Clubs (Safety of Premises) Ordinance;
- (c) premises which are subject to the Bedspace Apartments Ordinance;
- (d) premises which are subject to the Residential Care Homes (Elderly Persons) Ordinance; and
- (e) premises in which all accommodation is exclusively provided for continuous periods of 28 days or more.

E

A draft order is at Annex E.

## **LEGISLATIVE TIMETABLE**

10. The legislative timetable will be -

Publication in the Gazette	4 September 1998
First Reading and commencement of Second Reading debate	16 September 1998
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **HUMAN RIGHTS IMPLICATIONS**

11. The Department of Justice advises that the Bill has no human rights implications.

## **BINDING EFFECT OF THE LEGISLATION**

12. There is no express provision to bind the State in the Hotel and Guesthouse Accommodation Ordinance, but the Secretary for Home Affairs is the Hotel and Guesthouse Accommodation Authority responsible for the enforcement of the Ordinance. There is also no express provision to bind the State in the Hotel Proprietors Ordinance, the Hotel Accommodation Tax Ordinance and the Order to be made pursuant to section 3 of the Hotel and Guesthouse Accommodation Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

13. We estimate that the charging of Hotel Accommodation Tax on hotels which are not being taxed at present because of the loopholes will result in additional revenue of \$20 million a year. The Bill has no other financial or staffing implications.

## **ECONOMIC IMPLICATIONS**

14. The Bill helps to ensure that those establishments offering accommodation which are in substance hotels and guesthouses comply with requirements on fire and building safety, health and hygiene. This will be conducive to the development of Hong Kong's tourism industry. Closing the loopholes in the Hotel Accommodation Tax Ordinance will enable a fairer competition among the hotels. The rights and liabilities of innkeepers under the Hotel Proprietors Ordinance will also become applicable to those types of establishments as specified in the Bill.

## **PUBLIC CONSULTATION**

15. The Federation of Hong Kong Hotel Owners Limited (the Hotel Federation) and the Tourist Guest Houses Federation of Hong Kong Limited (the Guesthouse Federation) were consulted. The Hotel Federation asked for licences of up to five years' validity be issued. It otherwise did not object to the clauses of the Bill per se. It raised a few issues outside the context of the Bill, such as the safety standards used in licensing hotels; distinguishing purpose-built hotels and guesthouses; and making the Advisory Group on the Implementation of the Ordinance into a statutory body. The Guesthouse Federation did not raise any objection to the clauses of the Bill per se, but expressed concern about illegal guesthouses. We will continue to liaise with the two Federations to address the issues of mutual concern.

16. We briefed the Legislative Council Panel on Home Affairs on the Bill at its meetings on 26 April 1996 and 27 July 1998.

## **PUBLICITY**

17. A press release will be issued to tie in with the gazetting of the Bill on 4 September. A spokesman will be available to handle media and public enquiries.

## **ENQUIRY**

18. For enquiry on this brief, please contact Mr Ben W H Chong, Assistant Secretary for Home Affairs, on telephone number 2835 1485.

Home Affairs Bureau  
2 September 1998

Cref: .../paper/brief/LegCo-Hotel.doc/cl

**HOTEL ACCOMMODATION  
(MISCELLANEOUS PROVISIONS) BILL 1998: ANNEXES**

- |         |   |
|---------|---|
| Annex A | - Hotel Accommodation (Miscellaneous Provisions) Bill 1998  |
| Annex B | - Extracted copies of Hotel Proprietors Ordinance, Hotel Accommodation Tax Ordinance and Hotel and Guesthouse Accommodation Ordinance |
| Annex C | - Judge J M Duffy's Judgement in the case of The Queen V Triview Ltd.   |
| Annex D | - Section 26 of the Magistrates Ordinance (Cap. 227)  |
| Annex E | - Draft Hotel and Guesthouse Accommodation (Exclusion) Order  |

**HOTEL ACCOMMODATION (MISCELLANEOUS PROVISIONS) BILL 1998****CONTENTS**

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A BILL

To

Amend the Hotel Proprietors Ordinance, the Hotel Accommodation Tax Ordinance and the Hotel and Guesthouse Accommodation Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Hotel Accommodation (Miscellaneous Provisions) Ordinance 1998.
- (2) Sections 6 and 7 shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

**Hotel Proprietors Ordinance**

**2. Interpretation**

Section 2 of the Hotel Proprietors Ordinance (Cap. 158) is amended -

- (a) by renumbering it as section 2(1);  
(b) in subsection (1), by repealing the definition of "hotel" and substituting

-

" "hotel" (酒店) means an establishment held out by the proprietor as offering sleeping accommodation to any person presenting himself who appears able and willing to pay a reasonable sum for the services and

facilities provided and who is in a fit state to be received.”;

(c) by adding -

“(2) For the purposes of “any person presenting himself” in the definition of “hotel” in subsection (1) and only for those purposes -

(a) “any person” includes any person of any particular category, class, group or description;

(b) “presenting himself” includes -

(i) any person presenting himself in person;  
(ii) any person presenting himself through an agent or a representative;

(iii) any person presenting himself, whether in person or through an agent or a representative, by facsimile, letter, telegram, telephone or any other means;

(iv) any person presenting himself,

whether in person or

through an agent or a

representative, with prior

booking or notice;

(v) any person presenting

himself, whether in person

or through an agent or a

representative, without

prior booking or notice.”.

**3. Modifications of liabilities and rights of innkeepers as such**

Section 4(1) is amended by repealing “traveller” wherever it appears and substituting “person”.

**Hotel Accommodation Tax Ordinance**

**4. Interpretation**

Section 2 of the Hotel Accommodation Tax Ordinance (Cap. 348) is amended -

- (a) by renumbering it as section 2(1);
- (b) in subsection (1), in the definition of “hotel” by repealing “, without special contract,”;
- (c) by adding -
  - “(2) For the purposes of “any person presenting himself” in the definition of

“hotel” in subsection (1) and only for those purposes -

- (a) “any person” includes any person of any particular category, class, group or description;
- (b) “presenting himself” includes -
  - (i) any person presenting himself in person;
  - (ii) any person presenting himself through an agent or a representative;
  - (iii) any person presenting himself, whether in person or through an agent or a representative, by facsimile, letter, telegram, telephone or any other means;
  - (iv) any person presenting himself, whether in person or through an agent or a representative, with prior booking or notice;

(v) any person presenting himself, whether in person or through an agent or a representative, without prior booking or notice.”.

## **Hotel and Guesthouse Accommodation Ordinance**

### **5. Interpretation**

Section 2 of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) is amended -

- (a) by renumbering it as section 2(1);
- (b) in subsection (1), in the definition of “hotel” and “guesthouse” -
  - (i) by repealing “, but exclude any premises to which the provisions of the Bedspace Apartments Ordinance (Cap. 447) apply”;
  - (ii) in the Chinese text, by repealing everything after “他會” and substituting “向到臨該處所的任何人提供住宿的地方，而該人看似是有能力並願意為所提供的服務及設施繳付合理款項，並且是在宜於予以接待的狀況的;” ;
- (c) by adding -
  - “(2) For the purposes of “any person presenting himself” in the definition of “hotel” and “guesthouse” in subsection (1) and only for those purposes -

- (a) "any person" includes any person of any particular category, class, group or description;
- (b) "presenting himself" includes -
  - (i) any person presenting himself in person;
  - (ii) any person presenting himself through an agent or a representative;
  - (iii) any person presenting himself, whether in person or through an agent or a representative, by facsimile, letter, telegram, telephone or any other means;
  - (iv) any person presenting himself, whether in person or through an agent or a representative, with prior booking or notice;
  - (v) any person presenting himself,

whether in person or  
through an agent or a  
representative, without  
prior booking or notice.”.

## **6. Application for and issue of licence**

Section 8(5)(d) is amended by repealing “12” and substituting “36”.

## **7. Renewal of licence**

Section 9(1) and (6) is amended by repealing “12” and substituting “36”.

## **8. Secretary may direct remedial measures**

Section 19 is amended -

- (a) in subsection (2)(a), by adding “or served by posting the same in a conspicuous part of the hotel or the guesthouse” after “guesthouse”;
- (b) by adding -
  - “(3) If a notice under subsection (1) is served by posting it in a conspicuous part of the hotel or the guesthouse, such notice shall be in both the English and the Chinese languages and the addressee may be referred to by reference to his capacity in relation to the hotel or the guesthouse without the need to state the name of such a person.”.

**9. Order for closure and cessation of use  
of premises as a hotel or a guesthouse**

Section 20 is amended -

- (a) in subsection (1)(a), by adding “or by posting in a conspicuous part of the hotel or the guesthouse” after “registered post”;
- (b) by adding -
  - “(1A) If a notice under subsection (1)(a) is served by posting it in a conspicuous part of the hotel or the guesthouse, such notice shall be in both the English and the Chinese languages and the addressee may be referred to by reference to his capacity in relation to the hotel or the guesthouse without the need to state the name of such a person.”;
- (c) in subsection (2)(b), by adding “, or to remove the danger or risk of danger mentioned in subsection (1)(b)(i) or, as the case may be, to give effect to the direction mentioned in subsection (1)(b)(ii), and for such purposes may authorize in writing any person to carry out such work” after “order”;
- (d) by repealing subsection (3)(b) and substituting -
  - “(b) any person and any public officer authorized by the Secretary under subsection (2),”;
- (e) in subsection (4), by repealing everything after “that the” and substituting “order shall cease to be in force from such day as shall be specified in the notice.”.

**10. Offences in relation to certificates of exemption and licences**

Section 21(6)(e) is amended -

- (a) by adding “person or a” before “public officer”;
- (b) by repealing “section 20(2)(a)” and substituting “section 20(2)”.

**11. Section added**

The following is added -

**“21A. Time limit for prosecution of offences**

Any prosecution under the provisions of this Ordinance shall be commenced -

- (a) within 6 months of the commission of the offence; or
- (b) within 6 months of the offence being discovered by or coming to the notice of the Authority,

whichever is the later.”.

**12. “處所” substituted for “房產”**

Sections 2, 8, 18, 20 and 21 are amended by repealing “房產” wherever it appears and substituting “處所”.

**Explanatory Memorandum**

The main purpose of this Bill is to amend the Hotel Proprietors Ordinance (Cap. 158), the Hotel Accommodation Tax Ordinance (Cap. 348) and the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) to specify the scope of the definitions of “hotel” and “hotel” and “guesthouse” in the three Ordinances. Amendments are also made to the Hotel and Guesthouse Accommodation

Ordinance (Cap. 349) to streamline the operation of the licensing scheme under that Ordinance.

2. Clauses 2 and 3 of the Bill amend the Hotel Proprietors Ordinance (Cap. 158) -

- (a) clause 2 amends the definition of “hotel” in section 2 such that the scope of the definition includes such establishment whose proprietor holds out as offering sleeping accommodation to any person or any person of any particular category, class, group or description; and such person can be a person presenting himself in person or through an agent or a representative; or a person, whether presenting himself in person or through an agent or a representative, with or without prior booking;
- (b) clause 3 amends “traveller” to “person”.

3. Clause 4 of the Bill amends the definition of “hotel” in section 2 of the Hotel Accommodation Tax Ordinance (Cap. 348) so as to achieve the same result in clause 2.

4. Clauses 5 to 12 of the Bill amend the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) -

- (a) clause 5 amends the definition of “hotel” and “guesthouse” in section 2 so as to achieve the same result in clause 2;
- (b) clauses 6 and 7 extend the period of licences to a maximum period of 36 months;
- (c) clauses 8 and 9 allow notices to be served by posting them in a conspicuous part of a hotel or a guesthouse and clause 9 also allows any person authorized by the Secretary for Home Affairs in

writing to enter into a hotel or a guesthouse to execute any remedial

work while a closure order is in force;

- (d) clause 10 provides that it shall not be an offence for a person who is authorized by the Secretary for Home Affairs to execute remedial work to enter into any premises while a closure order is in force;
- (e) clause 11 extends the time limit for prosecution of offences under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349);
- (f) clause 12 amends “房產” to “處所”.

Extracted copies of

部份內容

Hotel Proprietors Ordinance, Cap. 158

《酒店東主條例》(第 158 章)

Hotel Accommodation Tax Ordinance, Cap. 348

《酒店房租稅條例》(第 348 章)

Hotel and Guesthouse Accommodation Ordinance, Cap. 349

《旅館業條例》(第 349 章)

A

B

**IN THE SUPREME COURT OF HONG KONG**

C

**(Appellate Jurisdiction)**

D

**MAGISTRACY APPEAL NO. 1176 OF 1995**

E

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F

BETWEEN

G

THE QUEEN

Respondent

I

and

J

TRIVIEW LIMITED

Appellant

K

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L

Coram : Hon Duffy J in Court

M

Date of hearing : 14th February 1996

N

Date of delivery of judgment : 1st March 1996

O

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JUDGMENT

P

Q

This was an appeal against a conviction for operating or managing a hotel without there being in force a Certificate of Exemption issued under Section 6 or a licence issued under s.8 of the *Hotel and Guesthouse Accommodation Ordinance*. Cap.349.

S

T

On 1st September 1990, the *Hotel and Guesthouse Accommodation Ordinance* was enacted and required all existing hotels to apply for a Certificate of Exemption. The Appellants, Triview Limited, owner of Hong Kong Parkview Club & Suite, applied for a Certificate of Exemption on 16th August 1991. A Certificate of Exemption was issued and that expired on

U

V

A 31st August 1992. The exemption was renewed for a period of one year until 31st  
B August 1993. Thereafter, the Appellants were required to apply for a licence under  
s.8 of the *Ordinance*. This, they refused to do.

C

D It is important to note that the two exemptions had been applied for by the  
E Appellants without prejudice to the Appellants' right to contend that they were not  
F running a hotel. There was some correspondence between the Appellant and the  
G Licensing Authority, and in November 1994, following advice from the Attorney  
H General's Chambers, Mr Stephenson, an Assistant Director with the Home Affairs  
I Department, at the behest of the Licensing Authority, conducted an undercover  
J operation which involved him booking and occupying a room at Parkview for two  
K days. He telephoned on the morning of 25th November and took occupancy of the  
room that same evening. He was allocated Room No.819. When he checked in he  
was advised by Parkview that they had no single suites available so they gave him a  
double-suite at no extra cost. He was also asked to sign a check-in form which  
included this statement :-

L

“Tenancy of Hong Kong Parkview Suites is subject to the Terms and Conditions as  
set out in the Tenancy Agreement/Rental Offer and this Registration Form.

M

N Signing this Registration Form signifies that you have accepted the said Terms and  
Conditions. The said TENANCY AGREEMENT/RENTAL OFFER Hong Kong  
Parkview apartments has been signed by your company.

O

P Any extensions or renewals of this tenancy is subject to the Terms and  
Conditions of the Rental Offer and this or a revised Registration Form (which will  
set out the revised term and rental).”

Q

R Mr Stephenson occupied Room 819 and his evidence was, in effect, that he enjoyed  
facilities which would normally be provided by a first class hotel.

S

T The definition of “hotel” which is the same as the definition for “guesthouse”  
is given in s.2 of the *Hotel and Guesthouse Accommodation Ordinance, Cap.349*,  
and is as follows :-

U

V “‘Hotel’ and ‘guesthouse’ mean any premises whose occupier, proprietor or tenant  
holds out that, to the extent of his available

A accommodation, he will provide sleeping accommodation for any person presenting  
B himself who appears able and willing to pay a reasonable sum for the services and  
C facilities provided and is in a fit state to be received ....”

D It is certainly true that the Appellants provided sleeping accommodation for Mr  
E Stephenson, and there was no denial by the Appellants that they held themselves out  
F as providing such. The trial and indeed the appeal turned on the meaning of the  
words “for any person presenting himself”

G There was no evidence before the Court of any instance of the Appellants  
H providing sleeping accommodation to anyone who simply walked in off the street.  
Indeed, there was evidence before the Court of an internal memorandum to all staff  
I members of the Appellants that accommodation was not to be provided to anyone  
J who came in off the street.

K It is submitted by Mr Harris, who appeared for the Appellants on the appeal,  
L that the words “to any person presenting himself” are surplusage, unless they are  
intended to distinguish hotel accommodation from any other sleeping  
M accommodation. He submitted that the words are included because the *Ordinance*  
N is regulating what traditionally were referred to as “inns”. He submitted that at  
O common law, an “inn” provided accommodation for persons who arrived seeking it,  
P rather than persons who had a previous arrangement for accommodation for a fixed  
Q period. He referred me to *Halsbury’s Laws of England, 4th ed., Vol.24*, #1105, note  
R 7, Parker v. Flint (1699) 12 Mod. Rep. 254. There it is stated that the definition  
S of “hotel” in the *Hotel Proprietors Act 1956* excludes establishments which fall  
T outside the definition of a common law inn. This, he submitted, is not surprising,  
U because the *Act* has to draw a distinction between establishments which provide  
conventional hotel accommodation, and lodgings or self-contained apartments,  
otherwise its ambit would extend to the latter. He submitted that it could not have  
been the intention of the legislature for the *Ordinance* to apply to all sleeping  
accommodation,

V

A otherwise it would extend to most forms of lettings of residential accommodation.  
B He submitted, therefore, that as the evidence does not show that Triview would  
C accept any person presenting himself and seeking accommodation or who arrived  
seeking accommodation, then the premises cannot be described as an hotel.

D  
E Mr Reading, for the Crown, submitted that a person presenting himself could  
be a person either with or without a prior booking.

F  
G I was persuaded by the Appellants' arguments as it seemed to me quite clear  
H that the definition contained in the *Ordinance* described what we know as a  
conventional hotel operation. That would include the holding out that the  
I accommodation, if vacant, was available to anyone who presented himself with or  
J without prior booking, and who was able to pay for that accommodation. If it is not  
proved that an establishment provided such a service, then such an establishment  
K would not fall within the definition of an hotel.

L There was no evidence before the learned Magistrate that Triview accepted  
M guests in that way. Therefore, the learned Magistrate was wrong to find that  
Triview were operating an hotel. This appeal is allowed.

N

O

P (LM. Duffy)  
Q Judge of the High Court

R  
S Mr John Reading, S.A.C.P., for Crown

T Mr Jonathan Harris (Richards Butler) for Appellant

U

V

**Section 26 of the Magistrates Ordinance (Cap.227)**

26. Limit of time for complaint or information

In any case of an offence, other than an indictable offence, where no time is limited by any Ordinance or statute for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose.

裁判官條例第 26 條

凡條例或法規對罪行（可公訴罪行除外）並無規定作出申訴或提出告發的時效，則申訴或告發須分別於其所涉事項發生後起計的 6 個月內作出或提出。

## **HOTEL AND GUESTHOUSE ACCOMMODATION (EXCLUSION) ORDER**

(Made under section 3 of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349))

### **1. Commencement**

This Order shall come into operation on the day that section 5 of the Hotel Accommodation (Miscellaneous Provisions) Ordinance 1998 (      of 1998) comes into operation.

### **2. Exclusion**

The premises specified in the Schedule are excluded from the application of the Ordinance.

### SCHEDULE [s. 2]

1. Premises to which the provisions of the Child Care Services Ordinance (Cap. 243) apply.
2. Premises to which the provisions of the Clubs (Safety of Premises) Ordinance (Cap. 376) apply.
3. Premises to which the provisions of the Bedspace Apartments Ordinance (Cap. 447) apply.
4. Premises to which the provisions of the Residential Care Homes (Elderly Persons) Ordinance (Cap. 459) apply.

5. Premises in which all accommodation is exclusively provided on the basis of a minimum period of 28 continuous days for each letting and no waiver, refund or reduction of fees will be made if the letting is for any reason shortened to less than 28 continuous days.

Secretary for Home Affairs

1998

Explanatory Note

This Order excludes certain premises from the application of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349).