

立法會
Legislative Council

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**Report of the Bills Committee on
Hotel Accommodation (Miscellaneous Provisions) Bill 1998**

Purpose

This paper reports on the deliberations of the Bills Committee on the Hotel Accommodation (Miscellaneous Provisions) Bill 1998.

The Bill

2. The Bill seeks to:

- (a) amend the definitions of 'hotel' and 'guesthouse' in the Hotel Proprietors Ordinance (Cap. 158), the Hotel Accommodation Tax Ordinance (Cap. 348), and the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), so that the scope includes establishments which offer accommodation to any person or any person of a particular category, and such person may either present himself in person or through an agent or a representative, with or without prior booking.
- (b) streamline the operation of the licensing system under the Hotel and Guesthouse Ordinance, Cap. 349 by
 - extending the period of licences to a maximum period of 36 months;
 - allowing notices under sections 19 and 20 to be served by posting them in a conspicuous part of the hotel or guesthouse;
 - allowing any person who is authorized in writing by the Secretary for Home Affairs (SHA) to enter into a hotel or guesthouse to execute remedial works while a closure order is in force;
 - extending the time limit for prosecution of offences under Cap. 349.

Background

3. The Hotel and Guesthouse Accommodation Ordinance, Cap. 349, was enacted in May 1991 to provide for the regulation, control and safety of hotel and guesthouse accommodation. It empowers SHA to establish a licensing scheme for such accommodation to ensure that the establishments comply with requirements on fire and building safety, health and hygiene. The licensing scheme is operated by the Licensing Authority of the Home Affairs Department.

4. Since implementation of Cap. 349, several deficiencies in the legislation have been identified. A Bill to rectify the deficiencies was introduced into the former Legislative Council on 29 May 1996. However, resumption of Second Reading debate of the Bill did not take place due to other legislative priorities. The Bill was re-introduced into the Legislative Council on 16 September 1998.

5. The following deficiencies in legislation have been identified by the Administration:

- (a) Under the current definitions of 'hotel' and 'guesthouse', establishments which do not offer accommodation to 'any person' but only to limited categories of persons (such as clients of a particular nationality or a tourist agency) are not covered by the legislation. The court also ruled in a case in 1996 that hotels which accepted guests with prior reservations instead of any person 'presenting himself' were not within the purview of Cap. 349. As a result, these premises are allowed to operate outside the licensing scheme and are not subject to the safety requirements for hotels or guesthouses.
- (b) Since the introduction of Cap. 349, most hotels have made efforts to comply with the licensing requirements. Some of them have been issued with annual licences with schedules containing major safety works and timetable(s) for completion of such works. For those hotels which have completed the scheduled works and which have good records of compliance with the safety requirements, the Licensing Authority is prepared to issue licences up to three years on a case by case basis. Guesthouses which can fulfil these conditions may also be considered for issue of three-year licences.
- (c) Serving of notices to direct remedial works of a hotel or guesthouse under section 19 of Cap. 349 is difficult if the whereabouts or identity of the responsible persons are not known. It would facilitate enforcement if such notices could be served by posting them in a conspicuous part of the premises without the need to state the name of the addressees.
- (d) Section 20 of Cap. 349 has not provided for re-entry into the premises once closed by order, even for the purpose of carrying out remedial works. Without such works, the premises cannot be made safe or

cannot be re-opened as a hotel or guesthouse.

- (e) Under section 26 of the Magistrates Ordinance, Cap. 227, 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 the offence may occur after the inspection made at the time of annual renewal of licence, and the offence may not be discovered promptly. As a result, many offences may be time-barred from prosecution.

The Bills Committee

6. At the House Committee meeting on 18 September 1998, a Bills Committee was formed to study the Bill. Chaired by Hon CHAN Kam-lam, the Bills Committee has held three meetings with the Administration, one of which was to receive views of deputations.

7. The membership list of the Bills Committee is in **Appendix I**.

Deliberations of the Bills Committee

8. Members of the Bills Committee have expressed much concern about the period of the licence and whether the proprietor will need to comply with any new safety and building requirements prevailing at the time of licence renewal. They have also sought clarification on the scope of the revised definitions of 'hotel' and 'guesthouse' in the three ordinances. The deliberations of the Bills Committee are summarized in the following paragraphs.

Scope of definitions of 'hotel' and 'guesthouse'

9. The Administration has explained that, for the avoidance of doubt, those premises which are already subject to regulation under other legislation will be excluded from the application of Cap. 349 by an exclusion order by SHA. These premises include those which are subject to the Child Care Services Ordinance, the Clubs (Safety of Premises) Ordinance, the Bedspace Apartment Ordinance, and the Residential Care Homes (Elderly Persons) Ordinance.

10. To distinguish hotels or guesthouses from service apartments which offer accommodation on a monthly basis, premises in which all accommodation is exclusively provided for continuous periods of 28 days or more will also be excluded from the application of Cap. 349. Members have noted that the minimum number of days in a calendar month (28 days) is adopted to facilitate enforcement. The Administration has stressed that service apartments which offer rented accommodation both on a daily or monthly basis are still subject to regulation under

Cap. 349.

11. On the criteria for inclusion or exclusion under Cap. 349, the Administration has clarified that the underlying principle of the licensing scheme is to ensure that the premises are fit and safe for the purposes of a hotel and a guesthouse. As those premises listed in paragraph 9 are already subject to control under other legislation, the exclusion order is only to remove any doubt as to whether these premises are also subject to the Hotel and Guesthouse Accommodation Ordinance, Cap. 349. In response to members, the Administration will review the exclusion schedule to include similar types of accommodation such as private hospitals or rehabilitation centres.

12. The Bills Committee has noted the hotel industry's request to distinguish 'hotel' and 'guesthouse' in the definitions, so that hotels and guesthouses may be subject to different licensing requirements. The distinction in definitions will also facilitate tourists in choosing suitable accommodation. In this connection, the Bills Committee has sought the views of the deputations and the Administration on a feasible definition. Different views have been expressed by deputations. While agreeing that the definitions can be further refined to provide a clearer guide for tourists, the Administration has advised that the Bill is intended to plug existing loopholes as described in paragraph 5. To address members' concern in this respect, the Administration has undertaken to conduct a separate exercise as early as possible to review the definitions of 'hotel' and 'guesthouse' in consultation with the trade and relevant bureaux.

Changes to licensing conditions

13. Several members of the Bills Committee have expressed concern that it will be a burden on the hotel and guesthouse industry if there are frequent changes in the licensing conditions. They have pointed out that the renovation cycle of hotels is about seven years. If the licensing conditions such as fire safety requirements vary each year, this will have significant cost implications on the hotels. Similarly, many guesthouses are small establishments and their operation will be seriously affected if renovation has to be carried out frequently for compliance with new licensing conditions imposed from time to time.

14. The Administration has clarified that the policy guidelines issued by SHA in 1993 clearly stated that new conditions will not be imposed on a licence when the works required under the schedule has been completed, unless there are alterations affecting the safety of or posing apparent safety threats to guests in these premises.

Period of licence

15. Considering that most hotels have faithfully complied with the licensing requirements, the Bills Committee has suggested that the system can be further streamlined by issuing licences of a longer period to those establishments with a good

record of compliance. The Administration's initial response to the suggestion was that the proposed relaxation from 12 months to 36 months in the Bill was already a great improvement. The Administration is of the view that further extending the licence period beyond 36 months during which no inspection takes place will raise public concern about the safety of these premises.

16. To address the concerns of the hotel industry that the Administration may impose new conditions at the time of licence renewal, causing uncertainty to the state of the licence and hotel operation, the Bills Committee has discussed various options on the licence period. Possibilities discussed include extending the licence period to five or seven years and devising a three-tier licensing system for hotels and guesthouses.

17. After evaluating the pros and cons of the different options including the proposal from the Federation of the Hotel Owners Limited, the Bills Committee has proposed, and the Administration has agreed, to extend the period of a licence up to seven years, subject to annual certification by an authorized person that there has been no substantial alteration to the latest plan agreed to by the Licensing Authority. Under the revised proposal, the Administration still retains the right to inspect the premises any time during the seven-years licence period. For those premises where a licence is issued for a period not exceeding 36 months, annual certification by an authorized person will not be required. The Licensing Authority has the discretion to determine the period of a licence with reference to the safety conditions and the record of compliance of the premises. The Administration has agreed to propose Committee Stage amendments to this effect.

Licence fees

18. Members have noted that the Chief Executive in Council will by regulations under section 22 of Cap. 349 fix the fees payable for the 36 months or 84 months licences. Some members have suggested payment by annual or triennial instalments to lessen the financial burden on proprietors of hotels and guesthouses in view of the economic downturn. The Administration has responded that the level of licence fees for the proposed categories will have to be examined. Members have noted that there will be no fee increases in the current financial year, and that only 26% of the costs are now being recovered through the licence fees.

Grace period for compliance with scheduled works or new safety requirements

19. Members have noted the industry's concern about the time allowed to carry out alterations for compliance with the scheduled works or new safety requirements. Some members have asked the Administration to allow a grace period for completion of the necessary works. The Administration has agreed to include in the administrative guidelines a reasonable period for carrying out the works.

Closure order

20. The Administration has clarified that an order for closure will only be issued in serious cases where SHA considers that there is danger or risk of danger to the guests of the hotel or guesthouse. Members have noted that the proposed re-entry permit will enable remedial works to be carried out by persons authorized by SHA in premises which are subject to a closure order. The provision is consistent with other relevant legislation such as the Buildings Ordinance.

Time limit for prosecution

21. The Bills Committee has also noted that the proposed extension of time limit for prosecution is in line with other legislation. This will enable the Authority to take prosecution on an offence within six months from discovery by the Authority.

Effective date

22. The Bills Committee has noted that the Bill will take effect from a date to be appointed by SHA by notice in the gazette.

Consultative machinery

23. Members have urged the Government to fully consult the hotel and guesthouse industry on matters relating to the licensing system. In this connection, members have suggested the Administration to include representatives of the guesthouse industry in its consultative machinery on hotel and guesthouse matters.

Unlicensed guesthouses

24. Deputations have raised concern about illegal guesthouses especially those operating in residential buildings. The Administration has advised that the Licensing Authority will further discuss with the Police to step up enforcement actions against unlicensed guesthouses. With the passage of the Bill, the Administration envisages that many of the illegal guesthouses will be brought under regulation of Cap. 349.

Committee stage amendments

25. The Committee Stage amendments (CSA) to be proposed by the Administration are given in **Appendix II**. The Bills Committee has not proposed any CSAs.

Recommendations

26. The Bills Committee supports the Bill and the CSAs proposed by the Administration in Appendix 2, and recommends resumption of the Second Reading debate of the Bill on 9 December 1998.

Advice sought

27. Members are invited to note the deliberations of the Bills Committee and support the recommendation at paragraph 26 above.

Legislative Council Secretariat
26 November 1998

**Bills Committee on
Hotel Accommodation (Miscellaneous Provisions) Bill 1998**

Membership List

Hon CHAN Kam-lam (Chairman)

Hon HO Sai-chu, JP

Hon Edward HO Sing-tin, JP

Prof Hon NG Ching-fai

Hon James TO Kun-sun

Hon CHAN Wing-chan

Hon Howard YOUNG, JP

Hon YEUNG Yiu-chung

Hon CHOY So-yuk

Total : 9 members

Date : 8 October 1998

HOTEL ACCOMMODATION (MISCELLANEOUS PROVISIONS) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 1(2) | By deleting "Sections 6 and 7" and substituting " <u>Sections 5(ba), 6, 7, 7A and 10(b)</u> ". |
| 5 | By adding -
"(ba) in subsection (1), by adding -
""authorized person" (認可人士) has the meaning assigned to it by section 2 of the Buildings Ordinance (Cap. 123);";". |
| 6 | By deleting the clause and substituting -
"6. Application for and issue of licence
Section 8 is amended -
(a) in subsection (5) (d) -
(i) by adding " <u>subject to subsection (5A)</u> ," before "authorize";
(ii) by repealing "12" and substituting "84";
(b) by adding - |

"(5A) Where a licence is issued for a period exceeding 36 months, the person holding the licence shall submit to the Authority a certificate ("authorized person's certificate"), which shall -

- (a) be submitted within a period of 1 month before and 1 month after each anniversary of the licence;
- (b) be in such form as the Authority may determine and signed by an authorized person;
- (c) certify that since the day upon which the licence was issued or, since the immediate previous anniversary of the licence, as the case may be, the hotel or the guesthouse -

- (i) has not undergone any substantial alteration by reference to the latest plan, if any, deposited with and agreed to by the Authority;
- (ii) has been operated, kept, managed or otherwise controlled by the person holding the licence in a manner which does not contravene any of the conditions imposed under subsection (2)(a);
- (iii) has been maintained by the person holding the licence in a proper

condition
with regard
to building
safety and
fire
safety."."

7 By deleting the clause and substituting -

"7. Renewal of licence

Section 9 is amended -

- (a) in subsection (1), by deleting "12" and substituting "84";
- (b) by adding -

"(3A) Where a licence is renewed for a period exceeding 36 months, the person holding the licence shall submit to the Authority a certificate ("authorized person's certificate"), which shall -

- (a) be submitted within a period of 1 month before and 1 month after each anniversary of the licence;
- (b) be in such form as the Authority may determine and

signed by an authorized person;

(c) certify that since the day upon which the licence was renewed or, since the immediate previous anniversary of the licence, as the case may be, the hotel or the guesthouse -

(i) has not undergone any substantial alteration by reference to the latest plan, if any, deposited with and agreed to by the Authority;

(ii) has been operated, kept, managed or otherwise controlled by the

person
holding the
licence in a
manner
which does
not
contravene
any of the
conditions
imposed
under
section
8(2)(a);
(iii) has been
maintained
by the
person
holding the
licence in a
proper
condition
with regard
to building
safety and
fire
safety.";

- (c) in subsection (6), by deleting "for a period of 12 months" and substituting "subject to subsection (3A), for a period of 84 months".

New By adding -

"7A. Cancellation and suspension of licence or refusal to renew licence, and amendment or variation of conditions of a licence

Section 10 is amended by adding -

- "(f) on the ground that, where the licence is issued or renewed for a period exceeding 36 months, an authorized person's certificate has not been submitted as required by section 8(5A) or 9(3A);
- (g) on the ground that an authorized person's certificate submitted under section 8(5A) or 9(3A) is incomplete, incorrect or false in any material particular.".

10 By deleting the clause and substituting -

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

Section 21 is amended -

- (a) in subsection (6)(e) -
 - (i) by adding "person or a" before "public officer";
 - (ii) by repealing "20(2)(a)" and substituting "20(2)";
- (b) by adding -
 - "(6A) An authorized person who in or in connection with an authorized person's certificate referred to in section 8 or 9

makes any statement or furnishes information which is false in any material particular and which he knows or reasonably ought to know is false in such particular commits an offence."."