

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1226/18-19  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/5/17

**Bills Committee on  
Hotel and Guesthouse Accommodation (Amendment) Bill 2018**

**Minutes of the fourth meeting  
held on Monday, 4 March 2019, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon YIU Si-wing, BBS (Chairman)  
Hon CHEUNG Kwok-kwan, JP (Deputy Chairman)  
Hon Paul TSE Wai-chun, JP  
Hon Charles Peter MOK, JP  
Hon KWOK Wai-keung, JP  
Hon Alvin YEUNG  
Hon SHIU Ka-fai  
Hon Vincent CHENG Wing-shun, MH
- Members absent** : Hon James TO Kun-sun  
Hon Tony TSE Wai-chuen, BBS
- Member attending** : Hon Jeremy TAM Man-ho
- Public Officers attending** : Mr Jack CHAN, JP  
Acting Secretary for Home Affairs  
Home Affairs Bureau
- Miss Vega WONG, JP  
Deputy Director of Home Affairs (2)  
Home Affairs Department

Miss Grace LI, JP  
Assistant Director of Home Affairs (4)  
Home Affairs Department

Mr Peter SZE  
Senior Assistant Law Draftsman (Acting)  
Department of Justice

Ms Carmen CHU  
Senior Government Counsel  
Department of Justice

**Clerk in attendance** : Ms Wendy JAN  
Chief Council Secretary (2) 4

**Staff in attendance** : Ms Vanessa CHENG  
Assistant Legal Adviser 5

Ms Catherina YU  
Senior Council Secretary (2) 4

Miss Alison HUI  
Legislative Assistant (2) 4

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**I. Meeting with the Administration**

[File Ref.: HAD HQ CR/15/3/20(C); LC Paper Nos. CB(3)811/17-18, LS96/17-18, CB(2)190/18-19(01) to (02), IN01/18-19, CB(2)201/18-19(01), CB(2)640/18-19(04) and CB(2)882/18-19(01) to (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to provide:

- (a) justifications for providing in administrative guidelines (instead of spelling out clearly in legislation) certain factors for considering whether a person is a fit and proper person to operate, keep, manage or otherwise have control of a hotel or guesthouse under the proposed new section 12L of the Hotel

and Guesthouse Accommodation (Amendment) Bill 2018 ("the Bill"), and examples of legislation having similar arrangements for the fit and proper requirements in respect of licensing requirement;

- (b) information on the circumstances under which a warrant was or was not required for conducting searches and inspections of hotels/guesthouses;
- (c) information on how affected persons (i.e. operators, landlords and/or tenants of hotels/guesthouses) ("affected persons") would be informed of the applications of closure orders, the procedures involved in the making of the application of closure orders (in particular, if the application was made at any time which was subsequent to the date when the second conviction had been made by the court) and after the closure orders had been made by the court and the legal right, if any, afforded to such affected persons to enable them to contest the application of closure orders or closure orders made by the court to ensure due process;
- (d) a response to the suggestion of providing provisions in the Bill to ensure that affected persons would be informed of the applications of closure orders and the closure orders made against them;
- (e) justifications for setting the time frame at within 16 months in the proposed new section 20A(2) between the previous conviction and the commission of the offence leading to the present conviction in respect of the same premises in considering making a closure order on application;
- (f) justifications for setting the closure period of the premises subject to a closure order at six months in the proposed new section 20A(5); and
- (g) justifications for setting the effective period of suspension orders at not more than two years in the proposed new section 20E(5).

3. The Chairman said that members would be informed of the date of the next meeting in due course.

**II. Any other business**

4. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 2  
Legislative Council Secretariat  
15 April 2019

**Proceedings of the fourth meeting of the  
Bills Committee on Hotel and Guesthouse Accommodation (Amendment) Bill 2018  
on Monday, 4 March 2019, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000430-000518	Chairman	<p>The Chairman reminded members to declare interests in the matter under discussion, if any.</p> <p>Declaration by the Chairman that he was an employee of a company which invested in hotel projects.</p>	
000519-000850	Chairman Administration	Briefing of the framework and main provisions of the Bill by the Administration.	
The Administration's response to issues raised at the meeting of the Bills Committee on 22 January 2019			
000851-001522	Chairman Administration	<p>Members noted the Administration's written response to the issues raised at the last meeting (LC Paper No. CB(2)882/18-19(02)).</p> <p>The Administration's response to the Chairman's enquiry and view regarding:</p> <ul style="list-style-type: none"> <li>(a) the reasons why four of the seven applications for guesthouse (holiday flat) licences which were submitted in 2018 were still being processed;</li> <li>(b) whether the processing time of applications for hotel/guesthouse licences could be reduced following the introduction of the new licensing regime under the Hotel and Guesthouse Accommodation (Amendment) Bill 2018 ("the Bill"); and</li> <li>(c) the Administration should, under the new licensing regime, strike a balance between allowing sufficient time for local consultation and processing licence applications within a reasonable time frame.</li> </ul> <p>The Administration's advice that, under the new licensing regime, the Hotel and Guesthouse Accommodation Authority ("Authority") would need to consider whether there were restrictive provisions in the deed of mutual covenant ("DMC") or the Government lease and the outcome of the local consultation. With these additional requirements, it was anticipated that the processing time of licence applications might be longer. The Administration, upon receipt of licence applications, would conduct inspections and issue lists of required upgrading works, and in parallel, commence the local consultation process with a view to shortening the processing time of licence applications.</p>	

Clause-by-clause examination		
001523-002515	Chairman Administration Assistant Legal Adviser 5 ("ALA5")	<p><u>Clause 11</u></p> <p><i>Proposed new section 12J</i></p> <p>The Administration's response to the following enquiry from ALA5:</p> <ul style="list-style-type: none"><li>(a) how the Authority would resolve the ambiguities, if any, in the DMC/Government lease as to whether the premises were free from a use restriction within the meaning of the proposed new section 12J;</li><li>(b) whether a written advice given by a legal practitioner under the proposed new section 12O(2)(b) would be conclusive as to whether the premises to which the application or licence related were free from a use restriction within the meaning of the proposed new section 12J; and</li><li>(c) if a DMC/Government lease provided that the premises were prohibited from being used as a boarding house, lodging-house, hostel or dormitory or similar accommodation, whether such a provision would be construed as falling within paragraph (a) of the definition of "restrictive provision" (under the proposed new section 12J(3)) that the part of premises was prohibited from being used as a hotel or guesthouse.</li></ul> <p>The Administration's response to the Chairman's enquiry regarding:</p> <ul style="list-style-type: none"><li>(a) whether the premises would be considered as free from a use restriction under the proposed new section 12J if the DMC or Government lease concerned did not contain an explicit restrictive provision; and</li><li>(b) how the Administration would deal with the applications for licence renewal from existing licensees who could not meet the new licensing requirements.</li></ul> <p>The Administration's advice on the transitional arrangements for operators of existing hotels/guesthouses affected by the new licensing requirements, particularly those operating on premises which might contain restrictive provisions in the DMC or Government lease concerned. There would be a transitional arrangement of 12 months. The existing licence could be renewed once for not more than 12 months if the existing licence expired before the end of the transitional period and had not been renewed within the transitional period. The new licensing requirements would not apply to the old regime licences in such circumstances.</p> <p>The Chairman's enquiry and the Administration's response regarding whether written legal advice should be provided by the licence applicant or by the affected person when the two parties had disputes over whether the premises could be used as a guesthouse/hotel.</p> <p>The Administration's advice that in the case of contradictory legal advice, the Authority might ask either or both parties for further</p>

		justifications and might seek the advice of the relevant bureaux/departments as appropriate.	
002516-002547	Chairman Administration	<i>Proposed new section 12K</i>  Members raised no question.	
002548-003826	Chairman Administration ALA5 Mr Alvin YEUNG	<p><i>Proposed new section 12L</i></p> <p>The Administration's response to the following enquiry from ALA5:</p> <p>(a) whether the Administration would consider providing specifically in the proposed new section 12L(2)(b) that the conviction of the person was for an offence for which it was necessary to find that the person had acted fraudulently, corruptly or dishonestly; and</p> <p>(b) whether the Authority would also take into account the following in considering whether a person was a fit and proper person to operate, keep, manage or otherwise have control of a hotel or guesthouse ("a fit and proper person"): (i) whether the person had entered into a composition or arrangement with his or her creditors; (ii) whether a receiver had been appointed; (iii) whether the person or a related person was a mentally disordered person; and (iv) whether the person or a related person was a director, officer, partner or sole proprietor in a business entity whose application for a hotel licence or a guesthouse licence had been refused or whose licence had been revoked or suspended.</p> <p>The Administration's advice that, in addition to the factors listed in the proposed new section 12L(2), the Authority would consider setting out in administrative guidelines other factors that it might consider in determining whether a person was a fit and proper person ("other relevant factors").</p> <p>ALA5's view that as administrative guidelines were not legally binding, other relevant factors should be included in the Bill.</p> <p>The Chairman's view that the Administration might consider spelling out other relevant factors under subsidiary legislation.</p> <p>The Administration's advice that it had made reference to the Securities and Futures Ordinance, among others, under which other factors were similarly set out in administrative guidelines and that such an approach was flexible. Since the essential considerations that the Authority must consider had already been set out in the Bill, it was not inappropriate to set out other considerations that the Authority might consider in administrative guidelines. Further, the Administration undertook to make clear of the intended use of administrative guidelines in resumption of the Second Reading debate on the Bill.</p> <p>At the request of the Chairman and ALA5, the Administration undertook to provide justifications for providing in administrative guidelines other relevant factors and examples of legislation having similar arrangements for the fit and proper requirements in respect</p>	Admin (paragraph 2(a) of the minutes.)

		<p>of licensing requirement.</p> <p>The Administration's response to Mr Alvin YEUNG's enquiry regarding:</p> <ul style="list-style-type: none"> <li>(a) the legal basis for considering other relevant factors set out in administrative guidelines in determining "a fit and proper person";</li> <li>(b) the legal basis for promulgating and amending administrative guidelines;</li> <li>(c) whether a person aggrieved by the decision of the Authority on whether the person was a fit and proper person (in particular, if the person was not considered by the Authority to be a fit and proper person due to his/her non-compliance of the requirements set out in the administrative guidelines though he/she had satisfied the requirements set out in the proposed new section 12L(2)) could apply for judicial review; and</li> <li>(d) the drafting convention for provisions regarding "Licence requirement: fit and proper requirement".</li> </ul> <p>The Administration's advice that any person who was aggrieved by the decision of the Authority might appeal to the Appeal Board under the proposed new section 17A. The Authority had the power to consider other factors set out in the administrative guidelines. Such power was mainly derived from the proposed new section 12L(1) which was a general provision empowering the Authority to exercise discretion in considering whether a person was a fit and proper person. The proposed new section 12L(2) listed out factors that the Authority must take into account but these factors were not exhaustive. Besides, it did not imply that the person would not necessarily be considered as a fit and proper person even if he/she did not comply with such requirements under the proposed new section 12L(2). If a person was aggrieved by the exercise of the discretionary power by the Authority, he could apply for judicial review in accordance with the public administrative law unless the right to judicial review was barred in certain circumstances.</p> <p>The Administration's further advice that the proposed new section 12L(1) was sufficient to empower the Authority to exercise such discretionary power. Thus, the power of promulgation of the administration guidelines was derived from the proposed new section 12L(1).</p>	
003827-003841	Chairman Administration	<p><i>Proposed new section 12M</i></p> <p>Members raised no question.</p>	
003842-004437	Chairman Administration ALA5	<p><i>Proposed new section 12N</i></p> <p>ALA5's enquiry and the Administration's response regarding the composition of the advisory panel appointed by the Authority and eligibility and terms of appointment of members of the advisory panel.</p>	



		<p>The Administration's response to the Chairman's enquiry that representatives from local communities and District Council members would be considered for appointment as members of the advisory panel.</p> <p>ALA5's enquiry and the Administration's response regarding the definition of "surrounding area" in the proposed new section 12N(6)(a)(ii) and (b).</p> <p>The Administration's response to the Chairman's enquiry that depending on the circumstances of each individual case, the Authority would deal with the views on licence applications from owners or occupiers of premises situated beyond the "surrounding area" with flexibility.</p>	
004438-004508	Chairman Administration	<p><i>Proposed new section 12O</i></p> <p>Members raised no question.</p>	
004509-004702	Chairman Administration	<p><i>Proposed new section 12P</i></p> <p>The Administration's response to the Chairman's enquiry regarding the time required for the Authority to give notices of certain intentions or decisions.</p> <p>The Administration's further advice that before exercising the powers of refusal to renew, cancellation, suspension, revocation of conditions of the licence, the licence holder might make written representations to the Authority under the proposed new section 12P(1)(b).</p>	
004703-005854	Chairman Administration ALA5	<p><u>Clause 13</u></p> <p><i>Proposed new sections 17A to 17B</i></p> <p>The Administration's response to the following enquiry from the Chairman:</p> <p>(a) whether the appeal board panel to be appointed by the Chief Executive ("CE") for the purposes of hearing appeals under the proposed new section 17B(1) would also deal with appeals against the decisions of the Authority from members of the local community;</p> <p>(b) whether there was currently a waiting list for hearing of appeals by the Appeal Board formed under the Hotel and Guesthouse Accommodation Ordinance (Cap.349);</p> <p>(c) the composition of the appeal board formed by the Convenor appointed under the proposed new section 17B(3); and</p> <p>(d) whether the existing licence, the application for licence renewal or new application for licence of a hotel/guesthouse would be affected if the appeal concerning that hotel/guesthouse was in progress.</p>	

		<p>The Chairman's view that the Administration should set a time frame for completing hearings of appeals.</p> <p>The Administration's response that under the proposed new section 17B(2)(a) and (3), CE must appoint at least two individuals who must be qualified for appointment as a District Judge to the appeal board panel for hearing appeals and appoint one of these individuals as the Convenor. Under the proposed new section 17D(1), the Convenor must form an appeal board to hear the appeal within 21 days after receiving a notice of appeal given under the proposed new section 17C. The Administration would keep in view the processing time of appeals and consider setting a performance pledge for handling appeals. If the renewal application was approved by the Authority, such renewal would not be affected unless the decision was overturned by the appeal board. If complaints were received in relation to the premises before the renewal application was approved by the Authority, the existing licence would not be affected unless the complaints led the Authority to cancel or revoke the licence. Unless the Authority made a decision in relation to the issue of licence (or refusal to issue licence), renewal (or refusal of renewal), cancellation, revocation, suspension or variation of the conditions of the licence, the appeal mechanism would not be invoked by the mere complaints of the occupiers of the building at which the guesthouse was situated.</p> <p>ALA5's enquiry and the Administration's response regarding the requirements which the 16 other individuals must meet in order to be eligible for appointment by CE to the appeal board panel under the proposed new section 17B(2)(b).</p>	
005855-005916	Chairman Administration	<p><i>Proposed new sections 17C to 17E</i></p> <p>Members raised no question.</p>	
005917-010022	Chairman Administration	<p><i>Proposed new section 17F</i></p> <p>The Administration's response to the Chairman's enquiry that the sum awarded to the Authority referred to the costs involved in the appeal.</p>	
010023-010026	Chairman Administration	<p><i>Proposed new sections 17G to 17J</i></p> <p>Members raised no question.</p>	
010027-010029	Chairman Administration	<p><u>Clause 14</u></p> <p>Members raised no question.</p>	
010030-011148	Chairman Administration Mr Charles MOK ALA5	<p><u>Clauses 15 and 16</u></p> <p><i>Proposed new sections 18 to 18A</i></p> <p>The Chairman's enquiry and the Administration's response regarding whether the proposed new section 18 would facilitate inspections of licensed hotels/guesthouses without warrants.</p>	

		<p>The Administration's advice that most of the occupiers of unlicensed hotels/guesthouses were not cooperative and refused to open the door when the enforcement officers sought to enter the premises without warrant in the past. In future, enforcement officers could apply for a warrant to enter a suspected unlicensed hotel or guesthouse to conduct inspection and might enter the premises with force that was reasonable in the circumstances.</p> <p>Mr Charles MOK's enquiry and the Administration's response regarding the circumstances under which a warrant would or would not be required for conducting searches and inspections of hotels/guesthouses. The Administration undertook to provide a written response in this regard.</p> <p>The Administration's response to the views of the Chairman and Mr Charles MOK about drawing up guidelines setting out the responsibilities of various enforcement officers in conducting inspections of hotels/guesthouses and on how to exercise the powers under the proposed new sections 18 and 18A. The Administration's advice that relevant guidelines would be provided for enforcement officers.</p> <p>ALA5's enquiry and the Administration's response regarding whether the Administration would consider replacing "at any time" by "at any reasonable time" in the proposed new section 18A(5)(a).</p>	<p>Admin (paragraph 2(b) of the minutes.)</p>
<p>011149- 011150</p>	<p>Chairman Administration</p>	<p><u>Clauses 17 to 19</u></p> <p>Members raised no question.</p>	
<p>011151- 014913</p>	<p>Chairman Administration Mr Alvin YEUNG Mr Paul TSE</p>	<p><u>Clause 20</u></p> <p><i>Proposed new sections 20A to 20E</i></p> <p>The Administration's response to the Chairman's enquiry about the closure period of the premises against which a closure order was made and its explanation of rescission of closure order under the proposed new section 20C.</p> <p>The Administration's response to the following enquiry from Mr Alvin YEUNG:</p> <p>(a) the meaning of "present conviction" in the proposed new section 20A(1)(a); and</p> <p>(b) whether applications for closure orders would be considered by the court by way of hearing.</p> <p>Mr Alvin YEUNG's remark that under the proposed new section 20E(3)(a), the court or magistrate must appoint a date for hearing an application for suspension of closure order and his enquiry about whether it was the Administration's intention that applications for closure orders should be made in writing only.</p> <p>The Administration's response that closure orders would usually be made at the proceedings for the "present conviction".</p>	

		<p>Concerns of Mr Alvin YEUNG and Mr Paul TSE that in the absence of court hearing, hotel/guesthouse operators affected by closure orders did not have an opportunity to defend themselves before the orders had been made. Their view that for the sake of due process, these operators should be informed of their legal right to contest the applications of closure orders or closure orders made by the court.</p> <p>Mr Alvin YEUNG's view that there should be provisions in the Bill to ensure that hotel/guesthouse operators would be informed of the Authority's applications of closure orders and the closure orders made against them.</p> <p>The Administration's response that it would consider administrative measures to ensure that affected persons would be informed of the applications of closure orders, the procedures involved in the making of the application of closure orders and after the closure orders had been made by the court and the legal right of the affected persons, with a view to facilitating their taking actions as appropriate. The Administration undertook to provide a written response in this regard.</p> <p>The Administration's response to Mr Paul TSE's view on the need for and the rationale of setting the effective period of suspension orders at not more than two years which was longer than the closure period (i.e. six months) of the premises subject to a closure order.</p> <p>The Administration undertook to provide written response to:</p> <ul style="list-style-type: none"> <li>(a) the suggestion of providing provisions in the Bill to ensure that affected persons would be informed of the applications of closure orders and the closure orders made against them;</li> <li>(b) justifications for setting the time frame at within 16 months in the proposed new section 20A(2) between the previous conviction and the commission of the offence leading to the present conviction in respect of the same premises in considering making a closure order on application;</li> <li>(c) justifications for setting the closure period of the premises subject to a closure order at six months in the proposed new section 20A(5); and</li> <li>(d) justifications for setting the effective period of suspension orders at not more than two years in the proposed new section 20E(5).</li> </ul>	<p>Admin (paragraph 2(c) of the minutes.)</p> <p>Admin (paragraph 2(d) to (g) of the minutes.)</p>
014914-014917	Chairman Administration	<p><i>Proposed new sections 20F to 20J</i></p> <p>Members raised no question.</p>	
014918-015102	Chairman Administration	<p><u>Clauses 21 to 25</u></p> <p>Members raised no question.</p>	
015103-015656	Chairman Administration	<p><u>Clause 26</u></p>	

	The Deputy Chairman Mr Paul TSE	<p><i>Proposed new sections 21D to 21E</i></p> <p>The Administration's response to the Chairman's enquiry regarding whether non-civil servants would be appointed for carrying out decoy operations at hotels/guesthouses to collect evidence. The Administration's further advice that a person employed by the Authority (irrespective of whether the person was a civil servant or not) could be authorized to carry out decoy operations at hotels/guesthouses to collect evidence.</p> <p>The Administration's response to the Deputy Chairman's enquiry regarding the mode of appointment of enforcement officers.</p> <p>The Administration's response to Mr Paul TSE's enquiry regarding whether the proposed new section 21E, like the proposed new section 21D, was related to appointment of enforcement officers and whether persons other than enforcement officers could exercise a power under the proposed new sections 18, 18A, 20 and 20B.</p> <p>The Administration's advice that the proposed new section 21E sought to protect persons against whom authorized persons might exercise powers under the proposed new sections 18, 18A, 20 and 20B in respect of the premises. It only dealt with the production of identity and was not a provision which sought to empower the Authority to appoint persons to exercise the powers under the proposed new section 18, 18A, 20 or 20B. While the proposed new section 21D dealt with the appointment of enforcement officers for the purposes of the Ordinance, other persons were also authorized under the proposed new sections 18, 18A, 20 and 20B to exercise the powers provided therein.</p>	
015657-015741	Chairman Administration	<p><i>Proposed new section 21F</i></p> <p>Members raised no question.</p>	
015742-020025	Chairman Administration Mr Paul TSE	<p><i>Proposed new section 21G</i></p> <p>The Administration's response to Mr Paul TSE's enquiry regarding the rationale for not providing the Government with immunity from civil liability.</p>	
<i>Agenda item II – Any other business</i>			
020026-020038	Chairman	Closing remarks	