



BERMUDA

HOTELS (LICENSING AND CONTROL) ACT 1969

1969 : 299

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SCHEDULE

[preamble and words of enactment omitted]

Interpretation

1 In this Act—

“Chief Fire Officer” means the holder of the public office of Chief Fire Officer under the Bermuda Fire and Rescue Service Act 1982 *[title 10 item 15]*;

“the Department” *[deleted by 2018 : 26 Schedule (s. 5)]*

“the Director” *[deleted by 2018 : 26 Schedule (s. 5)]*

“hotel” means any place, land-based or not, including all grounds and premises appurtenant thereto, which provides sleeping accommodation for ten or more guests and a charge is made for such accommodation, but does not include any premises in respect of which a certificate of exemption issued under section 4 is in force or a rooming-house registered under section 146 of the Public Health Act 1949;

“hotel inspector” means a person authorised by the Minister under section 13A(1) to exercise the powers of a hotel inspector;

“licence” means a licence to operate a hotel granted under this Act;

“Minister” means the Minister responsible for Tourism;

“the Ministry” means the Ministry responsible for tourism;

“operator” means the person who operates the business of a hotel or similar premises and cognate expressions shall be construed accordingly;

“the Permanent Secretary” means the Permanent Secretary of the Ministry responsible for tourism;

“Regulations” means Regulations made under section 14 for the time being in force;

“security guidelines” means the guidelines issued under section 15A;

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“the Tribunal” means the Hotel Licensing Appeal Tribunal established under section 17.

[Section 1 amended by 1992:2 effective 20 March 1992; “hotel” amended by 2001:16 s.6 effective 31 May 2002; “hotel” and “Minister” substituted, “hotel inspector” and “security guidelines” inserted, by 2007:19 s.2 effective 1 September 2007; “Chief Fire Officer” amended 2007:23 s.16 effective 2 July 2007; Section 1 definition “hotel” amended, definitions “the Department” and “the Director” deleted, and definitions “the Ministry” and “the Permanent Secretary” inserted by 2018 : 26 s. 2 & Schedule (s. 5) effective 1 July 2018]

Licence to operate premises as hotel

2 No person shall operate any premises as a hotel or part of a hotel except under and in accordance with the terms of a valid licence granted by the Minister authorizing him to operate those premises as a hotel.

Complex of premises

3 (1) The Minister may by notice served on the operator of any complex of premises declare that the premises therein specified and the grounds appurtenant thereto are operated as a single business venture as a hotel and, in that event, that complex of premises shall, for the purposes of this Act and the Regulations be deemed to be one hotel.

(2) The Minister may revoke any notice served by the Minister under subsection (1) at any time.

(3) Any notice served by the Minister under subsection (1) shall continue in force until revoked by the Minister.

(4) Without prejudice to any other provision of law, any decision or other function of the Minister under this Act or the Regulations and any licence, variation, transfer, exemption, suspension, endorsement, revocation, notice or other document made, granted or issued under this Act or the Regulations may be signified or issued under the hand of the Permanent Secretary.

[Section 3 subsection (4) amended by 2018 : 26 Schedule (s. 5) effective 1 July 2018]

Exempt hotels

4 (1) Where the Minister is satisfied—

- (a) that any premises operated as a hotel accommodate only guests who are normally resident in Bermuda and no others; or
- (b) that any premises operated as a club provide accommodation for members or guests only for purposes incidental to the operation of a bona fide club and that the provision of accommodation for payment is not one of the objects for which the club is formed,

he may issue a certificate exempting those premises from this Act for so long as those premises are so operated.

(2) If the Minister is satisfied that any premises in respect of which a certificate of exemption has been issued under subsection (1) cease or, at any time has ceased, to qualify

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for exemption pursuant to that subsection, or if the operator makes application therefor, the Minister may by notice served on the operator revoke such certificate from such date as may be specified in such notice:

Provided that the Minister shall not except on the application of the operator revoke any such certificate without first giving to the operator of the premises concerned reasonable notice of his intention to revoke the certificate and shall take into account any representations made by him or on his behalf.

Who may apply for grant, transfer or variation of licence

5 An application to the Minister for the grant, transfer or variation of a licence shall be made by or on behalf of the operator or the proposed transferee, as the case may be.

Transfer of licence

6 (1) Where an operator to whom a licence has been granted has died or divested himself of his interest in the business of the hotel in respect of which that licence was granted, the Minister may, upon the application of a person claiming to be the succeeding operator of that hotel, transfer that licence to that person:

Provided that before transferring any licence under this subsection the Minister shall, where practicable, give reasonable notice to the operator, to whom the licence was granted or, as the case may be, to his executors or administrators, of any application made to him under this subsection and shall take into account any representation made by or on behalf of any persons to whom such notice has been given.

(2) The Minister may at any time upon application by an operator or of his own motion vary any of the terms of a licence required to be specified therein in accordance with paragraphs (d), (e), (f) and (g) of section 11:

Provided that the Minister shall not of his own motion vary any term of a licence without first giving to the operator to whom that licence has been granted reasonable notice of his intention to effect such a variation and shall take into account any representations made by him or on his behalf.

(3) Any transfer of or variation of the terms of a licence made by the Minister under the foregoing subsections shall be endorsed on the licence by the Permanent Secretary together with the date when it was made by the Minister and the date when it is to take effect.

[Section 6 subsection (3) amended by 2018 : 26 Schedule (s. 5) effective 1 July 2018]

Inspection and report

7 Before granting or varying the terms of a licence the Minister shall defer consideration of any such application until the Chief Environmental Health Officer, the Director of Planning, the Officer in charge of the Crime Prevention Unit and the Chief Fire Officer, or such one or more of them as, having regard to the nature of the application, he may deem appropriate, have caused the hotel in respect of which application is made to be

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inspected and have furnished the Minister with a report of such inspection in relation to such particulars as the Minister may specify.

[Section 7 amended by 2007:19 s.3 effective 1 September 2007; Section 7 amended by 2014 : 33 s. 55 effective 1 January 2018; Section 7 amended by 2018 : 66 s. 2 effective 10 January 2019]

Grant of licence

8 (1) The Minister shall not grant an application for a licence or the transfer of a licence unless he is satisfied—

- (a) that the applicant and the person responsible for the management of the hotel are fit and proper persons to operate and manage the hotel;
- (b) that the hotel has been inspected under section 7 and that it complies with the Regulations and the security guidelines or, in the event that it fails to comply with the Regulations, an exemption can properly be granted under section 16;
- (c) that the operator is authorized by law to carry on business in Bermuda.

(2) The Minister may grant a licence subject to such conditions as he sees fit including, but not limited to—

- (a) a condition that the operator complies with the code of business conduct prescribed under section 15, or
- (b) a condition that the operator comply with any security guidelines.

[Section 8 paragraph (b) inserted by 2007:19 s.4 effective 1 September 2007]

Licence fee

9 Upon the Minister deciding to grant a licence and before such licence is issued there shall be paid into the Consolidated Fund in respect of such licence such fee as may be prescribed under the Government Fees Act 1965 *[title 15 item 18]*.

Duration of licence

10 A licence shall come into force on the date specified therein and shall continue in force until the expiration of one year from that date or such shorter period as may be specified therein.

Form of licence

11 A licence granted under this Act shall be in such form as the Minister may determine and shall specify—

- (a) the name of the operator;
- (aa) that the applicant has complied with the provisions of the Fire Safety Act 2014;
- (b) the person responsible for the management of the hotel business;
- (c) the premises in respect of which the licence is granted;

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- (d) the maximum number of guests who may at any one time be provided with sleeping accommodation in the hotel or in any room thereof;
- (e) the rooms to be reserved as public rooms for the general use of guests;
- (f) the date upon which the licence is to come into force;
- (g) the date upon which the licence is to expire;
- (h) the date upon which the licence was granted; and
- (i) any conditions attached to the licence under section 8(2).

[Section 11 amended by 2014 : 33 s. 55 effective 1 January 2018]

Suspension of licence; revocation

12 (1) Without prejudice to any of the foregoing provisions of this Act, where the Minister is satisfied that in relation to any hotel any provision of law or of the security guidelines or any condition of the licence is being contravened—

- (a) the Minister may serve upon the operator of that hotel a notice specifying the provision of law or of the security guidelines or the condition of the licence that is being contravened and requiring the operator to comply or ensure compliance therewith to the satisfaction of the Minister within such reasonable period as the Minister may specify in such notice and, if at the expiry of such period such person has failed so to comply or ensure compliance therewith to the satisfaction of the Minister, the Minister may suspend the licence; or
- (b) if the Minister is satisfied that such contravention is endangering the health or safety of any of the persons in or likely to use that hotel, the Minister may forthwith suspend or vary the licence granted in respect thereof until such time as he is satisfied that such provision of law or of the security guidelines or the condition of the licence is no longer being contravened.

(2) A licence which has been suspended by the Minister shall, during the period of such suspension, be deemed to be no longer in force.

(3) The Minister shall forthwith serve on the operator of the hotel notice of suspension of a licence effected pursuant to this section.

(4) The Minister may revoke a licence when satisfied that the premises to which it relates are no longer operated as a hotel.

(5) Where a licence is revoked or suspended under this section the operator shall, if the Permanent Secretary serves a notice upon him requiring him to surrender his licence, within seven days of the service of such notice surrender the licence to the Permanent Secretary.

(6) Where the operator fails to comply with a notice under subsection (5) he commits an offence against this Act:

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Punishment on summary conviction: a fine of \$3,000.

[Section 12 subsections (1) and (6) amended by 2007:19 s.5 effective 1 September 2007; Section 12 subsection (5) amended by 2018 : 26 Schedule (s. 5) effective 1 July 2018]

Entry on premises

13 (1) It shall be lawful for a police officer if there is reason to believe that premises not licensed as a hotel or not exempted from being licensed as a hotel are being operated as a hotel or part of a hotel to enter into and inspect such premises with or without the assistance of a hotel inspector.

(2) (a) Without prejudice to any other provision of law it shall, subject to paragraph (b), be lawful for any duly authorized officer of the Ministry, the Department of Health, the Department of Planning or an officer of the Bermuda Fire and Rescue Service or any police officer to enter into and inspect any premises licensed as a hotel or exempted from being licensed as a hotel without a warrant;

(b) Before any inspection is carried out under the authority of paragraph (a) the operator of the premises which it is intended to inspect, or some responsible employee of the operator shall be given such notice of the intention to carry out the inspection as is, in the circumstances of the case and having regard to the objects of the inspection, reasonable and shall be given an opportunity to be present or have some person selected by him present at such inspection.

(3) If any person authorized under subsection (2) is of the opinion that a contravention of any provision of law is being committed in a hotel and that such contravention is of such a nature that there is a likelihood of danger therefrom to the safety or health of persons therein if it is not promptly rectified, then that person may give such directions to the person for the time being in charge of the hotel as will, in his opinion, prevent or minimize such danger, and may require such persons or classes of persons as he may specify to vacate the hotel or such part of the hotel as he may specify until such danger is in his opinion prevented or minimized and may if such directions or requirements are not carried out call to his assistance such persons as he may think fit for the purpose of enforcing compliance therewith or carrying out such works of an emergency nature as he may think necessary.

(4) Any person giving directions or making requirements under the authority of paragraph (3) shall forthwith report the action he has taken to the Permanent Secretary.

(5) In subsection (3) the expression "contravention of any provision of law" shall be deemed to include, a failure to observe a Regulation in respect of the compliance with which an exemption has been granted under section 4(1) or of section 16(1).

[Section 13 subsection (1)(a) amended by 2007:23 s.17 effective 2 July 2007; subsections (1) and (2)(a) amended by 2007:19 s.6 effective 1 September 2007; subsections (2)(a) and (4) amended by 2018 : 26 Schedule (s. 5) effective 1 July 2018]

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Hotel Inspectors

13A (1) The Minister may authorize any public officer to exercise any powers or perform any duties conferred or imposed on a hotel inspector under this Act.

(2) The Minister shall provide every hotel inspector with a written instrument of appointment and every hotel inspector shall produce such instrument of appointment upon request when exercising or seeking to exercise any power or to perform any duty under this Act.

[Section 13A inserted by 2007:19 s.7 effective 1 September 2007]

Powers of Hotel Inspectors

13B (1) Subject to subsections (2) and (3), a hotel inspector may at any reasonable time enter and inspect any hotel premises or any part thereof for the purpose of enforcing this Act and the regulations and may be accompanied on the inspection by any duly authorised officer of the Department of Health, the Crime Prevention Unit or the Bermuda Fire and Rescue Service.

(2) Nothing authorises a hotel inspector to enter or inspect any private dwelling unit, including any grounds appurtenant thereto, without being accompanied by a police officer who has been issued a warrant by a magistrate authorising entry to inspect the private dwelling unit.

(3) Before any inspection is carried out under subsection (1) the owner of the private dwelling unit which a hotel inspector intends to inspect shall be given such notice of the intention to carry out the inspection as is, in the circumstances of the case and having regard to the objects of the inspection, reasonable and shall be given an opportunity to be present or have another person selected by them present during the inspection.

[Section 13B inserted by 2007:19 s.7 effective 1 September 2007; editorial amendment made to substitute "Bermuda Fire and Rescue Service" in subsection (2) as in sections 13 and 23]

Minister may make regulations

14 (1) The Minister may make Regulations for the operation and maintenance of hotels in a safe, hygienic and sanitary manner and condition, for the amenities to be provided and maintained and generally for the maintenance of standards in the operation of hotels for the protection and promotion of the tourist industry and in particular, but without prejudice to the generality of the foregoing—

- (a) regulating the number of persons who may be accommodated as guests in a hotel and in any room thereof;
- (b) prescribing standards of equipment for the sanitation of hotels, standards for the preparation and serving of food and drink in hotels and standards for the ventilation of hotels;
- (c) for the medical examination of hotel employees, for restricting and controlling the employment in hotels of persons suffering from disease or infection or who have been in contact with persons suffering from disease

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or infection and for prescribing standards of personal cleanliness to be observed by hotel employees;

- (d) prescribing standards for the maintenance of the exteriors and interiors of hotels and the roads, pathways and grounds thereof;
- (e) prescribing the precautions to be taken against the outbreak or spread of fire in hotels and for the protection of persons therefrom;
- (ea) prescribing security and safety standards;
- (f) prescribing the furnishings and fixtures to be provided in bedrooms and other rooms provided for the use of guests, and the standards to be maintained in connection therewith;
- (g) prescribing the manner in which any application may be made to the Minister;
- (h) for the keeping of registers and log-books by operators in relation to the operation of hotels;
- (i) for the making of reports to the Minister, the Department of Health, the Department of Planning, the Officer in charge of the Crime Prevention Unit and the Chief Fire Officer upon any matters connected with the observance of the Regulations;
- (j) requiring that the licence, the Regulations, or any part or extract therefrom, shall be displayed in any prescribed place;
- (k) providing for the proof of any matter in proceedings under this Act or the Regulations.

(2) *[repealed]*

(3) The affirmative resolution procedure shall apply to regulations made under this section.

(4) Regulations shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified therein.

(5) *[omitted]**[spent]*

[Section 14 subsection (1) paragraph (ea) inserted and paragraph (i) amended, and subsection (2) repealed, by 2007:19 s.8 effective 1 September 2007]

Minister may prescribe code of business conduct

15 (1) Without prejudice to section 14, the Minister may make Regulations prescribing a code of business conduct to be observed by operators which may, inter alia, regulate the following matters—

- (a) commissions payable to wholesale and retail travel agents;
- (b) advertising;
- (c) marketing;

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- (d) group bookings;
- (e) delinquent accounts;
- (f) other dealings (of whatever kind) with persons or bodies, whether in Bermuda or elsewhere, engaged in the business of arranging visits by travellers to Bermuda, being dealings affecting or capable of affecting the reputation of the hotel business or of tourism in Bermuda.

(2) Section 14(2), (3) and (4) shall apply to Regulations made under this section as they apply to Regulations made under section 14(1).

Security Guidelines

15A (1) The Officer in Charge of the Crime Prevention Unit may, after consultation with the operator, issue security guidelines in respect of any hotel or class of hotel.

(2) The Officer in Charge of the Crime Prevention Unit may request the operator of a hotel that is subject to the guidelines issued under subsection (1) to complete a self assessment evaluation survey of its security and safety standards annually and to submit it to the Ministry on a date, prior to the regulated licensing period, to be determined by the Permanent Secretary.

[Section 15A inserted by 2007:19 s.9 effective 1 September 2007; Section 15A subsection (2) amended by 2018 : 26 Schedule (s. 5) effective 1 July 2018]

Minister may grant exemption from compliance with regulations

16 (1) The Minister, at any time, if he sees fit may exempt the holder of a licence from complying, in whole or in part, with any one or more of the Regulations.

(2) Before granting any such exemption as is mentioned in subsection (1) the Minister shall consult with the Director of Planning, the Chief Environmental Health Officer and the Chief Fire Officer or such one or more of them as, having regard to the nature of the proposed exemption, he may deem appropriate.

(3) Any such exemption as is mentioned in subsection (1) may be granted for such period as the Minister may think fit and the Minister may extend such period from time to time as he sees fit.

(4) No exemption granted under this section shall have any effect unless particulars thereof have been endorsed on the licence.

(5) Any exemption granted under subsection (1) may be revoked in whole or in part, at any time, by the Minister and such revocation shall be endorsed on the licence:

Provided that before effecting any such revocation, the Minister shall give to the operator reasonable notice of his intention to revoke the exemption and shall take into account any representations made by or on behalf of the operator.

[Section 16 subsection (2) amended by 2014 : 33 s. 55 effective 1 January 2018; Section 16 subsection (2) amended by 2018 : 66 s. 2 effective 10 January 2019]

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Hotel Licensing Appeal Tribunal

17 (1) For the purposes of this Act there shall be a Tribunal to be called the Hotel Licensing Appeal Tribunal which shall consist of a Chairman and two other members selected by the Chairman from a panel of members.

(2) The Chairman of the Tribunal shall be a person appointed for the purpose by the Governor and shall hold office during the Governor's pleasure.

(3) The panel of members of the Tribunal shall be not less than 5 and not more than 9 persons appointed by the Governor and shall hold office during the Governor's pleasure.

(4) Fees shall be paid to members of the Tribunal in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

(5) In the exercise of his powers under this section, the Governor shall act on the advice of the Premier.

Appeal to Tribunal

18 (1) Any person aggrieved by any act, decision or order of the Minister in the exercise or purported exercise of any power or authority conferred on him by or under the Act or the Regulations may appeal to the Tribunal on the grounds that such act or decision is not sanctioned by law or is unreasonable.

(2) Upon hearing any appeal under this Act the Tribunal may make such order, including an order for costs, as it thinks just.

Hearing of appeals

19 (1) Appeals shall be heard by the Tribunal in a summary manner and the Tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses and their examination on oath.

(2) In the determination of any appeal the decision of the majority of the members shall prevail.

(3) The proceedings of the Tribunal when sitting to determine any appeal shall be open to the public.

(4) The Chief Justice shall make rules governing appeals to the Tribunal and the hearing thereof and all matters incidental thereto, including the fees to be paid and the forms to be used; and, subject to any such rules, the Tribunal may regulate its own proceedings.

(5) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under subsection (4) other than those relating to fees to which rules the affirmative resolution procedure shall apply.

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Operating hotel without a licence; offence

20 Any person who operates any premises as a hotel or part of a hotel when there is not in force a licence granted to him by the Minister to operate such premises as a hotel or part of a hotel commits an offence against this Act:

Punishment on summary conviction: a fine of \$3,000 for each day during which he has so operated such premises;

Punishment on conviction on indictment: a fine of \$6,000 for each day during which he has so operated such premises.

[Section 20 amended by 2007:19 s.10 effective 1 September 2007]

Irregular operation of licensed hotel; offence

21 Any person to whom a licence has been granted under this Act who operates the hotel in respect of which that licence has been granted otherwise than in accordance with the terms and conditions of such licence commits an offence against this Act:

Punishment on summary conviction: a fine of \$3,000 for each day during which such offence continues.

[Section 21 amended by 2007:19 s.11 effective 1 September 2007]

Offences

21A (1) Any person who operates a hotel in contravention of any of the provisions of the Regulations or who contravenes, or fails to comply with any of the provisions of the Regulations, or of any order, instruction or requirement lawfully made, given or imposed by any person under the authority thereof, or who fails to perform any duty imposed upon him thereby, commits an offence against the Regulations:

Punishment on summary conviction: a fine of \$1,000 for each offence.

(2) Where an operator, manager or person in charge of a hotel is charged with an offence under subsection (1), it shall be a defence for him to prove—

- (i) that the offence occurred without his consent;
- (ii) that the offence was not due to any act or omission on his part; and
- (iii) that he had taken reasonable steps to prevent the commission of the offence.

[Section 21A inserted by 2007:19 s.12 effective 1 September 2007]

Offences by bodies corporate

22 Where an offence against section 12, 20, 21 or 21A by a body corporate is committed with the consent or connivance of, or is attributable to any wilful neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

[Section 22 amended by 2007:19 s.13 effective 1 September 2007]

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Obstruction of officers; offence

23 Any person who obstructs any officer of the Ministry, the Department of Health, the Department of Planning or an officer of the Bermuda Fire and Rescue Service in the exercise of any power conferred on him or the performance of any duty imposed upon him by this Act or the Regulations commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,440 or both such imprisonment and fine.

[Section 23 amended by 2007: 23 s.17 effective 2 July 2007; and by 2007:19 s.14 effective 1 September 2007; Section 23 amended by 2018 : 26 Schedule (s. 5)effective 1 July 2018]

Consent of Director of Public Prosecutions

24 Proceedings in respect of an offence against this Act or any Regulations shall not, without the written consent of the Director of Public Prosecutions, be instituted by any person other than the Director of Public Prosecutions.

[Section 24 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Breach of statutory duty does not create civil liability

25 (1) It is hereby declared that the breach of any duty imposed upon an operator or any other person by or under this Act or the Regulations shall not confer any right of action for damages upon any person claiming to be injured or damaged thereby.

(2) Nothing in subsection (1) shall affect any cause of action which might have been brought by any person if this Act had not been enacted,

This Act to prevail over Public Health Act 1949

26 Nothing in this Act or the Regulations shall derogate from the Public Health Act 1949 [title 11 item 1] or any regulations made thereunder, but, in the event of any conflict, the provisions of this Act or the Regulations, as the case may be, shall, in so far as they relate to a hotel, prevail over the provisions of the Public Health Act 1949 or any regulations made thereunder.

Amendment

27 *[omitted]*

Amendment

28 *[omitted]*

Commencement and application

29 *[omitted]*

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SCHEDULE

[omitted]

[Assent Date: 23 June 1969]

[This Act was brought into operation on 1 December 1969]

[Amended by:

1971 : 43
1974 : 87
1976 : 10
1977 : 35
1984 : 30
1992 : 2
1999 : 8
2001 : 16
2007 : 19
2007 : 23
2014 : 33
2018 : 26
2018 : 66]