

Accommodation Registration Bill 2012

EXPLANATORY MEMORANDUM

OBJECTIVES

The Bill proposes to replace the current *Accommodation Registration Act 2006* and commence a new scheme of registration of accommodation houses and bed tax.

The new scheme proposed by the Bill will expand the types of accommodation covered which will include all accommodation provided for fee or reward of an amount per night prescribed by the Regulations.

Registration will remain at the core of the scheme but the onus of registration will switch to the operator of an accommodation house, not the owner as currently is the case. The suitability of the operator and premises are to be determined by the Secretary according to specified criteria, such as the fitness of the accommodation for human habitation. The Secretary then controls the ongoing standards for operators and premises through a power to impose, vary or remove conditions of registration and to suspend or cancel the registration of an accommodation house.

The bed tax is retained and will be imposed at the rate of \$10 per accommodation unit per night or any lesser amount that may be prescribed by the Regulations.

The proposed scheme requires mandatory notification to the Secretary of certain information, including a monthly return that outlines the occupancy of the accommodation house and the amount of bed tax that is due. If an operator fails to make a monthly return the Secretary is empowered to make a default assessment of bed tax which then becomes a debt due to the Republic. Additionally, an operator will be required to keep certain records for 5 years and allow the Secretary to attend and inspect those records at anytime.

Authorised officers are provided for and may exercise a range of powers such as to require the production of accommodation records and to inspect premises.

A number of offences are created that will be applied to accommodation operators who do not comply with the scheme. For example:

- a person who operates an unregistered accommodation house;
- a person who operates an unregistered accommodation house after being ordered by the Secretary to cease such operation.

The penalties provided for are related to the size of the accommodation house and are therefore relative to the estimated revenue of those operations.

The proposed scheme also provides that decisions of the Secretary may be appealed by a person who is aggrieved by such a decision. There will be an initial review by the Minister followed by an option to appeal to the Supreme Court.

EXPLANATION OF CLAUSES

Clause 1 provides for the short title of the Bill.

Clause 2 provides that the Act will commence on a date to be fixed by the Minister by Gazette notice.

Clause 3 provides for the definitions to be used in the Bill, including the following:

- an **'accommodation house'** is defined as a building, or group of buildings in close proximity, in which accommodation is provided for fee or reward but does not include such a building or buildings, or class of building or buildings, prescribed by the regulations;
- an **'accommodation unit'** is defined as a discrete part of an accommodation house in which accommodation is provided to a particular guest for fee or reward, and examples are given such as a room in a hotel, a flat or apartment or an attached townhouse;
- accommodation houses are classified into categories depending on capacity. Category 1 is for an accommodation house that can provide accommodation at any given time to 100 or more persons, category 2 is for 50-99 persons, category 3 is for 10-50 persons and category 4 is for less than 10 persons;
- **'operate'** in relation to an accommodation house, means to provide accommodation for fee or reward at the accommodation house and the **'operator'** of an accommodation house is the person who provides the accommodation house for fee or reward;

Clause 4 provides that the Act will only apply to accommodation provided for a fee or reward of a value, in relation to each accommodation unit per night, that exceeds the amount prescribed by the Regulations.

Clause 5 creates an offence to operate an accommodation house that is not registered.

Clause 6 provides that the operator of an accommodation house may apply to the Secretary for registration of the accommodation house. There will be a form and fee prescribed by the Regulations.

Clause 7 provides that the Secretary must register an accommodation house on application unless, in the opinion of the Secretary the accommodation house is not fit for human habitation, the applicant is not a suitable person to be the operator of an accommodation house or the accommodation house does not otherwise comply with any other requirements prescribed by the Regulations. Registration is for a period of 3 years and a person may apply to the Secretary to renew the registration before expiration.

Clause 8 provides that the Secretary may impose conditions on the registration of an accommodation house and that a person who contravenes such a condition commits an offence.

Clause 9 provides for the transfer of registration of an accommodation house to another person on application and in certain circumstances.

Clause 10 provides for mandatory notification by a registered operator to the Secretary if any of the following occur:

- the registered operator ceases to be the operator of the accommodation house;
- the registered operator is convicted of a criminal offence;
- any building work or renovation in relation to an accommodation unit, other than general maintenance, has been undertaken at the accommodation house;
- any other thing prescribed by the regulations exists or occurs in relation to the accommodation house or the operator of the accommodation house.

Clause 11 provides that the operator of an accommodation house must keep records as required by the Regulations. It will be an offence to not keep those records.

Clause 12 provides that the registered operator of an accommodation house must submit to the Secretary a monthly return in the manner and form required by the Regulations. The monthly return is to include information relating to the occupancy rate of the accommodation house and the amount of bed tax that is payable.

Clause 13 provides for the bed tax that is payable by the operator of an accommodation house and which is to be \$10 per accommodation unit per night, or any lesser amount prescribed by the Regulations. The bed tax is payable on or before the last day of the month following the month to which the bed tax relates and if not paid then a further 10% is added to the amount outstanding and then again each 6 months for which the bed tax remains unpaid.

Clause 14 provides that, if the operator of an accommodation house has not submitted a monthly return in relation to a particular month in accordance with section 12, the Secretary may make a reasonable estimate of the amount of bed tax that the operator is liable to pay in relation to that month. An operator may query the estimate made by the Secretary by submitting the monthly report that was not previously submitted.

Clause 15 provides that revenue received from the bed tax must be paid to the Treasury Fund.

Clause 16 provides that the Secretary, all police officers and a public officer appointed by the Secretary are authorised officers for the purposes of the Bill.

Clause 17 provides that each authorised officer, other than a police officer, must be issued with an identity card and must produce it on request when performing official duties.

Clause 18 provides for the powers of authorised officers which are:

- to enter and inspect, at any reasonable time, an accommodation house, or a place that the officer reasonably suspects is an accommodation house, for the purpose of the administration or enforcement of the Bill; and

- to require a person to produce a document reasonably required in connection with the administration or enforcement of the Bill; and
- to examine, copy or take extracts from a document produced under paragraph (b) or require a person to provide a copy of any such document; and
- to take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of the Bill.

Clause 19 provides for the cancellation or suspension of the registration of an accommodation house by the Secretary. Grounds for cancellation or suspension include:

- contravention of a condition of registration;
- the accommodation house poses a material risk to the health and safety of guests at the accommodation house;
- payment of the bed tax in relation to the accommodation house is more than 3 months in arrears;
- the operator of the accommodation house has contravened the Bill.

Clause 20 provides that the Secretary may, by order in writing, require a person to cease operating an accommodation house until the accommodation house is registered. If a person continues to operate an accommodation house after an order to cease, the person will be liable to a penalty for each additional day of operation (depending on the category of the accommodation house).

Clause 21 provides that the owner of a place being operated as an unregistered accommodation house by another person, commits an offence if the owner knew, or ought reasonably to have known, that the place was operated as an unregistered accommodation house and the owner failed to take reasonable steps to prevent the unregistered operation.

Clause 22 creates an offence of providing false and misleading information as required under the Bill.

Clause 23 creates an offence of hindering or obstructing an authorised officer in the exercise of powers or refusing or failing to comply with a requirement under the Bill.

Clause 24 creates an offence for a person to falsely represent that he or she is an authorised officer.

Clause 25 provides for the decisions that are to be reviewable under the Bill and for the persons who have standing to review those decisions.

Clause 26 provides that a person who makes a reviewable decision must provide to the affected person certain information about the decision and the fact that the decision is reviewable under the Bill.

Clause 27 provides for a person who has standing to apply for the review of a reviewable decision by the Minister. The Minister will have the power to affirm, vary or set aside the decision.

Clause 28 provides for appeal to the Supreme Court against certain decisions of the Minister.

Clause 29 provides that the Secretary must maintain a register of accommodation houses that contains certain information and may be inspected by the public on request.

Clause 30 provides that the Secretary may delegate a function or power under the Bill to another person.

Clause 31 provides for Regulations to be made by Cabinet which may:

- be of general application or vary in their application according to prescribed factors; and
- give the Minister or the Secretary a discretion to decide a matter; and
- impose a fine, not exceeding \$2,000, for offences against the Regulations.

Schedule 1 repeals the *Accommodation Registration Act 2006*.