

立法會
Legislative Council

LC Paper No. CB(2)1999/15-16
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/13

Bills Committee on Private Columbaria Bill

Minutes of the twentieth meeting
held on Tuesday, 24 November 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon WONG Yuk-man
Hon Steven HO Chun-yin, BBS
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon CHEUNG Kwok-che
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Elizabeth QUAT, JP
Hon Tony TSE Wai-chuen, BBS

Public Officers attending : Item I

Mr Christopher WONG, JP
Deputy Secretary for Food and Health (Food)1
Food and Health Bureau

Miss Diane WONG
Principal Assistant Secretary for Food and Health
(Food)2
Food and Health Bureau

Ms Phyllis KO
Senior Assistant Law Draftsman (II)1
Department of Justice

Mr CHIU Yu-chow
Assistant Director (Grade Management and
Development)
Food and Environmental Hygiene Department

Ms Viola YIM
Senior Superintendent (Cemeteries & Crematoria)
Special Duties
Food and Environmental Hygiene Department

Mr Thomas LEUNG
Assistant Director/New Buildings 1
Buildings Department

Ms Doris CHOW
Assistant Director (Estate Management)
(Lands Administration Office/Headquarters)
Lands Department

Ms Christine TSE
Assistant Director of Planning (Special Duties)
Planning Department

Clerk in attendance : Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Catherina YU
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

Action

I. Meeting with the Administration

[File Ref.: FH CR 2/3751/07, LC Paper Nos. CB(3)740/13-14, CB(2)2141/13-14(01), CB(2)2338/13-14(07) to (08), CB(2)305/14-15(01), CB(2)431/14-15(01) to (03), CB(2)630/14-15(01), CB(2)825/14-15(01), CB(2)878/14-15(01), CB(2)1063/14-15(01), CB(2)1286/14-15(01), CB(2)1535/14-15(01), CB(2)1813/14-15(01), CB(2)1905/14-15(01), CB(2)20/15-16(01), CB(2)220/15-16(01) and CB(2)309/15-16(01)]

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

2. The Bills Committee requested the Administration to:

- (a) consider charging interest for the expenses incurred by the Director of Food and Environmental Hygiene ("DFEH") in respect of a columbarium as mentioned in section 15 of Schedule 5 with reference to the prevailing annual rate;
- (b) consider charging interest for the expenses incurred as mentioned in section 15 of Schedule 5 sooner than one month after the service of the certificate on the person who was liable for such expenses;
- (c) consider moving a Committee stage amendment ("CSA") to section 15 of Schedule 5 to the effect that a charge would be imposed upon the land on which the columbarium concerned was situated in respect of the liabilities referred to in that section, if these liabilities had not been discharged;

Action

- (d) consider replacing the word "may" by the word "must" in the English text and "可" by "須" in the Chinese text of section 16(1) and (2) of Schedule 5;
- (e) consider including in clause 68(2) persons in possession of the columbarium concerned;
- (f) consider moving CSAs to clause 48 in response to ALA6's concern raised in her letter to the Administration dated 20 November 2015 (LC Paper No. CB(2)309/15-16(01));
- (g) consider providing expressly in the Bill a duty on DFEH or an authorized officer to return the impounded book, document or article after completing the examination;
- (h) review clause 49(1)(e) and consider imposing limitations on the powers of DFEH or an authorized officer;
- (i) consider revising clause 50 to reflect more clearly that clause 50(4) would apply if DFEH or an authorized officer seized, removed or impounded any thing pursuant to clause 50(3);
- (j) replace "a notice, written in the Chinese language" by "a notice" in the English text and replace "中文通告" by "通告" in the Chinese text of clause 50(4)(a);
- (k) consider whether it was necessary to expressly provide for the exclusion of ashes in clause 53;
- (l) consider replacing "可取" in the Chinese text of clause 54(4) by another rendition;
- (m) consider amending clause 54(2)(a) to reflect that depending on the circumstances, a holder of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability) was required to do one or more than one item stipulated in clause 54(1) as might be applicable;
- (n) consider whether the Chinese rendition of "enforcement notice" in the English text of clause 54 should be changed from "執法通知" to "執行通知";

Action

- (o) consider revising clause 81 to reflect more clearly that no one but DFEH could exercise the power of delegation and such power could not be further delegated;
- (p) consider using a consistent Chinese rendition for "other enforcement authority" in clause 82(2) and (3);
- (q) consider revising the expression "任何人在該人..." in the Chinese text of clause 87;
- (r) examine whether a pre-Bill columbarium could apply for an exemption under the Bill if its operator was an unincorporated association in the pre-enactment stage and applied in the capacity of a natural person, partner or company in the post-enactment stage; and
- (s) consider moving a CSA to prescribe the fees for the items to be specified in Schedule 6.

II. Date of next meeting

3. Members noted that the next meeting would be held on Monday, 7 December 2015 at 10:45 am.

III. Any other business

4. There being no other business, the meeting ended at 6:24 pm.

Council Business Division 2
Legislative Council Secretariat
24 August 2016

**Proceedings of the twentieth meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 24 November 2015, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000617 - 000704	Chairman	Opening remarks	
Clause-by-clause examination			
000705 - 001605	Chairman Mr WONG Kwok-hing Admin	Examination of Schedule 5 – Part 2 Section 15 Mr WONG Kwok-hing's enquiry and the Administration's response regarding whether legal expenses incurred by the Director of Food and Environmental Hygiene ("DFEH") in carrying out the prescribed ash disposal procedures were covered by section 15 of Schedule 5. Mr WONG's suggestion and the Administration's response regarding charging interest for the expenses incurred by DFEH in respect of a columbarium as mentioned in section 15 of Schedule 5 (as a double of the prevailing annual rate) to enhance the deterrent effect. The Administration undertook to give a response to the suggestion.	Admin (paragraph 2(a) of the minutes)
001606 - 001856	Chairman Mr James TO Admin	Mr James TO's view that charging an interest at the annual rate of 10% for the expenses as mentioned in section 15 of Schedule 5 was acceptable and amendments to the annual interest rate could be made in future if necessary.	
001857 - 002046	Chairman Admin	The Chairman's enquiry and the Administration's response regarding the need for using the words "看來是" in the Chinese text of section 15(8) of Schedule 5. The Administration advised that this formulation also appeared in other legislation, which sought to make the procedural steps for using the certification as evidence less cumbersome.	
002047 - 002433	Chairman Mr James TO Admin	Mr James TO's enquiry and the Administration's response regarding the reasons for charging interest for the expenses mentioned in section 15 of Schedule 5 commencing one month after the date of the service of the certificate on the person who was liable for such expenses. Views of the Chairman and Mr TO that interest should be charged sooner after the service of the	Admin (paragraph

Time marker	Speaker(s)	Subject(s)	Action required
		<p>certificate, e.g. seven days after serving the certificate. The Administration undertook to give a response.</p> <p>The Administration's advice that it would consider moving a Committee stage amendment ("CSA") to section 15 of Schedule 5 to the effect that a charge would be imposed upon the land on which the columbarium concerned was situated in respect of the liabilities referred to in that section, if these liabilities had not been discharged.</p>	<p>2(b) of the minutes)</p> <p>Admin (paragraph 2(c) of the minutes)</p>
002434 - 003032	<p>Chairman ALA6 Mr LEUNG Kwok-hung Admin</p>	<p>Examination of Schedule 5 – Part 2 Section 16</p> <p>ALA6's enquiry about the reasons for using the word "may" instead of the word "must" in section 16(1) and (2) of Schedule 5. The Administration's response that with the use of the word "may", DFEH would still do it. If DFEH did not do so, she would need to give justifications for exercising her discretion for not doing so.</p> <p>Mr LEUNG Kwok-hung's view that if DFEH was required under the law to keep information on ash disposal by columbaria, the word "must" should be used unless there were provisions in the Bill spelling out the circumstances under which DFEH could exercise his or her discretion.</p> <p>The Administration undertook to give a response to the suggestion of replacing the word "may" with the word "must" in the English text and "可" by "須" in the Chinese text of section 16(1) and (2) of Schedule 5.</p>	<p>Admin (paragraph 2(d) of the minutes)</p>
003033 - 003238	<p>Chairman Admin</p>	<p>Examination of Schedule 5 – Part 2 Section 17</p>	
003239 - 003628	<p>Chairman Admin</p>	<p>Examination of Part 7 Clauses 66 and 67</p>	
003629 - 003912	<p>Chairman Admin</p>	<p>Examination of Part 7 Clause 68</p> <p>The Administration's advice that taking into account concerns raised by members and ALA6 at previous meetings of the Bills Committee, it would consider including in clause 68(2) persons in possession of the columbarium concerned, so that they could make an application under clause 68.</p>	<p>Admin (paragraph 2(e) of the minutes)</p>

Time marker	Speaker(s)	Subject(s)	Action required
		The Administration's response to the views of the Chairman and ALA6 that it would replace "a notice, written in the Chinese language" by "a notice" in the English text and replace "中文通告" by "通告" in the Chinese text of clause 50(4)(a).	Admin (paragraph 2(j) of the minutes)
005539 - 005747	Chairman Admin	Examination of Part 6 Clause 51 The Chairman's enquiry and the Administration's response regarding the meaning of "合理手段" in the Chinese text of clause 51(2) and the reasons for requiring DFEH or an authorized officer instead of a police officer to arrest a person who had committed or was committing an offence under the Ordinance.	
005748 - 005942	Chairman Mr Albert CHAN Admin	Examination of Part 6 Clause 52 Mr Albert CHAN's enquiry and the Administration's response regarding whether DFEH or an authorized officer could enter private land or properties for the purposes of enforcing the Ordinance.	
005943 - 010504	Chairman Mr Albert CHAN ALA6 Mr LEUNG Kwok-hung Admin	Examination of Part 6 Clause 53 The Administration's response to Mr Albert CHAN's enquiry that the Administration would not touch on ashes interred in columbaria under clause 53 and such ashes would be dealt with according to the ash disposal procedures prescribed in the Bill. Views of Mr Albert CHAN and ALA6 that for clarity sake, the exclusion of ashes should be stated in clause 53. Mr LEUNG Kwok-hung considered it unnecessary as all matters relating to the handling of ashes had been covered by the relevant procedures prescribed in the Bill. The Chairman's view that the prescribed ash disposal procedures might suffice to address the concern about whether ashes were included under clause 53(1) but the word "any thing" therein might induce disputes. At the Chairman's request, the Administration undertook to take into account the views of members and ALA6 and consider whether it was necessary to expressly provide for exclusion of ashes in clause 53.	Admin (paragraph 2(k) of the minutes)
010505 - 010700	Chairman ALA6 Mr LEUNG Kwok-hung	ALA6's enquiry and the Administration's response regarding the justification for clause 53(3).	

Time marker	Speaker(s)	Subject(s)	Action required
	Admin	The Administration's response to Mr LEUNG Kwok-hung's enquiry on whether there was an obligation to return the things seized, removed or impounded. Provided that the things had not yet been disposed of, the things seized, removed or impounded would be returned to the owner upon the owner's application, even if he or she applied for the things to be returned out of time (i.e. beyond the 60-day time limit).	
010701 - 011506	Chairman Mr WONG Yuk-man ALA6 Admin	Examination of Part 6 Clause 54 Mr WONG Yuk-man's enquiry and the Administration's response regarding the meaning of "可取" in the Chinese text of clause 54(4). Mr WONG's view that the Administration should consider replacing "可取" by another rendition to avoid misunderstanding.	Admin (paragraph 2(1) of the minutes)
011507 - 011509	Chairman Mr WONG Yuk-man ALA6 Admin	In response to Mr WONG Yuk-man's enquiry, the Administration explained that depending on the circumstances, a holder of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability) was required to do one or more than one item stipulated in clause 54(1) as might be applicable. ALA6's view that in that case, corresponding amendments should be made to clause 54(2)(a). The Administration undertook to consider amending clause 54(2)(a).	Admin (paragraph 2(m) of the minutes)
011510 - 012130	Chairman ALA6 Mr WONG Yuk-man Mr LEUNG Kwok-hung Admin	ALA6's view that the Chinese rendition of "enforcement notice" in the English text of clause 54 should be changed from "執法通知" to "執行通知". Mr WONG Yuk-man's concurrence with ALA6's view. Mr LEUNG Kwok-hung's view that "執法通知" should be used as the subject heading of Part 6 of the Bill was "Enforcement". The Administration undertook to consider views of members and ALA6. ALA6's enquiry and the Administration's response regarding whether enforcement notices would be suspended in case of appeals.	Admin (paragraph 2(n) of the minutes)
012131 - 012930	Chairman Admin Mr WONG Yuk-man Admin	Examination of Part 9 Clause 81 The Administration's response to the enquiries of the Chairman and Mr WONG Yuk-man regarding DFEH's power of delegation under clause 81.	

Time marker	Speaker(s)	Subject(s)	Action required
		Views of the Chairman and Mr WONG Yuk-man that clause 81 did not clearly reflect that no one but DFEH could exercise the power of delegation and such power could not be further delegated. The Administration undertook to consider revising clause 81.	Admin (paragraph 2(o) of the minutes)
012931 - 013350	Chairman Mr WONG Yuk-man Admin	Examination of Part 9 Clause 82 Mr WONG Yuk-man's view that a consistent Chinese rendition for "other enforcement authority" should be used in clause 82(2) and (3). The Administration undertook to consider the view.	Admin (paragraph 2(p) of the minutes)
013351 - 013903	Chairman Admin	Examination of Part 9 Clauses 83 to 86	
013904 - 014146	Chairman Admin Mr WONG Yuk-man	Examination of Part 9 Clause 87 Views of the Chairman and Mr WONG Yuk-man that the term "任何人在該人" in the Chinese text of clause 87 was difficult to comprehend. The Administration undertook to consider revising the Chinese text of clause 87.	Admin (paragraph 2(q) of the minutes)
014147 - 014711	Chairman ALA6 Admin	Examination of Part 9 Clause 88 The Administration's advice that unincorporated associations would not be allowed to make applications for specified instruments. ALA6's enquiry and the Administration's response regarding whether there were pre-Bill columbaria which were operated by unincorporated associations. ALA6's concern about whether a pre-Bill columbarium could apply for an exemption under the Bill if its operator had been changed from being an unincorporated association to a company. The Administration would consider addressing this through Schedule 7 and undertook to provide a response in this regard.	Admin (paragraph 2(r) of the minutes)
014712 - 014739	Chairman Admin	Examination of Part 9 Clause 89	
014740 - 015009	Chairman ALA6 Mr WONG Yuk-man Admin	Examination of Part 9 Clause 90 The Administration's response to ALA6's enquiry that it would move a CSA to Schedule 6 to prescribe the fees for the items to be specified therein. The Administration's explanation of the reasons for providing fee schedule in	Admin (paragraph 2(s) of the minutes)

Time marker	Speaker(s)	Subject(s)	Action required
		Schedule 6 at the stage of CSAs rather than earlier, as any amounts at the stage of introduction of the Bill would have to be updated to reflect the most current rates prevailing at the enactment date.	
015010 - 015113	Chairman Deputy Chairman Admin	Examination of Part 9 Clause 91 The Administration's response to the Deputy Chairman's enquiry that any amendments to Schedule 6 should be made by way of subsidiary legislation.	
015114 - 015447	Chairman Admin	Examination of Part 9 Clauses 92 and 95	
015448 - 015506	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
24 August 2016