

Private Columbaria Bill
Debate and voting arrangements

Object of the Bill : To provide for the licensing of non-Government columbaria (“columbaria”) for keeping cremated human remains and the establishment of the Private Columbaria Licensing Board (“Licensing Board”).

First debate	:	Clauses with no amendment	– Clauses 6, 23, 26, 28, 47, 56, 57, 66, 69, 77, 83, 85, 86, 89, 90, 93, 95, 96, 101, 103 to 110, 113, 114, 115 and 117
Voting	:	To vote on the above clauses standing part of the Bill	
Second debate	:	Clauses with amendments proposed by the Secretary for Food and Health (“SFH”)	– Clauses 1 to 5, 7 to 22, 24, 25, 27, 29 to 43, the heading of Division 2 of Part 5, Clauses 44, 45, 46, 48 to 55, 58 to 65, 67, 68, 70 to 76, 78 to 82, 84, 87, 88, 91, 92, 94, 97 to 100, 102, 111, 112, 116 and 118

Joint debate on the original clauses and the amendments thereto.

Date theme: Amendments to the above clauses on various matters

Clause 1

- To amend clause 1(3) to stipulate that the following provisions come into operation on the expiry of six months (instead of three months) beginning on the day on which this Ordinance is published in the Gazette:
 - Part 4 (Instruments required for operating columbaria);
 - Division 2 of Part 5 (Duties to exhibit instruments and notices, not to deviate from approved plans etc.);
 - Part 10 (Implication on Land (Miscellaneous Provisions) Ordinance, Town Planning Ordinance, Buildings Ordinance and other Ordinances); and
 - Schedule 2 (Requirements relevant to eligibility for, or conditions imposed on, specified instruments) and Schedule 3 (Further provisions on applications relating to specified instruments).

Clauses 2 and 3, the heading of clause 4, clauses 4, 5, 7, 8 9, 11 and 12, the heading of clause 13, clauses 13, 15 to 22, 24, 25, 27 and 29, the heading of clause 30, clauses 30 to 36, the heading of clause 37, clauses 37 to 40, the heading of clause 41, clauses 41, 42 and 43, the heading of Division 2 of Part 5, the heading of clause 44, clause 45, the heading of clause 46, clauses 46, 49 to 52, the heading of clause 53, clauses 53, 54, 55, 58 to 62, the heading of clause 63, clauses 67,63 and 64, the heading of clause 65, clause 65, the heading of clause 67, clauses 67, 68, 71 to 76, 78, 79 and 80, the heading of clause 81, clauses 81, 82, 84, 92, 94, 97, 98, 100, 102, 111, 112, 116 and 118

- To make textual, technical or minor amendments to the above clauses, and/or align the Chinese and English texts or improve the clarity of the relevant provisions.

Clause 2

- To amend clause 2(1) to clarify the definition of “*ashes*”, and amend and add a number of interpretations.

Clause 5

- To amend clause 5(1) to provide that the Bill does not apply to domestic premises where not more than 10 containers of ashes are kept.

Clause 8

- To add clause 2A to provide that if a specified instrument in respect of a columbarium or an authorization under a licence to sell interment rights in respect of a columbarium is suspended, a person who operates, keeps, manages or has control of the columbarium under the specified instrument or licence does not contravene the restrictions on operating the columbarium if the person complies with the requirements imposed by the Licensing Board.

The following amendments to clauses 10 to 36 relate to Part 4 of the Bill (Instruments Required for Operating Columbaria)

Clause 10

- To add in the definition of “*ash interment layout*” the location of the religious ash pagoda, and to delete “the names of the dedicated persons” from the definition of “*ash interment quantity*”.

Clause 11

- To amend clause 11(5), (6) and (7) and add clause 11(7A), seeking to make amendments on matters relating to the validity period of specified instruments or exemptions in respect of columbaria premises.

Clauses 13 and 14

- To amend clause 13(1)(b) and (2), add clause 13(3) and amend clause 14(3), seeking to amend the conditions that must be met by the applicant of a licence in respect of a columbaria.

Clause 15

- To amend clause 15(1)(h)(i) and add clause 15(1A), seeking to amend the conditions for continuation of operation of a columbarium that was in operation, and in which ashes were interred in niches, immediately before the Bill announcement time (“pre-Bill columbarium”).

Clause 16

- To amend clause 16(2)(a)(ii) and add clause 16(4), seeking to make amendments on matters relating to the Licensing Board's acceptance/refusal of an application for the issue of a temporary suspension of liability in respect of a pre-Bill columbarium.

Clause 17

- To add clause 17(3) and (4) to provide for the relevant considerations that must have been regarded to by the Licensing Board in relation to an application for the issue of a licence or an exemption in respect of a pre-Bill columbarium or an extension of a temporary suspension of liability.

Clause 18

- To add clause 18(1), (2) and (3), seeking to specify the information required for an application for a specified instrument.

Clauses 19 and 20

- To amend clauses 19(4) and 20(1)(b) and add clause 20(3)(ab), seeking to provide that the plans accompanying an application for a specified instrument in respect of a columbarium must be certified by a qualified professional that they conform to the relevant conditions and meet the requirements of the Licensing Board.

Clause 32

- To add clause 32(3A), (4A) and (4B), amend clause 32(6) and add clause 32(6A) and (6B) which relate to the factors that must be considered by the Licensing Board and the arrangement for processing the relevant applications in respect of the transfer of a specified instrument of a columbarium.

Clause 33

- To add clause 33(2)(ea), amend clause 33(2)(f) and add clause 33(2)(g)(iv), seeking to specify certain circumstances under which the Licensing Board may exercise the powers to revoke, suspend, refuse to renew or extend and vary the conditions in respect of the specified instrument of a columbarium.

Clause 35

- To add clause 35(4) which provides that the Licensing Board must, on determining an application by a person holding a specified instrument for suspending the operation of a decision by the Licensing Board, notify the person in writing of the Licensing Board's decision and (if the application is refused) the reasons for the refusal.

Clause 36

- To amend clause 36(2) and add clause 36(2A) and (2B), seeking to require the holder of a specified instrument in respect of a columbarium to notify the Licensing Board in writing any change that materially affects the accuracy of the information that the holder has provided in connection with the relevant application, including a change of any director, manager, secretary or other similar officers.

The following amendments to clauses 41 to 45 relate to Part 5 of the Bill (Operation of Columbaria)

Clause 41

- To amend clause 41(2), (3) and (4) which relate to changes to certain circumstances or conditions concerning certain agreement for sale of interment right unenforceable by seller.

Clause 42

- To add clause 42(1A) and (4) to revise the arrangement for cancellation of an unenforceable agreement.

Clause 43

- To amend clause 43(3) and (4)(b) and add clause 43(4A) and (6) to make certain amendments regarding the arrangements for a person holding a specified instrument in respect of a columbarium to make the relevant records available for inspection by the Director of Food and Environmental Hygiene (“the Director”) or an authorized officer.

Clause 44

- To amend clause 44(2), (3) and (5), seeking to provide that a person who holds an exemption or temporary suspension of liability in respect of a pre-Bill columbarium must exhibit at a conspicuous place in the columbarium a notice to the effect that any sale of an interment right in respect of the columbarium is an offence of restriction on operating columbarium under section 9.

Clause 45

- To add clause 45(4) to stipulate that on determining an application for alteration or addition to the columbarium premises that would result in material deviation from the approved plans, the Licensing Board must notify the applicant in writing of its decision, and (if the application is refused) the reasons for the refusal.

The following amendments to clauses 48 to 54 relate to Part 6 of the Bill (Enforcement)**Clauses 48, 49, 50, 52, 53 and 54**

- To deleting clause 48 which provides for the appointment of a public officer as an authorized officer by the Director; and to transfer such power to clause 81;
- to add clause 49(1A) and amend clause 49(1)(c) and (d) to provide that the Director or an authorized officer has power to, in ascertaining whether this Ordinance, the conditions of a specified instrument or the management plan approved in respect of a columbarium is being complied with, inspect a columbarium and carry out the necessary examination and inquiry;
- to delete clause 52(1)(c) which provides that a person commits an offence if the person furnishes the Director or an authorized officer with information knowing that it is false or misleading in a material particular;
- to amend clause 53(1), (2) and (3) to stipulate certain arrangements for the disposal of things seized, removed or impounded; and
- to add clause 54(6) to provide that an appeal against a decision to serve an enforcement notice does not suspend the operation of the decision, pending the determination of the appeal, unless the Director decides otherwise.

The following amendments to clauses 58 to 68 relate to Part 7 of the Bill (Ash Disposal and Cessation of Columbaria)

Clause 58

- To amend clause 58(2)(a)(iii) to provide for the specified particulars of ash disposal that a person who has operated, kept, managed or had control of a columbarium must enter into the relevant record on interment and disinterment of ashes; and
- to add clause 58(3) to (6) to provide, among others, that if a columbarium in respect of which no specified instrument is in force is still in operation after the specified grace period, the person who operates the columbarium is regarded as having improperly disposed of ashes interred in the columbarium, unless that person carries out the prescribed ash disposal procedures.

Clause 59

- To add clause 59(1A) and (1B), amend clause 59(1) and (2), and add clause 59(3A), seeking to revise the arrangement for abandonment of a columbarium operated without a specified instrument.

Clause 60

- To amend clause 60(1) to (4), and add clause 60(1A), (2A) and (2B), seeking to revise the arrangement for abandonment of a columbarium where a specified instrument is issued, and to provide for the relevant penalties.

Clause 64

- To amend clause 64(1) to (6) and add clause 64(4A) to (4E) and (5A) and (5B), seeking to, among others, make amendments relating to the obligations of the owner, mortgagee etc. taking possession of columbarium premises, including requesting the person in possession to carry out the prescribed ash disposal procedures as soon as reasonably practicable, and to provide for the relevant penalties.

Clause 65

- To amend clause 65(3), (4) and (5) to provide, among others, that a magistrate may make an occupation order empowering the specified officer to occupy the columbarium premises; and to add clause 65(5A), (5B) and (5C) to provide, among others, that a specified officer may request the relevant person to produce any necessary information, and such person is required to produce such information.

Clause 68

- To amend clause 68(1) to specify certain conditions under which the Licensing Board may issue a certificate that the premises cease to be a columbarium;
- to add clause 68(2)(ba) to provide that the person in possession within the meaning of section 64 can apply for the above certificate; and
- to add clause 68(4) to provide that, on determining an application for the above certificate, the Licensing Board must notify the applicant in writing of the Licensing Board's decision and (if the application is refused) the reasons for the refusal.

The following amendments to clauses 70 to 73 relate to Part 8 of the Bill (Appeal)

Clauses 70 to 73

- To amend clause 71(4) to provide for the appointment of panel members for the purpose of the Appeal Board;
- to add clause 72(1)(ab), (ca), (cb) and (ea), and add clause 72(1)(g) and (h), to provide for, among others, specified circumstances under which an applicant for or a holder of a specified instrument may appeal to the Appeal Board against any decision made under this Ordinance; and to make corresponding technical amendments; and
- to amend clause 73(7) to provide that if the term of appointment of a panel member who is the presiding officer at an appeal expires during the hearing of the appeal, the panel member may continue to hear the appeal until the appeal is determined.

The following amendments to clauses 81 to 92 relate to Part 9 of the Bill (Miscellaneous)

Clause 81

- To amend clause 81 which provides for the Director's power of delegation.

Clause 87

- To amend clause 87(1) and (2) to provide that a person commits an offence if the person furnishes the Director, an authorized officer or a public officer with information knowing that it is false or misleading in a material particular, and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.

Clause 88

- To add clause 88(4) to provide that if a member of an unincorporated body commits an offence and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any other member or any manager, secretary or other similar officer of the unincorporated body, the other member or the manager, secretary or other similar officer commits the like offence.

Clause 91

- To amend clause 91(2) to stipulate that SFH may, by notice published in the Gazette, amend Schedule 1 of the Bill (Licensing Board).

Clause 92

- To add clause 92(2)(ca) to provide that SFH may make regulations restricting the imposition of additional fees, charges or sums in respect of an interment right of a columbarium.

Clauses 97, 98 and 99

- To make corresponding amendments to other ordinances in view of the implementation of the Bill.

Voting : To vote on the above amendments together, and then vote on the original clauses or the clauses as amended standing part of the Bill

Third debate	: New clauses proposed by SFH	– New clauses 4A, 4B, 11A, 11B and 18A, the new subdivision heading before clause 31A, clauses 31A, 46A, 46B, 46C, 61A, 65A and 94A, the new division heading before clause 119, clauses 119 and 120
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New Clauses 4A and 4B

- To provide that the Bill is not applicable to premises where ash transforming work is carried out and premises where transient exhibition of ashes is held, and to add the definitions of “synthetic material” and “transformation work”.

New Clauses 11A and 11B

- To provide for the time limit for applications for specified instruments and the validity period of specified instruments.

New Clause 18A

- To provide for requirements about registers accompanying applications.

New subdivision heading before clause 31A

- To provide that the Licensing Board may as it thinks fit impose conditions on a specified instrument in respect of a pre-Bill columbarium restricting the imposition of additional fees, charges or other sums in respect of an interment right.

New Clauses 46A, 46B and 46C

- To provide for, among others, interment of ashes by exercising interment right sold before the Bill announcement time, records on unused or partially used niches, and interment of ashes in religious ash pagodas.

New Clause 61A

- To provide that if a specified instrument holder has given a specified response that the holder continues to operate the columbarium, the person must continue to operate the columbarium in respect of which a specified instrument is in force.

New Clause 65A

- To provide for the power of court to order return of ashes.

New Clause 94A

- To provide for the ways of serving documents under the Bill.

New division heading before clause 119, new clauses 119 and 120

- To amend the Electronic Transactions (Exclusion) Order (Cap. 553 sub.leg. B), and add a provision on Schedule 1 to the Bill amended (provisions excluded from application of section 5 of the Bill).

Voting : To vote on the above new clauses standing part of the Bill

Fourth debate	:	Schedules with amendments proposed by SFH and Hon Cyd HO	– Schedules 1 to 7
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Joint debate on the Schedules and the amendments thereto.

Debate theme: Amendments to Schedules**SFH's amendments**

The amendments to Schedules 1 to 7 are mainly minor/technical changes and to improve the clarity and drafting of the relevant provisions as well as aligning the relevant Chinese and English texts. In addition, certain amendments are proposed to various Schedules including:

Schedule 1: Private Columbaria Licensing Board

- To add section 1(6) to provide that the notification under section 1(5) of Schedule 1 on appointment of members of the Licensing Board is not subsidiary legislation; and
- to amend section 4(2) and add sections 4(2A), (3A) and (8) to provide for the arrangements for the absence of the Chairperson of the Licensing Board or its committee from meetings.

Schedule 2: Requirements Relevant to Eligibility for, or Conditions Imposed on, Specified Instruments

- To add section 3(3)(d) seeking to add new requirements to the definition of “certifiable building”; and
- to amend section 4(2) to specify the meaning of “a reference to a building” in the definition of “structures certifiable for a pre-Bill columbarium” in section 4(1)(b).

Schedule 3: Further Provisions on Applications Relating to Specified Instruments

- To amend sections 2(2)(b) and (c) to provide that if the applicant for a specified document is a partner in a partnership or a body corporate, the application must be signed by an authorized person in writing to act for and on behalf of the partnership or the body corporate.

Schedule 4: Prescribed Information, Recommendations and Essential Terms in Agreement for Sale of Interment Right

- The amendments mainly relate to the seller's information that must be set out in an agreement for the sale of an interment right.

Schedule 5: Occupation Order and Ash Disposal Procedures

- The amendments mainly relate to application for, variation or cancellation of an occupation order, and arrangements for the commencement and carrying out of the prescribed ash disposal procedures.

Schedule 6: Fees

- In view of clauses 90 and 91 of the Bill, to add 18 items to the Schedule with their particulars and the relevant fees specified.

Schedule 7: Transitionals

- To amend sections 1(3)(a) and (b) to extend the grace period for a columbarium to continue operation without selling the interment right from six months to nine months.

Hon Cyd HO's amendment

To amend the definition of "relative" in Schedule 5

- Section 5(2) of Schedule 5 provides for a definition of "relative" to facilitate the return of a deceased person's ashes by ash handlers to eligible claimants under the prescribed ash disposal procedures in Part 2 of Schedule 5. The amendment seeks to extend the definition to the effect that a deceased person's same-sex partner in a marriage, civil partnership or civil union in any jurisdiction outside Hong Kong would become a relative and therefore eligible to claim for the return of the deceased person's ashes.

Mover	Voting	Remarks	Amendment(s)
SFH	To jointly vote on SFH's proposed amendments to Schedules 1 to 7	Irrespective of whether SFH's amendments to Schedules 1 to 7 are passed or not, Hon Cyd HO may move her amendment to Schedule 5.	LC Paper No. <u>CB(3) 772/15-16</u>
Hon Cyd HO	Ms HO's amendment to Schedule 5		LC Paper No. <u>CB(3) 778/15-16</u>

SFH's amendments

(printed in LC Paper No. CB(3) 772/15-16 issued on 4 July 2016)

Hon Cyd HO's amendment

(printed in LC Paper No. CB(3) 778/15-16 issued on 4 July 2016)

Council Business Division 3

Legislative Council Secretariat

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