



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : FHB/F 7/28/20  
本函檔號 OUR REF : LS/S/19/18-19  
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**URGENT**

By Fax (2136 3282)

4 March 2019

Mr Gilford LAW  
Principal Assistant Secretary for Food and Health (Food)2  
Food and Health Bureau  
17/F, East Wing  
Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Mr LAW,

**Public Health and Municipal Services (Fees)  
(Amendment) Regulation 2019 (L.N. 14 of 2019)**

Thank you for your letter dated 28 February 2019. We should be grateful if you could further clarify the following matters.

Concerning the legal basis for the Food and Environmental Hygiene Department ("FEHD") to remove the ashes of human remains ("ashes") from the niches and dispose of the ashes by means of green burial if the related persons have not sought extension of deposit within two years after the expiry date of the deposit period, or if they cannot be contacted after repeated attempts ("the ashes disposal arrangement"), except the consent obtained from the applicants, the Administration has also relied on section 118 of the Public Health and Municipal Services Ordinance (Cap. 132) and section 20 of the Cremation and Gardens of Remembrance Regulation (Cap. 132M). However, it appears that these provisions may not be broad enough to give FEHD the powers to implement the ashes disposal arrangement. Please clarify:

- (a) how the above provisions could empower FEHD in implementing the ashes disposal arrangement;

- (b) except the above provisions, whether and how FEHD would rely on other provisions in Cap. 132 (e.g. section 124B) and/or any other Ordinances (e.g. section 40 of the Interpretation and General Clauses Ordinance (Cap. 1)) as the legal basis of the powers for FEHD to implement the ashes disposal arrangement; and
- (c) whether and how FEHD would rely on any powers under the common law in implementing the ashes disposal arrangement.

It is further noted that section 118(4) of Cap. 132 provides expressly for the powers of the Director of Food and Environmental Hygiene ("DFEH") to remove and dispose of any human remains buried outside a cemetery. It is also noted that sections 119 and 119A of Cap. 132 provide expressly for the powers of the Chief Executive in Council and DFEH respectively to direct the removal and the disposal of any human remains. Please clarify:

- (a) without any express statutory provisions similar to those in Cap. 132 relating to human remains as stated above, whether FEHD may acquire the powers to implement the ashes disposal arrangement just by way of consent and/or contract; and
- (b) whether it is necessary to have express provisions on the powers of FEHD to implement the ashes disposal arrangement in Cap. 132 in the light of similar provisions in Cap. 132 relating to human remains.

We look forward to receiving your reply in both English and Chinese as soon as possible, preferably by 7 March 2019.

Yours sincerely,



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Assistant Legal Adviser

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