



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

7 March 2019

Mr Alvin CHUI
Assistant Legal Adviser
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHUI,

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

Thank you for your letter of 4 March 2019. Our response to your enquiries is set out below.

As you have rightly pointed out, under the proposed extendable arrangement, if no extension of deposit period is sought¹, the Food and Environmental Hygiene Department (“FEHD”) will (i) remove the ashes from the niches and (ii) dispose of unclaimed ashes by means of green burial.

For (i), FEHD relies on section 13(3), (4) and (5) of the Cremation and Gardens of Remembrance Regulation (Cap. 132M) (“the Regulation”). Under that section, the condition for depositing ashes at a Government columbarium or crematorium is “upon payment of the prescribed fee” and the period is that stipulated by the Director of Food and Environmental Hygiene (“DFEH”). Hence if no extension of deposit period is sought, and the prescribed fee for extension is not paid, the person to whom a niche is allocated

¹ Either the related persons do not seek extension or they cannot be contacted after repeated attempts by various means.

will not be entitled to deposit ashes in the niche upon expiry of the period stipulated by DFEH. The continued deposit of the ashes after the stipulated period will be without permission of DFEH and will constitute trespass to the land. DFEH may remove the ashes from the niche either by consent of the niche applicant as elaborated below or by relying on the remedy of self help under common law.

For (ii), to avoid any possible dispute over the ownership and disposal of the ashes in which the niche allocatee will have an interest, consent to disposal of unclaimed ashes by FEHD by means of green burial if no extension is applied for will be obtained upon application from the niche applicant by requiring the niche applicant to sign and submit the same to FEHD.

As stated above, DFEH may under section 13 of the Regulation stipulate the period for depositing ashes at a Government columbarium or crematorium. This provision, together with the fact that Government columbaria and crematoria are under the management of FEHD, will give FEHD the necessary power to receive applications for allocation of niches and to seek relevant consent in the application form for use of the niches.

As regards the disposal of unclaimed ashes by means of green burial, under section 118(1) of the Public Health and Municipal Services Ordinance (Cap. 132) ("the Ordinance), "any person who, without the permission in writing of the Authority [i.e. DFEH under Schedule 3 of the Ordinance]... scatters the ashes of any human remains after cremation, otherwise than in a cemetery, shall be guilty of an offence." Further, under section 118(3) of the Ordinance, "no permission under subsection (1)... shall be granted to any person other than... the duly authorized agent of such legal personal representative or next of kin..." When a niche applicant, who is usually the next of kin of the deceased, returns the signed application form, he/she gives consent to FEHD to dispose of any unclaimed ashes by means of green burial as indicated in the application form and hence FEHD may be regarded as a "duly authorized agent of such legal personal representative or next of kin" under section 118(3) who can scatter the ashes once permission in writing of DFEH is obtained.

Whilst section 118(1) of the Ordinance covers scattering of ashes in places otherwise than in a cemetery and hence both scattering ashes at sea and at Gardens of Remembrance ("GoR") would be covered, section 20 of the

Regulation further specifies the GoR should be designated by DFEH for such purpose.

We consider that the aforementioned consent by niche applicants and legal provisions will suffice for the purpose of enabling DFEH to implement the removal and disposal of unclaimed ashes under the extendable arrangement and hence no other express statutory provisions are necessary.

Thank you for your kind attention.

Yours sincerely,



(Gilford LAW)
for Secretary for Food and Health

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