

立法會 *Legislative Council*

LC Paper No. CB(2)933/18-19(07)

Ref : CB2/SS/8/18

Subcommittee on Public Health and Municipal Services (Fees) (Amendment) Regulation 2019

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Public Health and Municipal Services (Fees) (Amendment) Regulation 2019 ("the Amendment Regulation"), and gives a brief account of the relevant discussion held by the Panel on Food Safety and Environmental Hygiene ("the Panel").

Background

2. Hong Kong is facing an aging population. The number of deaths and cremations has been rising gradually. According to the Administration's projection based on latest demographic and operational data, the cumulative number of cremations would be around 1.2 million in the coming 20 years (from 2019 to 2038). Assuming full development of all the 24 sites that have been identified for public columbaria under the district-based columbarium development scheme, the Administration will be able to provide about 900 000 new public niches.

3. While continued efforts would be made in identifying more suitable sites for public columbarium projects, the Administration sees a need to optimize the use of existing land resource allocated for public columbaria use. The Food and Environmental Hygiene Department ("FEHD") has, for example, been encouraging and facilitating co-location of ashes in public niches (i.e. shared use of niches) by relaxing the definition of "close relative" and allowing the public to place more than two sets of ashes in a standard niche and more than four sets in a large niche with effect from January 2014.

Extendable arrangement for the use of public niches

4. According to the Legislative Council ("LegCo") Brief (File Ref.: FHB/F 7/28/20) issued by the Food and Health Bureau and FEHD in February 2019, to cope with the growing demand for disposal of ashes and to make the most of the new public niches coming on stream, the Administration proposes to introduce, starting from the next allocation exercise, an extendable arrangement in the allocation of public niches. In gist, niches will be allocated to applicants subject to an initial deposit period of 20 years, after which the interment may be extended for 10 years recurrently on application and payment of the prevailing prescribed fees. In other words, there is no time limit for the use of an allocated niche, as long as the related persons (i.e. the niche allocatee or nominated representative(s)) apply for extension of the deposit period. This extendable arrangement, however, would not affect sitting ashes already interred in existing niches.

5. To continue to encourage co-location of ashes, the Administration also proposes that the deposit period for the use of extendable niches be given a fresh count of 20 years from the co-location date¹ (regardless of the length of the original deposit term), and the interment may be further extended at 10-year intervals afterwards. If a new set of ashes is added to the niche later, the same new interment schedule will apply and supersede the original one due to the first set of ashes occupying the niche (i.e. a fresh count of 20 years from the co-location date of the new set of ashes, followed by extension of the deposit period at 10-year intervals thereafter).

6. If the related persons have not sought extension of interment and removed the ashes from the niches within two years after the expiry date of the deposit period (straddling two cycles of the Ching Ming and Chung Yeung Festivals), or if they cannot be contacted after repeated attempts during the time, FEHD will remove the ashes from the niches and dispose the ashes by means of green burial. A name tag will be set up at FEHD's columbarium facilities in a decent and solemn manner for all deceased whose ashes have been disposed of as afore-mentioned. The means and location of final disposal of the removed ashes will be properly documented.

¹ On an application for deposit of an additional set of ashes in the same niche, an option will be offered to give a fresh count of 20 years deposit period from the co-location date. If the option is not exercised, the new set of ashes may be co-located only for the remaining term of the original deposit period, and the original extension schedule (every 10 years) will apply. The option will have to be exercised at the time of tendering the application for deposit of an additional set of ashes.

Fee proposal to effect the extendable arrangement

7. Section 124I(1)(r) of the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") provides that the Secretary for Food and Health ("SFH") may by regulation provide for the fees and charges payable in connection with the disposal or interment of ashes resulting from the cremation of human remains in a crematorium. Section 8 of the Public Health and Municipal Services (Fees) Regulation (Cap. 132CJ) ("the Regulation") provides that the fee payable for a matter relating to a Government columbarium specified in Schedule 6 is the appropriate fee specified in the appropriate Part of that Schedule. The fees now prescribed in Part 2 of Schedule 6 to the Regulation cover only permanent deposit of ashes in public niches and temporary deposit of ashes at a Government crematorium.² Legislative amendments are therefore necessary to prescribe the fees for deposit of ashes in public niches for a fixed period to give effect to the extendable arrangement.

The Amendment Regulation

8. On 15 February 2019, the Administration published in the Gazette the Amendment Regulation (L.N. 14 of 2019), made by SFH under section 124I of PHMSO, to revise the fees for deposit of ashes in standard and large niches provided by FEHD for the purpose of effecting an extendable arrangement for niche allocation.

9. The Amendment Regulation, tabled before LegCo on 20 February 2019 for negative vetting, will come into operation on 26 April 2019. The Amendment Regulation amends the Regulation to:

- (a) introduce new fees for depositing ashes for a fixed period in a standard and large niche. The fees are pitched at \$120 per year and \$150 per year for a standard niche and a large niche respectively;
- (b) reduce the fees for permanent deposit of ashes in a standard niche and a large niche to a nominal amount of \$1; and
- (c) prescribe an administrative fee at \$140 per set of ashes for depositing an additional set of ashes in a niche.

² Currently, the fee for permanent deposit of ashes in a standard and large public niche are \$2,800 and \$3,600 respectively. According to the Administration, these fees are far from being able to recover the full cost in building and operating public columbaria. The fee for temporary deposit of ashes at a Government crematorium now stands at \$80 per month.

Relevant discussion held by the Panel

10. The Panel was briefed on the extendable arrangement for use of new public niches provided by FEHD at the meetings on 13 February and 10 April 2018. Members' major views and concerns over the extendable arrangement are summarized in the ensuing paragraphs.

Proposed introduction of a time limit for use of public niches

11. While the majority of members were supportive of the general direction of the Administration's proposal to introduce a time limit for the use of public niches to be allocated in the future, a few other members were opposed to the proposal and considered it premature to roll out the new arrangement starting from the next allocation exercise. In these members' view, consideration should be given to launching a pilot scheme on the new arrangement, say, by setting aside a certain percentage of niches for allocation under an extendable arrangement to assess the public's acceptance. Some members also expressed worries that the extendable arrangement might lead to a surge in the demand for and hence the price of private niches which were not subject to restrictions or conditions on the length of use. They called on the Administration to conduct a consultation exercise to gauge the public's views and acceptance before implementing the extendable arrangement.

12. According to the Administration, given the scarcity of land resources in Hong Kong, sole or predominant reliance on the deposition of cremated ashes in niches (be these public or private) was not sustainable. Field observations conducted by the Administration had revealed that allocated public niches might, with the passage of the time, become increasingly unattended to by descendants and that grave sweeping for niches allocated years ago was comparatively infrequent. While the Administration had stepped up promotional efforts to encourage the public to make fuller use of existing public niches, there were suggestions from the community and LegCo Members that consideration be given to introducing a time limit for the use of newly allocated public niches. It was also recommended in Director of Audit's Report No. 65 issued in October 2015 that the Administration should examine the feasibility of this suggestion with a view to improving the sustainability of public niche supply. The Administration stressed that if permanent niches and extendable niches were both to be allocated in the same exercise, hardly would there be any incentive for the selection of extendable niches in the absence of a significant fee differential between the two ways of allocation. Also, it would not be fair and reasonable for the public to shoulder the cost of maintaining permanent niches indefinitely in the future when these niches had become unattended by later generations of the deceased.

13. The Administration further advised that some non-government bodies providing niches were also taking new management initiatives to optimize the land allocated to them for burial and columbarium facilities and services. The Hong Kong Chinese Christian Churches Union, for instance, had since August 2017 introduced a time limit to the niches in their cemeteries for an initial interment period of 20 years which was extendable for every 10 years subject to renewal and payment. Many private columbaria had also taken or were taking active steps to introduce time-limited occupation of niches against the present perpetual interment arrangement. As such, the Administration expected that the proposed extendable arrangement for the use of public niches would not lead to a surge in the price of private niches.

Interment period

14. There was a view that FEHD should make endeavour to contact the niche allocatees or their nominated representatives to ascertain their wish to renew the interment before the expiry date of the deposit period. Some members suggested that FEHD might, say, once every two years, remind the related persons of the expiry date through electronic means or letters. If the related persons had not sought extension of interment or removed the ashes from the niches after the expiry of the deposit period, the ashes removed by FEHD should be kept for a reasonable period of time to allow the related persons to re-apply for extension of interment or claim back the ashes. In the event that the niche allocatee or his/her nominated representative could not be contacted after repeated attempts and that the ashes placed in a niche had to be disposed of, FEHD should keep proper record of the ash disposal arrangements adopted.

15. The Administration advised that while FEHD would make every effort to contact the related persons, it was incumbent upon the latter to update FEHD of their contact details from time to time and to take the initiative to file an application for renewal of interment. If the related persons could not be contacted after repeated attempts, the ashes removed would be disposed of in a manner as considered appropriate by the Director of Food and Environmental Hygiene, such as scattering the ashes in the Garden of Remembrance managed by FEHD or in designated areas in Hong Kong waters. The means and location of final disposal of the removed ashes would be properly documented by FEHD.

16. Some members considered that the Administration should exercise more flexibility in handling applications for renewal of interment. Enquiries were raised whether other relatives/friends of the deceased not officially nominated would be allowed to apply for renewal of interment in the event that the niche allocatee or the nominated representative(s) could not be contacted or refused to follow up the matter with FEHD; and whether non-government organizations or

community bodies could be nominated as niche allocatees or representatives. According to the Administration, there were diverse views on the proposed arrangements for handling applications for renewal of interment. Suggestions made would be taken into account in refining and developing the proposals for implementation.

Fees for effecting the extendable arrangement

17. Some members expressed concern that with the passage of time, a particular descendant might have to apply for extension of interment for a number of niches of different ancestors. There was a view that the Administration should not charge applicants any fees for extending the interment period of niches to avoid imposing too heavy a financial burden on the descendants. The Administration advised that the one-off fees for permanent deposit of ashes were currently \$2,800 for a standard niche and \$3,600 for a large niche respectively, which were basically set by the two ex-Municipal Councils some 20 years ago. Despite the fact that the fees were far from being able to recover the full cost in operating public columbaria, the Administration's preliminary thinking was to propose no change to the current fees in absolute terms. To implement the extendable arrangement, new fees would be introduced for initial deposit of ashes in extendable standard and large niches as well as subsequent extension of deposit in these niches.

Relevant papers

18. A list of relevant papers on the LegCo website is in the **Appendix**.

Appendix

Relevant papers on the Public Health and Municipal Services (Fees) (Amendment) Regulation 2019

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	13 February 2018 (Item VII)	<u>Agenda</u> <u>Minutes</u>
	10 April 2018 (Item V)	<u>Agenda</u> <u>Minutes</u> Administration's follow-up paper (LC Paper No. <u>CB(2)1567/17-18(01)</u>)

Council Business Division 2
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7 March 2019