

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance (Chapter 132)

**PUBLIC HEALTH AND MUNICIPAL SERVICES (FEES)
(AMENDMENT) REGULATION 2019**

INTRODUCTION

The Secretary for Food and Health, in exercise of the powers conferred by section 124I of the Public Health and Municipal Services Ordinance (Cap. 132), has made the Public Health and Municipal Services (Fees) (Amendment) Regulation 2019 (“the Amendment Regulation”) at **Annex A** to revise the fees for deposit of ashes in standard and large niches provided by the Food and Environmental Hygiene Department (“FEHD”) for the purpose of effecting an extendable arrangement for niche allocation.

JUSTIFICATIONS

2. Land is scarce and much sought-after in Hong Kong. Assuming full development of all the sites identified for public columbaria under the district-based scheme, we will be able to provide about 900 000 new public niches. Whilst we would continue to look for more suitable sites for public columbarium projects, there is a genuine limit of land resources in Hong Kong, not least competing uses and priorities. To optimise the use of the existing land allocated for public columbaria, FEHD has been encouraging and facilitating co-location of ashes in public niches, for example by relaxing the definition of “close relative” in January 2014.

3. With a growing and ageing population, the number of deaths and cremations has been rising gradually. According to 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). The death toll was 47,479 in 2018 and it is estimated to increase from around 50 400 in 2019 to 73 900 in 2038, and further up to 95 600 in 2048. It is thus imperative

for us to explore a more sustainable way to utilise columbarium facilities¹.

THE PROPOSAL

Extendable Arrangement for Niche Allocation

4. To cope with the escalating demand for disposal of ashes and to make the most of the new public niches coming on stream, the Government proposes to introduce, starting from the next allocation exercise, an extendable arrangement in the allocation of public niches for an initial deposit period of 20 years, followed by extension for 10 years recurrently on application and payment of the prevailing prescribed fees². 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 would not affect sitting ashes in existing public niches.

5. We will continue to encourage co-location of ashes of related persons in the same niche. We propose that the deposit period for the use of extendable niches be given a fresh count of 20 years from the co-location date³ (regardless of the length of the previous deposit term), and the period may be further extended at 10-year intervals afterwards. If a new set of ashes is added to the niche later, the same new deposit schedule will be available (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). Below is a comparison table illustrating the periods of deposit under the extendable arrangement:

¹ In parallel, the Government will step up promotion of green burial, including increasing the number of Gardens of Remembrance, establishing a central register for green burial, and working with various community sectors to boost its popularity.

² Such deposit of ashes for a certain period as stipulated by the Director of Food and Environmental Hygiene (“DFEH”) at her discretion is allowed under section 13 of the Cremation and Gardens of Remembrance Regulation (Cap. 132M).

³ 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.

Scenarios	The periods of deposit available under the extendable arrangement
1. No co-location of ashes	20 years (the initial deposit period) + 10 years for each subsequent extension
2. Co-locating the ashes of the second deceased in, e.g. the 18 th year of the initial deposit period of the first deceased	18 years (the initial deposit period for the ashes of the first deceased) + 20 years (starting from the co-location date) + 10 years for each subsequent extension thereafter

6. If the related persons have not sought extension of deposit 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 time⁴, 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 aforementioned. The means and location of final disposal of the removed ashes will be properly documented by FEHD.

7. At present, some non-governmental organizations (“NGOs”) provide after-death care services to senior citizens without descendants or close relatives. Having touched base with some major NGOs, they expressed that they would study how best to provide extension of interment right service for the elderly in need in future. We have also encouraged those major NGOs to make best use of our nomination arrangement of accepting any of the niche allocatee plus two more representatives to apply for extension in future and to nominate successors to take their places anytime when necessary.

Fee Proposal

8. Section 124I(1)(r) of the Public Health and Municipal Services Ordinance provides that the Secretary for Food and Health may by regulation provide for the fees and charges payable in connection with the disposal or

⁴ Starting from two years prior to expiry of the deposit period, FEHD will make constant efforts to contact the related persons by Short Message Services (“SMS”) and/or email, and display a pop-up message on the Departments’ dedicated Internet Memorial Service webpage for the deceased. Upon expiry of the deposit period, FEHD will step up efforts to contact the related persons, such as through issuing letters to their last known address, publishing notices in the Government Gazette, newspapers and FEHD website, and posting notices on relevant niche walls. A total of four years (i.e. two years for FEHD-initiated contact before the expiry date plus the two-year grace period after the expiry date) is provided to the related persons for applying for extension of deposit period.

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 in 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 in Government crematorium⁵. Legislative amendment by way of subsidiary legislation is therefore necessary to prescribe the fees for deposit of ashes in public niches for a fixed period to give effect to the above extendable arrangement. The Government proposes to pitch the fees at \$120 per year and \$150 per year for a standard niche and a large niche respectively.

Fees for depositing ashes under the extendable arrangement

9. Currently, the fee levels for permanent deposit of ashes in a standard and large niche are \$2,800 and \$3,600 respectively. Despite the fact that the current fees are far from being able to recover the full cost in building and operating public columbaria⁶, in a bid to promote better utilisation of columbaria facilities, the Government proposes to charge \$2,400 (\$120 per year x 20 years) for an initial deposit period of 20 years in the case of a standard niche and \$3,000 (\$150 per year x 20 years) for the same deposit period in the case of a large niche (by applying the proposed item 2A in section 3(5) of the Amendment Regulation).

10. In the case of extension of the period of deposit of ashes, the fees would be charged at the same rate (i.e. \$120 per year for a standard niche and \$150 per year for a large niche) by applying the proposed item 2A of the Regulation:

- (a) a 10-year extension after the initial 20-year deposit period: the fees payable would be \$120 or \$150 (applicable to a standard niche or a large niche respectively) times 10 years.
- (b) (in the case of co-location of a new set of ashes) a fresh count of 20

⁵ No change is proposed to the fee for the temporary deposit of ashes at a Government crematorium under section 13(2) of Cap. 132M, which currently stands at \$80 per month.

⁶ The fees were set by the two former municipal councils some 20 years ago. In 2013, the fees for niches allocated in columbaria in the New Territories were lowered to align with those in respect of the urban area.

years of deposit from the date of co-location: the fees payable would discount the term already paid for (i.e. 20 years minus the unexpired term of the original deposit period of the sitting ashes) and would be calculated accordingly⁷.

Fees for depositing an additional set of ashes in a niche already deposited with ashes

11. In the case of co-location of new set(s) of ashes in niches already deposited with ashes, an administrative fee at \$140 per set of ashes is currently payable in respect of the additional deposit of the new set of ashes in the same niche. This administrative fee will be put on a statutory footing in the current exercise (see the proposed item 2B in section 3(5) of the Amendment Regulation)⁸.

Fees for permanent deposit of ashes

12. After the extendable arrangement is implemented, public niches will be allocated accordingly as the general practice. We however propose to retain in Schedule 6 a fee for the permanent deposit of ashes and set it at a nominal amount of \$1 irrespective of the type of niche (see the proposed item 2 in section 3(4) of the Amendment Regulation). This is to cater for exceptional circumstances, in which a case of permanent deposit is justified and accepted at the discretion of DFEH.

LEGISLATIVE TIMETABLE

13. The legislative timetable is as follows:

Publication in the Gazette	15 February 2019
Tabling before the Legislative Council	20 February 2019
Date of commencement	26 April 2019

⁷ As the fees are calculated on a full year basis, a concession will be made to calculate the fees based on the number of full years (rounded down to the next whole number) of the term to be extended beyond the original deposit period. For example, if co-location of a new set of ashes takes place after 18.5 years from the deposit of the sitting ashes, the unexpired term is 1.5 years and the extended term will be 18.5 years to make up a fresh count of 20 years. The charging of fees will be based on 18 full years.

⁸ This processing fee is payable irrespective of whether the option of immediate extension is exercised or not (see footnote 3 above).

IMPLICATIONS OF THE AMENDMENT REGULATION

14. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no environmental, productivity or gender implications. The civil service, financial, economic, sustainability and family implications are set out at **Annex B**.

PUBLIC CONSULTATION

15. The Legislative Council Panel on Food Safety and Environmental Hygiene was consulted on 13 February 2018 and 10 April 2018. The Panel did not raise objection to the Government proceeding with the relevant legislative amendment to revise the fees. The Panel also invited members of the public, including the 18 District Councils, to submit written views. We have reverted to the Panel with our written response to those written views received (LC Paper No. CB(2)1567/17-18(01)). We have also consulted 18 District Councils or their relevant committees, the majority of which supported in principle more sustainable use of land resources for columbarium purposes by means of introducing extendable niches.

PUBLICITY

16. We plan to publicize in newspapers and on FEHD's website the new allocation arrangement. We will also prepare posters, information pamphlets, video broadcasting and message display boards in FEHD's Cremation Booking Offices, Permit Offices, Public Niche Allocation Office and other premises where appropriate, as well as through usual Government channels. Details will also be provided in the application form for niche allocation.

ENQUIRIES

17. Enquiries on this brief can be addressed to Mr Gilford LAW, Principal Assistant Secretary (Food) 2, at 3509 8926.

**Food and Health Bureau
Food and Environmental Hygiene Department
February 2019**

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

(Made by the Secretary for Food and Health under section 124I of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation comes into operation on 26 April 2019.

2. Public Health and Municipal Services (Fees) Regulation amended

The Public Health and Municipal Services (Fees) Regulation (Cap. 132 sub. leg. CJ) is amended as set out in section 3.

3. Schedule 6 amended (fees relating to Government crematoria, columbaria or public cemeteries, etc.)

- (1) Schedule 6, English text, Part 1, section 1, definition of *public cemetery*—

Repeal the full stop

Substitute a semicolon.

- (2) Schedule 6, Chinese text, Part 1, section 1, definition of *紀念花園*—

Repeal the full stop

Substitute a semicolon.

- (3) Schedule 6, Part 1, section 1—

Add in alphabetical order

“*ashes* (骨灰) has the meaning given by section 3 of the Cremation and Gardens of Remembrance Regulation;

large niche (大型龕位) means a niche—

- (a) that is located at a Government crematorium or columbarium; and

- (b) that is capable of holding 4 containers;

standard niche (標準龕位) means a niche—

- (a) that is located at a Government crematorium or columbarium; and

- (b) that is capable of holding 2 containers.”.

- (4) Schedule 6, Part 2—

Repeal item 2

Substitute

“2. The permanent deposit of ashes under section 13 of the Cremation and Gardens of Remembrance Regulation in a standard niche or a large niche \$1”.

- (5) Schedule 6, Part 2, after item 2—

Add

“2A. The deposit of ashes for a period stipulated by the Director of Food and Environmental Hygiene under section 13 of the Cremation and Gardens of Remembrance Regulation—

- (a) in a standard niche \$120 per year
(b) in a large niche \$150 per year

2B. The deposit of an additional set of ashes in a standard niche or a large niche \$140”.

- (6) Schedule 6, Part 2, item 3—

Repeal

“of human remains at a Government crematorium under section 13”

Substitute

“at a Government crematorium after the expiry of the period allowed by the officer in charge under section 13(2)”.



Secretary for Food and Health

12 February 2019

Explanatory Note

The Public Health and Municipal Services (Fees) Regulation (Cap. 132 sub. leg. CJ) (*principal Regulation*) provides for the fees payable in connection with the deposit of ashes at Government crematoria and columbaria. This Regulation amends the principal Regulation—

- (a) to introduce new fees for depositing ashes for a fixed period;
- (b) to reduce the fees for permanent deposit of ashes to a nominal sum of \$1; and
- (c) to prescribe a fee for depositing an additional set of ashes in a niche.

Implications of the Amendment Regulation

Civil service implication

More manpower will be needed to handle applications for extension, as compared to the current permanent deposit of ashes. While the Food and Environmental Hygiene Department will endeavour to absorb the workload from within existing resources, additional staffing resources may eventually be required, which would then be sought with justifications in accordance with the established mechanism.

Financial implication

2. The proposed fees for public niches are far from being able to recover the full cost in building and operating public columbaria. Nevertheless, comparing with the existing permanent allocation arrangement, adoption of extendable arrangement would generate additional revenue when the interment period is extended. Also, recycled use of niches and co-location of ashes will be promoted and thus would help ease the Government's burden in providing niches in general.

Economic implication

3. The extendable arrangement will increase the effective supply of public niches in the long term. While the cost of using public niches will likewise be raised, the proposed fees are set at levels far below the full cost.

Sustainability implication

4. The extendable arrangement for public niches will optimize the use of land as public columbaria, hence freeing up scarce land resources for other priority uses by society.

Family implication

5. Family members will have more incentive to pay tribute to the deceased as they will be reminded to extend the interment period of the niche(s). Since co-location of ashes will also be promoted through adoption of extendable arrangement, travelling time needed for gravesweeping can be reduced.