

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1986/15-16  
(These minutes have been  
seen by the Administration)

Ref : CB2/BC/9/13

**Bills Committee on Private Columbaria Bill**

**Minutes of the eighteenth meeting  
held on Monday, 26 October 2015, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)  
Dr Hon Kenneth CHAN Ka-lok (Deputy Chairman)  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Hon Cyd HO Sau-lan, JP  
Hon CHAN Hak-kan, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon CHEUNG Kwok-che  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon Steven HO Chun-yin, BBS  
Hon WU Chi-wai, MH  
Hon CHAN Yuen-han, SBS, JP  
Hon LEUNG Che-cheung, BBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP  
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Members absent** : Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Hon Albert CHAN Wai-yip  
Hon CHAN Han-pan, JP  
Hon Tony TSE Wai-chuen, BBS

**Public Officers** : Item I  
**attending**

Mr Christopher WONG, JP  
Deputy Secretary for Food and Health (Food)1  
Food and Health Bureau

Miss Diane WONG  
Principal Assistant Secretary for Food and Health  
(Food)2  
Food and Health Bureau

Ms Phyllis KO  
Senior Assistant Law Draftsman (II)1  
Department of Justice

Miss Cindy CHEUK  
Government Counsel  
Department of Justice

Mr CHIU Yu-chow  
Assistant Director (Grade Management and  
Development)  
Food and Environmental Hygiene Department

Ms Viola YIM  
Senior Superintendent (Cemeteries & Crematoria)  
Special Duties  
Food and Environmental Hygiene Department

Mr Tommy TAM  
Chief Building Surveyor/Legal Services  
Buildings Department

Ms Doris CHOW  
Assistant Director (Estate Management)  
(Lands Administration Office/Headquarters)  
Lands Department

Ms Christine TSE  
Assistant Director of Planning (Special Duties)  
Planning Department

**Clerk in attendance** : Ms Catherina YU  
Chief Council Secretary (2) 4 (Acting)

**Staff in attendance** : Ms Wendy KAN  
Assistant Legal Adviser 6

Miss Kay CHU  
Council Secretary (2) 4

Miss Maggie CHIU  
Legislative Assistant (2) 4

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**I. Meeting with the Administration**

[File Ref.: FH CR 2/3751/07, LC Paper Nos. CB(3)740/13-14, CB(2)2141/13-14(01), CB(2)2338/13-14(07) to (08), CB(2)305/14-15(01), CB(2)431/14-15(01) to (03), CB(2)630/14-15(01), CB(2)825/14-15(01), CB(2)878/14-15(01), CB(2)1063/14-15(01), CB(2)1286/14-15(01), CB(2)1535/14-15(01), CB(2)1813/14-15(01), CB(2)1905/14-15(01) and CB(2)20/15-16(01)]

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration to:

- (a) consider whether the two definitions of "instrument holder" in Part 1 and Part 2 of Schedule 5, which were the same, should be streamlined to appear only once;
- (b) provide information on the procedures of making application for and handling appeals against occupation orders made by the court;
- (c) provide information on the time limit for lodging the appeals;
- (d) provide a response to providing in the Bill the factors to be considered by the court for staying execution of an occupation order;

Action

- (e) provide a response to including in section 2 of Schedule 5 a requirement to publish notices of the hearings of the application for an occupation order in local newspapers or through the Internet;
- (f) consider extending the offence under section 2(4) of Schedule 5 which covered the removal or defacing of the notice referred to in section 2(2)(b) of that Schedule without lawful authority or reasonable excuse to cover that referred to in section 2(1)(a)(ii) of that Schedule as well;
- (g) consider removing section 3(3)(a) and (b) of Schedule 5 from the Bill;
- (h) provide information on whether the Judiciary Administrator would draw up procedures specifically for handling applications for variation of occupation orders, etc;
- (i) provide information on the level of the court referred to in the Bill;
- (j) consider specifying in section 5(1) of Schedule 5 the hours which would be considered convenient for affected consumers to claim for the return of ashes interred in a columbarium;
- (k) consider making reference in section 5(2) of Schedule 4 to the definition of authorized representative in clause 2;
- (l) provide a response to the suggestion of including the partner, fiancée and fiancé of the deceased under the category of relative in section 5(2) of Schedule 5;
- (m) advise whether a person who was married to a person of the same sex at a place outside Hong Kong had the right of claiming for the return of ashes of his or her same-sex spouse under the Bill; and
- (n) provide examples of provisions using "不遜於" as the Chinese rendition of the English term "no less favourable".

Action

**II. Date of next meeting**

3. Members noted that the next meeting would be held on Friday, 6 November 2015 at 8:30 am.

**III. Any other business**

4. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
19 August 2016

**Proceedings of the eighteenth meeting of the  
Bills Committee on Private Columbaria Bill  
on Monday, 26 October 2015, at 10:45 am  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Meeting with the Administration</i>			
000420 - 000625	Chairman	Opening remarks	
Clause-by-clause examination			
000626 - 001252	Chairman Admin	<p>The Administration's briefing on the background of ash disposal procedures prescribed in the Bill.</p> <p>The Administration stressed that the obligations of private columbarium operators ("operators") who failed to carry out the ash disposal procedures prescribed in the Bill and the right of a person (e.g. consumer, landlord, mortgagee, Director of Food and Environmental Hygiene ("DFEH"), etc.) to lodge claims against an operator would not be affected in the event that the steps necessary for ash disposal were carried out by a specified officer.</p>	
001253 - 002106	Admin	<p>Examination of Schedule 5 – Part 1 section 1</p> <p>The Administration's advice that the definition of instrument holder in section 1 in Part 1 and section 5(2) in Part 2 of Schedule 5 was the same, and would consider whether the two definitions should be streamlined to appear only once.</p>	Admin (paragraph 2(a) of the minutes)
002107 - 002257	Chairman ALA6 Mr WU Chi-wai Admin	<p>Examination of Schedule 5 – Part 1 section 2</p> <p>ALA6's enquiry and the Administration's response regarding the reasons for giving a notice of the hearing of the application for an occupation order ("notice of hearing") to the owner of the columbarium premises and the instrument holder in respect of the columbarium under section 2(1) of Schedule 5 but not giving a notice of the occupation order made ("notice of the order") to them if they did not make a submission to the court about the application under section 2(2) of that Schedule.</p> <p>Mr WU Chi-wai's view that DFEH should give a notice of the order to a person who had an interest in the application for an occupation order regardless of whether he or she had made a submission to the court about the application.</p>	

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002258 - 002625	Chairman Mr WU Chi-wai Admin	Mr WU Chi-wai's enquiry and the Administration's response regarding the appeal period against occupation orders.	
002626 - 002954	Chairman ALA6 Mr WU Chi-wai Admin	<p>ALA6's enquiry and the Administration's response regarding whether there would be subsidiary legislation to provide for the procedures relating to an application for an occupation order and an appeal on a decision made by the court. The Administration advised that the court could handle appeals against occupation orders according to its established procedures.</p> <p>Mr WU Chi-wai's enquiry and the Administration's response regarding procedures in relation to lodging appeals against occupation orders.</p> <p>Mr WU's enquiry and the Administration's response regarding whether giving a notice of the order by post would shorten the period for lodging appeals against occupation orders. At the request of the Chairman and Mr WU, the Administration undertook to provide a response on the appeal period and the appeal procedures after consulting the Judiciary Administrator.</p>	Admin (paragraphs 2(b) and (c) of the minutes)
002955 - 003354	Chairman Mr Alan LEONG Admin	Mr Alan LEONG's suggestion of and the Administration's response to providing in the Bill the factors to be considered by the court for staying execution of an occupation order.	Admin (paragraph 2(d) of the minutes)
003355 - 003558	Chairman Mr WONG Kwok-hing Admin	Mr WONG Kwok-hing's view and the Administration's response on publishing notices of hearings in local newspapers or through the Internet. The Administration undertook to provide a response to including in section 2 of Schedule 5 a requirement to publish notices of hearing in local newspapers or through the Internet.	Admin (paragraph 2(e) of the minutes)
003559 - 003706	Chairman ALA6 Admin	At the request of ALA6, the Administration undertook to consider extending the offence provision under section 2(4) of Schedule 5, which covered the removal or defacing of the notice referred to in section 2(2)(b) of that Schedule without lawful authority or reasonable excuse, to cover that referred to in section 2(1)(a)(ii) of that Schedule as well.	Admin (paragraph 2(f) of the minutes)
003707 - 004341	Chairman Admin ALA6	<p>Examination of Schedule 5 – Part 1 section 3</p> <p>ALA6's enquiry and the Administration's response regarding the reasons for restricting the</p>	

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		owner or the mortgagee to enter the columbarium which was subject to an occupation order.	
004342 - 005358	Chairman Mr Alan LEONG Mr Paul TSE Mr WONG Kwok-hing Admin	<p>Views of the Chairman, Mr Alan LEONG, Mr Paul TSE and Mr WONG Kwok-hing that section 3(3)(a) of Schedule 5 (which concerned the granting of an exemption for the part of a columbarium which was used for residential purpose) was not necessary as it would create a loophole and impose difficulties on the enforcement of occupation orders. The Administration's advice that the operators concerned were required to provide proof that part of the columbarium premises was used for residential purpose. The Administration would study whether section 3(4)(a) could cater for the situation in the absence of section 3(3)(a) and if so, it would consider removing the latter from the Bill.</p> <p>Mr Paul TSE's view and the Administration's response regarding the need for section 3(3)(b) of Schedule 5. Mr TSE's view that the areas to be covered by an occupation order would be spelt out in the relevant order. Mr TSE's request for the Administration to consider removing section 3(3)(b) of that Schedule from the Bill in order not to complicate the enforcement of occupation orders. The Administration undertook to consider the request.</p> <p>The Administration would study whether section 3(4)(a) of Schedule 5 ("the specified officer may permit any person to enter and remain on the columbarium for the relevant purpose") would be sufficient. If so, it would consider removing section 3(3) from the Bill.</p>	<p>Admin (paragraph 2(g) of the minutes)</p> <p>Admin (paragraph 2(g) of the minutes)</p>
005359 - 005712	Chairman Mr Alan LEONG Admin	<p>Examination of Schedule 5 – Part 1 section 4</p> <p>Mr Alan LEONG's enquiry and the Administration's response regarding whether the Judiciary Administrator had agreed to include the procedures relating to applications for variation of occupation orders, etc. in the legislation governing its procedures. At Mr LEONG's request, the Administration undertook to provide information on whether the Judiciary Administrator would draw up procedures specifically for applications for variation of occupation orders, etc.</p>	Admin (paragraph 2(h) of the minutes)



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005713 - 005948	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's enquiry regarding the level of the court referred to in Part 1 of Schedule 5, and the Administration's response that it was the Magistrate Court, according to the exchange between the Government and the Judiciary Administrator. As the Administration undertook to provide information on the procedures, it would cover the level of the court in one go.</p> <p>Mr TSE's view that given that the court might be required to handle a large amount of work arising from the Private Columbaria Ordinance, the Administration should have discussed with the Judiciary Administrator the relevant procedural matters at an early stage.</p>	Admin (paragraph 2(i) of the minutes)
005949 - 010643	Chairman Miss CHAN Yuen-han Admin	<p>Examination of Schedule 5 – Part 2 section 5</p> <p>Miss CHAN Yuen-han's enquiry and the Administration's response regarding the meaning of "reasonable hours (合理時間)" in section 5(1) of Schedule 5. Miss CHAN's view that the Administration should consider specifying in section 5(1) of that Schedule the hours which would be considered convenient for affected consumers to claim for the return of ashes interred in a columbarium. At Miss CHAN's request, the Administration undertook to provide a response.</p>	Admin (paragraph 2(j) of the minutes)
010644 - 011330	Chairman Mr Paul TSE Admin	<p>In response to Mr Paul TSE's enquiry about the meaning of authorized representative mentioned under "prescribed claimant" in section 5(2) of Schedule 5, the Administration explained its meaning by referring to the definition of authorized representative in clause 2.</p> <p>In response to Mr TSE's suggestion, the Administration undertook to consider providing a response to the suggestion of whether to make reference to the definition of authorized representative in clause 2 when the term was mentioned under "prescribed claimant" in section 5(2) of Schedule 5.</p>	Admin (paragraph 2(k) of the minutes)
011331 - 012312	Chairman Ms Cyd HO Mr LEUNG Kwok-hung Admin	<p>Ms Cyd HO's view that a partner of the deceased should be categorized as relative (in relation to the ashes of the deceased) under section 5(2) of Schedule 5. The Administration referred to paragraph 19 of the Legislative Council Brief on Private Columbaria Bill (File Ref.: FH CR 2/3751/07) and responded that DFEH might, at her discretion, arrange for the final disposal of abandoned ashes in any manner as she saw fit,</p>	

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		<p>including handing over ashes of the deceased in DFEH possession to his or her cohabitee or to a benevolent non-governmental organization.</p> <p>Views of Ms HO and Mr LEUNG Kwok-hung that a person should have the legal right to claim for the return of the ashes of his or her deceased partner. Mr LEUNG's view that fiancée or fiancé of the deceased should also be included in the definition of "relative" in section 5(2) of Schedule 5. The Chairman's view that the problem of proof of relationship with the deceased might need to be addressed. The Administration responded that if the co-habitee, fiancée or fiancé was appointed as an authorized representative, he or she would have priority in claiming for the return of the ashes.</p> <p>The Administration undertook to provide a response to the suggestion of including the partner, fiancée and fiancé of the deceased under the category of relative in section 5(2) of Schedule 5.</p>	<p>Admin (paragraph 2(1) of the minutes)</p>
012313 - 012849	<p>Chairman Mr LEUNG Kwok-hung Admin</p>	<p>Mr LEUNG Kwok-hung's suggestion of providing in the Bill the appointment of an authorized representative by the dedicated person for disposing of his or her ashes. The Administration's advice that there was provision in the Bill regarding appointment of a person under the agreement for sale of an interment right to claim for the return of ashes interred under the agreement.</p>	
012850 - 013500	<p>Chairman Mr WONG Yuk-man Mr LEUNG Kwok-hung Ms Cyd HO Admin</p>	<p>Mr WONG Yuk-man's enquiry regarding the legal right of illegitimate children/grandchildren of the deceased with respect to ash disposal.</p> <p>Ms Cyd HO's views that illegitimate children of the deceased should have the legal right of disposal of ashes with proof of relationship with the deceased.</p> <p>The Administration's response that "natural" was used under the definition of children. In other words, it referred to birth children (irrespective of whether they were born in or out of wedlock). Hence, both illegitimate children and legitimate children were treated equally and had the same right under the Bill, in line with the prevailing law.</p>	
013501 - 013713	<p>Chairman Ms Cyd HO Admin</p>	<p>Ms Cyd HO's reiteration of her request for the Administration to include the deceased's partner in the category of relative under section 5(2) of Schedule 5.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		The Chairman's view that the Administration should consider the implications of including in section 5 of Schedule 5 the deceased's partner on other legislation. Ms Cyd HO's view that the Administration should consider the inclusion of partners in that section from a humane perspective.	
013714 - 013928	Chairman Mr LEUNG Kwok-hung Admin	Mr LEUNG Kwok-hung's enquiry about whether a person who was married to a person of the same sex at a place outside Hong Kong had the right of claiming for the return of ashes of his or her same-sex spouse under the Bill. The Administration undertook to provide a response in this regard.	Admin (paragraph 2(m) of the minutes)
013929 - 014951	Chairman Mr WONG Yuk-man Admin	Examination of Schedule 5 – Part 2 section 6  Mr WONG Yuk-man's enquiry and the Administration's response regarding the meaning of "不遜於" in the Chinese text of section 6(3)(b)(ii)(B) of Schedule 5.  Mr WONG's view that the term "不遜於" was unclear. The Administration explained that the provision concerned the quality of the terms governing interment of the ashes in the columbarium, and hence it would be appropriate to adopt "不遜於", which was a more formal term than "不差於", in the context of a Bill. At Mr WONG's request, the Administration undertook to provide examples of provisions using "不遜於" as the Chinese rendition of the English term "no less favourable".	Admin (paragraph 2(n) of the minutes)
014952 - 015144	Chairman Admin	Examination of Schedule 5 – Part 2 section 7  The Chairman's enquiry and the Administration's response regarding the meaning of "展開" in the Chinese text of section 7(1)(a) of Schedule 5.	
015145 - 015228	Chairman Mr WONG Yuk-man	Mr WONG Yuk-man cited an example of using the term "不差於" in the Chinese text of a provision in the Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation (Cap. 369 sub. leg. AU).	
015229 - 020117	Chairman Admin	Examination of Schedule 5 – Part 2 section 8	

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
020118 - 020143	Chairman	Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
19 August 2016