



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

3 January 2016

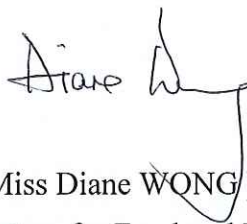
Ms Wendy KAN
Assistant Legal Adviser
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 5 November 2015 which seeks the Government's responses to your observations on Schedule 5 to, and Clause 65 of, the Private Columbaria Bill. Our responses to your observations and our other suggestion are set out at **Annex**.

Yours sincerely,



(Miss Diane WONG)

for Secretary for Food and Health

**The Government's Response to ALA's Observation
on Schedule 5 to, and clause 65 of, the Private Columbaria Bill (the Bill)**

Item	Response from the Government
1	<p>Issue: Re: Section 1 of Schedule 5 (<i>Definition of “Instrument holder”</i>) –</p> <ul style="list-style-type: none"> “在本部中 — 文書持有人 (instrument holder)指獲發指明文書的人，不論該文書是否正有效、已屆滿(而不獲續期或延展)、遭撤銷或遭暫時吊銷；” “In this Part— instrument holder (文書持有人) means a person to whom a specified instrument has been issued, whether the instrument is still in force, has expired without being renewed or extended or is revoked or suspended;” <p>In this definition, “<u>whether</u> the instrument is <u>still</u> in force” in the English text is rendered as “<u>不論該文書是否正有效</u>” in the Chinese text. Should the Chinese rendition rather be “<u>不論該文書仍然有效</u>” or “<u>不論該文書仍然正有效</u>”? If this definition is to be removed from Schedule 5 to clause 2 of the Bill, please ensure that the same meaning of “instrument holder” does apply in each and every provision of the Bill where the term appears. In clause 38 of the Bill, for example, “instrument holder” does not seem to have the same meaning.</p> <p>Response:</p> <p>We will consider amending “不論該文書是否正有效” to “不論該文書是否<u>仍然</u>有效”.</p> <p>There is reference to the term “instrument holder” in various parts of the Bill (clauses 33, 38 and 60 of, and Parts 1 and 2 of Schedule 5 to, the Bill) and the meaning of the term is made clear in the respective provision. Given this, we will keep the statutory provisions as they are.</p>
2	<p>Issue: Re: Section 1 of Schedule 5 (<i>Definition of “specified officer”</i>) –</p> <ul style="list-style-type: none"> “specified officer (指明人員) means the Director, an authorized officer or a public officer.” “指明人員 (specified officer)指署長、獲授權人員或公職人員。” <p>Please note Question 35 as set out in the Schedule to my letter dated 13 October 2015.</p> <p>Response: Please see our response to item 35 in our reply dated 1 December 2015 to your letter of 13 October 2015.</p>

Item	Response from the Government
3	<p>Issue: Re: Section 2(1) of Schedule 5 –</p> <ul style="list-style-type: none"> • “除非在對有關申請進行聆訊前最少 30 日前 —” • “The court may not make an occupation order under section 65 of this Ordinance in respect of any premises that are a columbarium unless, at least 30 days before the hearing of the application—” <p>In this section, “The court may not” in the English text is rendered as “法院不得”. Under clauses 11(9) and 12(2) and (3) of the Bill, “may not” in the English text is rendered as “不可”. Should a consistent Chinese rendition be used?</p> <p>Response: We will consider amending “不得” in section 2(1) of Schedule 5 to “不可” for consistency with other provisions of the Bill in which “不可” is used for “may not”.</p>
4	<p>Issue: Re: Section 2(1)(a)(i)(B) of Schedule 5 –</p> <ul style="list-style-type: none"> • “關乎該骨灰安置所的指明文書的持有人(如有的話)；及” • “to the instrument holder (if any) in respect of the columbarium; and” <p>In the Chinese text, “<u>文書的持有人</u>” should be “<u>文書持有人</u>”, in view of the Chinese rendition of “instrument holder” in the English text of section 1 of Schedule 5.</p> <p>Response: In view of section 1 of Schedule 5, we will consider amending “指明文書的持有人” to “文書持有人”.</p>

Item	Response from the Government
5	<p>Issue: Re: Section 2(2) of Schedule 5 –</p> <ul style="list-style-type: none"> • “If an occupation order is made in respect of a columbarium, the Director or an authorized officer must do both of the following within 7 days after the day the order is made— <ul style="list-style-type: none"> (a) give notice of the order to every person who made a submission under subsection (1)(b) and advise the person of the person’s right of appeal; (b) post a copy of the order at a conspicuous place outside the columbarium.” • “如法院已就某骨灰安置所作出佔用令，署長或獲授權人員須在該命令作出當日後 7 日內，作出以下兩項事情 — <ul style="list-style-type: none"> (a) 向每名根據第(1)(b)款陳詞的人，發出關於該命令的通知，告知他們提出上訴的權利； (b) 將該命令的複本，張貼在該骨灰安置所外的顯眼位置。” <p>Please clarify whether an occupation order is made in respect of <u>any premises that are a columbarium</u> (as provided for in section 2(1) of Schedule 5) or in respect of a <u>columbarium</u> (as provided for in section 2(2) of Schedule 5). Should a consistent wording be used?</p> <p>Response: Under clause 65(3), an occupation order is made—</p> <ul style="list-style-type: none"> (a) to empower a specified officer to enter and occupy the columbarium premises; and (b) to carry out the prescribed ash disposal procedures in respect of the columbarium. <p>Therefore, in view of item (b) above, an occupation order would be made in respect of a <u>columbarium</u>. We will consider amending the provisions concerned to achieve consistency.</p>
6	<p>Issue: Re: Section 2(2) of Schedule 5 – The rules on the procedures relating to an application for an occupation order and an appeal on a decision made by the court (including the effect of an occupation order pending an appeal) have not been provided for in the Bill. Will subsidiary legislation be made for providing these rules?</p> <p>Response: On reference to the court in clause 65(3) and in Part 1 and Part 2 of Schedule 5, we are considering various amendments to finetune the arrangements. In the process, we would have regard to the above points raised by ALA and other points made by Members.</p>

Item	Response from the Government
7	<p>Issue: Re: Section 2(2) of Schedule 5 – Please explain the reason(s) that the Director or an authorized officer must give notice of the order to every person who has made a submission under section 2(1)(b) of Schedule 5 but not to the owner of the premises and the instrument holder (if any) of the columbarium concerned as well.</p> <p>Response:</p> <p>Reference is made to section 10(1) of the Fire Safety (Buildings) Ordinance (Cap. 572), as well as section 10(1) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502).</p> <p>We will consider deleting section 2(2) of Schedule 5, and substituting the following –</p> <ul style="list-style-type: none"> (a) within a reasonable timeframe after an occupation order is made in respect of a columbarium, the specified officer must, in addition to giving notice of the order on the owner of the premises and the instrument holder under subsection (1)(a)(i), post a copy of the order at a conspicuous place outside the columbarium, to advise the person who has an interest in the application under subsections (1)(a)(i) and (1)(b) of the person’s right of appeal within 7 days after the later of the day on which the specified officer has given notice of the order and posted a copy of the order in this subsection. (b) Failure to comply with item (a) does not invalidate the effect of the occupation order. <p>Requiring the Director to “give notice to every person who made a submission under subsection (1)(b)” is not pragmatic, as the Director may not have access to the personal data of all such persons (names and addresses).</p>

Item	Response from the Government
8	<p>Issue: Re: Section 2(3) of Schedule 5 –</p> <ul style="list-style-type: none"> • “除非有針對佔用令的上訴，否則該命令在以下日期中的最遲者生效 — <ul style="list-style-type: none"> (a) 根據第(2)(a)款就該命令發出通知的最後一日後的第 7 日； (b) 根據第(2)(b)款張貼該命令的複本後的第 7 日；或 (c) 該命令所列的日期。” • “Unless there is an appeal against the order, an occupation order takes effect on the latest of— <ul style="list-style-type: none"> (a) 7 days after the last day on which notice was given in respect of the order under subsection (2)(a); (b) 7 days after a copy of the order was posted under subsection (2)(b); or (c) the day set out in the order.” <p>When will an occupation order take effect if there is an appeal?</p> <p>Response:</p> <p>Reference is made to section 8 of the Fire Safety (Buildings) Ordinance (Cap. 572), as well as section 8 of the Fire Safety (Commercial Premises) Ordinance (Cap. 502).</p> <p>We will consider the following amendments to section 2(3) of Schedule 5 –</p> <ul style="list-style-type: none"> (a) replacing “Unless there is an appeal against the order,” with “Unless there is an appeal against the order where subsection (3A) will apply,”; and (b) replacing “the day set out in the order” with “the date specified in the order”. <p>We will consider inserting the following after section 2(3) of Schedule 5 –</p> <ul style="list-style-type: none"> (3A) If there is an appeal against the order, the occupation order takes effect after the appeal is finally dismissed or is withdrawn. (3B) Despite subsection (3A), the court may, if of the opinion that in the particular circumstances it is appropriate to do so, direct an occupation order to come into force from the date when the occupation order is scheduled to take effect as provided for under subsection (3).

Item	Response from the Government
9	<p>Issue: Re: Section 2(3)(a) of Schedule 5 – Please clarify the meaning of “the last day on which notice was given in respect of the order under subsection (2)(a)”. The relevant Chinese text is “就該命令發出通知的最後一日後的第 7 日”. Do you mean “the last day on which notice must be given in respect of the order under subsection (2)(a)”?</p> <p>Response:</p> <p>Section 2(2)(a) of Schedule 5 requires a notice of an occupation order to be given to every person who made a submission under section 2(1)(b) of Schedule 5. More than one notice may, therefore, be given to different persons and on different dates within the 7-day period specified in section 2(2) of Schedule 5. What section 2(3)(a) of Schedule 5 provides is that the occupation order is to take effect on the expiry of 7 days after the date on which the last of those notices was given. It, therefore, does not necessarily refer to the last day of the 7-day period specified in section 2(2) of Schedule 5 for giving a notice.</p>
10	<p>Issue: Re: Section 2(3)(c) of Schedule 5 – Please clarify the meaning of “the day set out in the order”. Do you mean the day of making the order or the day specified in the order?</p> <p>Response: Section 2(3)(c) of Schedule 5 refers to the date specified in the order. Section 2(3)(c) could <u>not</u> be construed to mean the date on which the order is issued, as it will not be possible for a notice of the order given and a copy of the order posted by the Director under section 2(3)(a) and (b) to precede the date on which the order is issued (section 2(3)(c)).</p>
11	<p>Issue: Re: Section 2(4) of Schedule 5 –</p> <ul style="list-style-type: none"> • “任何人在沒有合法權限或合理辯解的情況下，移除或污損根據第(2)(b)款張貼的佔用令複本，即屬犯罪，一經定罪，可處第 4 級罰款及監禁 6 個月。” • “A person who, without lawful authority or reasonable excuse, removes or defaces a copy of an occupation order posted under subsection (2)(b) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.” <p>Should the offence under section 2(4) of Schedule 5 be extended to cover the removal or defacing of the notice referred to in section 2(1)(a)(ii) of Schedule 5 without lawful authority or reasonable excuse?</p> <p>Response: We will consider extending section 2(4) of Schedule 5 to cover the removal or defacing of, without lawful authority or reasonable excuse, the notice referred to in section 2(1)(a)(ii) of Schedule 5.</p>
12	<p>Issue: Re: Section 3(2) of Schedule 5 –</p> <ul style="list-style-type: none"> • “除第(4)款另有規定外，任何人不得進入或停留在任何受佔用令規限的骨灰安置所，但以下人士不在此限 —” • “Subject to subsection (4), a person may not enter or remain on any columbarium

Item	Response from the Government
	<p>subject to an occupation order unless the person is—”</p> <p>In the English text, should a person “must not”, instead of “<u>may not</u>”, enter or remain on any columbarium subject to an occupation order in view of the offence under section 3(6) of Schedule 5? Please note the relevant Chinese rendition is “不得”.</p> <p>Response: We will consider changing “may not” to “must not” in section 3(2) of Schedule 5 for consistency.</p>
13	<p>Issue: Re: Section 3(2) of Schedule 5 –</p> <ul style="list-style-type: none"> • “除第(4)款另有規定外，任何人不得進入或停留在任何受佔用令規限的骨灰安置所，但以下人士不在此限 — <ul style="list-style-type: none"> (a) 正在執行本身職務的指明人員；或 (b) 在與執行該職務相關的情況下行事的指明人員的代理人。” • “Subject to subsection (4), a person may not enter or remain on any columbarium subject to an occupation order unless the person is— <ul style="list-style-type: none"> (a) a specified officer acting in the course of his or her duty; or (b) a specified officer’s agent acting in connection with performance of the duty.” <p>Please explain the reason(s) for providing that persons (except for those referred to in section 3(2)(a) and (b) of Schedule 5) including an owner of the columbarium premises need to obtain a permit from the specified officer in order to enter or remain on the columbarium concerned.</p> <p>Response:</p> <p>Upon obtaining an occupation order, a specified officer (or his/her agents) would commence the carrying out of the prescribed ash disposal procedures at the concerned columbarium premises. If any person, including the owner of the columbarium premises, may enter the columbarium premises during the occupation order period without prior approval from the specified officer, the specified officer will not be in control of the premises. In terms of accountability, the liability or responsibility for the premises subject to an occupation order (and the properties therein) will become less than clear. This is liable to give rise to endless arguments. As the ash disposal procedures would involve the handling of many niches, ashes and related items (which might be held by the affected descendants to be of positive value), any damage to or loss of such objects or mistake in the records could entail substantive consequences. It would, therefore, be necessary for the owner of the columbarium premises as well as other persons to obtain prior approval from the specified officer before entering the premises.</p> <p>There are similar provisions in existing legislation. One such example is section 128(9) of the Public Health and Municipal Services Ordinance (Cap. 132).</p>

Item	Response from the Government
14	<p>Issue: Re: Section 3(2) of Schedule 5 – Should section 3(2) of Schedule 5 be expressly made subject to section 3(3) of Schedule 5 for the sake of clarity?</p> <p>Response:</p> <p>There are similar provisions in existing legislation, e.g. sections 128B(5) and 128C(2) of the Public Health and Municipal Services Ordinance (Cap. 132) and section 16(2) of the Karaoke Establishments Ordinance (Cap. 573).</p> <p>Nonetheless, having considered comments from Members at the Bills Committee meeting, we will consider deleting section 3(3) of Schedule 5 for the following reasons –</p> <p>(a) Re: a part of the columbarium being used for residential purposes. In real-life situation, the likelihood of this may not be high. This might be made use of to circumvent the occupation order; and</p> <p>(b) The specified officer could exclude common area or public area in his/her application for an occupation order (thus avoiding obstruction to public passage or fire escape), and give permission for a person to enter / remain on the columbarium for a purpose (say residential purpose) with conditions. If so, this would obviate the need for section 3(3) of Schedule 5.</p> <p>As we intend to delete section 3(3) of Schedule 5, the point on whether to expressly make section 3(2) of Schedule 5 subject to section 3(3) of Schedule 5 will fall away. We will consider replacing “Subject to subsection (3), when an occupation order” in section 3(1) of that Schedule with “An occupation order”.</p>
15	<p>Issue: Re: Section 3(4)(c) of Schedule 5 –</p> <ul style="list-style-type: none"> “在以下情況下撤銷准許：該人員認為准許是為某目的而給予，而該目的已不再存在，或任何根據(b)段施加的條件遭違反；” “revoke the permit if the specified officer thinks that the purpose for which the permit was granted no longer exists or any condition imposed under paragraph (b) has been breached;” <p>In the Chinese text, “撤銷准許” should be “撤銷該項准許” and “該人員認為准許” should be “該人員認為該項准許”, as in the Chinese text of section 3(4)(b) of Schedule 5.</p> <p>Response: We will consider adding “該項” before “准許” in section 3(4)(c) of Schedule 5.</p>
16	<p>Issue: Re: heading of section 4 of Schedule 5 –</p> <ul style="list-style-type: none"> “更改佔用令” “Variation of occupation order” <p>Since this section deals not only with variation but also cancellation of an occupation</p>

Item	Response from the Government
	<p>order, please consider to amend the heading of this section to reflect so.</p> <p>Response: We will consider amending the heading of section 4 of Schedule 5 to include cancellation of an occupation order.</p>
17	<p>Issue: Re: Section 4 of Schedule 5 – Similar to Question 6 above, will subsidiary legislation be made for providing the detailed rules on the procedures relating to an application for a variation or cancellation of an occupation order, as well as on the appeal mechanism?</p> <p>Response: Please see our response to item 6 above.</p>
18	<p>Issue: Re: Section 5(1)(a) and (b) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在本部中 — <ul style="list-style-type: none"> (a) 提述安排在場內交還安放在骨灰安置所內的骨灰，指在一段期間(該期間稱為場內申索期間)中的合理時間，在該骨灰安置所內，讓該等骨灰可供交還予該等骨灰所關乎的合資格申索人；及 (b) 提述安排在場外交還安放在骨灰安置所內的骨灰，指在一段期間(該期間稱為場外申索期間)中的合理時間，在該骨灰安置所以外的一個地方(該地方稱為場外申索地)，讓該等骨灰可供交還予該等骨灰所關乎的合資格申索人。” • “In this Part— <ul style="list-style-type: none"> (a) a reference to arranging for the return of the ashes interred in a columbarium on-site means making available the ashes for return, to an eligible claimant to whom the ashes relate, at the columbarium at reasonable hours during a period (which period is referred to as an <i>on-site claim period</i>); and (b) a reference to arranging for the return of the ashes interred in a columbarium off-site means making available the ashes for return, to an eligible claimant to whom the ashes relate, at a place other than the columbarium at reasonable hours during a period (which place and period are referred to as an <i>off-site claim venue</i> and <i>off-site claim period</i> respectively).” <p>For due compliance with the ash disposal requirements, please set out expressly the meaning of “reasonable hours” in this section. For example, the minimum number of hours and the operating hours in each day during which the ashes have to be made available for return.</p> <p>Response: In devising the relevant provision, we have in mind the need to balance the interests of the affected consumers and the operators. Our intention is to require the ashes to be returned during a certain time period in a day that would not be too inconvenient to the consumers, without at the same time imposing an unreasonable burden on the operators. We have hence adopted the phrase “at reasonable hours”.</p> <p>The term “reasonable” is commonly used in the legislative context (such as “reasonable excuse”, “reasonable time” and “reasonable grounds”) and in common law (such as “reasonable person”, “reasonable care” and “reasonable doubt”). According to the</p>

Item	Response from the Government
	<p>Black's Law Dictionary, "reasonable" means "fair, proper, or moderate under the circumstances". As such, whether reasonableness has been achieved is an objective standard given the circumstances, and is not dependent on the subject's intent or his assertion.</p> <p>Since use of "at reasonable hours" should have provided sufficient safeguard for affected consumers, we do not propose to revise the relevant clause in the Bill. It is pertinent to note that other pieces of legislation in Hong Kong also use the term "at reasonable hours". Examples include section 5 of the Town Planning Ordinance (Cap. 131) and section 19(1) of the Electoral Affairs Commission Ordinance (Cap. 541).</p>
19	<p>Issue: Re: Section 5(2) of Schedule 5 (<i>Definition of "eligible claimant"</i>) –</p> <ul style="list-style-type: none"> • “合資格申索人 (eligible claimant)就死者的骨灰、連同該等骨灰安放的任何匾牌或其他相關物品而言，指 — <ul style="list-style-type: none"> (a) (除非(b)段適用)訂明申索人； (b) 有關物品或骨灰(視情況所需而定)的擁有人(按照本附表第 9(3)、(4)、(5)及(6)條以外的、任何適用於物品或骨灰(視情況所需而定)的法律而斷定者)；” • “eligible claimant (合資格申索人), in relation to the ashes of a deceased person, any plaque or any other related items interred together with the ashes, means— <ul style="list-style-type: none"> (a) unless paragraph (b) applies, a prescribed claimant; (b) the owner of the item or ashes (as the case requires) as determined in accordance with any law applicable to item or ashes (as the case requires) apart from section 9(3), (4), (5) and (6) of this Schedule;” <p>In paragraph (b) of the definition, is it appropriate to describe someone as “the owner of the ashes”?</p> <p>Response:</p> <p>We will consider amending the definition of eligible claimant in section 5(2) of Schedule 5 by –</p> <ul style="list-style-type: none"> (a) changing “any plaque or any other related items” to “any related items”; and (b) changing “the owner of the item or ashes” to “the owner of the item or the person to whom the ashes are to be returned” in its paragraph (b).
20	<p>Issue: Re: Section 5(2) of Schedule 5 (<i>Definition of "eligible claimant"</i>) – Please replace “in accordance with any law applicable to <u>item or ashes</u>” with “in accordance with any law applicable to <u>the item or ashes</u>”.</p> <p>Response: We will consider adding “the” before “item or ashes” in paragraph (b) of the definition of eligible claimant in section 5(2) of Schedule 5.</p>

Item	Response from the Government
21	<p>Issue: Re: Section 5(2) of Schedule 5 (<i>Definition of “instrument holder”</i>) –</p> <ul style="list-style-type: none"> • “文書持有人 (instrument holder)指獲發指明文書的人，不論該文書正有效、已屆滿(而不獲續期或延展)、遭撤銷或遭暫時吊銷；” • “instrument holder (文書持有人) means a person to whom a specified instrument has been issued, whether the instrument is still in force, has expired without being renewed or extended or is revoked or suspended;” <p>Please note Question 1 regarding the Chinese rendition of “the instrument is still in force”.</p> <p>Response: We will consider amending “不論該文書是否正有效” to “不論該文書是否<u>仍然</u>有效”.</p>
22	<p>Issue: Re: Section 5(2) of Schedule 5 (<i>Definition of “overall claim period”</i>) –</p> <ul style="list-style-type: none"> • “整體申索期間 (overall claim period)在就某骨灰安置所進行訂明骨灰處置程序的情況下，就該骨灰安置所而言 — (a) 如本附表第 6(2)或(3)條適用 — 指場內申索期間； (b) 如本附表第 6(4)條適用 — 指場內申索期間及場外申索期間的總和；” • “overall claim period (整體申索期間), in relation to a columbarium in respect of which the prescribed ash disposal procedures are carried out, means— (a) if section 6(2) or (3) of this Schedule applies—the on-site claim period; or (b) if section 6(4) of this Schedule applies—the aggregate of the on-site claim period and the off-site claim period;” <p>Please provide the definition of “overall claim period” in relation to a columbarium in respect of which the on-site portion of the prescribed ash disposal procedures are carried out under section 7 of Schedule 5. This term is also used in relation to the carrying out of such procedures.</p> <p>Response:</p> <p>We will consider amending the definition of “overall claim period” under section 5(2) of Schedule 5 as follows –</p> <p>“(a) if section 6(2) <u>or 7</u> of this Schedule applies—the on-site claim period; or</p> <p>(b) if section 6(3) <u>or</u> (4) of this Schedule applies—the aggregate of the on-site claim period and the off-site claim period (as the case requires);”.</p>
23	<p>Issue: Re: Section 5(2) of Schedule 5 (<i>Definition of “overall claim period”</i>) – In the Chinese text of paragraph (a) of the definition, please add “或” after “指場內申索期間；”.</p> <p>Response: In the Chinese text, we will consider adding “或” between paragraph (a) and paragraph (b) of the definition of overall claim period.</p>

Item	Response from the Government
24	<p>Issue: Re: Section 6(1)(a) of Schedule 5 –</p> <ul style="list-style-type: none"> • “發出展開骨灰處置通告，述明該人有意 —” • “gives a commencement of ash disposal notice stating the person’s intention—” <p>In the English text, “the person's intention” should be “the person's intentions”.</p> <p>Response: We consider that “the person’s intention” is appropriate. We will consider amending section 8(4)(b) of Schedule 5 instead by changing “statement of the intentions” to “statement of the intention” for consistency.</p>
25	<p>Issue: Re: Section 6(1)(c) of Schedule 5 –</p> <ul style="list-style-type: none"> • “遵從本附表第 11 條的向署長交付移除骨灰的紀錄的規定。” • “complies with the requirement under section 11 of this Schedule for the delivery of a record of disinterment to the Director.” <p>Section 11 of Schedule 5 provides for the keeping of a record of the prescribed ash disposal procedures or the on-site portion of the procedures in respect of a columbarium, but not “a record of disinterment” as referred in section 6(1)(c) of Schedule 5.</p> <p>Response: We will consider amending section 6(1)(c) of Schedule 5 by changing “record of disinterment” to “record of the procedures”.</p>
26	<p>Issue: Re: Section 6(2)(b) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在該場內申索期間屆滿後，將沒有交還予合資格申索人的骨灰，交付署長，” • “delivers to the Director, on the expiry of the on-site claim period, the ashes that are not returned to an eligible claimant.” <p>In this section, “<u>on</u> the expiry of the on-site claim period” in the English text is rendered as “在該場內申索期間屆滿後” in the Chinese text. Should the relevant Chinese text be “在該場內申索期間屆滿時” or the relevant English text be “after the expiry of the on-site claim period” instead? In the latter case, should the time for delivery of the ashes to the Director be specified for the sake of certainty?</p> <p>Response:</p> <p>Depending on the context of the provision concerned, “on the expiry of ...” may be rendered as “在...屆滿後” or “在...屆滿時”. In section 6(2)(b) of Schedule 5, it is more appropriate to adopt “在該場內申索期間屆滿後” as the ashes may be delivered to the Director not just at the time when the on-site claim period expires. We will consider amending “on the expiry” to “<u>after</u> the expiry”.</p> <p>According to the prescribed ash disposal procedures, the person carrying out the ash disposal procedures must deliver the ashes to the Director before he/she would be considered to have completed the procedures (and hence discharged his/her obligations). We have always made reference to “at least” for specifying the timing</p>

Item	Response from the Government
	<p>for the claim period (be this on-site, off-site or overall). In other words, the timing specified is the minimum timing required for undertaking the procedures.</p> <p>Against the above background, we have not specified a time limit for the person to return the ashes to the Director, since the person carrying out the ash disposal procedures may wish to continue the ash disposal procedures and arrange for the return of the ashes on-site for a period longer than the specified minimum timing. However, he/she would not be considered to have completed the procedures until he/she deliver the ashes to the Director. Under clause 65 of the Bill, a specified officer may take any steps that may be necessary for carrying out the prescribed ash disposal procedures if the procedures or any step in them are or is not carried out, including applying for an occupation order. To address ALA's concern on timing, we will consider specifying in clause 65 the circumstances triggering a specified officer to make an application for an occupation order.</p>
27	<p>Issue: Re: Section 6(3)(b) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在該場內申索期間屆滿後 —” • “on the expiry of the on-site claim period—” <p>Please note Question 26 regarding “on the expiry of the on-site claim period”.</p> <p>Response: Please see our response to item 26 above, which also applies to section 6(3)(b) of Schedule 5.</p>
28	<p>Issue: Re: Section 6(4)(b) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在該場內申索期間屆滿後 —” • “on the expiry of the on-site claim period—” <p>Please note Question 26 regarding “on the expiry of the on-site claim period”.</p> <p>Response: Please see our response to item 26 above, which also applies to section 6(4)(b) of Schedule 5.</p>
29	<p>Issue: Re: Section 6(4)(b)(ii) of Schedule 5 –</p> <ul style="list-style-type: none"> • “安排在场外交還骨灰，並容許有场外申索期間(而該場內申索期間和該场外申索期間合計為期不少於 12 個月)；及” • “arranges for the return of the ashes off-site, allowing for an off-site claim period, where the aggregate of the on-site claim period and the off-site period is at least 12 months; and” <p>In the English text, “the off-site period” should be “the off-site claim period”.</p> <p>Response: We will consider amending section 6(4)(b)(ii) of Schedule 5 by changing “off-site period” to “off-site claim period”.</p>

Item	Response from the Government
30	<p>Issue: Re: Section 6(4)(c) of Schedule 5 –</p> <ul style="list-style-type: none"> “在該場外申索期間屆滿後，將沒有交還予合資格申索人的有關骨灰，交付署長，” “delivers to the Director, on the expiry of the off-site claim period, the ashes that are not returned to an eligible claimant.” <p>The issues raised in Question 26 also apply in respect of “on the expiry of the off-site claim period”.</p> <p>Response: Please see our response to item 26 above, which also applies to section 6(4)(c) of Schedule 5.</p>
31	<p>Issue: Re: Section 7(1)(c) of Schedule 5 –</p> <ul style="list-style-type: none"> “在該場內申索期間屆滿後，將沒有交還予合資格申索人的有關骨灰，交付署長。” “delivers to the Director, on the expiry of the on-site claim period, the ashes that are not returned to an eligible claimant.” <p>Please note Question 26 regarding “on the expiry of the on-site claim period”.</p> <p>Response: Please see our response to item 26 above, which also applies to section 7(1)(c) of Schedule 5.</p>
32	<p>Issue: Re: Section 7(1) of Schedule 5 – Since the duty to keep a record under section 11 of Schedule 5 applies to a person who carries out the on-site portion of the prescribed ash disposal procedures in respect of a columbarium, should compliance with such a duty be provided for in this section, as in section 6(1)(c) of Schedule 5?</p> <p>Response: We will consider amending section 7(1) of Schedule 5 to provide for, similar to section 6(1)(c) of that Schedule, a duty for the ash handler to deliver the record of the procedures to the Director under section 11 of that Schedule.</p>
33	<p>Issue: Re: heading of section 8 of Schedule 5 –</p> <ul style="list-style-type: none"> “展開骨灰處置通告” “Commencement of ash disposal notice” <p>Please provide a definition of “commencement of ash disposal notice” as this term has been referred to in other provisions of this Bill.</p> <p>Response: The heading “Commencement of ash disposal notice” refers to the notice to commence ash disposal procedures mentioned in section 8(1) of Schedule 5. We will consider adding a definition of <i>commencement of ash disposal notice</i> in clause 2.</p>
34	<p>Issue: Re: Section 8(1) of Schedule 5 –</p> <ul style="list-style-type: none"> 為施行本附表第 6(1)(a)及 7(1)(a)條，如某人被規定進行訂明骨灰處置程序，或

Item	Response from the Government
	<p>該等程序的場內部分，則該人在開啟有關骨灰安置所內被加封的龕位前，或在以其他方式開始處理該骨灰安置所內的骨灰前，須 —</p> <ul style="list-style-type: none"> (a) 連續 2 星期，每星期最少一次在 3 份於香港廣泛流通的報章(1 份須為英文報章，1 份須為中文報章)刊登通告，述明該人關於處置該等骨灰的意向； (b) 在該骨灰安置所外的顯眼位置，張貼一份類似的通告； (c) 向發牌委員會送達類似的通告；及 (d) 向每名指明收訊者送達類似的通告。 <ul style="list-style-type: none"> • For the purposes of sections 6(1)(a) and 7(1)(a) of this Schedule, a person who is required to carry out the prescribed ash disposal procedures or the on-site portion of the procedures must before opening sealed niches in the columbarium or otherwise starting to handle the ashes in the columbarium— <ul style="list-style-type: none"> (a) publish a notice stating the person’s intention regarding disposal of the ashes in 3 newspapers (of which 1 must be in English and 1 must be in Chinese) in general circulation in Hong Kong at least once in each of 2 consecutive weeks; (b) post a like notice at a conspicuous place outside the columbarium; (c) serve a like notice on the Licensing Board; and (d) serve a like notice on each specified addressee. <p>Which of the notices specified in section (1)(a), (b), (c) or (d) is the “commencement of ash disposal notice”? In section (1)(b), (c) and (d), please clarify the meaning of “like notice”. If all these notices are “commencement of ash disposal notices”, are they required to be published, posted or served at the same time so as to ascertain, for the purposes of clauses 62(2)(a) and 64(4)(a) of the Bill, the time within which the commencement of ash disposal notice has to be given, and for the purposes of section 10 of Schedule 5, the number of sets of ashes for calculating the expenses required to be paid. If so, should such a requirement be provided expressly in this section?</p> <p>Response:</p> <p>A commencement of ash disposal notice required by section 8(1) of Schedule 5 contains the particulars specified in section 8(4) of that Schedule (the content of the notice). Section 8(1)(a), (b), (c) and (d) of Schedule 5 sets out the means by which the commencement of ash disposal notice is to be given.</p> <p>Under clause 62(2)(a) or clause 64(4)(a), a person will be considered as failing to comply with the undertaking referred to in clause 62(1)(b) or to carry out the prescribed ash disposal procedures or the on-site ash disposal procedures under clause 64(2) or (3), as the case may be, unless the commencement of ash disposal notice is given in accordance with section 8 of Schedule 5 (i.e. with the content as stipulated in section 8(4) of that Schedule and by the means as set out in section 8(1)(a) to (d) of that Schedule, whether such means are effected on the same date or not) within 30 days after giving the undertaking or notice.</p> <p>As for section 10(1) of Schedule 5, it refers to the number of sets of ashes as at the date of the commencement of ash disposal notice. In principle, there should only be one</p>

Item	Response from the Government
	<p>notice (hence one date on which the notice is dated) even though the notice may be published, posted or served by different means on different dates. Therefore, we do not see the need to require the publication, posting and service of the commencement of ash disposal notice to be effected on the same date, which may be difficult to be carried out in practice. That said, we will consider revising section 8(1) of Schedule 5 to better reflect the above arrangement.</p> <p>The commencement of ash disposal notice must have been published, posted and served by the last day when the 30-day period expires. To address ALA's concern, we will consider specifying the date on which the on-site claim period begins in section 8(4)(b)(iii)(A) to be no earlier than the expiry of a 14-day period and no later than the expiry of a 21-day period, both counting from the last day when the 30-day period expires.</p>
35	<p>Issue: Re: With respect to section 8(1)(c) and (d) of Schedule 5 –</p> <p>(a) please provide the mode of service for serving the notice; and</p> <p>(b) in the Chinese text, please add “一份” before “類似的通告”.</p> <p>Response: For (a) above, our intention is to require the serving of the notice by registered post. We will consider amending the relevant provisions to clarify our intention. For (b) above, we will seek to achieve consistency when we review section 8(1)(a), (b), (c) and (d) of Schedule 5 as proposed in response to item 34 above.</p>
36	<p>Issue: Re: Section 8(2) of Schedule 5 –</p> <ul style="list-style-type: none"> “如骨灰根據在刊憲日期當日或之後訂立的安放權出售協議安放，則就該等骨灰而言，指明收訊者指該協議所指名的每名獲授權代表。” “For ashes interred under an agreement for the sale of an interment right entered into on or after the enactment date, specified addressee means each authorized representative named in the agreement.” <p>It seems unclear that an authorized representative must be appointed under an agreement for the sale of an interment right under the Bill. Section 2(e) of Schedule 4 only requires such an agreement to set out arrangements for appointing and replacing authorized representatives.</p> <p>Response:</p> <p>We will require the operator to include a term on the arrangement for the appointment and replacement of authorized representatives in the agreement for the sale of an interment right under section 2(e) of Schedule 4. We will strongly advise making use of this to appoint authorized representatives for the dedicated person (who may or may not be the purchaser). With the above said, we will not be able to mandate appointing authorized representatives, as this is a matter of personal decision (based on his/her individual circumstances and preference).</p>

Item	Response from the Government
37	<p>Issue: Re: Section 8(3)(a) of Schedule 5 –</p> <ul style="list-style-type: none"> • “如發出通告的人是文書持有人 — 獲授權代表(姓名及地址記錄在該人根據本條例第 43 條備存的紀錄內者)；或” • “if the person giving the notice is an instrument holder—an authorized representative whose name and address are recorded in a record kept by the person under section 43 of this Ordinance; or” <p>Section 3 of Schedule 7 provides that the requirement under clause 43 of the Bill to keep records of agreements for the sale of interment rights does not apply to an agreement made before the enactment date. Does it include the requirement under clause 43(4) of the Bill? If so, section 8(3)(a) of Schedule 5 seems to be redundant.</p> <p>Response:</p> <p>Please see points 2.08 to 2.12 in the last column against items A0007 and A0008 in the first batch of CSAs (Part A) issued to the BC.</p> <p>There is indeed a difference between –</p> <ul style="list-style-type: none"> (a) clause 43(1), (2) and (3) requiring a licensee to keep a record on agreements for sale of interment rights. Such agreements would naturally mean those entered into on or after the enactment date; and (b) clause 43(4) requiring a holder of a specified instrument (licence, exemption or TSOL) to keep a record on (a) interment / disinterment of ashes in and from the columbarium and (b) the contact details of authorised representatives in respect of ashes interred in the columbarium. Such information would naturally be used for the purpose of the ash disposal procedures (Part 7 and Schedule 5). Our intention is that this requirement should apply to ashes interred in the columbarium, even if the receipt of ashes occurred before the enactment date. <p>Hence, we will consider excising clause 43(4) from Division 1 of Part 5 and instead including the following in the relevant part of the Bill -</p> <ul style="list-style-type: none"> (a) the same provision, subject to a caveat of “where available” in respect of the contact details of authorized representatives in the case of an agreement entered into before the enactment date; and (b) the penalty provision, with fines and imprisonment similar to those in clause 43(5), in respect of contravention of the provision at item (a) above. <p>We will also consider making consequential amendment to the reference to “section 43(4)” in clause 58(2)(a)(iii) accordingly.</p> <p>Lastly, we will consider amending section 8(3)(b) of Schedule 5 to add “persons who are known to the operator as persons who will claim for the return of the ashes”, if an authorized representative is not available.</p>

Item	Response from the Government
38	<p>Issue: Re: Section 8(3)(a) of Schedule 5 – Which of the notice under section 8(1)(a), (b), (c) or (d) of Schedule 5 is “the notice” referred to in this section?</p> <p>Response: Please see our response to item 34 above.</p>
39	<p>Issue: Re: Section 8(4) of Schedule 5 –</p> <ul style="list-style-type: none"> • “根據第(1)款規定須刊登和送達的通告，須載有 —” • “A notice required to be published and served under subsection (1) must contain—” <p>In this section, “A notice required to be published and served under subsection (1)” should be “A notice required to be published, <u>posted</u> and served under subsection (1)”.</p> <p>Response: We will consider amending section 8(4) of Schedule 5 by changing “A notice required to be published and served under subsection (1)” to “A commencement of ash disposal notice”.</p>
40	<p>Issue: Re: Section 8(5) of Schedule 5–</p> <ul style="list-style-type: none"> • “通告指明的詳情，須符合本附表第 6(2)、(3)或(4)條(視情況所需而定)關於處理骨灰的規定。” • “The particulars specified in the notice must conform to the requirements of section 6(2), (3) or (4) of this Schedule (as the case requires) about the handling of ashes.” <p>In the Chinese text, please replace “通告” with “<u>有關通告</u>”, as the Chinese rendition of “the notice” in the English text.</p> <p>Response: We will consider changing “the notice” to “the commencement of ash disposal notice” in section 8(5) of Schedule 5. The expression “通告” in the Chinese text will be amended accordingly.</p>
41	<p>Issue: Re: Section 9(2) of Schedule 5 –</p> <ul style="list-style-type: none"> • “死者的骨灰，只可在整體申索期間的首 2 個月(<u>首 2 個月</u>)屆滿後交還。” • “The ashes of a deceased person may only be returned on the expiry of the first 2 months (<i>the first 2 months</i>) of the overall claim period.” <p>In this section, “<u>on</u> the expiry of” in the English text is rendered as “<u>屆滿後</u>” in the Chinese text. Should the relevant Chinese text be “<u>屆滿時</u>” or the relevant English text be “after the expiry of” instead?</p> <p>Response: Please see our response to item 26 above, which also applies to section 9(2) of Schedule 5.</p>
42	<p>Issue: Re: Section 9(2) of Schedule 5 – Please explain the policy reason(s) for providing that the ashes of a deceased person may only be returned on the expiry of the first two months of the overall claim period.</p> <p>Response:. An ash handler needs to allow reasonable time for the prescribed</p>

Item	Response from the Government
	<p>claimants to come forward to make a claim for the return of ashes, and to take stock of whether there are any competing claims. We consider a period of two months a reasonable period for this purpose. If there are competing claims (upon expiry of the two-month period), the ash handler will handle them in accordance with the rules in section 9 of Schedule 5 for handling competing claims for the return of the ashes. If there are no competing claims (in the first two months or at any time subsequently before the ashes are returned), the ashes can be returned on a first-come-first served basis.</p>
43	<p>Issue: Re: Section 9(3) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在首 2 個月屆滿後，骨灰處理者須將死者的骨灰 —” • “On the expiry of the first 2 months, the ash handler must return the ashes of a deceased person—” <p>In this section, “<u>On</u> the expiry of” in the English text is rendered as “屆滿後” in the Chinese text. Should the relevant Chinese text be “屆滿時” or the relevant English text be “After the expiry of” instead?</p> <p>Response: Please see our response to item 26 above, which also applies to section 9(3) of Schedule 5.</p>
44	<p>Issue: Re: Section 9(4) of Schedule 5 –</p> <ul style="list-style-type: none"> • “如在首 2 個月屆滿時，骨灰處理者沒有收到由屬訂明申索人的人提出的要求交還死者骨灰的申索，則 — <ul style="list-style-type: none"> (a) 骨灰處理者須將該等骨灰，交還予首個在整體申索期間的餘下部分中提出申索的訂明申索人；或 (b) 如在根據(a)段交還骨灰前，收到 2 個或多於 2 個由訂明申索人提出的對立申索 — <ul style="list-style-type: none"> (i) 骨灰處理者須將該等骨灰，交還予根據第(5)款其申索享有最高優先權的訂明申索人；或 (ii) 如該等對立申索享有同等優先權 — 骨灰處理者須按照第(6)款，交還該等骨灰。” • “If, by the expiry of the first 2 months, the ash handler does not receive any claim for the return of the ashes of a deceased person from a person who is a prescribed claimant— <ul style="list-style-type: none"> (a) the ash handler must return the ashes to a prescribed claimant who first makes a claim in the remainder of the overall claim period; or (b) if competing claims are received from 2 or more prescribed claimants before the ashes are returned under paragraph (a)— <ul style="list-style-type: none"> (i) the ash handler must return the ashes to the prescribed claimant whose claim has the highest priority under subsection (5); or (ii) if the competing claims are of equal priority—the ash handler must return

Item	Response from the Government
	<p>the ashes in accordance with subsection (6).”</p> <p>Please explain how this section operates if the person carrying out the on-site portion of the prescribed ash disposal procedures under section 7 of Schedule 5 arranges for the return of ashes on-site for only two months.</p> <p>Response:</p> <p>The person carrying out the on-site portion of the prescribed ash disposal procedures should allow an on-site claim period of <u>at least</u> two months (sections 6(3)(a), 6(4)(a) and 7(1)(b) of Schedule 5). Upon the expiry of the first two months, he/she should handle the ashes in accordance with section 9 of Schedule 5 until the ashes are delivered to the Director. Once the person carrying out the on-site portion of the ash disposal procedures delivers the ashes to the Director, he/she would be regarded to have completed the relevant ash disposal procedures.</p> <p>We are considering amendments to finetune the timing required for the on-site claim period (including revisiting the need for any off-site period), for practical reasons and to keep the number of times for relocating ashes to no more than what is necessary –</p> <p>(a) an ash handler could only commence returning the ashes on the expiry of the first 2 months of the overall claim period (see section 9(3) of Schedule 5), and hence the on-site claim period should logically be longer than 2 months; and</p> <p>(b) an ash handler should handle the claims on-site (rather than off-site), given the shortage of sites for keeping ashes after the enactment date and our intention to minimise the number of times for relocation to once (rather than twice).</p>
45	<p>Issue: Re: Section 9(7)(b) of Schedule 5 –</p> <ul style="list-style-type: none"> “在該等骨灰(連同該物品)根據本條交還予訂明申索人之前，某人聲稱自己是該物品的擁有人(該物品(如該人亦提出交還該等骨灰的申索，該物品連同該等骨灰)稱為指明物品)。” “before the ashes (together with the item) are returned to a prescribed claimant under this section, a person claims to be the owner of the item (the item (together with the ashes, if the person also claims for the return of the ashes) is called <i>specified item</i>).” <p>In this section, “(the item (together with the ashes, if the person also claims for the return of the ashes) is called specified item)” in the English text is rendered as “(該物品(如該人亦提出交還該等骨灰的申索，該物品連同該等骨灰)稱為指明物品)” in the Chinese text. Should the Chinese rendition rather be “(該物品連同該等骨灰(如該人亦提出交還該等骨灰的申索)稱為指明物品)”?</p> <p>Response: The meaning of the Chinese text, namely “(該物品(如該人亦提出交還該等骨灰的申索，該物品連同該等骨灰)稱為指明物品)”, is twofold: if the conditions described in section 9(7)(b) of Schedule 5 are fulfilled, i.e. before the ashes (together with the item) are returned to a prescribed claimant, a person claims to be the owner of the item, “the item” is called <i>specified item</i>; if the person claims both the item and for</p>

Item	Response from the Government
	<p>the return of the ashes, the item together with the ashes are called <i>specified item</i>. There is no discrepancy between the bilingual texts. No amendment is necessary.</p>
46	<p>Issue: Re: Section 9(8)(a) of Schedule 5 –</p> <ul style="list-style-type: none"> • “第(3)、(4)、(5)及(6)款不適用於指明物品；” • “subsections (3), (4), (5) and (6) do not apply to the specified item;” <p>In the Chinese text, please replace “指明物品” with “<u>有關</u>指明物品”, as the Chinese rendition of “<u>the</u> specified item” in the English text.</p> <p>Response: “Specified item” in section 9(8)(a) of Schedule 5 is used in a general sense in relation to the application of section 9(3) to (6) of Schedule 5. The provision does not refer to a particular specified item. No amendment to the Chinese text is considered necessary.</p>
47	<p>Issue: Re: Section 9(8)(b) and (c)(i) of Schedule 5 –</p> <ul style="list-style-type: none"> • “(b) 法院可按照第(3)、(4)、(5)及(6)款以外的、任何適用於指明物品的法律，裁斷對該物品的對立申索；及 <p>(c) 骨灰處理者 —</p> <p>(i) 須保存指明物品，直至某人取得飭令將該物品交還予該人的法院命令，並須按命令交還該物品；或</p> <p>(ii) 如在整體申索期間後的 12 個月屆滿時，法院沒有作出命令 — 須將該指明物品交付署長。”</p> <ul style="list-style-type: none"> • “(b) the court may determine competing claims for the specified item in accordance with any law applicable to it apart from subsections (3), (4), (5) and (6); and <p>(c) the ash handler—</p> <p>(i) must keep the specified item until a person obtains a court order for return of the item to the person and must return the item as ordered; or</p> <p>(ii) if no court order is made by the expiry of 12 months after the overall claim period, must deliver the specified item to the Director.”</p> <p>In the Chinese text, please replace “指明物品” with “<u>該</u>指明物品”, as the Chinese rendition of “the specified item” in the English text.</p> <p>Response: “Specified item” in section 9(8)(b) and (c)(i) of Schedule 5 is used in a general sense. The provisions do not refer to a particular specified item. No amendment to the Chinese text is considered necessary.</p>
48	<p>Issue: Re: Section 9(6) and (8) of Schedule 5 – The rules on the procedures relating to an application for a court order (including the appeal mechanism) have not been provided for in the Bill. Will subsidiary legislation be made for providing these rules?</p> <p>Response: Please see our response to item 6 above.</p>

Item	Response from the Government
49	<p>Issue: Re: Section 10(2) of Schedule 5 –</p> <ul style="list-style-type: none"> “在根據安放權出售協議而可能在各方之間存續的權利及責任的規限下，獲骨灰處理者根據本部交還一份骨灰的人，須在獲交還該份骨灰時，向骨灰處理者支付可歸因於該份骨灰的開支的半數。” “Subject to any rights and obligations that may subsist between the parties under an agreement for the sale of an interment right, a person to whom a set of ashes are returned by the ash handler under this Part must on that return pay to the ash handler half of the expenses attributable to that set of ashes.” <p>In the English text, “a set of ashes <u>are</u>” should be “a set of ashes <u>is</u>”.</p> <p>Response: We will consider changing “a set of ashes are” to “a set of ashes is”.</p>
50	<p>Issue: Re: Section 10(2) of Schedule 5 – Please give the justification for requiring a person to whom a set of ashes is returned by the ash handler to pay half of the expenses under this section. Since such a person is required to pay the ash handler on the return of the ashes, how could the “reasonable expenses” referred to in section 10(1) of Schedule 5 be ascertained at that time as all the relevant procedures have not yet completed?</p> <p>Response:</p> <p>In the light of Members’ views on section 10(2) of Schedule 5, we will consider amending the relevant provision to the effect that, instead of requiring (mandating) the claimant to pay the ash handler half of the expenses incurred, the ash handler may request the person claiming the ashes to pay half of the expenses incurred. In this regard, we will consider replacing “on that return” with “after completion of the applicable procedures”.</p>
51	<p>Issue: Re: Section 11(1)(b) of Schedule 5 –</p> <ul style="list-style-type: none"> “須載有發牌委員會所要求的關於進行該等程序所處理的骨灰及申索的資料。” “must contain the information that the Licensing Board requires about ashes and claims handled in carrying out the procedures.” <p>What kind of information the Administration intends to be required under this section? Will such requirement(s) be made by the Licensing Board by way of subsidiary legislation?</p> <p>Response: The information required could cover, for instance, the name and contact details of the claimant, the name of person whose ashes have been returned to the claimant, the date on which the return was arranged, whether any legal proceeding in respect of the ashes is pending etc. Under clause 83, the Private Columbaria Licensing Board may issue guidelines to provide guidance on the operation of any provision of the Private Columbaria Ordinance (“the Ordinance”) and on compliance with a provision of the Ordinance.</p>

Item	Response from the Government
52	<p>Issue: Re: Section 12 of Schedule 5 –</p> <ul style="list-style-type: none"> “署長或授權人員可藉書面通知，要求被本條例第 58、62 或 64(2)或(3)條規定進行訂明骨灰處置程序或該等程序的場內部分的人，採取署長或該人員認為對利便將骨灰交還予其合資格申索人屬必需的步驟，或對重新安放骨灰屬必需的步驟。” “The Director or an authorized officer may, by notice in writing, require a person required under section 58, 62 or 64(2) or (3) of this Ordinance to carry out the prescribed ash disposal procedures or the on-site portion of the procedures to take any steps that the Director or authorized officer considers necessary to facilitate the return of ashes to their eligible claimants or the reinterment of ashes.” <p>In the Chinese text, “授權人員” should be “<u>獲</u>授權人員”, in view of the Chinese rendition of “authorized officer” in the English text of clause 2(1) of the Bill.</p> <p>Response: We will consider amending “授權人員” to “<u>獲</u>授權人員”.</p>
53	<p>Issue: Re: Section 12 of Schedule 5 – Please clarify the legal consequence(s) for failing to take the steps as required by the Director or an authorized officer under this section.</p> <p>Response:</p> <p>We will consider amending the following sections of Schedule 5 –</p> <p>(a) section 6(1)(b) by adding “and any steps required by the Director or authorized officer in the notice in writing given under section 12 of Schedule 5” after “in the notice” In this way, where the person fails to comply with clause 58(2)(b), or with appropriate amendments, clause 62 (read together with clause 59 or 60), the offence provision under clause 63 will apply; and</p> <p>(b) section 12 by replacing “to their eligible claimants or the reinterment of ashes” with “to their eligible claimants, the reinterment of ashes or the return of ashes to the Director or authorized officer”.</p>
54	<p>Issue: Re: heading of section 13 of Schedule 5–</p> <ul style="list-style-type: none"> “署長完成訂明骨灰處置程序” “Director completing prescribed ash disposal procedure” <p>In the English text, “prescribed ash disposal procedure” should be “prescribed ash disposal procedures”.</p> <p>Response: We will consider changing “procedure” to “procedures” in the heading of section 13 of Schedule 5.</p>
55	<p>Issue: Re: Section 13(1) of Schedule 5 –</p> <ul style="list-style-type: none"> “如就骨灰進行的訂明骨灰處置程序未完成，而署長已接管該等骨灰，則不論

Item	Response from the Government
	<p>接管是否 —”</p> <ul style="list-style-type: none"> • “Subsections (2) and (3) apply if the Director has taken possession of ashes, in respect of which the prescribed ash disposal procedures have not been completely carried out, whether or not—” <p>In the English text, please clarify whether the word “completely” is redundant.</p> <p>Response: The word “completely” is necessary in the context, such that section 13(1) of Schedule 5 could cover cases whereby the person carrying out the ash disposal procedures has not carried out the procedures in full, i.e. where the procedures have only been carried out in part or have not been carried out at all.</p>
56	<p>Issue: Re: Section 13(1)(a) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在本條例第 58、59、60、62 或 64(2)或(3)條遭違反後發生；或” • “after a contravention of section 58, 59, 60, 62 or 64(2) or (3) of this Ordinance; or” <p>Please note Question 26 of my letter dated 13 October 2015 regarding contravention of clauses 59 and 60 of the Bill.</p> <p>Response: Unlike clause 63, the reference to “contravention of section ... 59, 60” in section 13(1)(a) of Schedule 5 is intended to cover a contravention of clause 59(4) or 60(5), so that the Director may carry out steps under section 13(2) and (3) of Schedule 5, whether or not after such a contravention, in case the prescribed ash disposal procedures have not been carried out in full.</p>
57	<p>Issue: Re: Section 13(1)(b)(ii) of Schedule 5 –</p> <ul style="list-style-type: none"> • “將在場內申索期間屆滿時沒有交還予合資格申索人的、在該骨灰安置所內的骨灰，交付署長，” • “has delivered to the Director ashes in the columbarium that are not returned to an eligible claimant on the expiry of the on-site claim period.” <p>This section seems to be redundant as a person has carried out the on-site portion of the prescribed ash disposal procedures in respect of a columbarium only if he has, among other things, delivered to the Director, on the expiry of the on-site claim period, the ashes that are not returned to an eligible claimant pursuant to section 7 of Schedule 5. Please clarify.</p> <p>Response:</p> <p>Section 13(1) (including paragraph (b)) of Schedule 5 is to be understood as “whether or not the requirement of carrying out the on-site portion of the prescribed ash disposal procedures in full under clause 64(3)(b)” is satisfied, it is still a fact that the prescribed ash disposal procedure has not been completely carried out, and the Director is thus required to carry out the steps that have not yet been completed under the prescribed ash disposal procedures as stipulated in section 13(2) and (3) of that Schedule. Since</p>

Item	Response from the Government
	<p>section 7(1)(c) of that Schedule already covers the return of ashes to the Director, it may not be necessary to repeat the same in section 13(1)(b)(ii). We will consider streamlining section 13(1)(b) to read as follows: “after a person has completely carried out the on-site portion of the prescribed ash disposal procedures in respect of the columbarium concerned under section 7 of Schedule 5, as the person is required to do under section 64(3)(b) of this Ordinance.”</p>
58	<p>Issue: Re: heading of section 14 of Schedule 5 –</p> <ul style="list-style-type: none"> • “署長處置遭放棄的骨灰的權力” • “Director’s power to dispose of abandoned ashes” <p>Are all the ashes referred to in section 14 of Schedule 5 abandoned? Is it appropriate to use the word “abandoned”?</p> <p>Response: We consider the word “abandoned” used in the heading of section 14 of Schedule 5 appropriate.</p>
59	<p>Issue: Re: Section 14(1) of Schedule 5 –</p> <ul style="list-style-type: none"> • “凡訂明骨灰處置程序已就由署長管有的骨灰進行(不論是否由署長進行)，署長可按其認為合適的任何方式，處置該等骨灰。” • “Any ashes in the Director’s possession in respect of which the prescribed ash disposal procedures have been carried out (whether or not by the Director) may be disposed of by the Director in any manner that the Director thinks fit.” <p>Please confirm whether scattering of ashes in gardens of remembrance or at sea will be one of the manners of disposing the ashes by the Director pursuant to this section.</p> <p>Response: The Director is empowered under section 14(1) of Schedule 5 to dispose of the ashes in his/her possession in any manner that he/she thinks fit, including but not limited to the scattering of ashes in gardens of remembrance or at sea.</p>
60	<p>Issue: Re: Section 14(2) of Schedule 5 –</p> <ul style="list-style-type: none"> • “凡有就骨灰進行的法律程序在法院待決，而有人已將該程序，以書面通知署長，則第(1)款不適用於該等骨灰。” • “Subsection (1) does not apply to any ashes in respect of which proceedings are pending in the court and a person has, by written notice, informed the Director of the proceedings.” <p>Please clarify the meaning of “proceedings are pending in the court”. If the Director actually knows that there are proceedings pending in the court in respect of the ashes in question, could he still dispose of the ashes in any manner that he thinks fit under section 14(1) of Schedule 5 if no person has, by written notice, informed him so?</p> <p>Response:</p> <p>As set out in our response to item 51 above, the information required from the ash</p>

Item	Response from the Government
	<p>handler could cover, inter alia, whether any legal proceeding in respect of the ashes is pending etc. Under such circumstances, if the Director knows this, the Director may not dispose of the ashes in the Director's possession. However, in circumstances beyond the Director's control (e.g. the ashes are returned to the Director after completion of a 12-month prescribed ash disposal procedure, and subsequently, some claimants initiate legal proceedings without informing the Director), then it is unreasonable to take issue with the Director (or the Government for that matter) for having disposed of the ashes notwithstanding that legal proceedings are still pending in the court.</p>
61	<p>Issue: Re: Section 15(1)(a) of Schedule 5–</p> <ul style="list-style-type: none"> • “按本條例第 58、59、60、62 或 64(2)或(3)條規定須就骨灰安置所進行訂明骨灰處置程序或該等程序的場內部分；但” • “is required under section 58, 59, 60, 62 or 64(2) or (3) of this Ordinance to carry out the procedures or the portion in respect of the columbarium; but” <p>Clauses 59 and 60 of the Bill have not imposed obligations to carry out the prescribed ash disposal procedures. Please amend.</p> <p>Response: We will consider deleting the reference to clauses 59 and 60 in section 15(1)(a) of Schedule 5.</p>
62	<p>Issue: Re: Section 15(3) of Schedule 5 –</p> <ul style="list-style-type: none"> • “在不局限開支的一般涵義的原則下，開支可包括督導費用和部門費用。” • “Without limiting the general meaning of <i>expenses</i>, the expenses may include supervision and departmental charges.” <p>Please clarify the meaning of “supervision and departmental charges”.</p> <p>Response:</p> <p>Reference is made to section 130(2)(b) of the Public Health and Municipal Services Ordinance (Cap. 132).</p> <p>Supervision and departmental charges would include the cost of manpower resources of the Government spent on carrying out and supervising the operation, procurement of outsourced service for removal, collection, packaging and transportation of unclaimed ashes and items, procurement of security guard service for safe custody of the columbarium that is the subject of an occupation order, the transport and materials supplied for the purpose of carrying out such works and any on-costs involved etc.</p>
63	<p>Issue: Re: Section 15(4) of Schedule 5 –</p> <ul style="list-style-type: none"> • “署長如相信有人有法律責任繳付有關開支，可向每一名該等人士送達證明書的複本。” • “The Director must serve a copy of the certificate on each person whom the

Item	Response from the Government
	<p>Director believes to be liable to pay the expenses.”</p> <p>In the Chinese text, should “可” rather than “須”, as the Chinese rendition of “must” in the English text?</p> <p>Response: We will amend “可” to “須”.</p>
64	<p>Issue: Re: Section 15(5) of Schedule 5 –</p> <ul style="list-style-type: none"> “自證明書送達上述人士當日後的 1 個月起，年利率為 10% 的利息可作為開支的一部分，向根據第(1)款有法律責任繳付開支的人追討。” “Interest is recoverable as part of the expenses from a person who is liable for the expenses under subsection (1) at the annual rate of 10% commencing 1 month after the date of service of the certificate on the person.” <p>Since interest is recoverable as part of the expenses from a <u>person who is liable for the expenses under section 15(1) of Schedule 5</u> at the annual rate of 10% commencing one month after the date of service of the certificate <u>on the person</u>, should the Chinese text of this section be amended as “自證明書送達<u>根據第(1)款有法律責任繳付開支的人</u>當日後的 1 個月起，年利率為 10% 的利息可作為開支的一部分，向<u>該人</u>追討”?</p> <p>Response: We will consider amending the provision to “凡署長於某日向<u>根據第(1)款有法律責任繳付開支的人</u>送達證明書，自該日後的 1 個月起以年利率 10% 計算的利息，可作為開支的一部分，向<u>該人</u>追討。”</p>
65	<p>Issue: Re: Section 15(5) of Schedule 5 – Please give the justification for charging an interest at the annual rate of 10% under this section.</p> <p>Response:</p> <p>We see the need to introduce a punitive element in recovering the expenses. Having made reference to other legislation including section 130(4)(b) of the Public Health and Municipal Services Ordinance (Cap. 132), section 33 of the Buildings Ordinance (Cap. 123), section 25 of the Bedspace Apartments Ordinance (Cap. 447) and section 144 of Lifts and Escalators Ordinance (Cap. 618), we consider an interest rate of 10% per annum a reasonable amount taking into account the prevailing interest rate. We will keep in view the appropriateness of the level of annual interest rate being charged, and would amend it in future if considered necessary.</p>
66	<p>Issue: Re: Section 15(8) of Schedule 5 –</p> <ul style="list-style-type: none"> “在沒有相反證據的情況下，證明書須推定為署長簽名的證明，以及第(1)款所提述的人所欠的開支款額的證明。” “A certificate purporting to be signed by the Director under subsection (2) is on its production admissible in any proceedings without further proof.” <p>In the English text, please add “as evidence” after “admissible”.</p> <p>Response: The word “admissible” already means admissible as evidence. No</p>

Item	Response from the Government
	amendment is necessary.
67	<p>Issue: Re: heading of section 16 of Schedule 5 –</p> <ul style="list-style-type: none"> • “署長在骨灰安置所處置骨灰後提供資料” • “Director to provide information on ash disposal by columbaria” <p>“Director to provide information on ash disposal by columbaria” is rendered as “署長在骨灰安置所處置骨灰後提供資料”. Should the Chinese rendition be “署長提供關於骨灰安置所處置骨灰的資料” instead?</p> <p>Response: We will consider amending “署長在骨灰安置所處置骨灰後提供資料” to “署長提供關於骨灰安置所處置骨灰的資料”.</p>
68	<p>Issue: Re: Section 16(1) of Schedule 5 –</p> <ul style="list-style-type: none"> • “署長可備存 — <ul style="list-style-type: none"> (a) 列出以下骨灰安置所的名單 — <ul style="list-style-type: none"> (i) 正進行的訂明骨灰處置程序所關乎的每間骨灰安置所；及 (ii) 已進行的訂明骨灰處置程序所關乎的每間骨灰安置所； (b) 就(a)段提述的每間骨灰安置所 — 根據本附表第 8 條刊登的展開骨灰處置通告的複本； (c) 就(a)(ii)段提述的每間骨灰安置所 — 根據本附表第 11(2)條向署長交付的訂明骨灰處置程序的紀錄的複本。” • “The Director may keep— <ul style="list-style-type: none"> (a) a list setting out— <ul style="list-style-type: none"> (i) each columbarium in respect of which the prescribed ash disposal procedures are being carried out; and (ii) each columbarium in respect of which the prescribed ash disposal procedures have been carried out; (b) in respect of each columbarium referred to in paragraph (a), a copy of the commencement of ash disposal notice published under section 8 of this Schedule; (c) in respect of each columbarium referred to in paragraph (a)(ii), a copy of the record of the prescribed ash disposal procedures delivered to the Director under section 11(2) of this Schedule.” <p>The list to be kept by the Director under section 16(1)(a), (b) and (c) of Schedule 5 only covers matters in respect of prescribed ash disposal procedures, but not the on-site portion of the prescribed ash disposal procedures. Please explain the reason(s) for such exclusion. Please also clarify the reason(s) for not imposing a duty on the Director to keep such a list.</p> <p>Response: We will consider making express reference to “or the on-site portion of</p>

Item	Response from the Government
	the procedures” after “prescribed ash disposal procedures” in section 16(1)(a)(i) and (ii) and (c) of Schedule 5.
69	<p>Issue: Re: heading of section 17 of Schedule 5 –</p> <ul style="list-style-type: none"> • “其他骨灰處置程序” • “Alternative ash disposal procedures” <p>In the Chinese text, should “<u>其他</u>骨灰處置程序” be “<u>替代</u>骨灰處置程序” instead, as the Chinese rendition of “Alternative ash disposal procedures” in the English text?</p> <p>Response: We will consider amending “<u>其他</u>骨灰處置程序” to “<u>替代</u>骨灰處置程序”.</p>
70	<p>Issue: Re: Section 17(2) of Schedule 5 –</p> <ul style="list-style-type: none"> • “如署長信納，關於骨灰安置所的骨灰處置方案所指明的程序，就利便將安放在該骨灰安置所內的骨灰交還予合資格申索人而言，與訂明骨灰處置程序同樣有效，則署長可應申請而就該骨灰安置所批准該方案。” • “The Director may, on application, approve an ash disposal plan in respect of a columbarium if it is satisfied that the procedures specified in the plan are as effective as the prescribed ash disposal procedures in facilitating the return of the ashes interred in the columbarium to an eligible claimant.” <p>In the English text, should “it is satisfied” rather be “the Director is satisfied”?</p> <p>Response: We will consider amending section 17(2) of Schedule 5 by changing “it is satisfied” to “the Director is satisfied”.</p>
71	<p>Issue: Re: the Chinese rendition of “the ashes” in Schedule 5 – It is noted that in Schedule 5, “the ashes” in the English text is rendered as “骨灰” or “有關骨灰” in the Chinese text. For example, in section 6 of Schedule 5. Please review to ensure consistency.</p> <p>Response: We will review the provisions in Schedule 5 to ensure consistency in the Chinese text.</p>
72	<p>Issue: Re: Clause 65(2) of the Bill –</p> <ul style="list-style-type: none"> • “如訂明骨灰處置程序或該程序中的任何步驟，未有就某骨灰安置所進行，則指明人員可採取對進行該程序屬必要的任何步驟。” • “A specified officer may take any steps that may be necessary for carrying out the prescribed ash disposal procedures in respect of a columbarium if the procedures or any step in them are or is not carried out.” <p>Please amend this clause to provide that a specified officer may also take any steps that may be necessary for carrying out the prescribed ash disposal procedures in respect of a columbarium if the on-site portion of the procedures or any step in them are or is not carried out.</p>

Item	Response from the Government
	<p>Response: The phrase “any step in them” in clause 65(2) should have covered the on-site portion of the prescribed ash disposal procedures, such that if the procedures or any step in them are or is not carried out, a specified officer may take any step necessary for carrying out the full set of prescribed ash disposal procedures. To put matters beyond doubt, we will consider replacing “in them” with “in the prescribed ash disposal procedures or the on-site portion of the prescribed ash disposal procedures”.</p>
73	<p>Issue: Re: Clause 65(6) of the Bill –</p> <ul style="list-style-type: none"> • “附表 5 第 1 部(該部就作出佔用令及該命令的效力訂定條文)具有效力。” • “Part 1 of Schedule 5 (which provides for the making of an occupation order and the effect of such an order) has effect.” <p>Since section 4 of Part 1 of Schedule 5 deals with variation and cancellation of an occupation order, please amend the description of Part 1 of Schedule 5 as set out in clause 65(6) of the Bill so as to reflect that Part 1 of Schedule 5 also deals with these matters.</p> <p>Response: The words in brackets in clause 65(6) only describe in general terms the subject matter of Part 1 of Schedule 5, and are not meant to list out every detail in that Part. No amendment is necessary.</p>