

Bills Committee on Private Columbaria Bill**Government's Response to the Issues Raised by
Members of the Bills Committee at Previous Meetings****(Issued on 22 January 2016)**

This paper sets out the fifth batch of Government's responses to the issues raised by members of the Bills Committee at previous meetings.

	Information requested / follow-up action required	Response from the Government
(A) Matters arising from the meeting on 23 January 2015		
1	A table detailing the types of non-compliance found in private columbaria, the location of non-compliant columbaria and how the Government dealt with such non-compliance.	At present, private columbaria would need to comply with existing statutory and Government requirements, including those relating to the land, planning and building aspects. Please refer to <u>Annex</u> for details.
2	Information on the enforcement actions taken against unauthorised columbaria.	
(B) Matters arising from the meeting on 16 February 2015		
3	A list containing the names and addresses of private columbarium operators who had responded to the notice served by FEHD under the administrative notification scheme and the number of niches under their operation.	<p>As at 31 December 2015, a total of 138 private columbaria joined the Notification Scheme. Among them, 136 columbaria were on DEVB's List, i.e. about 98.5% of the 138 private columbaria on DEVB's List. Another 2 are outside DEVB's List.</p> <p>In total, 385 000 niches with interred ashes are reported under the Notification Scheme. Amongst these, 312 000 niches with interred ashes are reported by 87 columbaria claiming to be dated columbaria.¹</p> <p>On 4 January 2016, we wrote to operators joining the Notification Scheme about the issue of releasing the names and addresses of their private columbaria to the Bills Committee.</p>

¹ A total of 88 private columbaria (out of 138 columbaria which joined the Notification Scheme) claimed to be dated columbaria. However, the niche data provided by one small-scale dated columbarium are incomplete. Hence, the above aggregate figures of 385 000 niches and 312 000 niches have not reflected the data of this case.

	Information requested / follow-up action required	Response from the Government
(C) Matters arising from the meeting on 23 March 2015		
4	The compliance status of private columbaria, which were known to the Administration, in relation to land-related and planning-related requirements.	<p>Please refer to our response to items 1 and 2 and <u>Annex</u> above.</p> <p>Please see columns 5 and 6 of the DEVB's List, for further details on the town planning and land/lease information of private columbaria made known to PlanD and LandsD.</p>
(D) Matters arising from the meeting on 17 April 2015		
5	Information on the enforcement actions the relevant government departments would take under their purview against non-compliant columbaria, as provided for under the relevant legislation.	Please refer to our response to items 1 and 2 and <u>Annex</u> above.

6	Information on policies on land premium for columbarium premises.	Under the current policy, any application for land grant / lease modification / land exchange / STT / waiver, etc. to permit the proposed use will be processed in accordance with the established procedures. Approval of any such application is subject to payment of full market value (FMV) premia, waiver fees or STT rentals as well as administrative fees as appropriate by the applicant unless policy directive is provided to charge nominal or concessionary premia / rentals / fees. The same procedures will apply to a private columbarium (be this a pre-Bill columbarium or not) seeking a licence under the Private Columbaria Bill (the Bill).
7	A formula for calculating land premium equitably for niches that had been sold.	<p>For pre-Bill columbaria confirmed to be eligible for exemption status in all other respects, D of Lands might, upon application, consider administratively regularising the breach of lease conditions and / or unlawful occupation of unleased land for the proposed exempted area before and during the exemption period, by way of a waiver and / or a STT, with the relevant waiver fees, STT rentals and administrative fees waived, depending on the circumstances and merits of each application. This has been set out in paragraph 14 of the LegCo Brief dated 18 June 2014.</p>

(E) Matters arising from the meeting on 27 April 2015

8	Response to members' concerns raised at previous meetings of the Bills Committee regarding breaches of Deeds of Mutual Covenant (DMC) by private columbarium operators.	<p>We have made reference to the approach taken by the Home Affairs Department (HAD) in its review of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), including the proposed amendment to the relevant legislation in the consultation document.</p> <p>According to our research on existing private columbaria joining the Notification Scheme, we are not aware of any explicit restrictive clause in the DMC that disallows the operation of columbarium facilities in the building concerned. As regards other clauses in the DMC which may be open to interpretation as to whether or not it allows columbarium operation, according to case law, the question of whether an activity can be regarded as a breach of the relevant clause would have to be judged on a case by case basis, having regard to the available evidence on the facts and circumstances of the case.</p> <p>We will consider moving CSAs to the Bill that –</p>
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		<p>(a) enable the Licensing Board to refuse an application for the issue of a licence, if the DMC of the building concerned contains a clause expressly to disallow commercial activities, or a clause expressly to allow only private residential use, <u>to the extent that</u> use of the relevant storey(s) as a columbarium contravenes the DMC concerned; and</p> <p>(b) in relation to (a), require the applicant to submit a confirmation signed by a solicitor affirming that there are no such explicit restrictive clauses in the DMC in respect of the relevant building.</p> <p>The above applies to a columbarium (be this a pre-Bill columbarium or not) applying for the issue of a licence under the Bill.</p> <p>For those cases where the question of whether or not a certain clause in the DMC carries a restrictive effect is open to interpretation, we could continue to count on the existing provision in the Bill, which has been formulated having regard to the experience of other licensing regimes, i.e. the application for issue of a licence is to be considered by the Licensing Board on a case by case basis having regard to public interest and other relevant considerations (clause 17 of the Bill). We would also wish to add that, when granting a licence, it is open to the Licensing Board to include licensing conditions for minimising the environmental nuisance caused to the neighbourhood.</p>
9	To consider moving a CSA to deal with niches which had already been sold but ashes were not yet interred as at the Bill announcement time.	<p>The regulatory regime under the Bill seeks to strike a fine balance amongst competing interests of different stakeholders –</p> <p>(a) the wider community interest, including meeting society’s needs for provision of columbaria;</p>
10	To assess the implications of relaxing the number of sets of ash in a niche in exempted columbaria and seriously consider making revision to the Bill, having regard to the policy consideration of increasing supply.	<p>(b) the sentiment of the descendants, in particular their wish not to upset the resting place of the deceased as far as practicable;</p> <p>(c) minimising the nuisance caused by such columbaria to their neighbouring community; and</p>
11	To study whether there was room to relax the number of sets	<p>(d) the sustainable development of the trade in the long-run.</p>

	<p>of ashes in a niche for exempted columbaria.</p>	<p>According to the Bill, in granting an exemption for a dated columbarium meeting the eligibility requirements, the Licensing Board will control the exempted area by way of the relevant plan. For a columbarium granted an exemption, its scale of operation would be frozen.</p> <p>For places outside the exempted area in the columbarium, if the relevant niches are in stand-alone and separated premises, it is open to operators meeting the eligibility requirements for a licence in all respects (including paying premium for such niches) to seek a licence in respect of such area that is separate from the exempted area.</p> <p>We now turn to cases where niches were sold before the Bill announcement time (BAT), but ashes are yet to be interred before the BAT. We are considering moving an appropriate CSA to handle the issue, with safeguards against abuse. Detailed proposal will be put before the Bills Committee in due course.</p>
<p>12</p>	<p>Information on the timeframe of appropriate enforcement actions to be taken by relevant government departments against non-compliant columbaria</p>	<p>Please refer to our response to items 1 and 2 and <u>Annex</u> above.</p>
<p>(F) Matters arising from the meeting on 12 May 2015</p>		
<p>13</p>	<p>Information on alterations or additions which would be considered as a material deviation from the approved plans in respect of the columbaria concerned.</p>	<p>As explained in item 16 in our second set of response issued on 29 December 2015, the approval of plans by the Licensing Board is a tool to monitor and ensure compliance with the requirements and conditions imposed under the specified instruments under the Bill.</p> <p>Clause 45 gives room for an applicant to seek permission from the Licensing Board for alteration or addition to its columbarium premises that would result in material deviation from the plan already approved.</p> <p>It is envisaged that the Licensing Board would give such permission, only if it is satisfied that the alteration or addition would not undermine, or would be <u>at least</u> as effective as the plan already approved in delivering, the express purpose for which the regulatory regime is formulated in the first place.</p>

(G) Matters arising from the meeting on 22 June 2015

14	Updated information collected under the administrative notification scheme.	Please refer to our response to item 3.
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**Food and Health Bureau
22 January 2016**

Statutory and Government Requirements Applicable to Private Columbarium Operators and the Follow-up Actions Taken by the Government in case of Non-compliance

	Land-related requirements	Planning-related requirements	Building-related requirements
Statutory and Government requirements	No unlawful occupation of unleased land. Compliance with lease, short term tenancy, licence or other instrument under which land is held from the Government.	Compliance with the Town Planning Ordinance (Cap. 131).	Compliance with the Buildings Ordinance (Cap. 123).
Current status on non-compliance (according to Part B of DEVB's List (124 private columbaria) as at December 2015)	83: columbarium use not permitted under the user restrictions of the relevant lease / licence / tenancy and / or involving unlawful occupation of unleased land. 31: breach of the user restrictions of the relevant lease / licence / tenancy not yet established or cases under litigation or investigation. 10: columbarium use may be permitted under the user restrictions of the relevant lease / licence / tenancy.	109: not in compliance with town planning requirements. 15: in compliance with town planning requirement or not covered by statutory plans.	Not Available.

<p>Enforcement actions by departments under existing legislation</p>	<p>According to a stock-taking exercise of the notices issued under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) between 2011 and 2015, LandsD has issued a total of 70 section 6(1) notices involving 34 columbaria. Amongst the notices issued –</p> <p>(a) 22 notices have been compiled with, the Government land has been repossessed, or the unauthorised structures have been removed; and</p> <p>(b) for 9 cases, the Government has taken prosecution actions.</p>	<p>According to a stock-taking exercise of the notices issued under section 23(1) of the Town Planning Ordinance (Cap. 131) between 2010 and 2015, the unauthorised development –</p> <p>(a) in 1 columbarium has fully ceased; and</p> <p>(b) in 1 columbarium has yet to cease.</p> <p>[Note: During the said period, there is another columbarium with the unauthorised development fully ceased. This case is no longer on DEVB's List.]</p>	<p>According to Buildings Department's records, there are 6 private columbaria subject to enforcement actions in respect of orders issued under section 24(1) of Cap. 123 against structures erected without approval / consent under section 14(1) of Cap. 123.</p> <p>The Buildings Department has been taking enforcement actions against non-compliance with the orders by initiating prosecutions. As at 31.12.2015, the progress of the removal of the unauthorised building works is as follows –</p> <p>(a) completed in 1 columbarium;</p> <p>(b) partly completed in 1 columbarium and second prosecution is being arranged;</p> <p>(c) works in progress in 2 columbaria; and</p> <p>(d) to be commenced in 2 columbaria.</p>
<p>Follow-up actions by operators</p>	<p>Of the 83 columbaria, regularisation applications from 13 received are under processing.</p>	<p>Of the 109 columbaria, the planning applications from 4 received are under processing.</p>	<p>See above.</p>