

**Bills Committee on Private Columbaria Bill**

**Ash Disposal Procedures**

**Purpose**

Under Part 7 of and Schedule 5 to the Private Columbaria Bill (the Bill), operators of private columbaria to which the Bill applies are required to dispose of interred ashes properly in accordance with the applicable ash disposal procedures. These provisions apply to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date of the Private Columbaria Ordinance (the Ordinance), whether or not the receipt of the ashes for interment in the columbarium or the operation, keeping, management or control of the columbarium by the person occurs before that day.

2. This paper sets out the detailed arrangements for Members' reference.

**Background**

**(A) Overview**

3. The responsibility for proper disposal of interred ashes falls squarely with the columbarium operator concerned. The Bill provides that a person operating a columbarium must not improperly dispose of ashes interred in the columbarium, whether or not because of cessation of columbarium operation. The Bill provides for ash disposal procedures for application to operators, third parties and specified officer<sup>1</sup> under different circumstances. The applicable circumstances include cessation of columbarium operation arising from any of the following –

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<sup>1</sup> A specified officer means the Director for Food and Environmental Hygiene (DFEH), an authorized officer or a public officer.

- (a) the operator has not applied for a specified instrument;
- (b) the operator has failed to obtain a specified instrument or secure its renewal or extension;
- (c) the operator chooses to abandon the columbarium before or after obtaining a specified instrument; or
- (d) a third party (see paragraphs 9 to 13 below) has taken possession of the columbarium premises.

The Bill also provides that a specified officer may apply to the court for an Occupation Order to occupy the columbarium premises for a period of time to carry out the prescribed ash disposal procedures.

## **(B) Guiding Principles**

4. Clause 57 of the Bill provides that a person disposing of ashes interred in a columbarium must do so having regard to the respect for, and the dignity of, the deceased persons concerned.

## **(C) Obligations of Operators**

5. Under clause 58 of the Bill, a person who has operated, kept, managed or in any other way had control of a columbarium must not improperly dispose of ashes interred in the columbarium. It will constitute improper disposal of the interred ashes unless –

- (a) he/she holds a specified instrument in respect of the columbarium and –
  - (i) the ashes are disposed of not because of cessation of operation of the columbarium;
  - (ii) the ashes are disposed of in accordance with the terms of the agreement for the sale of the interment right; and
  - (iii) the particulars of disposal are entered into the record of interment; or

- (b) he/she carries out the prescribed ash disposal procedures (see Schedule 5 to the Bill).

**(D) Abandonment of a Columbarium**

6. It will constitute abandonment of a columbarium, if under the applicable procedures with relevant timeframes (see clause 59 or 60 of the Bill), a person has not given a specified response (see clause 61 of the Bill), namely –

- (a) the person with a specified instrument expired has not applied for the renewal or extension of the instrument;
- (b) the person with a specified instrument in force does not inform DFEH or authorized officer in writing that he/she continues to operate the columbarium; or
- (c) the person does not give to DFEH or authorized officer a written undertaking to carry out the prescribed ash disposal procedures, specifying the particulars required by DFEH or authorized officer.

This applies whether the columbarium is operated with or without a specified instrument issued (see clause 60 or 59 of the Bill respectively).

7. Under clause 62 of the Bill, a person who has given to DFEH or authorized officer a written undertaking to carry out the prescribed ash disposal procedures must comply with the undertaking. This includes giving a commencement of ash disposal notice (see footnote 4 below) in accordance with the applicable procedures within 30 days after giving the undertaking and taking steps specified in the notice in accordance with the applicable procedures and timing.

**(E) Offence Provisions**

8. Under clause 63 of the Bill, a person who contravenes clause 58, 59, 60 or 62 of the Bill (see paragraphs 5 to 7 above) commits an offence and is liable –

- (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; and

- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

**(F) Obligations of Landlords, Mortgagees etc. Taking Possession of Columbarium Premises (Person in Possession)**

9. A person in possession (whether or not as landlord, mortgagee or based on any other interest in the columbarium premises) who takes possession of the premises must notify DFEH in writing within 7 days after taking possession (clause 64(1) of the Bill). If he/she does so, he/she does not commit an offence under clause 8 of the Bill by taking possession.

10. Under clause 64 of the Bill, a person in possession is subject to the applicable ash disposal procedures, depending on the circumstances involved.

11. For a person in possession who –

- (a) acquired the columbarium premises where (i) at the time of acquisition a certificate of columbarium use was registered in the Land Registry but no certificate of cessation of columbarium use was registered in the Land Registry; and (ii) the person from whom the premises were acquired was named in the certificate of columbarium use as having been issued with a specified instrument; or
- (b) is a successor or assign of another person who acquired the premises in circumstances specified in (a),

he/she is subject to the obligations to carry out the prescribed ash disposal procedures in full. He/she must carry out the procedures as soon as reasonably practicable after taking possession.

12. For a person in possession not falling within paragraph 11, he/she must carry out as soon as practicable after taking possession –

- (a) the prescribed ash disposal procedures in full; or
- (b) the on-site portion of the procedures.

13. A person in possession is regarded as having contravened the obligations under the relevant provisions of the Bill (paragraph 11 or 12 above refers), as the case may be, if he/she fails to give a commencement of ash disposal notice in accordance with the applicable procedures within 30 days after giving the notice referred to in paragraph 9 and take steps specified in the commencement of ash disposal notice in accordance with the applicable procedures and timing.

**(G) Powers of a Specified Officer to Carry Out Prescribed Ash Disposal Procedures and Occupation Order**

14. 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 these (or any of the steps in them) are not carried out. The court may, on application by a specified officer and being satisfied that any of the provisions referred to in paragraph 5, 6, 7, 11 or 12 above, as the case may be, has been contravened in respect of a columbarium, make an order empowering him/her to enter the columbarium premises and occupy the premises for a period specified in the order and carry out the prescribed ash disposal procedures in respect of the columbarium.

**(H) Claiming Back of Ashes**

15. Part 2 of Schedule 5 to the Bill sets out the details of the ash disposal procedures.

16. The following terms are defined in Schedule 5 –

- (a) “ash handler”, in relation to the ashes in respect of which the prescribed ash disposal procedures (the procedures in full (i.e. both on-site and off-site portions) or the on-site portion of the procedures) are being carried out, means the person carrying out the procedures; and
- (b) “eligible claimants”, in relation to the ashes, any plaque or any other related items interred together with the ashes of a deceased person, means –

- (i) unless paragraph (ii) below applies, a prescribed claimant<sup>2</sup>;
- (ii) the owner of the item or ashes (as the case requires) as determined in accordance with any law applicable to the item or ashes (as the case requires) apart from the relevant provisions of Schedule 5.

17. The ash handler is required to return the ashes of a deceased person to a prescribed claimant in accordance with paragraphs 19 to 24 and the rules as enshrined in section 9 of Schedule 5 to the Bill (see a summary of the rules at the Annex). If there are competing claims of equal priority over the ashes before the ashes are returned to a prescribed claimant, the ash handler must keep the ashes until a prescribed claimant obtains a court order and must return the ashes as ordered or, if no court order is made by the expiry of 12 months after the overall claim period, must deliver the ashes to DFEH.

18. However, if the ash handler is in possession of an item as one related to the ashes and a person claims to be the owner of the specified item<sup>3</sup>, paragraphs 19 to 24 and the rules as summarised in the Annex do not apply and the court may determine competing claims for the specified item in accordance with any law applicable to it. The ash handler must keep the specified item until a prescribed claimant obtains a court order and must return the specified item as ordered or, if no court order is made by the expiry of 12 months after the overall claim period, must deliver the specified item to DFEH.

19. Under the prescribed ash disposal procedures set out in section 6 of Schedule 5 to the Bill, a person is required to –

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<sup>2</sup> “Prescribed claimant”, in relation to the ashes of a deceased person, means an authorized representative, personal representative or relative of the deceased person (see the Annex for the meaning of these terms).

<sup>3</sup> Specified item means the item (together with the ashes, if the person also claims for the return of the ashes).

- (a) give a commencement of ash disposal notice<sup>4</sup>;
- (b) handle the ashes and claims in accordance with the intention stated in the notice; and
- (c) complies with the requirement under the Bill to deliver a record of disinterment to DFEH.

20. The person is required to –

- (a) handle the ashes interred in the columbarium in the specified manner (see section 6(2), (3) or (4) of Schedule 5 to the Bill); and

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<sup>4</sup> An ash handler must before opening sealed niches in the columbarium or otherwise starting to handle the ashes in the columbarium –

- (a) publish a notice stating the person's intention regarding disposal of the ashes in 3 newspapers 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 (see section 8(2) and (3) of Schedule 5 to the Bill).

A notice required to be published and served must contain –

- (a) the name and address of the columbarium;
- (b) a statement of the intentions of the person giving the notice with respect to the manner of ash disposal, specifying –
  - (i) whether the person is to carry out the prescribed ash disposal procedures in full or the on-site portion of the procedures;
  - (ii) if the prescribed ash disposal procedures are to be carried out, which of the relevant provision of Schedule 5 are the ashes to be handled in accordance with; and
  - (iii) the particulars relating to the intended handling of the ashes, including:
    - (A) the dates on which the on-site claim period begins and ends;
    - (B) if applicable - the dates on which the off-site claim period begins and ends and the address of the off-site claim venue;
    - (C) if applicable - the date by which the ashes, if not returned to an eligible claimant, are to be re-interred and the address of that columbarium and the terms of re-interment;
    - (D) if (C) does not apply - the date by which the ashes, if not returned to an eligible claimant, are to be delivered to DFEH and that the ashes are to be finally disposed of in a manner that DFEH thinks fit.

- (b) handle claims for the return of the ashes in accordance with section 9 of Schedule 5 to the Bill (see a summary of the rules at the **Annex**).

21. The person handles the ashes in the specified manner if he/she –

- (a) arranges for the return of ashes on-site during an on-site claim period of at least 12 months; and on the expiry of the on-site claim period, delivers to DFEH the ashes not returned to an eligible claimant;
- (b) arranges for the return of the ashes on-site during an on-site claim period of at least 2 months; and on the expiry of the on-site claim period, arranges for the ashes not returned to an eligible claimant to be interred in another columbarium (which is either licensed or to which the Ordinance does not apply) on terms no less favourable than the terms governing the interment of the ashes in the original columbarium; or
- (c) arranges for the return of the ashes on-site during an on-site claim period of at least 2 months; on the expiry of the on-site claim period, arranges for the ashes not returned to an eligible claimant to be removed to an off-site venue and the return of the ashes off-site during an off-site claim period (where the aggregate of the on-site claim period and the off-site claim period is at least 12 months); and on the expiry of the off-site claim period, delivers to DFEH the ashes not returned to an eligible claimant.

22. The procedures referred to in paragraphs 19 to 21 are applicable to a columbarium operator and a person in possession referred to in paragraph 11. For a person in possession referred to in paragraph 12 above, if he or she does not opt for observing the prescribed ash disposal procedures of at least 12 months in full, he/she is still required to the on-site portion of the procedures (i.e. giving a commencement of the ash disposal notice; arranging for the return of the ashes on-site during an on-site claim period of at least 2 months, and on the expiry of the on-site claim period, delivers to DFEH the ashes not returned to an eligible claimant).

23. The Bill prescribes the period within which a claim may be made for the return of ashes. By the time the relevant period as applicable expires, the ash handler may seek DFEH's assistance in handling any ashes / specified items not returned to an eligible claimant. Under the Bill, a person who is required but fails to carry out the prescribed ash disposal procedures or the



on-site portion of the procedures in respect of a columbarium is liable to pay to DFEH all expenses that DFEH incurs in carrying out the procedures (see section 15 of Schedule 5 to the Bill for recovering the expenses and interest involved). The Licensing Board may, on application and if satisfied that the procedures have been carried out in respect of the columbarium, issue a certificate that the premises cease to be a columbarium. A person to whom such a certificate of cessation of columbarium use is issued may register the certificate against the premises in the Land Registry.

24. Any ashes in DFEH's possession in respect of which the prescribed ash disposal procedures have been carried out (whether or not by DFEH) may be disposed of by DFEH in any manner as he/she thinks fit. This does not apply to any ashes in respect of which proceedings are pending in the court and a person has, by written notice, informed DFEH of the proceedings.

#### **(I) Alternative Ash Disposal Procedures**

25. Schedule 5 to the Bill also provides for the alternative of operators and third parties submitting an ash disposal plan to DFEH for approval. DFEH may, on application, approve such a plan if he or she is satisfied that the alternative ash disposal procedures in the plan are as effective as the prescribed ash disposal procedures in the Bill.

#### **Presentation**

26. Members are invited to note the content of this paper.

**Food and Health Bureau  
Food and Environmental Hygiene Department  
February 2015**

**Rules governing the handling of claims for ashes**

The Bill sets out the following rules—

- (a) The ashes of a deceased person may only be returned on the expiry of the first 2 months (the first 2 months) of the overall claim period.
- (b) On the expiry of the first 2 months—
  - (i) if the ash handler receives only 1 claim from a prescribed claimant, he/she must return the ashes to the prescribed claimant; or
  - (ii) if the ash handler receives competing claims from 2 or more prescribed claimants:
    - (1) he/she must return the ashes to the prescribed claimant whose claim has the highest priority; or
    - (2) if the competing claims are of equal priority, he/she must keep the ashes until a prescribed claimant obtains a court order and must return the ashes as ordered, or if no court order is made by the expiry of 12 months after the overall claim period, must deliver the ashes to DFEH.
- (c) If, by the expiry of the first 2 months, the ash handler does not receive any claim from a prescribed claimant –
  - (i) he/she must return the ashes to a prescribed claimant who first makes a claim in the remainder of the overall

claim period; or

(ii) if he/she receives competing claims from 2 or more prescribed claimant before the ashes are returned under paragraph (c)(i) –

(1) he/she must return the ashes to the prescribed claimant whose claim has the highest priority; or

(3) if competing claims are of equal priority, he/she must keep the ashes until a prescribed claimant obtains a court order and must return the ashes as ordered, or if no court order is made by the expiry of 12 months after the overall claim period, must deliver the ashes to DFEH.

2. The following rules apply in determining the priority of competing claims among prescribed claimants –

(a) among competing claims from 2 or more authorized representatives (AR)<sup>1</sup>:

(i) the order of priority follows that stated in the agreement for sale of the interment right concerned; or

(ii) if no order of priority is stated, the claims have equal priority;

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<sup>1</sup> An authorized representative means, in relation to an agreement for sale of interment right, a person who is authorized under the agreement to claim for the return of ashes interred under the agreement.

- (b) An AR's claim has priority over a personal representative<sup>2</sup> or a relative<sup>3</sup>;
- (c) a personal representative's claim and a relative's claim have equal priority.

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<sup>2</sup> A personal representative means –

- (a) a personal representative within the meaning of section 2 of the Probate and Administration Ordinance (Cap. 10) (i.e. an executor, original or by representation, or an administrator for the time being of a deceased person); or
- (b) the Official Administrator, if the Official Administrator gets in and administers an estate in a summary manner under section 15 of that Ordinance.

<sup>3</sup> A relative, in relation to the ashes of a deceased person, means –

- (a) the deceased's spouse;
- (b) the deceased's father, mother, grandfather or grandmother (whether natural or adoptive);
- (c) the deceased's step-father, step-mother, step-grandfather or step-grandmother;
- (d) the deceased's father-in-law or mother-in-law who is the natural parent, adoptive parent or step-parent of the deceased's spouse;
- (e) the deceased's grandfather-in-law or grandmother-in-law who is the natural grandparent, adoptive grandparent or step-grandparent of the deceased's spouse;
- (f) the deceased's son, daughter, grandson or granddaughter (whether natural or adoptive);
- (g) the deceased's step-son, step-daughter, step-grandson or step-granddaughter;
- (h) the deceased's son-in-law or daughter-in-law who is the spouse of the deceased's natural child, adoptive child or step-child;
- (i) the deceased's grandson-in-law or granddaughter-in-law who is the spouse of the deceased's natural grandchild, adoptive grandchild or step-grandchild;
- (j) the deceased's brother or sister (whether of full or half blood or by virtue of adoption);
- (k) the brother or sister (whether of full or half blood or by virtue of adoption) of the deceased's spouse;
- (l) the deceased's step-brother or step-sister;
- (m) the step-brother or step-sister of the deceased's spouse;
- (n) the deceased's uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption);
- (o) the uncle, aunt, nephew, niece or cousin (whether of full or half blood or by virtue of adoption) of the deceased's spouse; or
- (p) the spouse of any person mentioned in paragraph (j), (k), (l), (m), (n) or (o).