

Bills Committee on Private Columbaria Bill

Government's Response to the Issues Raised by Members of the Bills Committee during Previous Meetings

	Information requested / follow-up action required	Response from the Government
(A) Matters arising from the meeting on 16 February 2015		
1	To provide written responses to the submissions from the Alliance for the Concern Over Columbarium Policy (LC Paper Nos. CB(2)747/14-15(01) and CB(2)856/14-15(01)).	Please see the Administration's Response at <u>Annex</u> .
(B) Matters arising from the meeting on 26 October 2015		
2	To consider moving the definition of instrument holder from Part 1 and Part 2 of Schedule 5 (which were the same) to an appropriate part.	We note the definitions of "instrument holder" in Part 1 and Part 2 of Schedule 5 are the same. While moving it to a Part 3 (as an interpretative provision) is ideal, keeping it as it is also works. We do not intend to make any change.
3	To provide information on the procedures of making application for and handling appeals against occupation orders made by the court.	Taken on board. Please see the CSAs proposed by the Government on p. 75 of Annex 1 and p. 157 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
4	To provide information on the time limit for lodging the appeals.	
5	To give a response to providing in the Bill the factors for staying execution of an occupation order.	
6	To give a response to including in section 2 of Schedule 5 a requirement to publish notices of the hearings of the application for an occupation order in local newspapers or through the internet.	In the context of section 2 of Schedule 5, we consider the means as currently provided for in section 2(1)(a)(i) of Schedule 5 to the Bill sufficient. We may, in the light of experience, consider bringing in added means on an administrative basis.

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7	To consider extending the offence under section 2(4) of Schedule 5, which covered the removal or defacing of the notice referred to in section 2(2)(b) of that Schedule without lawful authority or reasonable excuse to cover that referred to in section 2(1)(a)(ii) of that Schedule as well.	Taken on board. Please see the CSAs proposed by the Government on p. 75 of Annex 1 and p. 157 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
8	To consider removing section 3(3)(a) and (b) of Schedule 5 from the Bill.	Taken on board. Please see the CSAs proposed by the Government on p. 76 of Annex 1 and p. 157-158 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
9	To provide information on whether the Judiciary Administrative Services would draw up procedures specifically for handling applications for variation of occupation orders, etc.	Please see the CSAs proposed by the Government on p. 74 of Annex 1 and p. 155 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
10	To provide information on the level of the court referred to in the Bill.	Please see the CSAs proposed by the Government on p. 74 of Annex 1 and p. 155 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
11	To consider specifying in section 5(1) of Schedule 5 the hours which would be considered convenient for affected consumers to claim for the return of ashes interred in a columbarium.	<p>When devising the relevant provision, we are mindful of the need to balance the interests of the affected consumers and the operators. Our intention is to require the operators to arrange 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 creating 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 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>

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		We therefore consider that the use of “at reasonable hours” should have provided sufficient safeguard for affected consumers. No revision to the relevant clause in the Bill is proposed. It is pertinent to note that other pieces of legislation in Hong Kong also use the term “at reasonable hours”.
12	To incorporate cross reference for the definition of authorized representative in section 5(2) of Schedule 5.	As is the case for other legislative provisions in Hong Kong, any terms defined in the interpretation section of the Bill should have the same meaning throughout the Bill unless otherwise requires. We therefore consider it not necessary to include cross reference for the definition of authorized representative in section 5(2) of Schedule 5 to the Bill.
13	To give a response to the suggestion of including the partner, fiancée and fiancé of the deceased under the category of relative in section 5(2) of Schedule 5.	As the term “spouse” is not defined in the Bill or in Cap. 1, it should be given its ordinary dictionary meaning. According to the Concise Oxford Dictionary, a spouse means husband or wife. Whether a person is husband/wife should then be determined according to the applicable law in force in Hong Kong at the time.
14	To advise whether a person who was married to a person of the same sex at a place outside Hong Kong had the right of disposing ashes of his or her same-sex spouse under the Bill.	<p>If a co-habitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong is the authorized representative or the purchaser, he/she is entitled to claim for the return of the ashes in that capacity.</p> <p>In the circumstances provided for in section 14 of Schedule 5, namely that the ashes are in the Director’s possession and no legal proceedings are pending, the Director may, by exercising her discretion, hand the ashes to a co-habitee, a fiancé or fiancée, or a same-sex partner married at a place outside Hong Kong etc. as she deems appropriate.</p> <p>Such persons, depending on the actual circumstances, may be an eligible claimant (see paragraph (b) of the definition of “eligible claimant” under section 5(2) of Schedule 5) and as such lodge competing claims for the item together with the ashes as mentioned in section 9(8) of Schedule 5.</p> <p>Setting out, in the definition of “relative”, relationships not formally recognised under the prevailing law could open up the definition to very far-fetched relationships which are difficult to ring-fence.</p>

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15	To provide examples of provisions using “不遜於” as the Chinese rendition of the English term “no less favourable”.	The examples that we have come across include sections 31S(4)(b) and 32C(2)(b) of the Employment Ordinance (Cap. 57), section 80(2) of the Construction Workers Registration Ordinance (Cap. 583), and section 509(2)(b) of the Companies Ordinance (Cap. 622).
(C) Matters arising from the meeting on 6 November 2015		
16	To consider specifying clearly in the Bill that notices referred to in section 8(1)(a), (b), (c) and (d) of Schedule 5 should be published, posted or served on the same day.	<p>Please see the CSAs proposed by the Government on p. 79 of Annex 1 and p.165 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016. The different paragraphs in the new section 8(1A) of Schedule 5 now refer to the same notice (no longer a like notice).</p> <p>We have provided clarification to ALA that the notices (now in section 8(1A)(a) to (d) of Schedule 5) must be given within 30 days after the date referred to in clause 62(2)(a), 64(4)(b)(i) or (4B)(a)(i).</p>
17	To consider requiring the person carrying out the prescribed ash disposal procedures to serve the commencement of ash disposal notice through the email addresses of the specified addressees, if available.	<p>Please see the CSAs proposed by the Government on p. 79 of Annex 1 and p.166 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.</p> <p>The Licensing Board may cover in guidelines how section 8(1A)(d) of Schedule 5 is to be implemented.</p>
18	To consider stating clearly in section 8(1)(a), (b), (c) and (d) of Schedule 5 that the notices referred therein should contain all the information stipulated in section 8(4) of Schedule 5.	<p>Please see the CSAs proposed by the Government on p. 79 of Annex 1 and p.165 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.</p> <p>There is no reference to “like” in section 8(1A)(a) to (d) of Schedule 5. By reading the definition of “commencement of ash disposal notice” and section 8(1A) and (4) of Schedule 5 together, it would be clear that it refers to the same notice which must contain the information stipulated in section 8(4) of Schedule 5.</p>
19	To address the concern about the handling of ashes under situation where the operator of a private columbarium which had ceased operation was the authorized representative and had a higher priority over the relatives of the	<p>Done. Please see the CSAs proposed by the Government on p. 1 of Annex 1 and p. 2 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.</p> <p>The seller of an interment right would not be allowed to be nominated as the purchaser’s authorized representative in relation to an agreement for the sale of an interment right.</p>

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	deceased person to claim for the return of ashes.	
20	To consider stating expressly in the Bill that in relation to Part 7 and Schedule 5 on ash disposal, the terms in the contracts signed between consumers and private columbarium operators could not override the provisions in the Bill.	Clause 56 provides that Part 7 applies to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date, 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.
21	To give a response on whether the Judiciary Administrative Services would draw up procedures for applications for court orders with respect to the return of ashes and items.	Please see the CSAs proposed by the Government on p. 84 of Annex 1 and p.172 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016. The provisions enable the drawing up of procedures for handling applications for court orders.
(D) Matters arising from the meeting on 24 November 2015		
22	To consider charging interest for the expenses incurred by the Director of Food and Environmental Hygiene (“DFEH”) in respect of a columbarium as mentioned in section 15 of Schedule 5 with reference to the prevailing annual rate.	Having made reference to other legislative provisions (including section 130(4)(b) of the Public Health and Municipal Services Ordinance (Cap. 132), section 33(4) of the Buildings Ordinance (Cap. 123), section 25(4) of the Bedspace Apartments Ordinance (Cap. 447) and section 144(6) of the Lifts and Escalators Ordinance (Cap. 618)), we consider an interest rate of 10% per annum (as currently provided for in section 15(5) of Schedule 5) appropriate. We will keep in view the appropriateness of the level of annual interest rate being charged, and would amend it in future if and when necessary.
23	To consider charging interest for the expenses incurred as mentioned in section 15 of Schedule 5 sooner than one month after the service of the certificate on the person who was liable for such expenses.	We consider it just and equitable to allow reasonable time (currently one month as provided for in section 15(5) of Schedule 5) for the person who is liable for the expenses to pay off the expenses before interest is being accrued on the sum payable.
24	To consider moving a Committee stage amendment (“CSA”) to section 15 of Schedule 5 to the effect that a charge would be imposed upon the land on which of the columbarium concerned was situated in respect of the liabilities	Taken on board. Please see the CSAs proposed by the Government on p. 87-88 of Annex 1 and p. 176-177 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.

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	referred to in section 15 of Schedule 5, if these liabilities had not been discharged.	
25	To consider replacing the word “may” by the word “must” in the English text and “可” by “須” in the Chinese text of section 16(1) and (2) of Schedule 5.	Taken on board. Please see page 183 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
26	To consider including in clause 68(2) persons in possession of the columbarium concerned.	Taken on board. Please see the CSAs proposed by the Government on p. 51 of Annex 1 and p. 92 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
27	To consider moving CSAs to clause 48 in response to ALA6's concern raised in her letter to the Administration dated 20 November 2015 (LC Paper No. CB(2)309/15-16(01)).	Taken on board. Please see the CSAs proposed by the Government to clause 48 (on p. 36 of Annex 1 and p. 69 of Annex 2 of LC Paper No. CB(2)1399/15-16(01)) and clause 81 (on p. 55 of Annex 1 and p. 105 of Annex 2 of LC Paper No. CB(2)1399/15-16(01)) dated 29 April 2016.
28	To consider providing expressly in the Bill a duty on DFEH or an authorized officer to return the impounded book, document or article after completing the examination.	<p>Taken on board. Please see the CSAs proposed by the Government to clause 53 on p. 37-39 of Annex 1 and p. 72-74 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.</p> <p>However, this has been over-taken by event, as we have deleted “remove or impound” from clause 49(1)(c). Therefore, the provision on the return of book, document or article is no longer necessary.</p>
29	To review clause 49(1)(e) and consider imposing limitations on the powers of DFEH or an authorized officer.	<p>Legislative provisions providing for enforcement powers which contain a general empowering provision similar to clause 49(1)(e) to cater for unforeseen circumstances can be found in other legislation. Examples include section 17(1)(h) of the Prevention of Copyright Piracy Ordinance (Cap. 544) and section 11 of the Dutiable Commodities Ordinance (Cap. 109).</p> <p>The sanction provision (i.e. clause 52(1)(a)), as amended by the proposed CSAs, will not include clause 49(1)(e).</p> <p>Hence, we propose to retain clause 49(1)(e) as it is.</p>
30	To consider revising clause 50 to reflect more clearly that clause	Taken on board. Please see the CSAs proposed by the Government on p. 36-37 of Annex 1 and p. 71 of Annex 2

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	50(4) would apply if DFEH or an authorized officer seized, removed or impounded any thing pursuant to clause 50(3).	of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
31	To replace “a notice, written in the Chinese language” by “a notice” in the English text and replace “中文通告” by “通告” in the Chinese text of clause 50(4)(a).	Taken on board. Please see the CSAs proposed by the Government on p. 36-37 of Annex 1 and p. 71 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
32	To consider whether it was necessary to expressly provide for the exclusion of ashes in clause 49.	Please see page 73 of the final version of the CSAs proposed by the Government issued on 5 June 2016. This has been over-taken by event, as we have deleted “remove or impound” from clause 49(1)(c).
33	To consider replacing “可取” in the Chinese text of clause 54(4) by another rendition.	We consider that the word “可取” is the appropriate Chinese rendition of “desirable”.
34	To consider amending clause 54(2)(a) to reflect in that paragraph that depending on the circumstances, a holder of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability) was required to do one or more than one item stipulated in clause 54(1) as may be applicable.	Taken on board. Please see the CSAs proposed by the Government on p. 39 of Annex 1 and p. 74 of Annex 2 of LC Paper No. CB(2)1399/15-16(01).
35	To consider whether the Chinese rendition of “enforcement notice” in the English text of clause 54 should be changed from “執法通知” to “執行通知”.	We consider that the word “執法通知” is the appropriate Chinese rendition of “enforcement notice”.
36	To consider revising clause 81 to reflect more clearly that no one but DFEH could exercise the power of delegation and such power could not be further delegated.	Taken on board. Please see the CSAs proposed by the Government on p. 55 of Annex 1 and p. 90 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.

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37	To consider using a consistent Chinese rendition for “other enforcement authority” in clause 82(2) and (3).	Agreed. Please see the CSAs proposed by the Government on p. 55 of Annex 1 and p. 106 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
38	To consider revising the expression “任何人在該人” in clause 87.	Taken on board. Please see the CSAs proposed by the Government on p. 55-56 of Annex 1 and p. 108 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
39	To examine whether a pre-Bill columbarium could apply for an exemption under the Bill if its operator who was an unincorporated association in the pre-enactment stage and applied in the capacity of a natural person, partner or company in the post-enactment stage.	Whether a columbarium qualifies for the pre-Bill status is dependent on whether the columbarium was in operation, and in which ashes were interred in niches, immediately before the Bill announcement time. The mere fact that the operator had been changed from an unincorporated association to a natural person, partner or company does not affect the pre-Bill status of the columbarium. An applicant might apply for exemption in respect of the pre-Bill columbarium provided that the eligibility criteria and requirements for seeking exemption as stipulated in the Bill have been met.
40	To consider moving a CSA to prescribe the fees for the items to be specified in Schedule 6.	The fees for the items in Schedule 6 are set out in the final version of the CSAs submitted to the Bills Committee for consideration dated 5 June 2016.
(E) Matters arising from the meeting on 7 December 2015		
41	To replace "section 8" by "section 9" in section 1(2) of Schedule 7.	Taken on board. Please see the CSAs proposed by the Government on p. 91 of Annex 1 and p. 183 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
42	To consider moving Committee stage amendments to clause 1(3), to the effect that the provisions in Divisions 1, 2 and 3 of Part 11 would come into operation on the expiry of three months beginning on the day on which the Private Columbaria Ordinance was published in the Gazette, i.e. at the same time as Part 10.	Taken on board. Please see the CSAs proposed by the Government to clause 1 on p. 1 of Annex 1 and p. 1 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
43	To provide information on the legal consequences of failing to comply	The proposed section 113A(1) of the Public Health and Municipal Services Ordinance (Cap. 132) applies to a

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	with the proposed section 113A(2) and (5) of the Public Health and Municipal Services Ordinance (Cap. 132).	person specified in Part 2A of the Fifth Schedule to that Ordinance. If a specified person fails to comply with the proposed section 113A(2) and (5), the relevant authority may delist the person from Part 2A of the Fifth Schedule to Cap. 132, thereby rendering the Private Columbaria Ordinance (and the sanctions therein) applicable to the relevant columbarium.
44	To take account of members' views in drawing up the guidelines/codes of practice on keeping columbaria clean and in good repair by holders of specified instruments.	Noted.
45	To provide information on the provisions of the Bedspace Apartments Ordinance (Cap. 447) which were relevant to the Bill.	<p>Sections 9(5) and 13(5) of the Bedspace Apartments Ordinance (Cap. 447) are extracted below for Members' reference –</p> <p>“A certificate of exemption in respect of which an application for renewal is made under this section and which expires prior to the determination of such application shall, unless such application is withdrawn, or the certificate is revoked under section 10, remain in effect until the determination by the Authority of such application.”</p> <p>“A licence in respect of which an application for renewal is made under this section and which expires prior to the determination of such application shall, unless such application is withdrawn, or the licence is revoked under section 15, remain in effect until the determination by the Authority of such application.”</p>
(F) Matters arising from the meeting on 21 December 2015		
46	To provide information on the types of legal entity of private columbaria on the list of the Development Bureau.	Currently, the updated number of private columbaria which had joined the Notification Scheme for pre-Bill columbaria is 137 (with 135 on DEVB's List and 2 outside DEVB's List). In accordance with the information collected under the Notification Scheme, 100 (73%) fall under the company category, 33 (24%) fall under the natural person category, 4 (3%) are others, such as Tung Wah Group of Hospitals or status pending further checking.
47	To revert to the Bills Committee on	It is not envisaged that the operators of pre-Bill columbaria

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	members' view on whether unincorporated associations as well as monasteries and ancestral halls with long history would have practical difficulties in making applications to which Schedule 3 applied in the capacity of a natural person or partner or by forming a company.	<p>would have substantive difficulties in making applications for a specified instrument in the capacity of a natural person, partner in a partnership or body corporate (including company).</p> <p>We do not propose allowing an unincorporated association to apply for a specified instrument in respect of a columbarium under the Bill for the following reasons –</p> <p>(a) unlike the above-mentioned entities (i.e. a natural person, partner in a partnership or body corporate (including company)), unincorporated associations are not legal entities and would hence be incapable of entering into agreements for the sale of an interment right with purchasers, etc.; and</p> <p>(b) in relation to the regulatory provisions under the Bill, in the case of unincorporated associations, it could be difficult for the Licensing Board and enforcement authority to hold the person in charge of the columbarium accountable.</p>
48	To consider making amendments to Schedule 7 and other relevant provisions such that the provisions on grace period would apply to a columbarium which was operated by an unincorporated association before the enactment date but became a legal entity in applying for a specified instrument in the post-enactment stage.	Taken on board. Please see the CSAs proposed by the Government to section 1(1) and (2) on p. 91 of Annex 1 and p. 181 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
49	To consider spelling out the requirements prescribed by the future Private Columbaria Licensing Board in clause 41(3)(j) or subsidiary legislation.	<p>Please see the CSAs proposed by the Government in the new clause 42(1A) on p. 29 of Annex 1 and p. 59 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.</p> <p>A purchaser under an agreement that is not enforceable under clause 41(3)(j), amongst others, may cancel the agreement within 6 months (not at any time) after the date of the agreement.</p> <p>It would not be possible nor desirable at this stage to spell out in an exhaustive list the requirements that the Private Columbaria Licensing Board (Licensing Board) may deem fit to specify. We prefer providing the necessary</p>

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		flexibility to the Licensing Board under that clause.
50	To consider reviewing its proposed Committee Stage amendment ("CSA") to section 1(a) of Schedule 4.	Done. Please see the CSAs proposed by the Government on p. 71 of Annex 1 and p. 150 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
51	To consider proposing CSAs to section 1(b)(i), (ii) and (iv) and section 2(b)(i) of Schedule 4.	Taken on board. Please see the CSAs proposed by the Government on p. 71-72 of Annex 1 and p. 150-151 of Annex 2 of LC Paper No. CB(2)1399/15-16(01) dated 29 April 2016.
52	To consider pegging clause 57 to clause 67 or 68.	Clause 57 is meant to provide general and guiding principles for the disposal of ashes in any circumstances. We do not consider it necessary to peg it to clause 67 or 68.
(G) Matters arising from the meeting on 5 January 2016		
53	To consider proposing amendments to Schedule 7 and other relevant provisions in the Bill such that the provisions on grace period would apply to a columbarium which was operated by an unincorporated association before the enactment date but became a legal entity in applying for a specified instrument in the post-enactment stage.	Please see our response to item 47 above.
54	To revert on whether the suggestion of the Privacy Commissioner for Personal Data (i.e. adding the element of reasonableness in relation to the information to be required by the future Private Columbaria Licensing Board for applications) should also apply to clause 32(3)(b), after checking previous correspondence from the Commissioner.	According to previous correspondence from the Privacy Commissioner for Personal Data, insofar as clause 32(3)(b) is concerned, we are asked to insert "reasonable" in subparagraph (ii) of that clause only. That we have done.
55	To consider issuing a specified instrument to all partners, instead	We have made reference to other pieces of legislation, including section 7 of the Amusement Game Centres

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	of to one or more partners, in a partnership.	<p>Ordinance (Cap. 435), section 7 of the Karaoke Establishments Ordinance (Cap. 573), section 7 of the Pawnbrokers Ordinance (Cap. 166) and section 6 of the Timber Stores Ordinance (Cap. 464). We consider issuing the specified instrument to the partner who is authorised in writing to act for and on behalf of the partnership acceptable.</p> <p>If there is any change in the partnership which results in a change of the partner authorised in writing to act for and on behalf of the partnership, arrangements will be effected through the transfer of the specified instrument to the partner who is newly authorised in writing to act for and on behalf of the new partnership.</p>
(H) Matters arising from the meeting on 26 January 2016		
56	To consider whether amendments to clause 33(2) were necessary to cater for the scenario of dissolution of a body corporate.	Taken on board. Please see page 50 of our English CSAs dated 29 April 2016.
57	To consider including a provision in the Bill to empower the Secretary for Food and Health or the Director of Food and Environmental Hygiene ("DFEH") to appoint a person or an organization to manage a private columbarium during the period where the columbarium operation had ceased but an occupation order had not yet been made.	<p>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, 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.</p> <p>In other words, in the case where the specified instrument concerned has been revoked, the operator concerned would be required to follow the prescribed ash disposal procedures. Even if the operator concerned has flown by night, a person in possession (e.g. owner, mortgagee) would also be required to follow the prescribed ash disposal procedures after taking possession of the columbarium premises.</p> <p>We therefore do not consider it necessary to include a provision in the Bill to appoint a person or an organisation to manage the private columbarium concerned pending the</p>

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		making of an occupation order.
58	To consider including a provision in the Bill to empower the Licensing Board to deal with an application to which Schedule 3 applies that is filed by an applicant that is not a natural person, a partner in a partnership or a body corporate.	<p>Please see our response made at the meeting on 21 December 2015 (item 2).</p> <p>We do not propose allowing an unincorporated association to apply for a specified instrument in respect of a columbarium under the Bill for the following reasons –</p> <p>(c) Unlike a natural person, a partnership or a body corporate, unincorporated associations are not legal entities and would hence be incapable of entering into agreements for the sale of an interment right with purchasers, etc.; and</p> <p>(d) in relation to the regulatory provisions under the Bill, in the case of unincorporated associations, it could be difficult for the Licensing Board and enforcement authority to hold the person in charge of the columbarium accountable.</p>
59	To consider including a new provision under clause 33 to provide for the scenario where one of the partners in a partnership was a company.	Taken on board. Please see page 50 of our English CSAs dated 29 April 2016.
60	To consider stipulating in the Bill the levels of courts which would handle applications for occupation orders and the arrangements for making appeals on decisions made by the court.	Done. Please see page 89 of our English CSAs dated 29 April 2016.
61	To consider moving Committee Stage Amendments ("CSAs") to section 6 of Schedule 5 to specify the time for delivery of unreturned ashes to DFEH by a person who was required to carry out the prescribed ash disposal procedures.	<p>Please see page 163 of our English CSAs dated 29 April 2016. According to the CSAs, the person required to carry out the prescribed ash disposal procedures should arrange for the return of ashes on-site for at least 12 months, and after the expiry of such on-site claim period, delivers to the Director, in a manner specified by the Director, the ashes that are not returned to an eligible claimant.</p> <p>According to section 70 of the Interpretation and General Clauses Ordinance (Cap. 1), where no time is prescribed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due</p>

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		<p>occasion arises. The ash handler should hence deliver the ashes that are not returned to an eligible claimant to the Director without unreasonable delay and as due occasion arises.</p> <p>We therefore do not consider it necessary to prescribe in the Bill the time for the delivery of the ashes to the Director.</p>
62	To consider moving CSAs to section 9 of Schedule 5 to specify the time for returning ashes by ash handlers.	According to section 70 of the Interpretation and General Clauses Ordinance (Cap. 1), where no time is prescribed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.
63	To consider moving CSAs to clause 43 to stipulate a time frame for holders of specified instruments to record the specified particulars in relation to agreements for the sale of interment rights.	According to clause 43(2)(b), a person holding a licence in respect of a columbarium must enter the specified particulars of each of the agreements for the sale of interment rights into a register within a period to be specified by the Private Columbaria Licensing Board (the Licensing Board). We propose to leave the provision as it is, rather than stipulating a time frame in clause 43.
(I) Matters arising from the meeting on 15 February 2016		
64	To use a standardized Chinese text for the term "commencement of ash disposal notice" in the Bill.	We have aligned the Chinese rendition of "commencement of ash disposal notice" as “展開骨灰處置通告” throughout the Bill.
65	To consider making clear that clause 11A(3) dealt with both pre-Bill columbaria and non-pre-Bill columbaria.	Clause 11A(3) as it is provides for an application for a renewal to be made not later than 18 months before the expiry of the validity period. Whether the application is in respect of a pre-Bill columbarium or not, it serves the purpose well. We consider it not necessary to separate it into different provisions whereby the limb on licence deals with applications from pre-Bill columbaria and non-pre-Bill columbaria and the limb on exemption deals with pre-Bill columbaria.
66	To review clause 11A(5) and consider amending the validity period of temporary suspension of liability under that clause.	Done. Please see the revised clause 11A(6) on page 20 of our English CSAs dated 29 April 2016.

	Information requested / follow-up action required	Response from the Government
67	To consider amending clause 11A to indicate that a person who had missed the deadline for making an application as referred to in clause 11A(3) to (5) could make an application afresh.	Please see page 20 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
68	To reflect to relevant authorities that applicants for specified instruments should be alerted of their legal liabilities other than those under the Private Columbaria Ordinance as far as practicable.	Briefing sessions for operators in respect of the new licensing regime will be arranged after the enactment of the Bill. The briefing sessions will cover the relevant information as appropriate.
69	To consider adding the words "if any" after "authorized representatives" in clause 46A to cater for the situation where no such persons had been appointed.	The relevant clause is now shown as clause 43(4) on page 60-61 of our English CSAs dated 29 April 2016. We do not consider it necessary to add the words "if any" after "authorized representatives" in clause 43(4)(a), as it is implicit that the holder of the specified instrument would only be required to keep the relevant records should there be any such authorized representatives appointed.
70	To consider providing the time allowed for holders of specified instruments to meet the requirements under clause 46A(1).	According to section 70 of the Interpretation and General Clauses Ordinance (Cap. 1), where no time is prescribed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.
71	To consider reviewing whether clause 48(2)(a) should be placed under Part 6 which concerned enforcement.	The relevant clause has been moved to clause 81, as shown on page 105 of our English CSAs dated 29 April 2016.
72	To consider reviewing clause 54(6) as to how a recipient of an enforcement notice would be notified of a decision of the Director of Food and Environmental Hygiene under that clause on suspension of enforcement notice or otherwise pending the determination of an appeal.	According to clause 54(6), a decision of the Director to serve an enforcement notice would continue to have effect despite there being an appeal under clause 72, unless the Director decides otherwise. As drafted, the Director will have a discretion to suspend operation of his/her decision when or after the enforcement notice is given. We therefore do not see the need to amend clause 54(6) to elaborate on the timing.

	Information requested / follow-up action required	Response from the Government
(J) Matters arising from the meeting on 23 February 2016		
73	Should the Government decide to put forward Committee stage amendments ("CSAs") to fine-tune the timing required for the on-site claim period and impose a fine for contravening section 7(1)(c) of Schedule 5, please provide such amendments to the Bills Committee for consideration.	Done. Please see the proposed CSAs to clause 64 and sections 5 and 7 of Schedule 5 on pages 85, 159 and 164 of our English CSAs dated 29 April 2016.
74	To consider notifying landlords when applications for licences for operating columbaria were received in respect of their premises.	Section 4 of Schedule 3 stipulates the different means through which the Licensing Board may cause a notice to be published, thereby notifying interested parties that an application for the issue of a licence in respect of a columbarium has been received and where the particulars of the application may be inspected. We will convey Members' suggestion to the Licensing Board for its consideration.
75	To consider moving CSAs to fine-tune the arrangements for applications for and appeals against occupation orders, and for court orders including the appeal mechanism mentioned in section 9(6) and (8) of Schedule 5.	Taken on board. Please see the proposed sections 1A, 2(3A) and 9(10) to (13) of Schedule 5 on pages 155, 157 and 172 of our English CSAs dated 29 April 2016.
76	To consider moving CSAs to section 10 of Schedule 5, clarifying whether the operator of a columbarium is entitled to be reimbursed of expenses incurred for carrying out the prescribed ash disposal procedures.	Please see the proposed amendments to section 10(1) on page 172 of our English CSAs dated 29 April 2016. With the CSAs, a person who has operated, kept, managed or in any other way had control of the concerned columbarium would not be entitled to be reimbursed of half of the expenses incurred for carrying out the prescribed ash disposal procedures. Nonetheless, as explained in item 118 below, we have decided to delete section 10 of Schedule 5.
77	To consider informing mortgagees of the licence applications in respect of the columbarium premises under mortgage.	Please see our response to item 74 above.

	Information requested / follow-up action required	Response from the Government
78	To give a response to spelling out the information to be required under section 11(1)(b) of Schedule 5 in the Bill or under subsidiary legislation.	Guidelines will be prepared in respect of, among other things, the record keeping requirements under section 11(1)(b) of Schedule 5 for public reference. We do not propose to spell out the list of information to be required in the Bill or under subsidiary legislation.
79	To consider whether a person who failed to take the steps to facilitate the return of ashes under section 12 of Schedule 5 would be subject to lighter sanction.	Making a person who is required to carry out the prescribed ash disposal procedures take the steps to facilitate the return of ashes under section 12 of Schedule 5 is an integral step in those procedures. To avoid undermining the effectiveness of the provision, we will keep the CSA as it is.
80	To give a response to the scenario under which DFEH knew that there were pending legal proceedings, and how DFEH might dispose of the ashes which were in his/her possession.	<p>Section 14(2) of Schedule 5 stipulates that subsection (1) would not apply to the ashes in respect of which proceedings are pending in the court and the Director has been informed of the proceedings in writing. In other words, if the Director has been informed of the proceedings in the court in respect of the ashes, he/she would not dispose of the ashes when the proceedings are pending.</p> <p>Should be Director come to know of the presence of such proceedings through other means, say indirectly through reading a newspaper, whilst it would be up to the Director to decide the best course of action, we could not see any reasons why she would choose not to err on the conservative side i.e. ascertaining whether there are indeed such court proceedings, and in the meantime, withholding action on disposal of the ashes.</p>
81	To consider reviewing section 16(1)(a) and (b) of Schedule 5 and removing section 16(1)(c) from Schedule 5.	Taken on board. Please see page 178 of our English CSAs dated 29 April 2016.
82	To give a response explaining why it is considered appropriate for a specified person (in this context, the Board of Management of the Chinese Permanent Cemeteries) to remain subject to the regulation under the Public Health and Municipal Services Ordinance (Cap. 132) and the Private Cemeteries Regulation (Cap. 132	The Board of Management of the Chinese Permanent Cemeteries has a well-established governance structure. The operations of the Board are governed by the Chinese Permanent Cemeteries Ordinance (Cap. 1112). The Secretary for Home Affairs serves as the Chairman of the Board, with the Director of Lands and the Director of Food and Environmental Hygiene serving as ex-officio members. Its fees and any revisions are subsidiary legislation subject to negative vetting by LegCo. There is hence sufficient safeguard in place to ensure that the

	Information requested / follow-up action required	Response from the Government
	sub. leg. BF), rather than under the Bill.	columbarium development undertaken by the Board would comply with relevant government and statutory requirements (which would include the Public Health and Municipal Services Ordinance (Cap. 132) and the Private Cemeteries Regulation (Cap. 132 sub. leg. BF)).
83	To consider spelling out the particulars of columbaria to be set out in the list under new section 113A(5) of Cap. 132.	It would not be possible nor desirable at this stage to spell out exhaustively the required particulars. We prefer keeping the drafting of the proposed section 113A(5) of Cap. 132 as it is to provide the necessary flexibility to the relevant authority.
84	To explain the term “a columbarium of a Chinese temple” in the Bill.	Please see clause 46C on pages 65 to 68 of our English CSAs dated 29 April 2016.
85	To consider uploading the list of exempted columbaria of a Chinese temple with religious ash pagodas on the Internet for access by the public.	Noted.
(K) Matters arising from the meeting on 4 May 2016		
86	To provide information on the licensing requirements under the existing legislation in respect of transforming ashes into synthetic diamond, jewellery, ornament or any other material ("synthetic material").	The process of transforming ashes into synthetic material involves the use of incinerators, which is one of the specified processes listed in Schedule 1 to the Air Pollution Control Ordinance (Cap. 311). According to section 14 of Cap. 311, a licence is required for the operation of such specified processes. The application for licence should be made to EPD. If EPD decides to grant the licence, a set of conditions will be imposed to ensure proper control over the discharge of air pollutant emissions.
87	To give a response to the suggestion of amending the definition of "ashes" to the effect that the Private Columbaria Ordinance did not apply to domestic keeping of synthetic material.	The definition of “ashes” on page 2 of our English CSAs dated 29 April 2016 includes synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes. Clause 5 provides that the Bill would not apply to domestic keeping of ashes under certain conditions. As seen on page 13 of our English CSAs, we propose increasing the number of containers of ashes that could be kept in domestic premises from five to ten. This should help address Members’ concerns in respect of the keeping in domestic premises of synthetic material

	Information requested / follow-up action required	Response from the Government
		transformed from human ashes.
88	To consider revising clause 11A in relation to applications for the renewal or extension of specified instruments which were made out of time.	Please see clause 11A on page 19 and 20 of our English CSAs dated 29 April 2016.
(L) Matters arising from the meeting on 11 May 2016		
89	To delete "(4A)" from clause 32(2).	Done.
90	To consider incorporating into clause 33(2)(f) the scenario under which a partner in a partnership was a body corporate.	Done. Please see page 51 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
91	To consider reviewing the drafting of clause 41(2)(a).	The purpose of clause 41(2) is to protect consumers' interest by rendering an agreement for sale of an interment right unenforceable against the seller if the seller purports to sell under the agreement an interment right that the seller is not entitled to sell. The Government's policy intention in respect of clause 41(2)(a) has been explained thoroughly at the Bills Committee meeting on 11 May 2016. Having reviewed the drafting of clause 41(2)(a), we consider the current drafting appropriate.
(M) Matters arising from the meeting on 16 May 2016		
92	To discuss with the Home Affairs Bureau whether there is a need to include reference to clause 46C(9) in clause 46C(13).	Although clause 87 has provided for a general offence of providing false or misleading information, it is necessary to maintain reference to clause 46C(9) in clause 46C(13) as the offence under clause 46C(9) and 46C(13) is different in nature from clause 87. Clause 46C(9) sets out the record keeping requirements (in the form of a register) for the holder of an exemption in respect of a pre-Bill columbarium that is a columbarium of a Chinese temple specified under clause 46C(2), and the requirement to make the register available for inspection by the Secretary for Home Affairs. We therefore propose to keep clause 46C(13) as it is.
93	To consider amending clause 49(1), spelling out that it is for the purposes of ascertaining compliance or otherwise with this	Done. Please see pages 72 to 73 of the final version of the CSAs proposed by the Government issued on 5 June 2016.

	Information requested / follow-up action required	Response from the Government
	Ordinance, the conditions of a specified instrument or the approved management plan that the Director or an authorized officer may exercise the powers conferred under this clause (i.e. the power to inspect, remove or impound any documents, ... etc.).	
94	To provide examples of provisions in other legislation, which were similar to clause 49(1)(e).	Legislative provisions providing for enforcement powers which contain a general empowering provision similar to clause 49(1)(e) to cater for unforeseen circumstances may be found in other legislation. Examples include section 17(1)(h) of the Prevention of Copyright Piracy Ordinance (Cap. 544) and section 11 of the Dutiable Commodities Ordinance (Cap. 109).
(N) Matters arising from the meeting on 17 May 2016		
95	To consider amending clause 64(4B) to the effect that a person who had acted in accordance with clause 64(4A) but did not give a commencement of ash disposal notice in accordance with section 8 of Schedule 5 within 30 days after the date of the notification under clause 64(1) would not be regarded as having committed an offence.	<p>The giving of a commencement of ash disposal notice under section 8 of Schedule 5 is part of the prescribed ash disposal procedures.</p> <p>Clauses 64(4A) and 64(4B) apply to a person in possession who is not “an owner or mortgagee who acquired an interest in the premises subject to an obligation to carry out the prescribed ash disposal procedures” referred to in clause 64(4)(a).</p> <p>Clause 64(4A) provides a route for such a person to invite the Director to carry out ash disposal and allow an authorized officer to enter the columbarium premises for ash disposal purpose for at least 12 months. According to clause 64(4B), such a person would be considered to have complied with clause 64(2), if he/she acts in accordance with clause 64(4A) (under which there is no need to give a commencement of ash disposal notice). We therefore do not propose to amend clause 64(4B).</p>
96	To consider stating in clause 64(5A) that the acquisition of an interest in the premises by parties other than owners or mortgagees of the premises would be handled in accordance with relevant provisions in other legislation.	Clause 64 only refers to the acquisition of an interest in the premises by owners or mortgagees of the premises. The need for covering other scenarios does not arise.

	Information requested / follow-up action required	Response from the Government
97	To consider including in clause 65(4)(b) reference to clause 64(4C) and (4D).	Clause 64(4C) and (4D) stipulates the penalties for contravening clause 64(2). As clause 65(4)(b) already includes reference to clause 64(2), no amendment is necessary.
(O) Matters arising from the meeting on 24 May 2016		
98	To consider revising clause 64(5B) to the effect that a person who had operated, kept, managed or in any other way had control of the columbarium would be required under the Bill to produce information for facilitating a person in possession to carry out the prescribed ash disposal procedures. Similar considerations apply in the context of clause 65(5A).	Please see pages 92 to 94 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
99	To consider including in Part 8 of the Bill the term of appointment and resignation arrangements of members of the panel under the Private Columbaria Appeal Board ("the Appeal Board").	Please see page 99 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
100	To consider including in the Bill provisions about giving public access to information on appeals.	We will consider the means of publishing the information on appeal administratively, such as publishing on the Internet, having regard to the practice of other statutory appeal boards including the Administrative Appeal Board and the Municipal Services Appeal Board.
101	To consider amending clause 72 to allow the transferees and the parties referred to in clause 68 and section 17 of Schedule 5 (the applicant) to lodge appeal to the Appeal Board.	Please see page 101 of the final version of the CSAs proposed by the Government issued on 5 June 2016.

	Information requested / follow-up action required	Response from the Government
102	At the resumption of Second Reading debate on the Bill, to provide further information on the mechanism in respect of the interment of ashes of religious practitioners in religious ash pagodas (including the appeal mechanism).	Noted.
103	To convey to the Home Affairs Bureau the need to establish an appeal mechanism for interment of ashes of religious practitioners in religious ash pagodas.	The Home Affairs Bureau is exploring the detailed arrangements on the appeal mechanism in respect of the interment of ashes in religious ash pagodas.
104	To consider amending the relevant provisions in the Bill to the effect that all notices in relation to appeals issued to appellants should be given in writing.	Please see the relevant provisions in the final version of the CSAs proposed by the Government issued on 5 June 2016.
105	To consider whether to upload the status and results of applications for specified instruments (i.e. a licence, an exemption or temporary suspension of liability) onto the relevant website or provide a reference card for applicants for specified instruments to check the progress of their applications.	Members' comments are noted. We will consider the arrangements administratively.
106	To consider amending clause 94A to indicate the documents which must not be sent by electronic mail (e.g. notice of appeal) and amend 94A(3) to include persons such as an authorized officer.	Please see pages 117 to 120 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
107	To consider amending clause 120 (which lists provisions in the Bill that are to be excluded from application of section 5 of the Electronic Transactions Ordinance).	Please see pages 136 to 137 of the final version of the CSAs proposed by the Government issued on 5 June 2016.

	Information requested / follow-up action required	Response from the Government
108	To consider specifying in the Bill that amendments of Schedule 1 should be subsidiary legislation subject to positive vetting.	Schedule 1 of the Bill sets out administrative provisions relating to the Licensing Board, including the constitution of the Board, staffing, committees, and disclosure of interests, etc. These are operational in nature. Having made reference to the legislation of other statutory licensing authorities (e.g. the Liquor Licensing Board established under the Dutiable Commodities (Liquor) Regulations (Cap. 109B), and the Estate Agents Authority established under the Estate Agents Ordinance (Cap. 511)), we consider it appropriate for amendments to Schedule 1 to be made by subsidiary legislation subject to negative vetting.
109	To consider amending section 5(a) of Schedule 1 to require a member of the further Private Columbaria Licensing Board ("the Licensing Board") or a committee who knew that he/she had a direct or indirect interest in a matter under consideration only after the meeting had begun to disclose to the Licensing Board or the committee the nature of the interest as soon as he/she was aware of the aforesaid interest.	As currently provided for in section 5(a) of Schedule 1, a member of the Licensing Board or a committee who has a direct or indirect interest in a matter under consideration must before or as soon as practicable after the meeting begins, disclose to the Licensing Board or committee the nature of the interest. The phrase "as soon as practicable" already requires the member to disclose the interest without unreasonable delay. We propose to keep the provision as it is.
110	To consider amending section 1(b) of Schedule 2 to expressly include columbarium premises which were acquired through adverse possession as confirmed by the court.	We will not preclude any person from applying for a specified instrument in respect of a columbarium situated on premises acquired through adverse possession. At the end of the day, whether the application is to be granted would depend on whether the applicant could meet all relevant requirements under the Bill, including requirements on lands, town planning and buildings matters, etc.
111	To consider spelling out in Schedule 4 the particulars which must be set out in an agreement for the sale of an interment right as required under section 1(b)(i), (ii) and (iii) and section 2(b)(v) of Schedule 4.	Taken on board. Please see pages 154 to 156 of the final version of the CSAs proposed by the Government issued on 5 June 2016 for the details.
112	To consider deleting "including"	Taken on board. Please see page 158 of the final version

	Information requested / follow-up action required	Response from the Government
	from section 2(e) of Schedule 4.	of the CSAs proposed by the Government issued on 5 June 2016.
(P) Matters arising from the meeting on 30 May 2016		
113	To consider amending section 2(2) of Schedule 5 to the effect that the holder of the specified instrument (i.e. a license, an exemption or temporary suspension of liability) of the columbarium concerned and the owner of the columbarium premises would be notified if an occupation order was made in respect of the columbarium.	Taken on board. Please see page 161 of the final version of the CSAs proposed by the Government issued on 5 June 2016.
114	To consider adding to clause 65(3)(a) the conditions set out in section 3(3) of Schedule 5 in the form of a proviso to address the concern about removing section 3(3) of Schedule 5 from the Bill.	<p>On further deliberations, we are of the view that section 3(3) of Schedule 5 should be deleted.</p> <p>In hearing the submission of a specified officer (seeking an occupation order) and the views of those who may be affected by the restriction placed on entry into the premises that may be subject to the occupation order, the judge will consider all relevant factors.</p> <p>Depending on the facts and circumstances of each case, this could be a fine balancing act, including weighing up Basic Law 29 (which provides that the homes and other premises of Hong Kong residents shall be inviolable, and arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited) and the justifications put up by the specified officer (e.g. need to properly take stock of the ashes and related items to be vacated from the premises, possible difficulties in ensuring that the ashes and related items kept in the premises would not be tampered with, if entry into the premises is not restricted, etc.)</p> <p>We should allow room for the judge to make a decision on whether the occupation order sought should be granted and, if so, the extent to which the order should apply, rather than prescribing in the Bill a provision which expressly states that an occupation order does not operate to prevent that part of the columbarium from being so used if, on the date of application for the occupation order, any</p>

	Information requested / follow-up action required	Response from the Government
		<p>part of the columbarium is used for residential purpose.</p> <p>Where an occupation order has been granted, under section 3(4)(a), the specified officer may permit, in writing, any person to enter and remain on the columbarium for a purpose specified in the permit. In other words, the specified officer may consider each case on its individual merits, and allow an applicant to enter and remain in a certain part of the premises subject to an occupation order.</p> <p>An aggrieved party may, under section 4 of Schedule 5, apply for a variation of the occupation order.</p>
115	To consider reviewing the term of imprisonment for contravening section 6(2)(b) of Schedule 5.	Please see page 168 of the final version of the CSAs proposed by the Government issued on 5 June 2016. We have deleted “or to the satisfaction of” the Director in section 6(2)(b) of Schedule 5 concerning the delivery of ashes to the Director.
116	To consider amending section 6(2)(b) of Schedule 5, e.g. by adding the word "identifiable" to the provision so that ashes of individual deceased persons which were delivered to the Director of Food and Environmental Hygiene ("DFEH") would be identifiable. If the amendments were not feasible, specific information on how DFEH would enforce section 6(2)(b) of Schedule 5 (including the guidelines for relevant parties) should be covered in the speech of the Secretary for Food and Health ("SFH") for the resumed Second Reading debate on the Bill.	<p>We have carefully considered the matter. Since the details of the steps required to be taken for proper ash disposal may depend on the particular facts and circumstances of each case, it remains our considered view that it is not possible or desirable to set out, in the legislation, an exhaustive list of all the detailed steps governing the conduct of the ash disposal procedures.</p> <p>It is considered not desirable to prescribe the details through subsidiary legislation because the time required for going through the legislative process is such that it would frustrate timely response to circumstances where, for instances, the ash disposal procedures would have to be triggered immediately after the Bill is enacted or where the facts of an individual case justifiably warrants variation to the guidelines promulgated by the Licensing Board.</p> <p>For the purpose of providing greater clarity (such that a person would know what he is required to do in order to comply with the procedures), we would make an undertaking here that the Licensing Board will promulgate guidelines (or code of practice) on the proper disposal of ashes. More specifically, the guidelines may contain requirements to the effect that the ashes to be delivered to the Director should be contained in a proper container with clear identification, with a record of the ashes delivered (including the name and address of the columbaria, the location and serial number of the niche and the name of</p>
117	<p>The aforesaid speech should also cover:</p> <p>(i) the Bills Committee's concerns about the Administration's proposals of imposing requirements which</p>	

	Information requested / follow-up action required	Response from the Government
	<p>would attract criminal liability for non-compliance and the details of which were not prescribed by subsidiary legislation and therefore not subject to scrutiny by LegCo; and</p> <p>(ii) the rationale underlying the Bills Committee's acceptance of these proposals (i.e. acknowledgement of the practical difficulties inherent in stipulating such requirements in the Bill or in subsidiary legislation, of the need to strike a balance between the severity of the criminal sanction imposed in the event of non-compliance and the swift and sufficient deterrence that we wish to achieve, whilst recognizing that the court would duly discharge in a fair manner its gatekeeping role when handling non-compliance cases).</p>	<p>the deceased person) etc.</p> <p>Section 6(2)(b) of Schedule 5 has been drafted to afford sufficient flexibility to the Director to impose requirements or conditions as may be reasonably necessary in the circumstances of each case. On the other hand, we submit that the scope of this discretion is sufficiently circumscribed by the application of administrative law principles.</p> <p>SFH will include the above undertaking in his speech to be delivered at the resumption of the second reading debate.</p>
118	<p>To consider substituting "The reasonable expenses incurred by a person" by "The reasonable expenses to be incurred by a person" in section 10(1) of Schedule 5.</p>	<p>Please see page 178 of the final version of the CSAs proposed by the Government issued on 5 June 2016. We have deleted section 10 of Schedule 5.</p> <p>ALA has asked us to provide the justification for requiring a person to whom a set of ashes is returned by the ash handler to pay half of the expenses and how the "reasonable expenses incurred" could be ascertained upfront as all the relevant procedures have not yet been completed (see her letter dated 5 November 2015).</p> <p>On reflection, we propose to delete section 10 of Schedule 5 altogether. We have given careful consideration to how</p>

	Information requested / follow-up action required	Response from the Government
		<p>the Licensing Board may go about adjudicating what amounts to “expenses reasonably incurred” if asked to do so by parties aggrieved. Having tried to walk through the process ourselves, we could see almost insurmountable difficulties on the part of the Board to arrive at fair and evidence-based decisions on matters relating to expenses.</p> <p>Instead of placing the Board in such a position, we therefore propose doing away with section 10 of Schedule 5.</p>
119	After the implementation of the Private Columbaria Ordinance, brief LegCo on the difficulties encountered in enforcing section 11(1)(b) of Schedule 5 and on the information referred therein. The Administration's undertaking to do so should be covered by the aforesaid speech of SFH.	Noted for action.
120	To consider replacing "The Director may keep" by "The Director must keep" in section 13(2A) of Schedule 5.	Taken on board. Please see page 180 of the final version of the CSAs proposed by the Government issued on 3 June 2016.
121	To consider replacing "has failed to do so" by "has not done so" in section 15(1)(b) of Schedule 5.	Taken on board. Please see page 181 of the final version of the CSAs proposed by the Government issued on 3 June 2016.
122	To consider replacing "The Director may keep" by "The Director must keep" in section 16(1) of Schedule 5.	Taken on board. Please see page 183 of the final version of the CSAs proposed by the Government issued on 3 June 2016.
123	To consider including in section 16(1) of Schedule 5 a requirement that DFEH must keep a list setting out the columbaria in respect of which ash disposal procedures were being carried out or had been	Taken on board. Please see page 183 of the final version of the CSAs proposed by the Government issued on 3 June 2016.

	Information requested / follow-up action required	Response from the Government
	carried out by DFEH.	

Food and Health Bureau
June 2016

Bills Committee on Private Columbaria Bill

**Government's Written Response to the Submission from
the Alliance for the Concern Over Columbarium Policy (the Alliance)
(In relation to LC Paper No. CB(2)747/14-15(01) and LC Paper No.
CB(2)856/14-15(01))**

The Alliance's submission on 27 January 2015

Background

The submission aims at urging members of the Committee to formulate a timetable for the scrutiny of the Private Columbaria Bill (the Bill) to ensure that the Bill will be passed before July 2016.

Government's response

2. Since its first meeting on 29 July 2014, the Bills Committee has held a total of 33 meetings (up to 30 May 2016). It is examining the draft Committee Stage Amendments proposed by the Government.
3. The Government has all along been facilitating the work of the Bills Committee, with the aim of passing the Bill within the current legislative session.

The Alliance's submission on 10 February 2015

Background

4. Some issues and suggestions concerning the specific details of the Bill were raised in the submission. Our response is set out below.

Government's response

- (1) Having considered the opinions and concerns of the stakeholders, the Government has proposed CSAs to address:
 - (a) in respect of pre-Bill columbarium seeking exemption, how to handle the interment right sold before the Bill announcement but yet to be exercised, namely the arrangements for the relevant persons to exercise their interment rights purchased; and

- (b) in respect of a pre-Bill columbarium of a Chinese temple, how to handle the interment of religious practitioners in religious ash pagodas in exempted columbaria, subject to fulfilling a set of requirements and conditions.
- (2) We have made reference to the mode of operation of the Travel Industry Compensation Fund and considered the merits or otherwise of the setting up a central compensation fund for post-enactment transactions on the sale of interment rights. However, after careful consideration, we are of the view that it is not feasible to set up such a fund. In case of default of a travel agent, the consumers affected can make use of the compensation from the Fund to procure substitute tourism products of comparable value usually in a matter of weeks, whereas the interval between the prepayment date and the date of use/default in respect of sale of niches may be in terms of many years. During that period, the prices of niches could have inflated substantially and unscrupulous operators could also opt to fly by night. Consumers affected may be unable to buy another niche of comparable value, if the levy is fixed at a low level. If the amount of compensation payable at the event-triggering point is set at such a level that an aggrieved consumer is able to purchase a niche at a price comparable to the current market price of the niche he bought long ago, the amount of levy to be imposed will be huge. It is almost certain that the plan cannot be implemented. As the levy is payable by the trade and consumers, imposing high levy will result in inequity, as operators of sound columbaria having to shoulder the burden of operators of poorly-run columbaria. In all, the setting up of a central compensation fund is obviously not feasible. We do not have a fair and objective mechanism to assess the level of levy required. In addition, the proposed fund may also give rise to moral hazard and make consumers less vigilant in protecting their interests.
- (3) We propose to amend the definition of “ashes” to include synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes. We also propose, under the Bill, subject to a workplace that is used for carrying out ash transforming work fulfilling the requirements set out in clause 4A, the Bill does not apply to such a workplace.
- (4) According to the Government’s proposal, the validity period of a licence must not exceed the shorter of the following:
 - (a) where—
 - (i) the columbarium premises are held directly from the Government under a lease — the remainder of the term of the lease; or
 - (ii) the columbarium premises are occupied under a tenancy — the

remainder of the term of the tenancy;

(b) 10 years.

As such, if an applicant has the right to continue to use the columbarium premises for a period of less than 10 years, the validity period of the licence must not exceed the remainder of the term of the lease or tenancy.

- (5) Under clause 88 of the Bill, if a body corporate commits an offence under the Ordinance, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, the director, manager, secretary or other similar officer commits the like offence.
- (6) According to the Government's proposal, the Private Columbaria Licensing Board (the Licensing Board) is required to take into account explicit restrictive covenant in the deed of mutual covenant (where available) in its consideration of a licence application involving premises located in a multi-storey building.
- (7) The temporary suspension of liability (TSOL), which is temporary in nature, seeks to allow time for pre-Bill columbaria to seek compliance with the requirements for licence or exemption, as the case may be. The number of sets of ashes kept in the columbarium issued with TSOL is limited to the total number of sets of ashes kept at the Bill announcement time (if a related application for the issue of an exemption is pending) or at the Bill enactment date of the Bill (if a related application for the issue of a licence (but no related application for the issue of an exemption) is pending).

We understand the Alliance's view on the validity period of TSOL (a maximum of three years for the first issue, extendable for a maximum of another three years upon expiry). However, it is not in the interest of the licence applicants to stall on their actions to seek compliance with the requirements on planning, land and buildings, as they are not allowed to sell niches unless they have obtained licences.

Having considered the time required for the private columbaria to complete the rectification/regularisation process with a view to meeting the requirements concerning land, planning and buildings under the existing mechanism, we consider the proposed validity period reasonable.

Clause 11(9) of the Bill provides that "a temporary suspension of liability may not be extended more than once, unless exceptional circumstances exist". We will make every endeavour to explain to the Bills Committee that the Licensing Board will invoke clause 11(9) of the Bill for justifiable cases. For instance, an applicant has taken all reasonable steps to meet the

requirements laid down in clause 14, but fails to complete the procedures for rectification/regularisation within two TSOL periods due to circumstances beyond his control (for example, more time is needed to resolve objections to the planning application, to follow up rectification in relation to the building requirements or negotiation over the regularisation exercise). As such, the requirement of a longer period to complete the said procedures is not caused by or might possibly be beyond the control of the applicant. If the Licensing Board is not empowered to extend the validity period of TSOL more than once, the columbarium will have to cease operation upon the expiry of the second TSOL period. This may not only reduce the supply of niches by the columbarium (with the potential of obtaining a licence), but also give rise to social tension and disruption.

- (8) We must be pragmatic in addressing the issue of private columbaria issue, which is a historical legacy, and must strike a reasonable balance between avoiding social tension and disruption (including avoiding upsetting the resting place of the deceased whose ashes were interred in private columbaria) and safeguarding the interests of residents in their neighbourhood. Members of the public who are dissatisfied with the decisions of the Licensing Board may seek judicial reviews.
- (9) According to the Bill, a columbarium complies with the planning-related requirements only if the columbarium complies with every requirement under the Town Planning Ordinance (Cap. 131). It is not in the interest of the licence applicants to stall in seeking compliance with the planning requirements for they are not allowed to sell niches unless they hold licences.
- (10) As mentioned in paragraph 3, the Government has all along been facilitating the work of the Bills Committee, with the aim of passing the Bill within the current legislative year.

Conclusion

5. We would like to reiterate that the regulatory regime proposed in the Bill represents a big step forward as compared with the status quo. Once the Bill is passed, a regulatory regime could be put in place, the industry could be put on a sustainable path, and consumers' interests can be better protected. We must adopt a pragmatic approach in handling the dated private columbaria which do not comply with certain requirements of the prevailing statutory and Government requirements. Otherwise, it would lead to massive displacement of interred ashes, thus upsetting the resting place of the deceased and leading to social discord. We consider that the Bill strikes a fine balance amongst the interests of different stakeholders and helps address their various concerns.

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