



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : FH CR 2/3751/07
本函檔號 OUR REF : LS/B/27/13-14
電 話 TELEPHONE : 3919 3509

傳真 FAX : 2877 5029
電郵 E-MAIL : wkan@legco.gov.hk

By Fax (2136 3282)

13 October 2015

Miss Diane WONG
Prin AS for Food & Health (Food)2
Food and Health Bureau
17/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Miss WONG,

Re: Private Columbaria Bill

Please find attached a schedule listing my observations on Part 7 of the Bill for your consideration. I would be grateful if you could let me have the Administration's reply in bilingual form as soon as possible.

Yours sincerely,

(Wendy KAN)
Assistant Legal Adviser

Encl.

cc. DoJ (Attn: Ms Phyllis KO (By Fax: 2845 2215) & Miss Cindy CHEUK (By Fax: 2869 1302))
Clerk to Bills Committee
LA
SALA3

Schedule

Clause 56

1. The English text of 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. The Chinese text of this clause, however, states contrarily that such disposal or abandonment applies to Part 7. Please amend.

Clause 57

2. Please clarify the legal consequence(s) for a person failing to comply with clause 57.

Clause 58(2)(a)(iii)

3. Clause 58(2)(a)(iii) refers to "the record of interment" kept under clause 43(4). The record required to be kept under clause 43(4) is a record on interment and disinterment of ashes in and from the columbarium concerned. Should clause 58(2)(a)(iii) be refined?

Clause 59(1)

4. When should a person give a specified response in order to avoid being regarded as having abandoned a columbarium? Should a time limit be provided for in clause 59(1)?

5. Please clarify whether the Director's notice mentioned in clause 59(1) means both of the notice published in the Gazette pursuant to clause 59(2)(a) and the notice posted outside the columbarium pursuant to clause 59(2)(b) or either of them.

Clause 59(2)

6. Clause 59(2) provides that for the purposes of the Director's notice about a suspected abandonment under clause 59(1), the Director or an authorized officer must once in each of two consecutive months publish and post notices as required under clause 59(2)(a) and (b). Please confirm whether the authorized officer publishes or posts such notices for and on behalf of the Director, given that it is the Director's notice. In practice, will the notice published or posted by the authorized officer specify that it is the Director's notice?

7. In the Chinese text, please replace "發出通告" with "發出的通告", as in the Chinese text of clause 60(2).

Clause 59(3)

8. Please clarify whether "The notice" referred to in clause 59(3) means the Director's notice mentioned in clause 59(1)(b) or the notice mentioned in clause 59(2)(b).

9. Who are the "other persons having an interest in the columbarium" referred to in clause 59(3)? Please explain the reason(s) for requiring to warn them under clause 59(3).

10. In this provision, "within 1 month after the date of the notice" in the English text is rendered as "在自該通告的日期起計的 1 個月內" in the Chinese text. Please amend.

Clause 59(3)(b)

11. In the Chinese text, please consider to replace "第 65(1)條界定的" with "第 65(1)條所界定的" as the Chinese rendition of "as defined by section 65(1)" in the English text, as in the Chinese text of clause 60(2)(b)(ii).

Clause 60(1)

12. Similar to Question 4 above, when should the instrument holder give a specified response in order to avoid being regarded as having abandoned the columbarium? Should a time limit be provided for in clause 60(1)?

13. In the English text, should "abandons a columbarium" rather be "abandons the columbarium"? The relevant Chinese text is "棄辦該骨灰安置所".

14. In the Chinese text, please replace "已期滿失效並且未獲續期或延展," with "已期滿失效並且未獲續期或延展、".

Clause 60(2)(a)

15. In this provision, "a notice" in the English text is rendered as "該通告" in the Chinese text. Please amend.

16. Similar to Question 6 above, please confirm whether the authorized officer sends the notice to the instrument holder for and on behalf of the Director, given that it is the Director's notice. In practice, will the notice sent by the authorized officer specify that it is the Director's notice?

Clause 60(2)(b)

17. In this provision, "within 1 month after the date on which the notice is sent" in the English text is rendered as "在自該通告寄出的日期起計的 1 個月內" in the Chinese text. Please amend.

Clause 60(3)

18. After the warning referred to in clause 60(2) has been given, when will the instrument holder be regarded as failing to give a specified response so that the Director's obligation to give a further warning arises? Should a time limit be provided for in clause 60(3)?

19. Please explain the reason(s) for providing that only the Director, instead of either the Director or an authorized officer, must give the further warning under clause 60(3).

20. Similar to Question 9 above, who are the "other persons having an interest in the columbarium" referred to in clause 60(3)? Please explain the reason(s) for requiring to give a further warning to them under clause 60(3).

21. In this provision, "within 1 month after the date on which the further warning is given" in the English text is rendered as "在自該進一步警告作出的日期起計的 1 個月內" in the Chinese text. Please amend.

Clause 60(4)

22. Please confirm whether it is the policy intention that the further warning stated in clause 60(3) must be published, sent and posted in accordance with clause 60(4) on the same day such that "the date on which the further warning is given" as mentioned in clause 60(3) will be the same date. If so, should express provision be made in clause 60(4)?

Clause 61(a)

23. In the Chinese text, should "該人已提出申請" be changed to "該人提出申請", as the Chinese rendition of "the person applies for" in the English text?

Clause 61(c)

24. In the Chinese text, should "該骨灰安置所" rather be "有關骨灰安置所", as the Chinese rendition of "the columbarium" in the English text?

25. Please explain the reason(s) for providing that failure to give to the Director or authorized officer a written undertaking to carry out the prescribed ash disposal procedures in accordance with clause 61(c) is regarded as failure to give a specified response under clause 60(1) in case where the Licensing Board only suspends for a certain period of time a specified instrument in respect of a columbarium pursuant to clause 33.

Clause 63

26. Clause 63 provides that a person who contravenes clause 58, 59, 60 or 62 commits an offence. In relation to the offence for contravening clause 59 or 60, it is noted that both clauses 59(4) and 60(5) also contain another offences (i.e. offences for removing or defacing a notice without lawful authority or reasonable excuse) which carry different penalties. Further, it seems that clauses 59 and 60 have not prohibited a person who has operated, kept, managed or in any other way had control of the columbarium and an instrument holder from abandoning a columbarium for a contravention to be made so as to constitute an offence. Please clarify the scope of the offence under clause 63. In addition, if such a person has not abandoned a columbarium as a matter of fact but has failed to give a specified response, would such a person commit an offence?

Clause 64(1)

27. In this provision, "whether or not as landlord, mortgagee or based on any other interest in any premises that are a columbarium" in the English text is rendered as "不論是以業主或承按人的身分，或基於在屬骨灰安置所的處所中享有任何其他權益" in the Chinese text. Please amend.

28. In this provision, reference to "an offence under section 8" should be "an offence under section 9". Please amend.

Clause 64(2)

29. In this provision, "reasonably" in the English text has not been rendered in the Chinese text. Please amend.

30. Since a person in possession could include a mortgagee or other categories of person, please explain the appropriateness of using the words "acquired the premises" in this provision. Please also clarify the time of acquisition of the premises by each category of person in possession.

Clause 64(3)

31. In this provision, "reasonably" in the English text has not been rendered in the Chinese text. Please amend.

Clause 64(4)

32. Please clarify the legal consequence(s) for contravening clause 64(2) or (3) by a person in possession.

Clause 64(5)(a)

33. Please consider either to delete "in the Land Registry" from clause 64(5)(a)(i)(A) or add "in the Land Registry" after "the premises" in clause 64(5)(a)(i)(B).

34. In the Chinese text, should "根據第 68 條" rather be "已根據第 68 條", as the Chinese rendition of "was registered under section 68" in the English text?

Clause 65(1)

35. As "authorized officer" means any officer appointed under clause 48 pursuant to clause 2(1) and that clause 48 empowers the Director to appoint a public officer as an authorized officer for the purposes of the Bill, please clarify the need to add "a public officer" in the definition of "specified officer" under clause 65(1).

Clause 65(2)

36. Please confirm whether it is the policy intention that a specified officer can only take steps to carry out the prescribed ash disposal procedures in respect of a columbarium upon a court order pursuant to clause 65(2). If so, should such requirement be expressly spelt out in clause 65(2)?

Clause 65(3)

37. Please note Question 26 regarding contravention of clauses 59 and 60.

Clause 65(4)

38. Please Question 26 regarding contravention of clauses 59 and 60.

39. Since "occupation order" has been defined in clause 65(3), please consider to replace "An order may be made under subsection (3)" with "An occupation order may be made".

Heading of Clause 67

40. As clause 67 deals with disposal of ashes, please consider to replace "**Discharge of obligation in respect of ashes**" with "**Discharge of obligations in respect of disposal of ashes**".

Clause 67(2)

41. It is noted that "requirement" is used in clause 67(2)(a) whereas "obligation" is used in clause 67(2)(b). Should a consistent wording be used? Further, should "*ash disposal requirement*" be changed to "*ash disposal obligation*"?

Clause 68(1)

42. Please add "in the Land Registry" after "a certificate of columbarium use is registered".

43. In the Chinese text, please replace "登記者" with "註冊者", as "registered" in the English text is rendered as "註冊" in the Chinese text of clause 38(3).

Clause 68(2)

44. Please clarify the reason(s) for not allowing persons in possession other than landlords (as owners of the premises) as defined in clause 64(1) to apply for a certificate of cessation of columbarium use under clause 68(1).