



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

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By Fax (2136 3282)

5 November 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 in relation to Schedule 5 to, and clause 65 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.

c.c. DoJ (Attn: Ms Phyllis KO & Miss Cindy CHEUK (By Fax: 3918 4613))
Clerk to Bills Committee
LA
SALA3

Schedule

Section 1 of Schedule 5

Definition of "Instrument holder"

1. In this definition, "whether the instrument is still in force" in the English text is rendered as "不論該文書是否正有效" in the Chinese text. Should the Chinese rendition rather be "不論該文書仍然有效" or "不論該文書仍然正有效"? If this definition is to be removed from Schedule 5 to clause 2 of the Bill, please ensure that the same meaning of "instrument holder" does apply in each and every provision of the Bill where the term appears. In clause 38 of the Bill, for example, "instrument holder" does not seem to have the same meaning.

Definition of "specified officer"

2. Please note Question 35 as set out in the Schedule to my letter dated 13 October 2015.

Section 2(1) of Schedule 5

3. In this section, "The court may not" in the English text is rendered as "法院不得". Under clauses 11(9) and 12(2) and (3) of the Bill, "may not" in the English text is rendered as "不可". Should a consistent Chinese rendition be used?

Section 2(1)(a)(i)(B) of Schedule 5

4. In the Chinese text, "文書的持有人" should be "文書持有人", in view of the Chinese rendition of "instrument holder" in the English text of section 1 of Schedule 5.

Section 2(2) of Schedule 5

5. Please clarify whether an occupation order is made in respect of any premises that are a columbarium (as provided for in section 2(1) of Schedule 5) or in respect of a columbarium (as provided for in section 2(2) of Schedule 5). Should a consistent wording be used?

6. The rules on the procedures relating to an application for an occupation order and an appeal on a decision made by the court (including the effect of an occupation order pending an appeal) have not been provided for in the Bill. Will subsidiary legislation be made for providing these rules?

7. Please explain the reason(s) that the Director or an authorized officer must give notice of the order to every person who has made a submission under section 2(1)(b) of Schedule 5 but not to the owner of the premises and the instrument holder (if any) of the columbarium concerned as well.

Section 2(3) of Schedule 5

8. When will an occupation order take effect if there is an appeal?

Section 2(3)(a) of Schedule 5

9. Please clarify the meaning of "the last day on which notice was given in respect of the order under subsection (2)(a)". The relevant Chinese text is "就該命令發出通知的最後一日後的第 7 日". Do you mean "the last day on which notice must be given in respect of the order under subsection (2)(a)"?

Section 2(3)(c) of Schedule 5

10. Please clarify the meaning of "the day set out in the order". Do you mean the day of making the order or the day specified in the order?

Section 2(4) of Schedule 5

11. Should the offence under section 2(4) of Schedule 5 be extended to cover the removal or defacing of the notice referred to in section 2(1)(a)(ii) of Schedule 5 without lawful authority or reasonable excuse?

Section 3(2) of Schedule 5

12. In the English text, should a person "must not", instead of "may not", enter or remain on any columbarium subject to an occupation order in view of the offence under section 3(6) of Schedule 5? Please note the relevant Chinese rendition is "不得".

13. Please explain the reason(s) for providing that persons (except for those referred to in section 3(2)(a) and (b) of Schedule 5) including an owner of the columbarium premises need to obtain a permit from the specified officer in order to enter or remain on the columbarium concerned.

14. Should section 3(2) of Schedule 5 be expressly made subject to section 3(3) of Schedule 5 for the sake of clarity?

Section 3(4)(c) of Schedule 5

15. In the Chinese text, "撤消准許" should be "撤消該項准許" and "該人員認為准許" should be "該人員認為該項准許", as in the Chinese text of section 3(4)(b) of Schedule 5.

Section 4 of Schedule 5

16. Since this section deals not only with variation but also cancellation of an occupation order, please consider to amend the heading of this section to reflect so.

17. Similar to Question 6 above, will subsidiary legislation be made for providing the detailed rules on the procedures relating to an application for a variation or cancellation of an occupation order, as well as on the appeal mechanism?

Section 5(1)(a) and (b) of Schedule 5

18. For due compliance with the ash disposal requirements, please set out expressly the meaning of "reasonable hours" in this section. For example, the minimum number of hours and the operating hours in each day during which the ashes have to be made available for return.

Section 5(2) of Schedule 5

Definition of "eligible claimant"

19. In paragraph (b) of the definition, is it appropriate to describe someone as "the owner of the ashes"?

20. Please replace "in accordance with any law applicable to item or ashes" with "in accordance with any law applicable to the item or ashes".

Definition of "instrument holder"

21. Please note Question 1 regarding the Chinese rendition of "the instrument is still in force".

Definition of "overall claim period"

22. Please provide the definition of "overall claim period" in relation to a columbarium in respect of which the on-site portion of the prescribed ash disposal procedures are carried out under section 7 of Schedule 5. This term is also used in relation to the carrying out of such procedures.

23. In the Chinese text of paragraph (a) of the definition, please add "或" after "指場內申索期間；".

Section 6(1)(a) of Schedule 5

24. In the English text, "the person's intention" should be "the person's intentions".

Section 6(1)(c) of Schedule 5

25. Section 11 of Schedule 5 provides for the keeping of a record of the prescribed ash disposal procedures or the on-site portion of the procedures in respect of a columbarium, but not "a record of disinterment" as referred in section 6(1)(c) of Schedule 5.

Section 6(2)(b) of Schedule 5

26. In this section, "on the expiry of the on-site claim period" in the English text is rendered as "在該場內申索期間屆滿後" in the Chinese text. Should the relevant Chinese text be "在該場內申索期間屆滿時" or the relevant English text be "after the expiry of the on-site claim period" instead? In the latter case, should the time for delivery of the ashes to the Director be specified for the sake of certainty?

Section 6(3)(b) of Schedule 5

27. Please note Question 26 regarding "on the expiry of the on-site claim period".

Section 6(4)(b) of Schedule 5

28. Please note Question 26 regarding "on the expiry of the on-site claim period".

Section 6(4)(b)(ii) of Schedule 5

29. In the English text, "the off-site period" should be "the off-site claim period".

Section 6(4)(c) of Schedule 5

30. The issues raised in Question 26 also apply in respect of "on the expiry of the off-site claim period".

Section 7(1)(c) of Schedule 5

31. Please note Question 26 regarding "on the expiry of the on-site claim period".

Section 7(1) of Schedule 5

32. Since the duty to keep a record under section 11 of Schedule 5 applies to a person who carries out the on-site portion of the prescribed ash disposal procedures in respect of a columbarium, should compliance with such a duty be provided for in this section, as in section 6(1)(c) of Schedule 5?

Section 8(1) of Schedule 5

33. Please provide a definition of "commencement of ash disposal notice" as this term has been referred to in other provisions of this Bill.

34. Which of the notices specified in section (1)(a), (b), (c) or (d) is the "commencement of ash disposal notice"? In section (1)(b), (c) and (d), please clarify the meaning of "like notice". If all these notices are "commencement of ash disposal notices", are they required to be published, posted or served at the same time so as to ascertain, for the purposes of clauses 62(2)(a) and 64(4)(a) of the Bill, the time within which the commencement of ash disposal notice has to be given, and for the purposes of section 10 of Schedule 5, the number of sets of ashes for calculating the expenses required to be paid. If so, should such a requirement be provided expressly in this section?

35. With respect to section 8(1)(c) and (d) of Schedule 5 –

- (a) please provide the mode of service for serving the notice; and
- (b) in the Chinese text, please add "一份" before "類似的通告".

Section 8(2) of Schedule 5

36. It seems unclear that an authorized representative must be appointed under an agreement for the sale of an interment right under the Bill. Section 2(e) of Schedule 4 only requires such an agreement to set out arrangements for appointing and replacing authorized representatives.

Section 8(3)(a) of Schedule 5

37. Section 3 of Schedule 7 provides that the requirement under clause 43 of the Bill to keep records of agreements for the sale of interment rights does not apply to an agreement made before the enactment date. Does it include the requirement under clause 43(4) of the Bill? If so, section 8(3)(a) of Schedule 5 seems to be redundant.

38. Which of the notice under section 8(1)(a), (b), (c) or (d) of Schedule 5 is "the notice" referred to in this section?

Section 8(4) of Schedule 5

39. In this section, "A notice required to be published and served under subsection (1)" should be "A notice required to be published, posted and served under subsection (1)".

Section 8(5) of Schedule 5

40. In the Chinese text, please replace "通告" with "有關通告", as the Chinese rendition of "the notice" in the English text.

Section 9(2) of Schedule 5

41. In this section, "on the expiry of" in the English text is rendered as "屆滿後" in the Chinese text. Should the relevant Chinese text be "屆滿時" or the relevant English text be "after the expiry of" instead?

42. Please explain the policy reason(s) for providing that the ashes of a deceased person may only be returned on the expiry of the first two months of the overall claim period.

Section 9(3) of Schedule 5

43. In this section, "On the expiry of" in the English text is rendered as "屆滿後" in the Chinese text. Should the relevant Chinese text be "屆滿時" or the relevant English text be "After the expiry of" instead?

Section 9(4) of Schedule 5

44. Please explain how this section operates if the person carrying out the on-site portion of the prescribed ash disposal procedures under section 7 of Schedule 5 arranges for the return of ashes on-site for only two months.

Section 9(7)(b) of Schedule 5

45. In this section, "(the item (together with the ashes, if the person also claims for the return of the ashes) is called **specified item**)" in the English text is rendered as "(該物品(如該人亦提出交還該等骨灰的申索, 該物品連同該等骨灰)稱為**指明物品**)" in the Chinese text. Should the Chinese rendition rather be "(該物品連同該等骨灰(如該人亦提出交還該等骨灰的申索)稱為**指明物品**)"?

Section 9(8)(a) of Schedule 5

46. In the Chinese text, please replace "指明物品" with "有關指明物品", as the Chinese rendition of "the specified item" in the English text.

Section 9(8)(b) and (c)(i) of Schedule 5

47. In the Chinese text, please replace "指明物品" with "該指明物品", as the Chinese rendition of "the specified item" in the English text.

Section 9(6) and (8) of Schedule 5

48. The rules on the procedures relating to an application for a court order (including the appeal mechanism) have not been provided for in the Bill. Will subsidiary legislation be made for providing these rules?

Section 10(2) of Schedule 5

49. In the English text, "a set of ashes are" should be "a set of ashes is".

50. Please give the justification for requiring a person to whom a set of ashes is returned by the ash handler to pay half of the expenses under this section. Since such a person is required to pay the ash handler on the return of the ashes, how could the "reasonable expenses" referred to in section 10(1) of Schedule 5 be ascertained at that time as all the relevant procedures have not yet completed?

Section 11(1)(b) of Schedule 5

51. What kind of information the Administration intends to be required under this section? Will such requirement(s) be made by the Licensing Board by way of subsidiary legislation?

Section 12 of Schedule 5

52. In the Chinese text, "授權人員" should be "獲授權人員", in view of the Chinese rendition of "authorized officer" in the English text of clause 2(1) of the Bill.

53. Please clarify the legal consequence(s) for failing to take the steps as required by the Director or an authorized officer under this section.

Heading of section 13 of Schedule 5

54. In the English text, "**prescribed ash disposal procedure**" should be "**prescribed ash disposal procedures**".

Section 13(1) of Schedule 5

55. In the English text, please clarify whether the word "completely" is redundant.

Section 13(1)(a) of Schedule 5

56. Please note Question 26 of my letter dated 13 October 2015 regarding contravention of clauses 59 and 60 of the Bill.

Section 13(1)(b)(ii) of Schedule 5

57. This section seems to be redundant as a person has carried out the on-site portion of the prescribed ash disposal procedures in respect of a columbarium only if he has, among other things, delivered to the Director, on the expiry of the on-site claim period, the ashes that are not returned to an eligible claimant pursuant to section 7 of Schedule 5. Please clarify.

Heading of section 14 of Schedule 5

58. Are all the ashes referred to in section 14 of Schedule 5 abandoned? Is it appropriate to use the word "abandoned"?

Section 14(1) of Schedule 5

59. Please confirm whether scattering of ashes in gardens of remembrance or at sea will be one of the manners of disposing the ashes by the Director pursuant to this section.

Section 14(2) of Schedule 5

60. Please clarify the meaning of "proceedings are pending in the court". If the Director actually knows that there are proceedings pending in the court in respect of the ashes in question, could he still dispose the ashes in any manner that he thinks fit under section 14(1) of Schedule 5 if no person has, by written notice, informed him so?

Section 15(1)(a) of Schedule 5

61. Clauses 59 and 60 of the Bill have not imposed obligations to carry out the prescribed ash disposal procedures. Please amend.

Section 15(3) of Schedule 5

62. Please clarify the meaning of "supervision and departmental charges".

Section 15(4) of Schedule 5

63. In the Chinese text, should "可" rather be "須", as the Chinese rendition of "must" in the English text?

Section 15(5) of Schedule 5

64. Since interest is recoverable as part of the expenses from a person who is liable for the expenses under section 15(1) of Schedule 5 at the annual rate of 10% commencing one month after the date of service of the certificate on the person, should the Chinese text of this section be amended as "自證明書送達根據第(1)款有法律責任繳付開支的人當日後的 1 個月起，年利率為 10% 的利息可作為開支的一部分，向該人追討"?

65. Please give the justification for charging an interest at the annual rate of 10% under this section.

Section 15(8) of Schedule 5

66. In the English text, please add "as evidence" after "admissible".

Heading of section 16 of Schedule 5

67. "Director to provide information on ash disposal by columbaria" is rendered as "署長在骨灰安置所處置骨灰後提供資料". Should the Chinese rendition be "署長提供關於骨灰安置所處置骨灰的資料" instead?

Section 16(1) of Schedule 5

68. The list to be kept by the Director under section 16(1)(a), (b) and (c) of Schedule 5 only covers matters in respect of prescribed ash disposal procedures, but not the on-site portion of the prescribed ash disposal procedures. Please explain the reason(s) for such exclusion. Please also clarify the reason(s) for not imposing a duty on the Director to keep such a list.

Heading of section 17 of Schedule 5

69. In the Chinese text, should "其他骨灰處置程序" be "替代骨灰處置程序" instead, as the Chinese rendition of "Alternative ash disposal procedures" in the English text?

Section 17(2) of Schedule 5

70. In the English text, should "it is satisfied" rather be "the Director is satisfied"?

The Chinese rendition of "the ashes" in Schedule 5

71. It is noted that in Schedule 5, "the ashes" in the English text is rendered as "骨灰" or "有關骨灰" in the Chinese text. For example, in section 6 of Schedule 5. Please review to ensure consistency.

Clause 65(2) of the Bill

72. Please amend this clause to provide that a specified officer may also take any steps that may be necessary for carrying out the prescribed ash disposal procedures in respect of a columbarium if the on-site portion of the procedures or any step in them are or is not carried out.

Clause 65(6) of the Bill

73. Since section 4 of Part 1 of Schedule 5 deals with variation and cancellation of an occupation order, please amend the description of Part 1 of Schedule 5 as set out in clause 65(6) of the Bill so as to reflect that Part 1 of Schedule 5 also deals with these matters.