



中華人民共和國香港特別行政區政府總部食物及衛生局

Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

1 December 2015

Ms Wendy KAN
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1 Legislative Council Road
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Dear Ms Kan,

Private Columbaria Bill

Thank you for your letter of 13 October 2015 which seeks the Government's responses to your observations on Part 7 of the Private Columbaria Bill. Our responses to your observations and our other suggestion are set out at **Annex**.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Diane Wong".

(Miss Diane WONG)

for Secretary for Food and Health

**The Government's Response to ALA's Observation
on Part 7 of the Private Columbaria Bill (the Bill)**

Item	Response from the Government
1	<p>Issue: Re: clause 56 –</p> <ul style="list-style-type: none"> • “任何人在刊憲日期或之後，處置安放在某骨灰安置所內的骨灰，或棄辦某骨灰安置所，均適用本部，不論該人是否在該日期前，已接收該等骨灰以安放於該骨灰安置所內，或已營辦、維持、管理或控制該骨灰安置所。” • “This Part 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.” <p>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?</p> <p>Response: The sentence “任何人在刊憲日期或之後，處置安放在某骨灰安置所內的骨灰，或棄辦某骨灰安置所，均適用本部” means Part 7 is applicable to the disposal or abandonment of a columbarium as described in the provision. The Chinese text therefore has the same meaning as “This Part applies to any disposal of ashes interred in a columbarium, or abandonment of a columbarium, by a person on or after the enactment date”. No amendment is therefore necessary.</p>
2	<p>Issue: Re: clause clause 57 –</p> <ul style="list-style-type: none"> • “任何人如處置安放在骨灰安置所內的骨灰，須在顧及對有關死者的尊重及其尊嚴下行事。” • “A person disposing of ashes interred in a columbarium must do so having regard to the respect for, and the dignity of, the deceased persons concerned.” <p>Please clarify the legal consequence(s) for a person failing to comply with clause 57.</p> <p>Response: Clause 57 is meant to serve as a guiding principle to govern the general disposal of ashes interred in a columbarium. There is no direct legal consequence for a person failing to comply with clause 57. However, such guiding principle would have a bearing on how the relevant authority or the court would judge whether an ash handler complies with the ash disposal requirement, and is thus discharged from all obligations in respect of the disposal of the ashes interred in the columbarium under clause 67.</p> <p>Please note that under the Public Health and Municipal Services Ordinance (Cap. 132), sections 118(4), 119 and 119A provide for the disposal of human remains in such</p>

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	<u>decent manner</u> as the relevant authority may think fit.
3	<p>Issue: Re: clause 58(2)(a)(iii) –</p> <ul style="list-style-type: none"> • “該項處置的詳情，記入根據第 43(4)條備存的安放紀錄，包括 —” • “the particulars of disposal are entered into the record of interment kept under section 43(4), including—” <p>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 <u>interment and disinterment of ashes</u> in and from the columbarium concerned. Should clause 58(2)(a)(iii) be refined?</p> <p>Response: We will consider amending clause 58(2)(a)(iii) by inserting “and disinterment of ashes” after “record on interment” for consistency with clause 43(4).</p>
4	<p>Issue: Re: clause 59(1) –</p> <ul style="list-style-type: none"> • “在以下情況下，某人即屬棄辦未獲發指明文書的骨灰安置所 — <ul style="list-style-type: none"> (a) 該人曾營辦、維持、管理或以任何其他方式控制該骨灰安置所；而 (b) 儘管署長就懷疑棄辦該骨灰安置所的情況發出通告，該人沒有作出指明回應。” • “A person abandons a columbarium in respect of which no specified instrument has been issued if— <ul style="list-style-type: none"> (a) the person has operated, kept, managed or in any other way had control of the columbarium; and (b) despite the Director’s notice about a suspected abandonment in respect of the columbarium, the person fails to give a specified response.” <p>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)?</p> <p>Response: Our intention is that the Director will publish/post a notice once in each of two consecutive months, and that a person would be considered to have abandoned a columbarium under clause 59(1) if he/she fails to provide a specified response within one month after the date of the second notice. We will consider amending clause 59(1) to specify the above time limit, and failure to give a specified response before the time limit would be regarded as having abandoned a columbarium.</p>

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5	<p>Issue: Re: clause 59(1) – 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.</p> <p>Response: Clause 59(2) requires the Director to give a notice about suspected abandonment, once in each of 2 consecutive months, by publishing it in the Gazette and posting it outside the columbarium. It is the same notice though given on different dates or by different means. The notice published under clause 59(2)(a) and the notice posted under clause 59(2)(b) reflect what the Director’s notice in clause 59(1) is.</p>
6	<p>Issue: Re: clause 59(2) –</p> <ul style="list-style-type: none"> • “就第(1)款所指的署長就懷疑棄辦情況發出通告而言，署長或獲授權人員須連續 2 個月，每個月一次 — <ul style="list-style-type: none"> (a) 在憲報刊登公告；及 (b) 在有關骨灰安置所外的顯眼位置，張貼一份通告。” • “For the purposes of the Director’s notice about a suspected abandonment under subsection (1), the Director or an authorized officer must once in each of 2 consecutive months— <ul style="list-style-type: none"> (a) publish a notice in the Gazette; and (b) post a notice at a conspicuous place outside the columbarium.” <p>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?</p> <p>Response: The authorized officer referred to in clause 59(2) will be a public officer appointed by the Director pursuant to clause 48 for the purposes of the Private Columbaria Ordinance, which include the publication and posting of the notice under paragraph (a) and (b) of clause 59(2). The notice will specify that it is the Director’s notice under clause 59.</p>
7	<p>Issue: Re: clause clause 59(2) – 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).</p> <p>Response: We will consider amending “發出通告” in clause 59(2) to “發出的通告” for consistency with clause 60(2).</p>

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8	<p>Issue: Re: clause 59(3) –</p> <ul style="list-style-type: none"> “上述通告須對曾營辦、維持、管理或以任何其他方式控制有關骨灰安置所的人，以及對該骨灰安置所享有權益的任何其他人，作出內容如下的警告：除非在自該通告的日期起計的 1 個月內，有人作出指明回應，否則 —” “The notice must warn any person who has operated, kept, managed or in any other way had control of the columbarium and any other persons having an interest in the columbarium that, unless within 1 month after the date of the notice a person gives a specified response—” <p>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).</p> <p>Response: Clause 59(3) is on the content of the notice. The notice in clause 59(3) reflects what the Director’s notice about a suspected abandonment under clause 59(1)(b) is. As explained in our response to item 5 above, the notices referred to in clause 59(2)(a) and clause 59(2)(b) also reflect what the Director’s notice under clause 59(1)(b) is.</p>
9	<p>Issue: Re: clause 59(3) – 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).</p> <p>Response:</p> <p>Examples of “other persons having an interest in the columbarium” include the landlords (or their successors or assigns), mortgagees of the premises that are used as a columbarium. We acknowledge that they may not be the persons (the operators) required to give a specified response under clause 59(1) or clause 60(1). The original intention is to alert them of the possibility of suspected abandonment of the columbarium, since these “other persons having an interest in the columbarium” may consider taking possession of the columbarium premises after the abandonment. As it is possible to keep such persons posted through other means (such as FEHD posting the notice on its website), we will consider deleting “other persons having an interest in the columbarium” in clause 59(3) and clause 60(3).</p> <p>We will consider amending “may apply for an occupation order under section 65” in clause 59(3)(b) and clause 60(3)(b) to “may apply for an occupation order under section 65(3)”.</p>
10	<p>Issue: Re: clause 59(3) – 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.</p> <p>Response: We will consider amending “在自該通告的日期起計的 1 個月內” in clause 59(3) to “在該通告的日期後的 1 個月內”.</p>

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11	<p>Issue: Re: clause 59(3)(b) –</p> <ul style="list-style-type: none"> “第 65(1)條界定的指明人員可申請第 65 條所指的佔用令，以使其能夠就該骨灰安置所進行訂明骨灰處置程序。” “a specified officer, as defined by section 65(1), may apply for an occupation order under section 65 to enable the specified officer to carry out the prescribed ash disposal procedures in respect of the columbarium.” <p>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).</p> <p>Response: We will consider amending “第 65(1)條界定” in clause 59(3)(b) to “第 65(1)條所界定” for consistency with clause 60(2)(b)(ii).</p>
12	<p>Issue: Re: clause 60(1) –</p> <ul style="list-style-type: none"> “如某人(文書持有人)就某骨灰安置所持有指明文書，而該文書正有效、已期滿失效並且未獲續期或延展，或被撤銷或暫時吊銷，在以下情況下，該人即屬棄辦該骨灰安置所：儘管署長就懷疑棄辦該骨灰安置所的情況發出通告，該文書持有人沒有作出指明回應。” “A person (<i>instrument holder</i>) whose specified instrument in respect of a columbarium is in force, has expired without being renewed or extended or is revoked or suspended, abandons a columbarium if, despite the Director’s notice about a suspected abandonment in respect of the columbarium, the instrument holder fails to give a specified response.” <p>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)?</p> <p>Response: Please see our response to item 4 above. Similar amendments will be made to clause 60. A person would be considered to have abandoned a columbarium under clause 60(1) if he/she fails to provide a specified response within one month after the date of the second notice. We will consider amending clause 60(1) to specify the above time limit, and failure to give a specified response before the time limit would be regarded as having abandoned a columbarium.</p>
13	<p>Issue: Re: clause 60(1) – 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”.</p> <p>Response: We will consider amending “abandons a columbarium” in clause 60(1) to “abandons <u>the</u> columbarium”.</p>
14	<p>Issue: Re: clause 60(1) – 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、”.</p> <p>Response: It is in order to use a comma in clause 60(1) before “或 ...” (i.e. “A、 B、</p>

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	C, 或 D”。 It may not be necessary to amend the punctuation.
15	<p>Issue: Re: clause 60(2)(a) –</p> <ul style="list-style-type: none"> • “署長或獲授權人員須按有關文書持有人最後為人所知的地址，以掛號郵遞，將該通告寄交該人；及” • “the Director or an authorized officer must send a notice to the instrument holder, by registered post addressed to the instrument holder’s last known address; and” <p>In this provision, “a notice” in the English text is rendered as “該通告” in the Chinese text. Please amend.</p> <p>Response: We will consider amending “該通告” in clause 60(2)(a) to “通告”.</p>
16	<p>Issue: Re: clause 60(2)(a) – 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?</p> <p>Response: Please see our response to item 6 above.</p>
17	<p>Issue: Re: clause 60(2)(b) –</p> <ul style="list-style-type: none"> • “該通告須對該文書持有人，作出內容如下的警告：除非在自該通告寄出的日期起計的 1 個月內，該人作出指明回應，否則 —” • “the notice must warn the instrument holder that, unless within 1 month after the date on which the notice is sent, the instrument holder gives a specified response—” <p>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.</p> <p>Response: We will consider amending “在自該通告寄出的日期起計的 1 個月內” in clause 60(2)(b) to “在該通告寄出的日期後的 1 個月內”.</p>
18	<p>Issue: Re: clause 60(3) –</p> <ul style="list-style-type: none"> • “如儘管有第(2)款所指的警告，有關文書持有人仍沒有作出指明回應，則署長須對該人及對有關骨灰安置所享有權益的任何其他人作出內容如下的進一步警告：除非在自該進一步警告作出的日期起計的 1 個月內，該文書持有人作出指明回應，否則 —” • “If, despite the warning under subsection (2), the instrument holder fails to give a specified response, the Director must give a further warning to the instrument holder and any other persons having an interest in the columbarium that, unless within 1 month after the date on which the further warning is given, the instrument holder gives a specified response—”

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	<p>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)?</p> <p>Response: Please see our response to items 4 and 12 above.</p>
19	<p>Issue: Re: clause 60(3) – 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).</p> <p>Response: We will consider amending clause 60(3) by inserting “or an authorized officer” after “the Director”.</p>
20	<p>Issue: Re: clause 60(3) – 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).</p> <p>Response: Please see our response to item 9 above.</p>
21	<p>Issue: Re: clause 60(3) – 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.</p> <p>Response: We will consider amending “在自該進一步警告作出的日期起計的 1 個月內” in clause 60(3) to “在作出該進一步警告的日期後的 1 個月內”.</p>
22	<p>Issue: Re: clause 60(4) –</p> <ul style="list-style-type: none"> • “The further warning under subsection (3) must be given—” • “第(3)款所指的進一步警告，須以以下方式發出 —” <p>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)?</p> <p>Response: It is our policy intention that the further warning notice will be gazetted, given by registered post and posted at a conspicuous place outside the columbarium on the same day. We will consider amending clause 60(4) by inserting “on the same day” after “must be given”.</p>
23	<p>Issue: Re: clause 61(a) –</p> <ul style="list-style-type: none"> • “(如該人已就有關骨灰安置所獲發指明文書，但該文書已經期滿失效，並且未獲續期或延展)該人已提出申請，要求將該文書續期或延展；” • “(if the person has been issued with a specified instrument in respect of the

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	<p>columbarium but it has expired without having been renewed or extended) the person applies for the renewal or extension of the instrument;"</p> <p>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?</p> <p>Response: We will consider amending “該人已提出申請” in clause 61(a) to “該人提出申請”.</p>
24	<p>Issue: Re: clause 61(c) –</p> <ul style="list-style-type: none"> • “該人向署長或獲授權人員作出書面承諾，承諾就該骨灰安置所進行訂明骨灰處置程序，而該承諾書指明署長或獲授權人員要求的詳情。” • “the person gives to the Director or authorized officer a written undertaking to carry out the prescribed ash disposal procedures in respect of the columbarium, specifying the particulars that the Director or authorized officer requires.” 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? <p>Response: We will consider amending “該骨灰安置所” in clause 61(c) to “有關骨灰安置所”.</p>
25	<p>Issue: Re: clause 61(c) – 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.</p> <p>Response: An instrument holder with an instrument in force, has expired without being renewed or extended or is revoked or suspended, is required to give a specified response when he/she is given the Director’s notice about a suspected abandonment in respect of the columbarium (clause 60(1) refers). If a specified instrument is merely suspended by the Licensing Board, it may not be necessary for the Director at the stage of suspension to issue a Director’s notice as it may not involve “suspected abandonment” of a columbarium. We will consider amending “is revoked or suspended” in clause 60(1) to “is revoked”.</p>
26	<p>Issue: Re: clause 63 –</p> <ul style="list-style-type: none"> • “任何人違反第 58、59、60 或 62 條，即屬犯罪 —” • “A person who contravenes section 58, 59, 60 or 62 commits an offence and is liable—” <p>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</p>

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	<p>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?</p> <p>Response:</p> <p>We will consider inserting a sub-clause before clause 59(1) and revising clause 59(1) as follows –</p> <p>(0) A person who has operated, kept, managed or in any other way had control of a columbarium must not abandon a columbarium in respect of which no specified instrument has been issued.</p> <p>(1) For the purposes of subsection (0), a person [...]</p> <p>Similarly, we will consider inserting a sub-clause before clause 60(1) and revising clause 60(1) as follows –</p> <p>(0) A person (instrument holder) whose specified instrument in respect of a columbarium (i) is in force; (ii) has expired without being renewed or extended; or (iii) is revoked must not abandon a columbarium.</p> <p>(1) For the purposes of subsection (0), the instrument holder abandons a columbarium if despite the Director's notice about a suspected abandonment in respect of the columbarium, the instrument holder fails to give a specified response.</p> <p>We will consider amending "a person who contravenes section 58, 59, 60 or 62 commits an offence" as "a person who contravenes section 58(1), 59(0), 60(0) or 62 commits an offence". The non-provision of a specified response before a time limit will be regarded as abandonment of columbarium. The abandonment of columbarium is by itself an offence.</p>
27	<p>Issue: Re: clause 64(1) –</p> <ul style="list-style-type: none"> “凡某人(接管人)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，而接管該處所，該人如在接管後的 7 日內，將此事以書面通知署長，則不會僅因該項接管而犯第 8 條所訂罪行。” “A person (person in possession) who, whether or not as landlord, mortgagee or based on any other interest in any premises that are a columbarium, takes possession of those premises does not commit an offence under section 8 merely by taking possession if the person notifies the Director, in writing, of that fact within 7 days after taking possession.” <p>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</p>

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	<p>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.</p> <p>Response: We will consider amending “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 clause 64(1) to “不論是否以業主或承按人的身分，或是否基於在屬骨灰安置所的處所中享有任何其他權益”.</p>
28	<p>Issue: Re: clause 64(1) – In this provision, reference to “an offence under section 8” should be “an offence under section 9”. Please amend.</p> <p>Response: Clause 64(1) will be amended to refer to “section 9” instead of “section 8”.</p>
29	<p>Issue: Re: clause 64(2) –</p> <ul style="list-style-type: none"> • “如接管人是在進行訂明骨灰處置程序的責任的規限下，取得有關處所，則該人須在接管該處所後，在切實可行的範圍內，盡快進行該程序。” • “The person in possession must carry out the prescribed ash disposal procedures as soon as reasonably practicable after taking possession if the person in possession acquired the premises subject to the obligation to carry out the prescribed ash disposal procedures.” <p>In this provision, “reasonably” in the English text has not been rendered in the Chinese text. Please amend.</p> <p>Response: We will consider adding “合理地” before “切實可行” in clause 64(2).</p>
30	<p>Issue: Re: clause 64(2) – 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.</p> <p>Response:</p> <p>We will consider amending clause 64(2) by replacing “acquired the premises” with “acquired <u>the interest in the premises</u>”.</p> <p>We will consider amending clause 64(5) as follows –</p> <p>“(5) For the purposes of subsection (2), a person acquired <u>the interest in the premises</u> subject to the obligation to carry out the prescribed ash disposal procedures if –</p> <p>(a) the person in possession acquired <u>the interest in the premises</u> in the following circumstances –</p> <p>(i) at the time of the acquisition –</p> <p>(A) [...]; but</p>

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	<p>(B) [...]; and</p> <p>(ii) the person from whom the <u>interest in the premises</u> <u>was</u> acquired was named in the certificate of columbarium use as having been issued with a specified instrument; or”</p> <p>The time of acquisition of the interest in the premises is to be determined on a case by case basis according to the applicable law, e.g. in the case of a mortgage, execution of a mortgage deed.</p>
31	<p>Issue: Re: clause 64(3) –</p> <ul style="list-style-type: none"> • “除非第(2)款適用，否則接管人須在接管後，在切實可行的範圍內，盡快 ——” • “Except where subsection (2) applies, the person in possession must as soon as reasonably practicable after taking possession——” <p>In this provision, “reasonably” in the English text has not been rendered in the Chinese text. Please amend.</p> <p>Response: We will consider adding “合理地” before “切實可行” in clause 64(3).</p>
32	<p>Issue: Re: clause 64(4) –</p> <ul style="list-style-type: none"> • “如接管人 [...] 則該人即視為違反第(2)或(3)款(視情況所需而定)。” • “A person in possession is regarded as having contravened subsection (2) or (3) (as the case requires) if the person [...].” <p>Please clarify the legal consequence(s) for contravening clause 64(2) or (3) by a person in possession.</p> <p>Response: The legal consequence for contravening clause 64(2) or (3) is that the court may make an occupation order in respect of the columbarium under clause 65. There is no other sanction applicable to a person in possession, as compared with the sanction under clause 63 applicable to an operator.</p>
33	<p>Issue: Re: clause 64(5(a) –</p> <ul style="list-style-type: none"> • “接管人是在以下情況下取得處所 —— (i) 在該人從另一人取得該處所的時間 —— (A) 一份骨灰安置所用途證明書，已根據第 38 條，於土地註冊處針對該處所註冊；但 (B) 沒有證明書根據第 68 條針對該處所而註冊；及” • “the person in possession acquired the premises in the following circumstances—— (i) at the time of the acquisition—— (A) a certificate of columbarium use was registered under section 38 against the premises in the Land Registry; but

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	<p>(B) no certificate was registered under section 68 against the premises; and”</p> <p>Please consider either to delete “in the Land Registry” from clause 63(5)(a)(i)(A) or add “in the Land Registry” after “the premises” in clause 64(5)(a)(i)(B).</p> <p>Response: Under clause 38, there is already reference to “in the Land Registry”. We will consider deleting “in the Land Registry” after “under section 38” from clause 64(5)(a)(i)(A).</p>
34	<p>Issue: Re: clause 64(5)(a) – 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?</p> <p>Response: Clause 64(5)(a)(i)(B) refers to the absence of a registered certificate, and hence it is not necessary to add “已” before “根據第 68 條”.</p>
35	<p>Issue: Re: clause 65(1) –</p> <ul style="list-style-type: none"> • “在本條中 — <i>指明人員</i> (specified officer)指署長、獲授權人員或公職人員。” • “In this section— <i>specified officer</i> (指明人員) means the Director, an authorized officer or a public officer.” <p>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).</p> <p>Response: The term “specified officer” was meant to have a wider meaning than that of “authorized officer”, such that a public officer from another department who is not appointed by the Director as an authorized officer may carry out the prescribed ash disposal procedures under clause 65 and Part 1 of Schedule 5.</p>
36	<p>Issue: Re: clause 65(2) –</p> <ul style="list-style-type: none"> • “如訂明骨灰處置程序或該程序中的任何步驟，未有就某骨灰安置所進行，則指明人員可採取對進行該程序屬必要的任何步驟。” • “A specified officer may take any steps that may be necessary for carrying out the prescribed ash disposal procedures in respect of a columbarium if the procedures or any step in them are or is not carried out.” <p>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 or clause 65(2). If so, should such requirement be expressly spelt out in clause 65(2)?</p>

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	<p>Response: Our intention is that if the prescribed ash disposal procedures or any step in them are or is not carried out, a specified officer may take any steps that may be necessary for carrying out the procedures under clause 65(2), and such steps may include but are not limited to applying to the court for an occupation order under clause 65(3). There may be situations where a specified officer may proceed to take any steps necessary for carrying out the prescribed ash disposal procedures without having to apply for an occupation order from the court under clause 65(3) (e.g. cases where the land owners give consent voluntarily to the specified officers to gain access to their properties for taking those steps). We will consider amending “the Director or an authorized officer” in section 2(1)(a)(i) and 2(2) of Schedule 5 as “the specified officer”.</p>
37	<p>Issue: Re: clause 65(3) –</p> <ul style="list-style-type: none"> • “法院如信納第 58、59、60、62 或 64(2)或(3)條已就某骨灰安置所而遭違反，則可應指明人員提出的申請，作出命令(佔用令)，賦權該人員 —” • “On an application by a specified officer and on being satisfied that section 58, 59, 60, 62 or 64(2) or (3) has been contravened in respect of a columbarium, the court may make an order (<i>occupation order</i>) empowering the specified officer—” <p>Please note Question 26 regarding contravention of clauses 59 and 60.</p> <p>Response: As explained in our response to item 26 above, amendments will be made to clause 63 which would have the effect of removing reference to clauses 59(4) and 60(5). We will make similar amendments to clause 65(3).</p>
38	<p>Issue: Re: clause 65(4) –</p> <ul style="list-style-type: none"> • “不論是否有人 — (a) 被指出為已違反第 58、59、60、62 或 64(2)或(3)條；或 (b) 被控以第 63 條所訂罪行， 法院仍可根據第(3)款作出命令。” • “An order may be made under subsection (3), whether or not a person— (a) is identified as having contravened section 58, 59, 60, 62 or 64(2) or (3); or (b) is prosecuted for an offence under section 63.” <p>Please note Question 26 regarding contravention of clauses 59 and 60.</p> <p>Response: As explained in our response to item 26 above, amendments will be made to clause 63 which would have the effect of removing reference to clauses 59(4) and 60(5). We will make similar amendments to clause 65(4).</p>
39	<p>Issue: Re: clause 65(4) – 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”.</p>

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	<p>Response: The existing version in clause 65(4) is effective. Having said that, we will consider the version proposed by ALA.</p>
40	<p>Issue: Re: heading of clause 67 –</p> <ul style="list-style-type: none"> • “解除關於骨灰的責任” • “Discharge of obligation in respect of ashes” <p>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”.</p> <p>Response: The existing version of the heading of clause 67 is effective. Having said that, we will consider the version proposed by ALA.</p>
41	<p>Issue: Re: clause 67(2) –</p> <ul style="list-style-type: none"> • “在第(1)款中 — 骨灰處置規定 (ash disposal requirement)指 — <p>(a) 第 58、62 或 64(2)條所訂定的、進行訂明骨灰處置程序的規定；或</p> <p>(b) 第 64(3)條所訂定的、進行訂明骨灰處置程序或該等程序的場內部分的責任。”</p> <ul style="list-style-type: none"> • “In subsection (1)— ash disposal requirement (骨灰處置規定) means— <p>(a) the requirement under section 58, 62 or 64(2) to carry out the prescribed ash disposal procedures; or</p> <p>(b) the obligation under section 64(3) to carry out either the prescribed ash disposal procedures or the on-site portion of the procedures.”</p> <p>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”?</p> <p>Response: Under clause 67(2)(a), the context is what is required of operator and the person in possession who was aware of the licensed operation at the time of acquiring the interest in the premises (namely the prescribed ash disposal procedures). Hence, the term “requirement” is used. Under clause 67(2)(b), the context is what is demanded of the person in possession who might not be aware of the licensed operation at the time of acquiring the interest in the premises (namely the option of on-site portion of the prescribed ash disposal procedures other than the prescribed ash disposal procedures). Hence, the term “obligation” is used. That said, we will consider using an appropriate term in the context of clause 67(2)(b).</p>
42	<p>Issue: Re: clause 68(1) –</p> <ul style="list-style-type: none"> • “如有人向發牌委員會提出申請，而該委員會信納訂明骨灰處置程序或該等程

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	<p>序的場內部分，已就任何處所(有骨灰安置所用途證明書已針對該處所登記者)進行，該委員會可發出證明書，證明該處所不再是骨灰安置所。”</p> <ul style="list-style-type: none"> • “The Licensing Board may, on application and if satisfied the prescribed ash disposal procedures or the on-site portion of the procedures have been carried out in respect of any premises against which a certificate of columbarium use is registered, issue a certificate that the premises cease to be a columbarium.” <p>Please add “in the Land Registry” after “a certificate of columbarium use is registered”.</p> <p>Response: Under clause 38, there is already reference to “in the Land Registry”. Rather than adding “in the Land Registry” in clause 68(1), we will consider adding “under section 38” after “is registered” for consistency with clause 64(5).</p>
43	<p>Issue: Re: clause 68(1) – 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).</p> <p>Response: We will consider amending “登記” in clause 68(1) to “註冊” for consistency with clause 38(3).</p>
44	<p>Issue: Re: clause 68(2) –</p> <ul style="list-style-type: none"> • “為第(1)款的目的而提出的申請，須由以下人士提出 — <ol style="list-style-type: none"> 有關處所的擁有人； 持有關於有關處所的指明文書的人；或 第 65(1)條所界定的指明人員。” <ul style="list-style-type: none"> • “An application for the purposes of subsection (1) must be made by— <ol style="list-style-type: none"> the owner of the premises; the holder of a specified instrument in respect of the premises; or a specified officer, as defined by section 65(1).” <p>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).</p> <p>Response: We will consider adding after paragraph (a) “the owner of the premises” “(aa) a person in possession in respect of the columbarium premises, as set out in section 64(1);”.</p>