

Bills Committee on the Private Columbaria Bill

**An Overview of the Key
Committee Stage Amendments (“CSA”) proposed by the Government**

In paragraph 141 of the Bills Committee’s report to the House Committee, it is foreshadowed that we would submit a paper giving an overview of all the CSAs proposed by the Government. This we now do.

2. Following thorough deliberations since the Bill was first introduced into LegCo in June 2014, the Government and the Bills Committee have, acting in concert, worked out a set of CSAs that, by refining the regulatory regime proposed in the Bill, help make it better suited for the purpose. The full set of CSAs proposed by the Government incorporated has been lodged with the Clerk to the Legislative Council on 25 June 2016.

3. Each and every one of the CSAs, together with notes explaining the rationale underlying the proposed changes, are summarized in **Annex**. The notes, being largely self-explanatory, are not repeated here.

4. The key changes that have been made in response to the suggestions of Members of the Bills Committee (Members), Assistant Legal Advisor of the Legislative Council (ALA) and deputations are highlighted in paragraph 6 below.

5. When the Bills Committee concluded its deliberations on 13 June 2016, Members noted that, on top of the changes that had been fully covered in earlier discussions, the Government and the ALA would (before the CSAs are given to LegCo on 25 June) comb through the text of the Bill again and may, in the course of doing so, make mutually agreed finishing touches to the Bill. In the event, we did make some such finishing touches. For record purpose, we have set them out in paragraph 7 below.

6. The key CSAs that have been proposed in response to the suggestions of Members, the ALA and deputations are set out below -

(a) interment of ashes of religious practitioners in **pre-BAT**¹ **yet-to-be-disposed-of niches in a religious ash pagoda (hereinafter called “the subject niches”)** as provided for under the Bill

- relaxing the restriction in the Bill which renders a dated columbarium² ineligible to seek exemption should it continue to inter ashes in religious ash pagodas after the BAT. Under the relaxation, subject to fulfilment of conditions to forestall abuse:

- (i) a dated columbarium interring ashes in the subject niches (not involving any fees, charges or other sums) before the enactment date may still be eligible to seek exemption status; and
- (ii) a dated columbarium obtaining exemption status and fulfilling the requirements under clause 46C may still, following publication of the relevant notice by the Secretary for Home Affairs (“SHA”), inter ashes in the subject niches (not involving any fees, charges or other sums) during the validity period of exemption.

SHA will be empowered to allow the subject niches (subject to a designated quota) in exempted pre-Bill columbaria that are specified Chinese temples to be used for interring ashes of religious practitioners (i.e. Buddhist or Taoist monks, nuns, priests or priestesses) who have resided and served the temples before their death, and formulate requirements and conditions for this purpose;

(b) interment of ashes in **pre-BAT sold niches** as provided for under the Bill

- relaxing the restriction in the Bill which disqualifies a dated columbarium from seeking exemption should it continue to inter

¹ BAT means “8:00 a.m. on 18 June 2014”.

² “Dated” means a pre-Bill columbarium that “commenced operation before 1 January 1990” (read together with clause 15(2) of the Bill).

ashes after the BAT. Under the relaxation, subject to fulfilment of conditions to forestall abuse (e.g. any such columbarium must properly keep the relevant agreements and records of interment for future examination by the Licensing Board and the enforcement authority):

- (i) a dated columbarium interring ashes in pre-BAT sold niches after the BAT but before the enactment date may still be eligible to seek exemption status; and
 - (ii) a dated columbarium obtaining exemption status may still inter ashes in pre-BAT sold niches during the validity period of exemption;
- (c) imposing conditions on a specified instrument in respect of a pre-Bill columbarium restricting the imposition of fees or charges beyond what is agreed in a pre-BAT agreement

- Waiving of relevant waiver fees, short term tenancy rentals and administrative fees before and during the validity period of exemption may be considered on a case-by-case basis having regard to its individual merits in respect of the following –

- (i) pre-BAT sold niches in dated columbaria confirmed to be meeting the eligibility criteria of exemption in all other respects; or
- (ii) pre-BAT yet-to-be-disposed-of niches in religious ash pagodas for interring ashes of religious practitioners in dated columbaria of Chinese temples confirmed to be meeting the eligibility criteria of exemption in all other respects.

Under the newly-added clause 31A, the Licensing Board may as it thinks fit impose conditions on a specified instrument in respect of a pre-Bill columbarium restricting the imposition of fees or charges beyond what is agreed in a pre-BAT agreement.

- (d) excluding the following premises from the application of the Bill, if certain pre-requisites are met

- (i) premises used as workplaces for carrying out the transformation

work of ashes into synthetic materials; and

(ii) premises used as exhibition venues for temporary display of ashes;

(e) deed of mutual covenant (“DMC”)

- requiring an applicant for the issue of a licence which covers columbarium premises in respect of which a DMC is in force to produce a written legal advice confirming that there is no express restrictive covenant in the DMC concerned. The Private Columbaria Licensing Board (“Licensing Board”) may refuse the application if the applicant fails to provide the required legal advice;

(f) proper authorization requirement

- making clear proper authorization requirement in respect of the following applicant seeking a specified instrument –

(i) if the applicant is a partner in a partnership – the application has to be signed by the partner who is authorized in writing to act for and on behalf of the partnership; and

(ii) if the applicant is a body corporate –the application has to be signed by a director or other officer concerned in the management of the body corporate who is authorized in writing to act for and on behalf of the body corporate;

(g) enhanced consumer protection measures

- on the requirements that agreements for sale of interment rights must meet in order for it to be enforceable against the purchaser, a distinction is made between –

(i) the scenarios touching on fundamental issues relating to the agreement, where the purchaser may cancel the agreement at any time after it is entered into; and

(ii) the scenarios touching on less serious issues relating to the agreement, where the purchaser may cancel the agreement

within six months after the date of the agreement;

- making a transferee liable for all debts and obligations in relation to each agreement for sale of an interment right entered into before the transfer by the transferor. In other words, each such agreement may, after the transfer, be enforced by the purchaser against the transferee;
 - excluding an operator or his/her agent from being appointed as the authorized representative under an agreement for the sale of an interment right; and
 - specifying the arrangements for authorizing a person to enforce an agreement for sale of an interment right as an essential term under an agreement for the sale of an interment right. This could cater for scenarios where the purchaser himself is the dedicated person, in which case the person so authorised (who may be his relative or friend) could enforce the agreement when the purchaser passes away;
- (h) making the requirements in Schedule 4 specific
- specifying clearly in Schedule 4 the information, recommendations and essential terms to be set out in agreements for the sale of interment rights, thus facilitating compliance by sellers of those rights;
- (i) clarifying the powers and roles of the public officers and the Courts
- clarifying the parameters of the powers of the Director of Food and Environmental Hygiene or an authorized officer insofar as the inspection of columbarium premises with a specified instrument in force (clause 49);
 - clarifying the roles of a specified officer in carrying out steps considered necessary for ash disposal in Part 7 and Schedule 5; and
 - making clear the level of the Court that would handle applications for occupation orders and competing claims for ashes.
7. Since the last Bills Committee meeting on 13 June 2016, we have

given the Bill some final touching up, including revisions made in response to Members' suggestions at that meeting and the tidying up of some loose ends. These key CSAs are summarized as follows –

- (a) taking over a Member's CSA as Government's CSA, whereby it is expressly provided that under the newly-added clause 17(3) and (4), in relation to an application for the issue of a licence or exemption or an application for the extension of a temporary suspension of liability, the other relevant considerations in clause 17(2)(b) include, among others, whether, in respect of the columbarium, the applicant has or has not complied with applicable requirements in Schedule 2 has taken steps towards meeting those requirements;
- (b) making clear by way of the newly-added clause 58(3) that the person operating, keeping, managing or controlling a columbarium without a specified instrument after the grace period is regarded as having improperly disposed of ashes interred in the columbarium, unless the person carries out the prescribed ash disposal procedures;
- (c) making clear the application of clause 94A on service of documents etc., namely apart from covering the Appeal Board, the Licensing Board or a public officer, also covering a person other than the Appeal Board, the Licensing Board or a public officer (e.g. a specified addressee referred to in section 8 of Schedule 5);
- (d) making clear that the land-related requirement under section 1(b) of Schedule 2 only requires compliance with the requirement in respect of the columbarium under the lease, short term tenancy or other instrument under which the columbarium premises are held directly from the Government;
- (e) inserting an additional category in the definition of certifiable building in section 3(3) of Schedule 2, thereby putting it beyond doubt that structures that are neither in contravention of section 14 of the Buildings Ordinance (Cap. 123) nor the Land (Miscellaneous Provisions) Ordinance (Cap. 28) are to be covered under this category; and
- (f) making clear the relevant provisions in section 3(3) of Schedule 5 apply to the columbarium premises, or any part of them, in line

with the amendments made to clause 65 (see clause 65(3)(ab)).

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

Food and Health Bureau

5 July 2016

Proposed Committee Stage Amendments to the Private Columbaria Bill (“the Bill”)
Submitted to the Clerk to the Legislative Council on 25 June 2016 (Final Set of CSAs)

| | Provisions to be amended | Brief description of the amendments | Rationale for the amendments |
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| 1 | Clause 1(3) | To replace “3 months” with “6 months”. | It seeks to allow a longer preparation time, before inviting applications for a specified instrument. |
| 2 | | To inserting “(ca) Divisions 1, 2 and 3 of Part 11;”. | With this CSA, the consequential amendments to Cap. 28, Cap. 123 and Cap. 131 would come into operation at the same time as Part 10 (which is related to those Ordinances). |
| 3 | Clause 2(1) | <p>To amend the definition of “ashes” –</p> <p>(a) to cover synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes; and</p> <p>(b) to remove the reference of “any plaque” and update the provision reference in paragraph (b) of the definition.</p> | <p>(a) There is demand from some members of the public to carry with them or bring home the synthetic materials transformed from human ashes, for remembrance of the deceased. This form of ash disposal is environmentally-friendly and sustainable. As such act is a matter of personal choice that does not affect other people, we did not intend to regulate it when preparing the Bill. We have originally defined “ashes” under the Bill to “exclude synthetic diamonds, jewellery, ornaments or any other materials transformed from human ashes”. However, when the Bill is under scrutiny, it transpires that some operators are selling private niches for interring synthetic materials transformed from human ashes in a manner no different from selling private niches for interring human ashes. This is tantamount to running columbaria in disguise to circumvent the regulatory requirements. The proposed amendments seek to plug the loophole.</p> <p>(b) The term “any related items” would serve the purpose of the Bill adequately. There is no need to highlight “any plaque”.</p> |

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| 4 | To amend the definition of “authorized officer” by amending the provision reference from clause 48 to clause 81(3). | This is a consequential textual amendment since the relevant empowering provision has been moved from clause 48 to clause 81(3). |
| 5 | To amend the definition of “authorized representative” by adding “(other than the person who operates, keeps, manages or in any other way has control of the columbarium in which the ashes are, or are to be, interred or an agent of such a person)” after “interred under the agreement”. | It seeks to address Members’ concerns about a seller or his/her agent coercing the purchaser to nominate the former as the latter’s authorized representative in relation to an agreement for the sale of an interment right, and the possibility of a conflict of interest of the seller or his/her agent assuming such a capacity. |
| 6 | To amend the definition of “building” by adding “(except in paragraph (b) of the definition of <i>structures certifiable for a pre-Bill columbarium</i> in section 4(1) of, and in section 4(2) of, Schedule 2)” before “has the meaning”. | It seeks to enhance clarity. |
| 7 | To amend the definition of “columbarium” by replacing “intended” with “claimed, represented or held out”. | It seeks to enhance clarity. |
| 8 | To make textual amendments to the definition of “dedicated person” by replacing “place” with “area” in paragraph (a), and replacing “otherwise” and “location” with “any other area” and “area” respectively in paragraph (b). | It seeks to ensure consistency with similar expressions in the Bill. |
| 9 | To make textual amendments to the definition of “interment right” by replacing “niche or a specified location” with “specific niche or area”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 10 | To add the definition of “lease”. | It seeks to enhance clarity. |

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| 11 | To amend the definition of “licence” by updating the reference to other clauses to which the definition does not apply. | It seeks to remove reference to other clauses that are no longer relevant, as those clauses no longer contain the word “licence” after streamlining. |
| 12 | To amend the definition of “niche” by replacing “intended” with “claimed, represented or held out”. | It seeks to enhance clarity. |
| 13 | To amend the definition of “owner” by (a) replacing “direct from the Government, whether under a lease, licence” with “directly from the Government, whether under a lease, short term tenancy”; and (b) deleting “except in Part 7 and Schedule 5”. | For (a), it seeks to ensure consistency with similar expressions in the Bill. For (b), this is not necessary, having regard to reference to “owner” in Part 7 and Schedule 5. |
| 14 | To amend the definition of “purchaser” by excluding its application to certain provisions for which the term “purchaser” has a separate definition. | The term “purchaser” has a specific definition in Division 1 of Part 5 and in Schedule 4 as provided by clause 41(1). |
| 15 | To make textual amendment to the definition of “sell” by replacing “is to be construed in accordance with” with “—see”. | It seeks to streamline the presentation. |
| 16 | To remove reference to clause 33(2)(f)(ii) in the definition of “specified form”. | The exclusion of clause 33(2)(f)(ii) in the definition is no longer required after the clause has been amended as per the final set of CSAs. |
| 17 | To amend the Chinese text of the definition of “安放” by adding “或其內或其上” after “在任何處所” in both paragraphs (a) and (b). | It seeks to enhance clarity. |
| 18 | To make technical amendment to the English text of the definition of “unleased land” by replacing the full stop at the end with a semicolon. | It is a technical amendment consequential to the addition of definition of another term at the end of this clause. |

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| 19 | | To add the definition of “Appeal Board”. | It seeks to move the definition of the term from Part 8 to Part 1 of the Bill, as the term has been used elsewhere throughout the Bill. |
| 20 | | To add the definition of “commencement of ash disposal notice”. | It seeks to enhance clarity. |
| 21 | | To add the definition of “deed of mutual covenant”. | It is related to the new clauses 13(3) and 18(3) which require an applicant for the issue of a licence in respect of a columbarium to produce to the Private Columbaria Licensing Board a written legal advice to confirm that there is no express restrictive covenant in the deed of mutual covenant (where in force) in relation to the use of the columbarium premises. |
| 22 | | To add the definition of “seller”. | It seeks to provide a general definition of the term whenever it appears other than in Division 1 of Part 5 of, and in Schedule 4 to, the Bill. |
| 23 | | To add the definition of “specified officer”. | It seeks to enhance clarity. |
| 24 | | To add the definition of “tenancy”. | It seeks to enhance clarity. |
| 25 | | To add the definition of “validity period”. | It seeks to enhance clarity. |
| 26 | Clause 2(4) | To make textual amendment to the clause by replacing “means” with “is a reference to”. | It seeks to streamline the presentation. |
| 27 | Clause 2(5) | To make textual amendment to the clause by replacing “means” with “is a reference to”. | It seeks to streamline the presentation. |
| 28 | | To replace “and” with “or” in subclause (a) | It seeks to enhance clarity. |
| 29 | Clause 2(6) | To make textual amendment to the clause by replacing “means” with “is a reference to”. | It seeks to enhance clarity. |
| | | To replace “持續” with “繼續” in the Chinese text. | It seeks to align the terminology to make it consistent with similar reference in the Town Planning Ordinance (Cap. 131). |

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| 30 | Clause 2(6)(a) | To replace “and” with “or”. | It seeks to enhance clarity. |
| 31 | Clause 2(7) | To make textual amendment to the clause by replacing “means” with “is a reference to”. | It seeks to streamline the presentation. |
| 32 | Clause 2(8) | To make textual amendment to the clause by replacing “means” with “is a reference to”. | It seeks to streamline the presentation. |
| 33 | Clause 3(3)(b)(i) | To add “or” after the semicolon. | It seeks to enhance clarity. |
| 34 | Clause 3(3)(b)(ii) | To replace “於骨灰安置所中的現存龕位(或有待在骨灰安置所中” with “在骨灰安置所內的現存龕位(或有待在骨灰安置所內” in the Chinese text. | It seeks to enhance clarity. |
| 35 | Clause 4, heading | To replace “or undertakers” with “, undertakers” in the English text. | It is a minor textual amendment. |
| 36 | Clause 4(1)(c) | To replace “人” with “人士” in the Chinese text. | Please see item 12 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |

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| 37 | Clause 4A | To insert a new clause to exclude any premises that are used for carrying out ash transforming work from the application of the Bill provided that they meet the conditions set out in that clause. | <p>As per item 3 above, the definition of “ashes” in the Bill will include “synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes”. In other words, workplaces used for such transformation work are also caught by the definition of columbarium.</p> <p>This CSA seeks to exclude from the application of the Bill workplaces for such transformation work and its ancillary activities in such premises including the delivery and collection of ashes and synthetic materials, provided that a set of pre-requisites are met, including –</p> <ul style="list-style-type: none"> (a) the workplace is not situated within any columbarium premises; (b) the keeping of ashes in the workplace is transient and incidental to the carrying out of the transformation work; (c) no interment right in respect of the workplace is sold; (d) no person may be allowed to pay worship, and no ritual offerings may be given, in the workplace to any deceased person; and (e) the operator of the workplace must keep a register of the delivery of ashes and synthetic materials to and from the workplace. |
| 38 | Clause 4B | To insert a new clause to exclude any premises where transient exhibition of ashes is held from the application of the Bill provided that they meet the conditions set out in that clause. | <p>Exhibitions have been held in Hong Kong in recent years, involving display of Buddha’s relics for a short time span, say less than ten days. Such activities are not the target of regulation under the Bill. This CSA seeks to exclude, from the application of the Bill, the venues for holding temporary exhibition involving the display of human ashes for no more than 14 days, provided that a set of pre-requisites are met, including –</p> <ul style="list-style-type: none"> (a) no more than ten containers of ashes are kept in, on or at the premises; (b) each container contains, or is claimed, represented or held out to be containing, the ashes of only 1 person; and (c) no interment right in respect of the premises is sold. |

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| 39 | Clause 5(1)(a) | To increase the number of container of ashes that could be kept in domestic premises from five to ten. | Members have suggested that we should cater for the need of large families. We suggest keeping to the provision in the Bill as it is, as introducing the element of making reference to relationship will complicate the issue. This CSA seeks to raise the cap on five containers of ashes to ten containers of ashes with each container containing, or being claimed, represented or held out to be containing, the ashes of only one person. |
| 40 | Clause 5(1)(b) | To add “, or is claimed, represented or held out to be containing,” after “contains”. | It seeks to enhance clarity. |
| 41 | Clause 7(1) | To delete “principal” from the subclause. | This is made in response to an enquiry from ALA to the Government on 1 December 2015. Given that clause 7(1)(b) covers any other things that the Licensing Board is required or authorized to do under this Bill, we agree that the word “principal” may be deleted. |
| 42 | Clause 7(1)(a) | To replace “的的營辦” with “的營辦” | Please see the last item of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. This is a textual amendment. |
| 43 | Clause 7(1)(a)(iii) | To replace “營辦者” (wherever appearing) with “營辦人” in the Chinese text. | It seeks to ensure consistency with similar expressions in the Bill. |
| 44 | Clause 8(1) | To replace “in accordance with” with “under”. | It seeks to enhance clarity. |
| 45 | Clause 8(2) | To replace “in accordance with” with “under”. | It seeks to enhance clarity. |
| 46 | Clause 8(2A) | To add a new subclause to clarify that a person who operates, keeps, manages or in any other way has control of a columbarium under a specified instrument or an authorization under a licence to sell interment right will not be considered as having contravened clause 8(1) due to the suspension of the specified instrument or the authorization, if all requirements, terms and conditions imposed by the Licensing Board upon suspending the specified instrument or authorization are complied with. | It seeks to better reflect our policy intention. |

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| 47 | Clause 9(3)(b)(i) | To replace “按” with “根據” in the Chinese text. | It seeks to ensure consistency with similar expressions in the Bill. |
| 48 | Clause 9(3)(b)(ii) | To delete “a” in the English text. | It seeks to ensure consistency with similar expressions in the Bill. |
| 49 | Clause 10 | To amend the definition of “ash interment layout” – (a) by adding “and” after the semicolon in paragraph (b); (b) by adding – “ (c) (if an exemption is applied for or is issued in respect of the columbarium that is a columbarium of a Chinese temple as referred to in section 46C) the location of the religious ash pagoda as defined by section 46C(14);”. | (a) It is a technical amendment consequential to the adding of a new paragraph (c) in the definition. (b) This is a consequential amendment arising from the introduction of clause 46C. |
| 50 | | To amend the definition of “ash interment quantity” – (a) by replacing the comma with “and” in paragraph (a); (b) deleting “and the names of the dedicated persons” in both paragraphs (a) and (b). | (a) It is a technical amendment consequential to the deleting of the phrase “and the names of the dedicated persons” in that paragraph. (b) After careful review, we consider that the names of the dedicated persons are not necessary for determining the ash interment quantity of a columbarium. We therefore suggest deleting its reference in the definition of “ash interment quantity”. After all, clauses 18A, 43, 46A, 46B and 46C will capture the names of the dedicated persons, where there is a purpose for seeking such information. |
| 51 | Clause 11(1)(b) | To replace “and” with “or”. | It seeks to enhance clarity. |
| 52 | Clause 11(2) | To add “specified” before “instrument”. | Please see item 7 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |

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| 53 | Clause 11(3) | <p>To amend the wording for the validity period of a licence by replacing the original paragraph (a) with the following –</p> <p>“(a) where—</p> <p style="padding-left: 40px;">(i) the columbarium premises are held directly from the Government under a lease—the remainder of the term of the lease; or</p> <p style="padding-left: 40px;">(ii) the columbarium premises are occupied under a tenancy—the remainder of the term of the tenancy;”.</p> | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 54 | Clause 11(4) | <p>To amend the wording for the validity period of an exemption to the effect that the validity period of an exemption must not exceed –</p> <p>(a) where the columbarium premises are held directly from the Government under a lease—the remainder of the term of the lease; or</p> <p>(b) where the columbarium premises are occupied under a tenancy—the remainder of the term of the tenancy.”.</p> | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 55 | Clause 11(5) | To amend the wording for the validity period of a temporary suspension of liability (TSOL) to the effect that the validity period of a TSOL must not exceed three years. | Clause 30(1) and (2) provides that a TSOL is subject to the condition that its holder must take, with reasonable expedition, all necessary steps towards meeting the requirements, and procuring the issue, of a licence or an exemption (as the case may be). This will include taking steps to procure a longer term right relating to the use of columbarium premises for the purpose of satisfying the requirements under clause 13(1)(b) or 15(h)(i) or clause 14(3)(b) or 15(h)(ii). Hence, clause 11(5)(a) is not necessary. Removing it will also enable the application for a TSOL to be processed more expeditiously. |

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| 56 | Clause 11(6) | To delete this subclause. | This subclause is no longer necessary after the proposed amendments to clause 11(5) and (7). |
| 57 | Clause 11(7) | To replace “(5)(b)” with “(5), if the columbarium premises are occupied under a short term tenancy granted by the Government”. | It seeks to make consequential amendments in light of the proposed amendments to clause 11(5). |
| 58 | | To replace “columbarium premises referred to in subsection (6)” with “premises”. | It seeks to streamline the presentation. |
| 59 | Clause 11(7A) | <p>To add a new subclause to provide that a specified instrument in respect of which an application for renewal or extension is made in accordance with clause 11A, and which expires prior to the determination by the Licensing Board of the application, remains in effect until the determination of the application, unless –</p> <p>(a) the application is withdrawn;</p> <p>(b) the specified instrument is revoked under section 33;</p> <p>(c) for a licence—(despite subsection (3)(b)) the term referred to in subsection (3)(a)(i) or (ii) expires; or</p> <p>(d) for an exemption—the term referred to in subsection (4)(a) or (b) expires.</p> | Please see items 8, 13 and 16 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |

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| 60 | Clause 11 | <p>To –</p> <p>(a) add a new clause 11A before clause 11(2) to set out the time limit for making application to the Licensing Board for the issue of a specified instrument, renewal of a licence or exemption and extension of a TSOL; and</p> <p>(b) subsume subclauses (2) to (9) under clause 11B which stipulates the validity period of specified instruments.</p> | <p>These CSAs seek to reorganise clause 11 into three clauses, namely –</p> <p>(a) clause 11 providing that the Licensing Board may, on application and subject to any conditions that it thinks fit to impose, issue, renew or extend a specified instrument;</p> <p>(b) clause 11A stipulating the time limit for filing an application for a specified instrument; and</p> <p>(c) clause 11B stipulating the validity period of a specified instrument.</p> <p>For clause 11A(1) and (2), they were moved from clause 21(1) and (2). Clause 21(1) and (2) will consequentially be deleted (see item 95 below).</p> <p>For clause 11A(3) to (5), please see items 8, 13 and 16 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015.</p> |
| 61 | Clause 12(3)(a) | To replace “之内或之上” with “内或其上”. | It seeks to enhance clarity. |
| 62 | Clause 13, heading | To replace “and management plan” with “, etc.”. | It seeks to enhance clarity in light of the addition of a new subclause (3) (see item 65 below). |
| 63 | Clause 13(1)(b) | To replace “whether under a lease, licence or otherwise” with “under a lease”. | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 64 | Clause 13(2) | To replace “prepared by the applicant” with “submitted by the applicant in respect of the columbarium”. | Please see item 9 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. It seeks to ensure consistency with similar expressions in the Bill. |

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| 65 | Clause 13(3) | To add subclause (3) to require an applicant for the issue of a licence to produce a written legal advice to confirm that there is no express restrictive covenant in the deed of mutual covenant (where in force) as required under clause 18(3). This empowers the Licensing Board to refuse the application, if the applicant fails to produce the written legal advice. | <p>Please see item 8 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 22 January 2016 (LC Paper No. CB(2)721/15-16(02)).</p> <p>The newly-added clause 13(3) (read together with clause 18(3)) empowers the Licensing Board to refuse an application for the issue of a licence (in respect of a pre-Bill columbarium or not), if the deed of mutual covenant concerned contains an express restrictive covenant to the effect that –</p> <ul style="list-style-type: none"> (a) any use of the premises as a columbarium is prohibited; (b) any commercial use of the premises is prohibited; or (c) only private residential use of the premises is permitted. |
| 66 | Clause 14(3) | To replace “, whether under a lease, licence or otherwise” with “under a lease”. | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 67 | Clause 15(1) | To add “某” after “要求就” in the Chinese text. | Please see item 11 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 68 | Clause 15(1)(c) | To add “某” after “要求就” in the Chinese text. | Please see item 11 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 69 | Clause 15(1)(h)(i) | To replace “whether under a lease, licence or otherwise” with “under a lease”. | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 70 | Clause 15(1A) | <p>To add a new subclause to empower the Licensing Board not to refuse an application under clause 15(1)(b) –</p> <ul style="list-style-type: none"> (a) if – <ul style="list-style-type: none"> (i) ashes are interred in the pre-Bill columbarium after the Bill announcement time but before the enactment date; and (ii) the interment right in respect of those ashes was sold before the Bill | <p>(a) According to the Bill announced in June 2014, after the new legislation comes into operation, for those pre-Bill columbaria that intend to apply for exemption in lieu of having to obtain a licence for continuing their operation, not only would they have to meet the eligibility criterion of having commenced operation before 1 January 1990 (dated columbaria) and other requirements, they must cease selling (including letting out) new or unoccupied niches as from the Bill announcement time (i.e. 8 am on June 18, 2014). In other words, the ash interment quantity will be frozen at the level prevailing at the Bill announcement time.</p> <p>Some members of the public and stakeholders have expressed concerns about the requirement of freezing the number of sets of ashes interred in niches at the Bill announcement time for a dated private columbarium</p> |

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| | | <p>announcement time; or</p> <p>(b) if –</p> <p>(i) ashes are interred in a religious ash pagoda as defined by clause 46C(14) in the pre-Bill columbarium after the Bill announcement time but before the enactment date; and</p> <p>(ii) no fees, charges or other sums were paid, or are payable, for the interment of the ashes.</p> | <p>intending to apply for exemption status, and consider that the Government should adopt a more flexible approach, so that the frozen ash interment quantity in these dated columbaria could cover those niches that were sold before the Bill announcement time but the use of which is called for after that time.</p> <p>Having considered the actual situation, we propose and the Bills Committee agrees that a dated columbarium would still be eligible to apply for exemption if it inters ashes after the Bill announcement time but before the enactment date in niches that were sold before the Bill announcement time but yet to be filled. However, in order to prevent abuse, any such columbarium must properly keep the relevant contracts and records of interment for future examination by the Licensing Board and the enforcement authority (see items 83 and 87 below). If the relevant dated columbarium is granted an exemption status in future, it may continue to inter ashes during the validity period of the exemption in niches that were sold before the Bill announcement time but yet to be filled.</p> <p>Allowing bona fide consumers and operators to inter ashes into niches that were sold before the Bill announcement time but yet to be filled is considered a reasonable and empathetic arrangement. After all, to qualify for exemption, a columbarium must cease the selling or letting out of any niches after the Bill announcement time. Hence, its scale of operation will still be frozen at the level prevailing at the time when the Bill was announced and subject to control through the regulatory regime.</p> <p>(b) Religious ash pagodas are provided by religious organisations in Buddhist and Taoist monasteries for interring the ashes of monks / nuns / priests / priestesses on a non-commercial and non-profit-making basis (hereinafter called “religious ash pagodas” (宗教骨灰塔)). The Hong Kong Buddhist Association and the Hong Kong Taoist Association have appealed to the Government to allow this practice to continue, on the grounds that the religious ash pagodas are used for interring the ashes, at no cost, of the monks / nuns / priests / priestesses who have devoted most of their life to the religious institutions.</p> <p>In response to concerns raised by these religious organisations, Members of the Bills Committee and other stakeholders, we propose, in consultation with the Home Affairs Bureau (“HAB”), the following</p> |
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| | | | <p>grandfathering arrangements to deal with this historical legacy, with the Secretary for Home Affairs (“SHA”) taking charge of the relevant policy and operation of the relevant provisions –</p> <p>(i) The grandfathering arrangements will be confined to the religious ash pagodas in exempted pre-Bill columbaria of Chinese temples (to be specified by HAB), for interring the ashes of their religious practitioners (e.g. monks / nuns / priests / priestesses) without charging any fees, charges or other sums.</p> <p>(ii) The number of set of niches that may be interred in the religious ash pagodas after the publication of the relevant notice by SHA would be subject to a designated quota to be specified by SHA which must not exceed 1 000 for each specified columbarium.</p> <p>The relevant columbarium must comply with any requirement or condition that SHA may impose.</p> |
| 71 | Clause 16(2)(a) | To add “事宜” after “多於一項” in the Chinese text. | Please see item 13 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 72 | Clause 16(2)(a)(ii) | To add “and the ash interment quantity is limited to that as at the enactment date” after “time”. | <p>Clause 46(2) provides that (if the issue of a licence is also applied for) the holder of a TSOL in respect of a pre-Bill columbarium must ensure that the number of sets of ashes kept in the columbarium is limited to the total number of sets of ashes that were kept in the columbarium as at the enactment date.</p> <p>Our policy intention is that the Licensing Board may refuse an application for the issue of a TSOL, if an applicant for TSOL fails to prove that the ash interment quantity is limited to that as at the enactment date. Otherwise, the applicant may make use of the intervening period prior to the application being determined or the appeal being disposed of to circumvent the restriction relating to the ash interment quantity as at the enactment date. The CSA seeks to better reflect our policy intention.</p> |
| 73 | Clause 16(2)(a)(iv) | To add “該” before “骨灰” in the Chinese text. | Please see item 14 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |

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| 74 | Clause 16(2)(b) | To delete “the Director of Lands considers that”. | It seeks to enhance clarity. In any case, the phrase “the Director of Lands considers that” is not necessary in the context. This issue could be dealt with through departmental circulation. |
| 75 | | To add “(to the extent as shown in the plans required under section 19)” before “includes”. | It seeks to enhance clarity by stipulating more clearly that in considering whether the occupation of land as is necessary for, or ancillary to, the operation of the columbarium includes unlawful occupation of unleased land, the extent of the occupation under consideration should be limited to that as shown in the plans submitted by the applicant under clause 19. |
| 76 | Clause 16(2)(b)(ii) | To add“、當日” before “或之後” in the Chinese text. | Please see item 15 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 77 | Clause 16(4) | To add a new subclause to empower the Licensing Board not to refuse an application under subclause 2(a)(iii) – (a) if – (i) ashes are interred in the pre-Bill columbarium after the Bill announcement time but before the enactment date; and (ii) the interment right in respect of those ashes was sold before the Bill announcement time; or (b) if – (i) ashes are interred in a religious ash pagoda as defined by clause 46C(14) in the pre-Bill columbarium after the Bill announcement time but before the enactment date; and (ii) no fees, charges or other sums were paid, or are payable, for the interment | Please see the rationale for item 70 above. |

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| | | of the ashes. | |
| 78 | Clause 17(1) | To replace “This section” with “Subsection (2)”. | It seeks to enhance clarity. |
| 79 | | To replace “要求就某骨灰安置所發出指明文書的申請作出” with “某骨灰安置所的指明文書申請作出的”. | Please see item 16 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 80 | Clause 17(3) | To add subclause (3) to empower the Licensing Board to have regard to, in relation to an application for the issue of a licence or exemption or an application for the extension of a TSOL, the record of the steps that the applicant has taken in respect of the columbarium towards meeting the applicable requirements in Schedule 2 as one of the other relevant considerations under subclause (2). | <p>Hon LEE Cheuk-yan has proposed CSAs to clause 17 which sought to empower the Licensing Board to have regard to past records of non-compliance with statutory and government requirements for planning, land and building by private columbaria in determining an application for a specified instrument.</p> <p>As explained in item 2 of our response to issues raised by Members at the meeting on 6 June 2016, clause 17 empowers the future Licensing Board to have regard to public interest and any other relevant considerations in determining the merits of an application for a specified instrument in respect of a columbarium. This general provision, empowering as it already does the Licensing Board to have regard to relevant considerations, should be able to address Hon Lee’s concerns.</p> |
| 81 | Clause 17(4) | <p>To add subclause (4) to provide that for the purpose of subclause (3), a reference to the applicant in that subclause is to be construed as including a reference to –</p> <p>(a) if the applicant is a partner in a partnership—any other partner in the partnership; or</p> <p>(b) if the applicant is a body corporate—a director or other officer concerned in the management of the body corporate.</p> | <p>We understand Hon Lee’s concern, and have taken over the Member CSA as a Government CSA, whereby it is expressly provided that under the newly-added clause 17(3), in relation to an application for the issue of a licence or exemption or an application for the extension of a temporary suspension of liability, the other relevant considerations in clause 17(2)(b) include, among others, compliance or otherwise with applicable requirements in Schedule 2 as well as steps taken towards meeting those requirements.</p> |
| 82 | Clause 18 | To renumber the clause as clause 18(1). | It is a technical amendment consequential to the adding of subclauses (2) and (3) to clause 18 as per items 85 and 86 below. |

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| 83 | Clause 18(1)(b) | To add a new subparagraph (ia) to stipulate that for an application for the issue of an exemption in respect of a pre-Bill columbarium (if any interment right in respect of any niche in the columbarium was sold before the Bill announcement time, but has not been exercised or has only been exercised partially), the application must be accompanied by the registers required under clause 18A. | Please see the rationale for item 70 above. |
| 84 | Clause 18(1)(b)(iii) | To replace “documents specified in the application form or otherwise required by the Licensing Board” with “documents— (A) specified in the application form; or (B) otherwise reasonably required by the Licensing Board.”. | By inserting “reasonably” before “required”, it seeks to address the suggestion from the Office of the Privacy Commissioner for Personal Data. |
| 85 | Clause 18 | To add a subclause (2) to empower the Licensing Board, in relation to an application for a specified instrument in respect of a columbarium, to require the applicant to produce evidence to prove that the owner of the columbarium premises has, or all the joint owners or co-owners of the columbarium premises have, given authorization or consent for the premises to be used as a columbarium. | The Bill currently requires an applicant for a licence to hold the columbarium premises directly from the Government, or (where the applicant is seeking a licence or exemption for a pre-Bill columbarium) have the option of having a right to continue to use the columbarium premises for at least five years from the date on which the licence or exemption (as the case requires), if issued, is to take effect. In the case of a right to continue to use the columbarium premises, there is possibility that the applicant is not the owner or the sole owner of the premises. This CSA, therefore, seeks to empower the Licensing Board to require the applicant to produce evidence to prove that the owner of the premises has, or all joint owners or co-owners of the premises have, given authorization or consent for the premises to be used as a columbarium to ensure that the applicant would not go behind the back of the owner or other joint owners or co-owners to operate a columbarium at the premises without their authorisation or consent. This will help better protect the interests of the owner, or other joint owners or co-owners, and consumers. |

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| 86 | | It is related to the new clause 13(3) which requires an applicant for the issue of a licence to produce a written legal advice to the Private Columbaria Licensing Board to confirm that there is no express restrictive covenant in the deed of mutual covenant (where in force) in relation to the use of the columbarium premises. | Please see item 8 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 22 January 2016 (LC Paper No. CB(2)721/15-16(02)). |
| 87 | Clause 18A | <p>To add a new clause to stipulate that the following registers are to accompany an application for the issue of an exemption –</p> <p>(a) a register on the niches in the columbarium in respect of which the interment rights were sold before the Bill announcement time but have not been exercised; and</p> <p>(b) a register on the niches in the columbarium in respect of which the interment rights were sold before the Bill announcement time but have only been exercised partially,</p> <p>and that the registers must be in the specified form, contain the particulars specified by the Licensing Board and kept in the manner determined by the Licensing Board.</p> | Please see the rational for item 70 above. |
| 88 | Clause 19(1) | To replace “18(b)(ii)” with “18(1)(b)(ii). | This is a consequential technical amendment after the renumbering of clause 18 as per item 82 above. |
| 89 | Clause 19(3)(d) | To add “and” after the semicolon. | It seeks to enhance clarity. |

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| 90 | Clause 19(4) | <p>To replace subclause (4) with the following –</p> <p>“(4) A qualified professional must—</p> <p>(a) certify that the current site situation of the columbarium premises conforms to the plans in all respects; or</p> <p>(b) if the current site situation of the columbarium premises does not conform to the plans in all respects—identify the difference, with annotations, on the plans.”.</p> | <p>The original wording of the provision requires a qualified professional to certify that the current site situation of the columbarium premises conforms to the plans accompanying an application for a specified instrument in all respects. However, we also need to cater for the scenario where the site situation does not conform to the plans in all aspects. This CSA seeks to provide for such cases.</p> <p>After the enactment of the Bill, and as we go about taking forward the regulatory regime on private columbarium, it is envisaged that –</p> <p>(a) there will be columbaria continuing part of their operation on an exemption and another part of their operation on a licence; and</p> <p>(b) there will be reprovisioning of niches within a private columbarium (including moving from one part to another part within the same columbarium building and moving from a columbarium building to an approved building (i.e. with approval and consent obtained under s. 14 of Cap. 123) within the same columbarium,</p> <p>provided that the relevant plans reflecting the above arrangements are at least as effective as the original plans in delivering the express purpose of the Ordinance (for which the regulatory regime is formulated in the first place).</p> <p>In concrete terms, the scale of the following is to be confined to what is necessary for, or ancillary to, the operation of the columbarium in the following terms -</p> <p>(a) <u>on ash interment</u>:</p> <p>(i) in respect of a licence, the ash interment capacity is limited to that as at BAT;</p> <p>(ii) in respect of an exemption, the ash interment quantity is limited to that as at BAT and unfilled pre-BAT-sold niches; and</p> <p>(iii) in respect of a TSOL –</p> |
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| | | | <p>(1) if the applicant also applies for a licence, the ash interment capacity is limited to that as at BAT and the ash interment quantity is limited to that as at the enactment date; and</p> <p>(2) if the applicant also applies for an exemption, the ash interment quantity is limited to that as at BAT and interment in pre-BAT-sold niches before the enactment date.</p> <p>(b) <u>on occupation of land</u>: in respect of a licence or exemption, no unlawful occupation of Government land; and</p> <p>(c) <u>on non-compliant structures</u>: in respect of a licence or exemption, non-compliant structures are limited to structures certifiable for a pre-Bill columbarium subject to fulfilling section 4(3) of Schedule 2.</p> |
| 91 | Clause 20(1)(a) | To replace “以場內實況而論，在包括第(2)款指明的詳情的所有方面，” with “處所的場內實況，在各方面(包括第(2)款指明的詳情)” in the Chinese text. | Please see item 18 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. It seeks to enhance clarity. |
| 92 | Clause 20(1)(b) | To replace “and 16” with “, 16 and 17”. | Clause 17 is about the considerations relevant to the determination of applications, and should hence be referred to in this paragraph as well. |
| 93 | Clause 20(3) | To add a new paragraph (ab) to require the Licensing Board to attach the registers required under section 18A that accompany an application for the issue of an exemption endorsed by the Licensing Board to the plans on approving them. | This is a consequential amendment in light of items 70, 83 and 87 above. |
| 94 | Clause 21, heading | To replace “ time limit, evidence of ash interment layout and ash interment quantity as at Bill announcement time ” with “ evidence of ash interment layout and quantity, etc. ”. | Please see item 19 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 95 | Clause 21(1) and (2) | To delete the two subclauses. | Please see the rationale for item 60 above. |

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| 96 | Clause 21(3) | To replace “section 14, 15 or 16 or section 4 of Schedule 2 (each is called an <i>eligibility-related provision</i>)” with “an eligibility-related provision”. | Please see item 21 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. Having reviewed the provision, we propose adding an interpretative provision on the term “eligibility-related provision” as clause 21(6) (see item 101 below), thereby allowing us to simplify the write-up in clause 21(3) and clause 22(1)(b) (see item 103). |
| 97 | Clause 21(3)(e) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 98 | Clause 21(4)(a) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 99 | Clause 21(5)(a) | To replace “liability; and” with “liability;”. | It is a technical amendment consequential to the adding of a new paragraph (ab) as per item 100 below. |
| 100 | Clause 21(5) | To add a new paragraph (ab) to require the Licensing Board to decide on, and identify, in the plans it endorses in accordance with clause 20 the location of the religious ash pagoda as defined by clause 46C(14) for an exemption in respect of a pre-Bill columbarium that is a columbarium of a Chinese temple as referred to in clause 46C. | This is a consequential amendment in light of items 70, 83 and 87 above. |
| 101 | Clause 21(6) | To add a new subclause to define “ <i>eligibility-related provision</i> ” to mean section 14, 15 or 16 or section 4 of Schedule 2. | It seeks to streamline the presentation. |
| 102 | Clause 22(1)(a) | To replace “operator” with “ <i>operator</i> (營辦人)”. | It seeks to streamline the presentation. |

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| 103 | Clause 22(1)(b) | To replace paragraph (b) with the following – “(b) <i>eligibility-related provision</i> (資格相關條文) has the meaning given by section 21(6);”. | Please see the rationale for item 96 above. |
| 104 | Clause 22(1)(c) | To replace “notifiable particulars mean” with “ <i>notifiable particulars</i> (須通報詳情) means”. | It seeks to streamline the presentation. |
| 105 | Clause 22(1)(d) | To replace “batch 1 particulars mean” with “ <i>batch 1 particulars</i> (第 1 組詳情) means”. | It seeks to streamline the presentation. |
| 106 | Clause 22(1)(e) | To replace “batch 2 particulars mean” with “ <i>batch 2 particulars</i> (第 2 組詳情) means”. | It seeks to streamline the presentation. |
| 107 | | To replace “and” with “or”. | It seeks to enhance clarity. |
| 108 | Clause 22(1)(f)(ii) | To replace “, (7) and (8)” with “and (7)”. | This is a technical amendment arising from the deletion of clause 22(8) as per item 122 below. |
| 109 | Clause 22(2) | To delete “有關” (wherever appearing) in the Chinese text. | It seeks to streamline the presentation. |
| 110 | Clause 22(2)(b)(i) | To replace “particulars,” with “particulars—”. | It seeks to streamline the presentation. |
| 111 | Clause 22(2)(b)(ii) | To replace “particulars,” with “particulars—”. | It seeks to streamline the presentation. |
| 112 | Clause 22(2)(b) | To replace “該營辦人” with “營辦人” in the Chinese text. | It seeks to enhance clarity. |
| 113 | Clause 22(3) | To delete “有關” (wherever appearing) in the Chinese text. | Please see item 22 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |

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| 114 | | To add “有關” before “骨灰安置所” in the Chinese text. | It seeks to enhance clarity. |
| 115 | Clause 22(4) | To delete “the following in duplicate and might retain 1 set and provide the other set to the operator”. | After compiling the records collected under the Notification Scheme, the scheme officer might prepare a statement of the notifiable particulars and a set of photographs taken and other records made as the scheme officer thought fit, relating to the notifiable particulars. These documents would be deemed as evidence of the notifiable particulars to be considered by the Licensing Board under clause 22(6). It would be useful to streamline the procedures to make it more efficient and user-friendly by having the Food and Environmental Hygiene Department, as the secretariat of the Licensing Board, to submit the information to the Licensing Board, instead of having the scheme officer to make a duplicate of the documents and provide one set to the operator for their submission to the Licensing Board. This CSA should also be read with item 124 below. |
| 116 | | To delete “有關” (wherever appearing) in the Chinese text. | It seeks to streamline the presentation. |
| 117 | Clause 22(4)(a) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 118 | Clause 22(5) | To delete “, (8)”. | This is a technical amendment arising from the deletion of clause 22(8) as per item 122 below. |
| 119 | Clause 22(6) | To delete “有關” in the Chinese text. | It seeks to streamline the presentation. |
| 120 | Clause 22(7)(a) | To add “furnaces or” after “land by the”. | It seeks to enhance clarity. |
| 121 | Clause 22(7)(b) | To add “furnaces or” after “whether the” | It seeks to enhance clarity. |

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| 122 | Clause 22(8) | To delete this subclause. | Under the Bill as originally drafted, the Licensing Board may consider evidence of the notifiable particulars other than evidence referred to in subclause (4), if the applicant satisfies the Licensing Board that he/she was precluded from participating in the Notification Scheme by circumstances beyond his/her control. Some Members of the Bills Committee questioned this. These CSAs seek to address this concern, through empowering the Licensing Board to consider any evidence of the notifiable particulars other than evidence referred to in subclause (4). |
| 123 | Clause 22(9) | To delete “, in its sole and absolute discretion,”. | |
| 124 | | To remove the conditions under which the Licensing Board would consider evidence of the notifiable particulars other than evidence referred to in subclause (4). | |
| 125 | Clause 24 | To replace “The licence” with “A licence in respect of a columbarium”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 126 | Clause 24(a) | To replace “specified” with “shown”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 127 | Clause 24(b) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 128 | Clause 25(a) | To replace “it” with “them” in the English text. | It seeks to enhance clarity. |
| 129 | Clause 27(a) | To add “subject to sections 46A and 46C,” before “that the”. | Please see rationale for item 70 above. This CSA is a consequential technical amendment. |
| 130 | Clause 29(2) | To replace “A” with “The” in the English text. | Please see item 25 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 131 | Clause 30, heading | To add “ steps to be taken, ” after “ conditions about ”. | Please see item 26 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 132 | Clause 30(3) | To replace “A” with “The” in the English text. | Please see item 27 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 133 | Clause 30(3)(b) | To replace “the structures certifiable for a pre-Bill columbarium” with “those as”. | It seeks to enhance clarity. |
| 134 | Clause 31 | To add “pre-Bill” after “in respect of a”. | Please see item 28 of our response dated 9 October 2014 to ALA’s letter dated |

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| | | | 4 September 2014. |
| 135 | Clause 31A | <p>To add the following after clause 31 –</p> <p style="text-align: center;">“ Subdivision 4—Miscellaneous</p> <p>31A. Conditions about additional fees etc.</p> <p>Without limiting Subdivisions 1, 2 and 3 and section 11, the Licensing Board may as it thinks fit impose conditions on a specified instrument in respect of a pre-Bill columbarium restricting the imposition of any additional fees, charges or other sums in respect of an interment right beyond the amounts, or not in accordance with any mechanism for their future revision, specified or otherwise contained in any agreement for the sale of the interment right entered into before the Bill announcement time.”.</p> | <p>Hon Albert CHAN has expressed concerns that private columbarium operators who are required to pay a considerable amount of land premium might eventually not be able to attain regularisation or they might choose to pass on the cost to consumers, charging them a considerable amount of fees or charges not originally provided for in the agreements for the sale of interment rights.</p> <p>Waiving of relevant waiver fees, short term tenancy rentals and administrative fees may be considered on a case-by-case basis having regard to its individual merits in respect of the following –</p> <p>(a) pre-BAT sold niches in columbaria meeting the eligibility criteria of exemption in all other respects; or</p> <p>(b) pre-BAT yet-to-be-disposed-of niches in religious ash pagodas for interring ashes of religious practitioners in columbaria of specified Chinese temples meeting the eligibility criteria of exemption in all other respects and fulfilling the pre-requisites in clause 46C.</p> <p>This CSA seeks to address Hon Chan’s concerns by empowering the Licensing Board to impose conditions on a specified instrument in respect of a pre-Bill columbarium restricting the imposition of fees or charges beyond what is agreed in a pre-BAT agreement. The Licensing Board may as it thinks fit do so, in respect of cases which have enjoyed waiving of relevant waiver fees, short term tenancy rentals and administrative fees.</p> |
| 136 | Clause 32(1)(b) | To add “an” before “exemption” in the English text. | Please see item 31 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 137 | Clause 32(1)(c)(i) | To replace “an application” with “the related application”. | It seeks to enhance clarity. |
| 138 | Clause 32(1)(c)(ii) | To replace “an application” with “the related application”. | It seeks to enhance clarity. |
| 139 | Clause 32(2) | To add “(3A),” after “subsections (3),”. | This is a technical amendment consequential to the addition of a new |

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| | | | subclause (3A). |
| 140 | | To add “(transferee)” after “another person”. | It seeks to enhance clarity. |
| 141 | Clause 32(3)(a) | To replace “該” with “發牌” in the Chinese text. | It seeks to enhance clarity. |
| 142 | Clause 32(3)(b)(ii) | To add “reasonably” after “otherwise”. | By inserting “reasonably” before “required”, it seeks to address the suggestion from the Office of the Privacy Commissioner for Personal Data. |
| 143 | Clause 32(3A) | To add a new subclause to empower the Licensing Board to refuse an application for the transfer of an instrument referred to in subclause (1) if the transferee fails to prove to the satisfaction of the Licensing Board that the transferee – (a) holds the columbarium premises directly from the Government under a lease; or (b) has the right to continue to use the columbarium premises as required by clause 14 or 15 (as the case requires). | An applicant for a licence or exemption is required to hold the columbarium premises directly from the Government under a lease (under clause 13) or have the right to continue to use the columbarium premises for at least five years beginning on the date on which the relevant a licence or exemption (as the case requires), if issued, is to take effect (under clause 14 or 15). The same requirements should also be applicable to a transferee. Other than the above, we expect that the circumstances applicable to the Licensing Board’s original decision on the issue of a specified instrument under clause 13 (whether or not as modified under clause 14), clause 15 or clause 16 (as the case requires) would still remain valid during the remaining term of the specified instrument in the post-transfer period. |
| 144 | Clause 32(4A) | To add a new subclause to require the Licensing Board to notify the applicant of its decision and the reasons for the refusal (if applicable) in respect of an application made under clause 32. | It seeks to ensure consistency with similar provisions in the Bill. |
| 145 | Clause 32(4B) | To add a new subclause to require the Licensing Board, if it exercises its power under subclause (4) to vary the conditions to which an instrument referred to in subclause (1) is subject or impose new conditions, to notify the transferee in writing of its decision, the reason for the decision and the date on which the decision is to take effect. | It seeks to ensure consistency with similar provisions in the Bill. |

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| 146 | Clause 32(6) | <p>To replace subclause (6) with the following –</p> <p>“(6) Despite the Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49) and any rules of common law, a transferee is liable for all debts and obligations (including all outstanding, subsisting and future liabilities) in relation to each agreement for sale of an interment right entered into before the transfer by the person from whom an instrument referred to in subsection (1) is transferred and, accordingly, any such agreement may, after the transfer, be enforced by the purchaser against the transferee.</p> <p>(6A) A transferee may be indemnified by the person from whom an instrument referred to in subsection (1) is transferred for all amounts for which the transferee is made liable under subsection (6) and for which the transferee would not otherwise be liable, and the amount of the indemnity may be recovered by civil proceedings as a debt or liquidated demand.</p> <p>(6B) For the purposes of this section, a reference to transfer includes—</p> <p>(a) if the person from whom an instrument referred to in subsection (1) is transferred is a natural person and that person dies—a reference to succession; and</p> <p>(b) if the person from whom an instrument referred to in subsection (1) is transferred is a partner in a partnership and there is a change of any partner in the partnership (whether that person or</p> | <p>The original clause 32(6) has been superseded by the newly-added clause 32(4A).</p> <p>The newly-added clause 32(6) seeks to enhance consumer protection by stating explicitly that a transferee is liable for all debts and obligations in relation to each agreement for sale of an interment right entered into before the transfer of the specified instrument and, accordingly, any such agreement may, after the transfer, be enforced by the purchaser against the transferee.</p> <p>Clause 32(6A) seeks to make it clear that a transferee may be indemnified by the transferor for all amounts for which the transferee is made liable as mentioned above and for which the transferee would not otherwise be liable. We will defer the issue of indemnity to be settled among the transferee and the transferor, as this is basically a commercial decision on their part.</p> <p>Clause 32(6B) seeks to state clearly that a reference to transfer will include succession or a change in partnership.</p> |
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| | | another partner)—a reference to a transfer from that person to a partner in the new partnership (whether to that person, if that person remains as a partner in the new partnership, or to another partner), and the reference to another person in subsection (2) is to be construed accordingly.”. | |
| 147 | Clause 33(1)(d) | To replace “additional” with “new”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 148 | Clause 33(2)(ea) | To add a new paragraph to empower the Licensing Board to exercise the powers under subclause (1) if the instrument holder is a body corporate other than a company or (where the instrument holder is a partner in a partnership) if any partner in the partnership is a body corporate other than a company, and the body corporate is dissolved. | <p>Clause 33(2) sets out the different circumstances under which the Licensing Board may exercise the powers under subclause (1).</p> <p>This CSA seeks to provide for the circumstances where the instrument holder is a body corporate other than a company or where the instrument holder is a partner in a partnership and one or more of the partners is/are a body corporate other than a company.</p> |
| 149 | Clause 33(2)(f) | To replace “and—“ with “or (where the instrument holder is a partner in a partnership) if any partner in the partnership is a company, and—”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 150 | Clause 33(2)(f)(i) | To delete “or resolved”. | It seeks to align the wording of the provision with that in section 228(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). |

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| 151 | Clause 33(2)(f)(ii) | To replace the subparagraph (ii) with the following – “(ii) a winding-up statement in respect of the company is delivered to the Registrar of Companies under section 228A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);”. | It seeks to align the wording of the provision with that in section 228A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). |
| 152 | Clause 33(2)(f)(iv) | To replace “otherwise than in consequence of such an order” with “under the Companies Ordinance (Cap. 622)”. | It seeks to align the scope of the provision with that in the Companies Ordinance (Cap. 622). |
| 153 | Clause 33(2)(f)(v) | To add “(where the company is a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622))” before “the company’s”. | It seeks to align the scope of the provision with that in the Companies Ordinance (Cap. 622). |
| 154 | | To replace “the Companies Ordinance (Cap. 622)” with “that Ordinance”. | It seeks to ensure consistency with similar provisions in the Bill. |
| 155 | Clause 33(2)(g) | To replace “the partnership that is the instrument holder” with “a partnership who is the instrument holder or is any other partner in that partnership”. | It seeks to ensure consistency with similar provisions in the Bill. |
| 156 | Clause 33(2)(g)(i) | To replace “and no application for succession of the specified instrument is received” with a semicolon. | The situation relating to succession of a specified instrument has been covered by the proposed clause 32(6B)(a) (see item 146 above), and hence should be deleted from this provision. |
| 157 | Clause 33(2)(g)(ii) | To replace “affairs; or” with “affairs;”. | It is a technical amendment consequential to the adding of a new subparagraph (iv) (see item 159 below). |

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| 158 | Clause 33(2)(g)(iii) | To replace the full stop with “; or”. | It is a technical amendment consequential to the adding of a new subparagraph (iv) (see item 159 below). |
| 159 | Clause 33(2)(g)(iv) | To add a new subparagraph to empower the Licensing Board to exercise the powers under subclause (1) if the natural person who is the instrument holder, or is a partner in partnership who is the instrument holder or is any other partner in that partnership, is serving a sentence of imprisonment, whether in Hong Kong or elsewhere, at any time during the validity period of the specified instrument. | <p>Clause 33(2) sets out the different circumstances under which the Licensing Board may exercise the powers under subclause (1).</p> <p>This CSA seeks to provide for the circumstances where the natural person who is the instrument holder, or is a partner in partnership who is the instrument holder or is any other partner in that partnership, is serving a sentence of imprisonment, whether in Hong Kong or elsewhere, at any time during the validity period of the specified instrument.</p> |
| 160 | Clause 33(3) | To replace “of its decision, in writing, setting out” with “in writing of”. | It seeks to ensure consistency with similar provisions in the Bill. |
| 161 | Clause 33(3)(a) | To add “Licensing Board’s” before “decision”. | It seeks to enhance clarity. |
| 162 | Clause 34(1) | To delete “in writing to it”. | Please see item 34 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 163 | Clause 34(2)(b)(i) | To replace “plans that comply with the requirements in section 19 and, if applicable” with “if applicable—plans that comply with the requirements in section 19 and, where appropriate”. | It seeks to enhance clarity. |
| 164 | Clause 34(2)(b)(ii)(B) | To add “reasonably” after “otherwise”. | By inserting “reasonably” before “required”, it seeks to address the suggestion from the Office of the Privacy Commissioner for Personal Data. |

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| 165 | Clause 34(3) | To replace subclause (3) with the following – “(3) On determining an application made under this section, the Licensing Board must notify the applicant in writing of— (a) the Licensing Board’s decision; and (b) (if the application is refused) the reasons for the refusal.”. | It seeks to ensure consistency with similar provisions in the Bill. |
| 166 | Clause 35(2)(a) | To add “after the date” after “7 days”. | It seeks to enhance clarity. |
| 167 | Clause 35(3) | To replace “subsection (1)” with “subsection (1)(a)”. | It seeks to enhance clarity. |
| 168 | Clause 35(4) | To add a new subclause to require the Licensing Board to notify the appellate in writing of its decision and the reasons for the refusal (if applicable) in respect of an application made under subclause (1)(a). | It seeks to ensure consistency with similar provisions in the Bill. |
| 169 | Clause 36(1) | To replace “of the change.” with “after the date on which the change occurs.”. | It seeks to enhance clarity. |
| 170 | Clause 36(1)(a) | To replace “申請，要求發出指明文書” with “指明文書申請”. | Please see item 37 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 171 | Clause 36(2) | To add “referred to” after “A change”. | It seeks to ensure consistency with similar provisions in the Bill. |
| 172 | | To replace “the proprietor, partner or director” with “any director, manager, secretary or other similar officer”. | It seeks to align the wording of the provision with similar provisions in other legislation. |

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| 173 | Clause 36(2A) | To add a new subclause to require the holder of a specified instrument to notify the Licensing Board of any change occurs that materially affects the accuracy of the information that the holder of the specified instrument has provided in connection with the application on the basis of which the specified instrument has been issued, renewed or extended. | Please see items 5 and 6 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 31 December 2015 (LC Paper No. CB(2) 548/15-16(02) (revised)). |
| 174 | Clause 36(2B) | To add a new subclause to stipulate that a change referred to in subclause (2A)(b) includes a change of any director, manager, secretary or other similar officer of the holder of the specified instrument. | |
| 175 | Clause 36(3) | To add “after the date” after “14 days”. | It seeks to enhance clarity. |
| 176 | Clause 36(4) | To add “, (2A)” after “subsection (1)”. | It seeks to provide for the legal consequence for failing to comply with subclause (2A). |
| 177 | Clause 37, heading | To add “的” before “申請” in the Chinese text. | Please see item 18 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 178 | Clause 37 | To replace “載有關乎本部所指的指明文書申請的進一步條文的附表 3，” with “附表 3(載有關乎本部所指的指明文書的申請的進一步條文)” in the Chinese text. | It seeks to enhance clarity. |
| 179 | Clause 38(2)(a)(iii) | To replace “文書的” with “文書” in the Chinese text. | Please see item 40 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 180 | Clause 38(2)(b) | To replace “as defined by section 65(1), to apply for an occupation order under section 65 apply to the premises” with “to apply for an occupation order under section 65 apply to the columbarium”. | The definition of “specified officer” has been provided at clause 2 of the Bill as per item 23 above. This is a consequential technical amendment. |

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| 181 | Clause 38(3) | To add “合理地” before “切實可行” in the Chinese text. | Please see item 42 of our response dated 9 October 2014 to ALA’s letter dated 4 September 2014. |
| 182 | Clause 40 | To renumber the clause as 40(1). | It is a technical amendment consequential to the adding of subclause (2) to clause 40(2) as per item 184 below. |
| 183 | Clause 40(1) | To replace “this Part and Schedule 4” with “this Division”. | Please see item 1 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 184 | Clause 40(2) | To add a new subclause to stipulate that Division 1 of Part 5 applies to an agreement for the sale of an interment right entered into on or after the enactment date. | Please see item 1 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 185 | Clause 41, heading | To replace “ by seller ” with “ against purchaser ”. | The main objective of the provision is to enhance consumer protection. We therefore consider it more appropriate to amend the relevant wording to focus on the purchaser instead of the seller. |
| 186 | Clause 41(1) | To replace “columbarium” with “columbarium, whether or not to the purchaser as dedicated person”. | It seeks to enhance clarity. |
| 187 | Clause 41(2) | To delete “by the seller”. | The main objective of the provision is to enhance consumer protection. We therefore consider it more appropriate to amend the relevant wording to focus on the purchaser instead of the seller. |
| 188 | Clause 41(2)(aa) | To add a new paragraph before paragraph (a) to stipulate that an agreement of the sale of an interment right is not enforceable if the seller sells an interment right in respect of the columbarium premises for a term that extends beyond the term of the lease where the premises are held directly from the Government under a lease. | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. The basis of the provision is the original paragraph (c) (which is to be deleted as per item 191 below). The revised wording seeks to enhance consistency with similar expressions in the Bill. |

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| 189 | Clause 41(2)(a) | To replace paragraph (a) with the following – “(a) where the columbarium premises are occupied under a short term tenancy granted by the Government—by selling an interment right in respect of the premises otherwise than for payment payable on the same periodic basis as that for the payment of rent for the short term tenancy; or”. | It seeks to enhance clarity. |
| 190 | Clause 41(2)(b) | To replace “for columbarium premises occupied under a tenancy or lease” with “where the columbarium premises are occupied under a tenancy by an agreement entered into between private parties for the letting or leasing of the premises”. | Please see item 2 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. It seeks to differentiate the situations where the columbarium premises are (a) held directly from the Government under a lease, (b) occupied under a short term tenancy granted by the Government, and (c) occupied under a tenancy between private parties. The first situation is now covered by the newly added paragraph (aa) (see item 188 above). This provision covers the latter. |
| 191 | Clause 41(2)(c) | To delete the paragraph. | Please see the rationale for item 188 above. |
| 192 | Clause 41(3) | To delete “by the seller”. | The main objective of the provision is to enhance consumer protection. We therefore consider it more appropriate to amend the relevant wording to focus on the purchaser instead of the seller. |
| 193 | Clause 41(3)(a) | To replace “still holds the licence” with “the licence is still in force”. | It seeks to enhance clarity. |
| 194 | Clause 41(3)(c)(i) | To replace “specified” with “prescribed”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 195 | Clause 41(3)(c)(ii) | To replace “a comprehensive description of the rights and obligations of the seller and the purchaser under the agreement including (but not limited to) the matters specified” with “the essential terms prescribed”. | It seeks to enhance clarity. |

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| 196 | Clause 41(3)(f) | To replace “, rights and obligations,” with “and essential terms”. | It seeks to enhance clarity. |
| 197 | Clause 41(3)(h) | To delete the paragraph. | Under paragraph (h) as drafted, the requirement of delivering a copy of the agreement to purchaser at the time the purchaser signed it, if not met, may render the agreement unenforceable. It does not appear to be warranted. Having reviewed the provision, we propose to delete it. |
| 198 | Clause 41(3)(i)(iii) | To replace “another manner if the seller can prove receipt of the copy by the purchaser” with “any other manner if receipt of the copy by the purchaser can be proved”. | This seeks to enhance clarity. |
| 199 | Clause 41(3)(j) | To replace “prescribed” with “specified”. | Please see item 5 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. It seeks to enhance consistency with similar expressions in the Bill. |
| 200 | Clause 41(4) | To replace “does not meet the requirements of subsection (3)(b), (c), (d), (e) or (j), or in respect of which the seller has not complied with the requirements of subsection (3)(a), (f), (g), (h) or (i),” with “is not enforceable under subsection (2) or (3)”. | It seeks to enhance clarity. |
| 201 | Clause 41(4)(a) | To replace “the seller” with “a”. | The main objective of the provision is to enhance consumer protection. We therefore consider it more appropriate to amend the relevant wording to focus on the purchaser instead of the seller. |
| 202 | | To add “or (1A)” after “42(1)”. | This is a consequential amendment arising from the addition of a clause 42(1A) as per item 205 below. |
| 203 | Clause 41(4)(b) | To replace paragraph (b) with the following – “(b) the amount has not been refunded to the purchaser under section 42(2).”. | The main objective of the provision is to enhance consumer protection. We therefore consider it more appropriate to amend the relevant wording to focus on the purchaser instead of the seller. |

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| 204 | Clause 41(5) | To add a new subclause to provide that subclause (4) does not affect, limit or diminish any rights of a purchaser to claim under an agreement for the sale of an interment right under the common law rules or equitable principles or any other Ordinance. | It seeks to stipulate more clearly that despite subclause (4), a purchaser retains the right to claim under an agreement for the sale of an interment right under the common law rules or equitable principles or any other Ordinance, with a view to enhancing consumer protection. |
| 205 | Clause 42(1) | To replace “by the seller under section 41(2) or (3) may cancel the agreement at any time after it is made” with “under section 41(2) or (3)(a), (b) or (c) may cancel the agreement at any time after it is entered into”. | <p>This CSA stems from the concerns raised by ALA and some Members of the Bills Committee. It provides that the purchaser under an agreement that is not enforceable may cancel the agreement –</p> <p>(a) at any time after it is entered into (i.e. clause 42(1)), under scenarios touching on the fundamental issues relating to the agreement; and</p> <p>(b) within six months after the date of the agreement (i.e. clause 42(1A)) under scenarios touching on less serious issues relating to the agreement.</p> |
| 206 | Clause 42(1A) | To add a new subclause to stipulate that a purchaser under an agreement that is not enforceable under clause 41(3)(d), (e), (f), (g), (i) or (j) may cancel the agreement within 6 months after the date of the agreement by giving the seller a written notice of cancellation. | |
| 207 | Clause 42(2) | To replace “must, within 30 days” with “or (1A) must, within 30 days after the date”. | It seeks to enhance clarity. |
| 208 | Clause 42(3) | To add “, (1A)” after “subsections (1)”. | This is a consequential amendment arising from the addition of clause 42(1A) as per item 206 above. |
| 209 | Clause 42(4) | To add a new subclause to stipulate that clause 42 applies in the case of a transfer approved under clause 32 as if a reference to seller in subclauses (1), (1A) and (2) were a reference to the transferee within the meaning of clause 32(2). | It seeks to make it clear that a reference to seller in the relevant provisions are a reference to a transferee in the case where the transfer of specified instrument was approved under clause 32, thereby ensuring that the purchasers’ right to cancellation would not be affected simply by reason of the transfer. |
| 210 | Clause 43(2)(b) | To replace “prescribed” (wherever appearing) with “specified”. | It seeks to ensure consistency with similar expressions in the Bill. |

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| 211 | | To replace “agreement” with “agreements” in the English text. | It seeks to enhance clarity. |
| 212 | Clause 43(3) | To replace “, and the register, kept in respect of the columbarium under this section” with “kept under subsection (1), and the register kept under subsection (2), in respect of the columbarium”. | Please see item 6 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. It seeks to enhance clarity. |
| 213 | Clause 43(4)(b) | To replace “of authorized representatives in respect of ashes interred in the columbarium.” with the following – “ of— (i) authorized representatives; and (ii) purchasers of the interment rights, in respect of ashes interred in the columbarium.” | As some purchasers might not have appointed any authorized representatives under the agreement for the sale of interment right, it would be desirable to have the holder of the specified instrument recording the contact details of the purchasers as well, which would be particularly useful if the prescribed ash disposal procedures (or the steps necessary for disposal of ashes by specified officers) have to be carried out. |
| 214 | Clause 43(4A) | To add a new subclause to stipulate that a person holding a specified instrument in respect of a columbarium must make the record kept under subclause (4) in respect of the columbarium available for inspection, on request, by the Director or an authorized officer. | It seeks to confer upon the Director or an authorized officer the power to inspect the record kept under subclause (4), as with other similar provisions in the Bill. |
| 215 | Clause 43(5) | To replace “or (4)” with “, (4) or (4A)”. | This is a consequential amendment arising from the addition of clause 43(4A) as per item 214 above. |
| 216 | Clause 43(6) | To add a new subclause to define “specified”, in subclause (2)(b), to mean “specified by the Licensing Board”. | It seeks to enhance clarity. |
| 217 | Division 2 of Part 5, heading | To replace “ Instruments ” with “ Specified instruments ”. | It seeks to enhance clarity. |

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| 218 | Clause 44(2) | To add “pre-Bill” after “in respect of a “. | It seeks to enhance clarity. |
| 219 | | To delete “, in both English and Chinese,”. | It seeks to simplify the provision. |
| 220 | | To replace reference to clause 8 with that to clause 9. | Please see item 1 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 221 | Clause 44(3) | To delete the subclause. | It seeks to simplify the provision. |
| 222 | Clause 44(5) | To add “(1), (2) or” after “subsection”. | |
| 223 | Clause 45(3) | To replace “if applicable” with “where appropriate”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 224 | Clause 45(4) | To add a new subclause to require the Licensing Board to notify the applicant of its decision and the reasons for the refusal (if applicable) in respect of an application made under clause 45(1). | It seeks to ensure consistency with similar expressions in the Bill. |
| 225 | Clause 46, heading | To replace “數量” and substituting “份數” in the Chinese text. | Please see item 2 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 226 | Clause 46(1) | To replace “specified” with “shown”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 227 | Clause 46(2) | To replace “The” with “Subject to sections 46A and 46C, the”. | This is a consequential amendment arising from the addition of clause 46A as per item 231 below. |
| 228 | | To add “pre-Bill” after “in respect of a “. | It seeks to enhance clarity. |
| 229 | | To replace “specified” with “shown”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 230 | Clause 46A | To add a new clause as follows – “46A. Interment of ashes by exercising interment right sold before Bill | Please see the rationale for item 70 above. |

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| | | <p>announcement time</p> <p>The ashes of a dedicated person may be interred after the Bill announcement time in a niche in a pre-Bill columbarium in respect of which an exemption has been issued if—</p> <p>(a) the interment right in respect of the niche was sold before the Bill announcement time, but has not been exercised or (if more than one set of ashes may be interred in that niche) has only been exercised partially; and</p> <p>(b) the name of the dedicated person has been entered into—</p> <p>(i) an endorsed register referred to in section 20(3)(ab); or</p> <p>(ii) the register updated under section 46B(2).”</p> | |
| 231 | Clause 46B | <p>To add a new clause as follows –</p> <p>“46B. Records on unused or partially used niches, etc.</p> <p>(1) The holder of an exemption in respect of a pre-Bill columbarium must not replace the name of a dedicated person contained in an endorsed register referred to in section 20(3)(ab) or the register updated under subsection (2), or cause such a name to be replaced, by the name of another person</p> | Please see the rationale for item 70 above. |

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| | | <p>unless—</p> <ul style="list-style-type: none"> (a) the purchaser so requests; (b) that other person is a relative (as defined by section 5(2) of Schedule 5) of the dedicated person, whether or not living, and the purchaser has made a statutory declaration to confirm that fact; and (c) the arrangements for effecting changes of the dedicated person set out in the agreement for the sale of the interment right (if applicable) have been followed. <p>(2) The holder of an exemption in respect of a pre-Bill columbarium must—</p> <ul style="list-style-type: none"> (a) update the endorsed register as soon as practicable after effecting the changes of a dedicated person; (b) notify the Director of the change, in writing, within 10 working days after the date on which the change is effected; and (c) make the updated register available for inspection, on request, by the Director or an authorized officer. <p>(3) If—</p> | |
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| | | <p>(a) the name of a dedicated person contained in an endorsed register referred to in section 20(3)(ab), or the register updated under subsection (2), is replaced by the name of another person otherwise than in accordance with subsection (1); or</p> <p>(b) the name of the dedicated person shown on the niche in the pre-Bill columbarium is different from that entered into such a register,</p> <p>the holder of an exemption in respect of the columbarium commits an offence and is liable on conviction to a fine of \$500,000 and to imprisonment for 2 years.</p> <p>(4) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.”</p> | |
| 232 | Clause 46C | <p>To add a new clause as follows –</p> <p>“46C. Interment of ashes in religious ash pagodas</p> <p>(1) If a pre-Bill columbarium in respect of which an exemption has been issued is a columbarium of a Chinese temple specified under subsection (2), the ashes of the religious practitioners of that temple may be interred in a religious ash</p> | Please see the rationale for item 70 above. |

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| | | <p>pagoda specified under that subsection after the publication of the notice under that subsection.</p> <p>(2) The Secretary for Home Affairs must, by notice published in the Gazette, specify for the purposes of subsection (1)—</p> <p>(a) the columbaria of Chinese temples to which that subsection applies;</p> <p>(b) the religious ash pagodas in each of those columbaria in which ashes may be interred under that subsection;</p> <p>(c) the number of sets of ashes that may be interred under that subsection;</p> <p>(d) the location of those religious ash pagodas (as shown in the approved plans) in which ashes may be interred under that subsection; and</p> <p>(e) the location and serial numbering of the niches (according to the ash interment layout as shown in the approved plans) in which ashes may be interred under that subsection.</p> <p>(3) The number of sets of ashes specified under subsection (2) in respect of a pre-Bill columbarium</p> | |
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must not exceed 1 000.

- (4) The holder of an exemption in respect of a pre-Bill columbarium must ensure that the number of sets of ashes that may be interred in the columbarium under subsection (1) is limited to the number of sets of ashes specified by the Secretary for Home Affairs under subsection (2)(c).
- (5) No fees, charges or other sums may be payable for interment of ashes under subsection (1).
- (6) Without limiting sections 26, 27 and 28, a pre-Bill columbarium must comply with any requirement or condition that the Secretary for Home Affairs may impose for the purpose of determining whether the columbarium is, or continues to be, eligible or not to be specified under subsection (2).
- (7) If a pre-Bill columbarium has failed to comply with any requirement or condition imposed under subsection (6) or the Secretary for Home Affairs is satisfied that a pre-Bill columbarium is no longer eligible to be specified under subsection (2), he or she—
 - (a) may decide that the columbarium is to cease to be specified under subsection (2); and

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| | | <p>(b) must notify his or her decision in the Gazette.</p> <p>(8) A notice published in the Gazette under subsection (2) or (7) is not subsidiary legislation.</p> <p>(9) The holder of an exemption in respect of a pre-Bill columbarium that is a columbarium of a Chinese temple specified under subsection (2) must—</p> <p>(a) keep a register of all the religious practitioners of that temple, whose ashes are interred in the religious ash pagoda, in compliance with any requirement or condition imposed under subsection (6); and</p> <p>(b) make the register available for inspection, on request, by the Secretary for Home Affairs.</p> <p>(10) For the purposes of this section, the Secretary for Home Affairs or a public officer authorized by him or her in writing has power to do all or any of the following things—</p> <p>(a) to enter and inspect at all reasonable times a columbarium of a Chinese temple specified under subsection (2);</p> <p>(b) to require the holder of the</p> | |
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| | | <p>exemption—</p> <p>(i) to produce a book, document or any other article; or</p> <p>(ii) to furnish any information,</p> <p>in that holder's possession that relates to any matter referred to in subsection (4), (6) or (9);</p> <p>(c) to conduct any examination and inquiry that may be necessary for ascertaining whether subsection (4), (6) or (9) is being, or has been, complied with.</p> <p>(11) A person commits an offence if the person—</p> <p>(a) wilfully obstructs the exercise of a power under subsection (10); or</p> <p>(b) without reasonable excuse, fails to produce a book, document or article required to be produced, or furnish information required to be furnished, under subsection (10)(b).</p> <p>(12) A person who commits an offence under subsection (11) is liable on conviction to a fine at level 4 and to imprisonment for 6 months.</p> | |
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| | | <p>(13) A person who contravenes subsection (4) or (9) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.</p> <p>(14) In this section—</p> <p>Chinese temple (華人廟宇) has the meaning given by section 2 of the Chinese Temples Ordinance (Cap. 153);</p> <p>religious ash pagoda (宗教骨灰塔), in relation to a pre-Bill columbarium that is a columbarium of a Chinese temple, means any part of that columbarium (whether a structure or otherwise) that is used for the interment of the ashes of the religious practitioners of that temple;</p> <p>religious practitioners (修行者), in relation to a Chinese temple, includes the Buddhist monks and nuns and Taoist priests and priestesses (as the case requires) residing and serving in that temple immediately before death (but excludes their family members and any other persons related to that temple, whether as followers, donors or otherwise of that temple).”</p> | |
| 233 | Clause 48 | To delete the clause. | The provision has been subsumed under clause 81 for consistency. Please see item 374 below. |

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| 234 | Clause 49(1A) | <p>To add a new subclause before subclause (1) as follows –</p> <p>“(1A) The Director or an authorized officer has power to do all or any of the things set out in subsection (1) for the purposes of ascertaining whether any or all of the following is being, or has been, complied with—</p> <p>(a) this Ordinance;</p> <p>(b) the conditions of a specified instrument;</p> <p>(c) the management plan approved for the purposes of section 13(2) in respect of a columbarium.”.</p> | <p>It seeks to address ALA’s concerns about the scope of the powers conferred upon the Director or an authorized officer under subclause (1).</p> |
| 235 | Clause 49(1) | <p>To replace “For the purpose of this Ordinance, the Director or an authorized officer has power to do all or any of the following things—” with “The things referred to in subsection (1A)” are—”.</p> | <p>This is a consequential amendment arising from the addition of clause 49(1A) as per item 234 above.</p> |
| 236 | Clause 49(1)(c) | <p>To replace “remove and impound for the purpose of examination for so long as the Director or authorized officer may consider necessary, and to examine and copy,” with “examine and copy”.</p> | <p>Please see item 3 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015.</p> |
| 237 | Clause 49(1)(d) | <p>To delete everything after “inquiry that” and substituting “the Director or authorized officer considers necessary;”.</p> | <p>Clause 49(1A), which provides for the general purpose for clause 49, was modelled on the original subparagraphs (i) to (iii) of this provision. The relevant subparagraphs could hence be deleted.</p> |
| 238 | Clause 50 | <p>To replace “anything” (wherever appearing) with “any thing”</p> | <p>It seeks to enhance clarity.</p> |

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| 239 | Clause 50(2)(d) | To replace “in” with “on”. | It seeks to enhance clarity. |
| 240 | Clause 50(4) | To delete everything after “subsection (2)(b)” and substituting “(or by the exercise under subsection (3) of the powers referred to in subsection (2)(b)), the Director or authorized officer must post at a conspicuous place outside the premises a notice declaring the seizure, removal or impoundment.”. | Please see item 7 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |
| 241 | Clause 51(2)(a) | To replace “拘補” with “拘捕” in the Chinese text. | It seeks to enhance clarity. |
| 242 | Clause 52(1)(a) | To replace ““49, 50 or 51;” with “49(1)(a), (c) or (d), 50 or 51; or”. | Clause 52(1)(b) already provides for the legal consequence for contravening clause 49(1)(b). As discussed at the Bills Committee, we do not intend to provide for the legal consequence for contravening clause 49(1)(e). This CSA therefore seeks to explicitly exclude reference to clause 49(1)(b) and (e) in clause 52(1)(a), enhancing clarity of the provision. |
| 243 | Clause 52(1)(b) | To replace “; or” with a full stop. | This is a textual amendment consequential to the deletion of clause 52(1)(c) as per item 244 below. |
| 244 | Clause 52(1)(c) | To delete the paragraph. | The offence relating to the provision of false or misleading information has been grouped under clause 87. Please see items 380 and 381 below. |
| 245 | Clause 53, heading | To replace “物品” with “物件”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 246 | Clause 53(1) | To add “(or by the exercise under section 50(3) of the powers referred to in section 50(2)(b))” after “section 50(2)(b)”. | Please see item 10 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |

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| 247 | | To replace “該物品” with “該物件” in the Chinese text. | It seeks to ensure consistency with similar expressions in the Bill. |
| 248 | Clause 53(2) | <p>To replace the original subclause (2) with the following –</p> <p>“(2) The Director must, after the proceedings are abandoned or determined—</p> <p>(a) return the thing as ordered by the court; or</p> <p>(b) (if no court order is made) give a notice in writing to the owner of the thing, stating that—</p> <p>(i) the owner may collect the thing from the Director within 60 days after the date of the notice; and</p> <p>(ii) unless the owner collects the thing within 60 days after the date of the notice, it—</p> <p>(A) is to become the property of the Government, free from all liens, claims or encumbrances; and</p> <p>(B) may be sold or otherwise disposed of in a manner that the Director thinks fit.”.</p> | Please see item 4 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |

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| 249 | Clause 53(3) | To replace “acted as provided under subsection (2)” with “collected the thing within the 60 days stated in the notice”. | This is a consequential amendment in light of the proposed amendments to subclause (2) as per item 248 above. |
| 250 | Clause 53(3)(b) | To replace “售賣或以署長認為合適的” with “出售，亦可按署長認為合適的其他” in the Chinese text. | Please see item 12 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |
| 251 | Clause 54(1) | To replace “, require” with “served on”. | It seeks to enhance clarity. |
| 252 | | To add “, require the recipient” before “to do”. | It seeks to enhance clarity. |
| 253 | Clause 54(1)(b) | To replace “the contravention” with “such a contravention”. | It seeks to enhance clarity. |
| 254 | Clause 54(1)(c) | To replace “the contravention” with “such a contravention”. | It seeks to enhance clarity. |
| 255 | Clause 54(2)(a) | To add “(if applicable)” before “the time”. | Please see item 16 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |
| 256 | Clause 54(2)(b) | To replace “applicable,” with “applicable—”. | It seeks to streamline the presentation. |
| 257 | Clause 54(2)(c) | To replace “any” with “if applicable—the”. | Please see item 16 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |
| 258 | Clause 54(2)(e)(i) | To replace “for action” with “for any action that the Director considers necessary or desirable”. | It seeks to enhance clarity. |

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| 259 | Clause 54(4) | To add “within the stated time” after “action stated in the notice”. | Please see item 18 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |
| 260 | | To replace “preventing the recurrence of the” with “for preventing the recurrence of such a”. | It seeks to enhance clarity. |
| 261 | | To replace “to be taken that the Director considers necessary or desirable to remedy the consequences or prevent the recurrent” with “that the Director considers necessary or desirable to be taken to remedy the consequences of the contravention or to prevent the recurrence of the contravention.” in the English text. | It seeks to enhance clarity. |
| 262 | Clause 54(6) | To add a new subclause to stipulate that an appeal under clause 72 against a decision to serve an enforcement notice does not suspend the operation of the decision, pending the determination of the appeal, unless the Director decides otherwise. | Please see item 17 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |
| 263 | Clause 55 | To delete everything after “this Part” and substitute “, a reference to carrying out the prescribed ash disposal procedures is to be construed in accordance with section 6 of Schedule 5.”. | After considering the practical situation after the enactment date, we will remove reference to the off-site claim period from the Bill. |
| 264 | Clause 58(1) | To add “曾” before “營辦” in the Chinese text. | It seeks to enhance clarity. |
| 265 | Clause 58(2)(a) | To replace the original subparagraph (iii) with the following – “(iii) the following particulars of disposal are entered into the record on interment and disinterment of ashes kept under section | Please see item 3 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. In response to ALA’s comments, we have exhaustively listed the particulars that should be entered into the record on interment and disinterment of ashes. |

43(4)—

- (A) the name of the dedicated person;
- (B) if the ashes are interred in a niche—
 - (I) the location and serial numbering of the niche;
 - (II) photos showing the exterior and interior of the niche before disposal; and
 - (III) the number of containers of ashes, and any related items interred together with the ashes, in the same niche;
- (C) the name, the Hong Kong identity card number (if applicable) and the contact details of the person who has collected the ashes and the related items (if any) interred together with the ashes in the same niche (if applicable);
- (D) the date of return of the ashes and the related items (if any) to the person referred to in sub-subparagraph (C); and
- (E) any—
 - (I) breach of the agreement for the sale of the interment right on the part of the purchaser or authorized representative; or
 - (II) other reason for the disposal; or”.

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| 266 | Clause 58(2) | To add “內” before “的骨灰” in the Chinese text. | It seeks to ensure consistency with similar expressions in the Bill. |
| 267 | Clause 58 | <p>To add the following subclauses –</p> <p>“(3) Without affecting sections 8 and 9, if a columbarium in respect of which no specified instrument is in force is still in operation after the grace period, the person who operates, keeps, manages or in any other way has control of the columbarium is regarded, for the purposes of subsection (1), as having improperly disposed of ashes interred in the columbarium, unless the person carries out the prescribed ash disposal procedures.</p> <p>(4) In this section—</p> <p><i>grace period</i> (寬限期) means the period beginning on the enactment date and ending—</p> <p>(a) on the expiry of 9 months beginning on the enactment date; or</p> <p>(b) if an application is made for a temporary suspension of liability by the expiry of those 9 months—at the time when the application is finally disposed of or withdrawn.</p> <p>(5) If an application referred to in paragraph (b) of the definition of <i>grace period</i> in subsection (4) is refused, it is finally disposed of at the later of the following—</p> <p>(a) at the time the period within which an appeal may be lodged under section 72 against the refusal expires without an appeal having been lodged; or</p> | It seeks to impose the obligation for carrying out the prescribed ash disposal procedures onto operators of columbaria without specified instruments who continue to operate their columbaria after the grace period. |

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| | | <p>(b) if an appeal has been lodged within time, at the time the appeal is determined or withdrawn.</p> <p>(6) The Secretary may, by notice published in the Gazette, amend subsection (4) by substituting another period for any period specified in that subsection.”.</p> | |
| 268 | Clause 59 | <p>To add the following subclauses before subclause (1) –</p> <p>“(1A) A person who has operated, kept, managed or in any other way had control of a columbarium, in respect of which no specified instrument has been issued, must not abandon the columbarium.</p> <p>(1B) If the Director or an authorized officer suspects that a columbarium in respect of which no specified instrument is issued is not in operation, the Director or authorized officer may give a notice about the suspected abandonment (<i>notice about suspected abandonment</i>).”.</p> | <p>Please see item 4 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015.</p> <p>It seeks to stipulate clearly the offence on abandoning a columbarium operated without a specified instrument. We have also taken the opportunity to define clearly the “notice about suspected abandonment” to enhance clarity.</p> |
| 269 | Clause 59(1) | To delete the subclause. | |

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| 270 | Clause 59(2) | To replace the original subclause with the following – “(2) For the purposes of subsection (1B), the notice about suspected abandonment must be— (a) published in the Gazette once in each of 2 consecutive months; and (b) posted at a conspicuous place outside the columbarium.”. | It seeks to enhance clarity. |
| 271 | Clause 59(3) | To add “about suspected abandonment” after “The notice”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 272 | | To delete “and any other persons having an interest in the columbarium”. | Please see item 9 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 273 | | To replace “1 month after the date of the notice” with “2 months after the date of the notice,”. | This is a consequential amendment arising from the introduction of a two-month time limit in subclause (3A) as per item 275 below. |
| 274 | Clause 59(3)(b) | To replace “, 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” with “may apply for an occupation order under section 65 to enable to officer to carry out the steps that the officer considers necessary for disposal of ashes in respect of the columbarium”. | It is a consequential amendment arising from moving the definition of “specified officer” to clause 2 as per item 23 above. It also seeks to enhance consistency with similar expressions in the Bill. |

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| 275 | Clause 59(3A) | <p>To add a new subclause to stipulate that a person referred to in subclause (1A) will be deemed as abandoning a columbarium if –</p> <p>(a) the notice about suspected abandonment has been given; but</p> <p>(b) the person fails to give a specified response within 2 months after the date of the notice about suspected abandonment.</p> | Please see item 4 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 276 | Clause 59(4) | To replace “a notice” with “the notice about suspected abandonment”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 277 | Clause 60(1) | To replace “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” with “or is revoked, must not abandon the columbarium”. | <p>Please see items 4, 12 and 25 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015.</p> <p>It seeks to stipulate clearly the offence on abandoning a columbarium issued with a specified instrument. We have also taken the opportunity to define clearly the “notice about suspected abandonment” to enhance clarity.</p> |
| 278 | Clause 60(1A) | <p>To add a new subclause as follows –</p> <p>“(1A) If the Director or an authorized officer suspects that a columbarium in respect of which a specified instrument is in force, has expired without being renewed or extended, or is revoked, is not in operation, the Director or authorized officer may give a notice about the suspected abandonment (<i>notice about suspected abandonment</i>).”.</p> | |
| 279 | Clause 60(2) | <p>To replace the original subclause (2) with the following –</p> <p>“(2) For the purposes of subsection (1A), the notice about suspected abandonment must</p> | Please see items 19 and 20 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |

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| | | <p>be given to the instrument holder.</p> <p>(2A) The notice about suspected abandonment must warn that, unless within 2 months after the date of the notice, the instrument holder gives a specified response—</p> <p>(a) the instrument holder is liable to be prosecuted for an offence under section 63; and</p> <p>(b) a specified officer may apply for an occupation order under section 65 to enable the officer to carry out the steps that the officer considers necessary for disposal of ashes in respect of the columbarium.</p> <p>(2B) If the instrument holder fails to give a specified response within 1 month after the date of the notice about suspected abandonment, the Director or an authorized officer may give a reminder notice.”.</p> | |
| 280 | Clause 60(3) | <p>To delete everything before paragraph (a) and substitute the following –</p> <p>“(3) The reminder notice must warn again that, unless within 2 months after the date of the notice about suspected abandonment, the instrument holder gives a specified response—”.</p> | <p>This is a consequential amendment arising from the introduction of subclause (2B) as per item 279 above.</p> |

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| 281 | Clause 60(3)(b) | To replace “, 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” with “may apply for an occupation order under section 65 to enable to officer to carry out the steps that the officer considers necessary for disposal of ashes in respect of the columbarium”. | It is a consequential amendment arising from moving the definition of “specified officer” to clause 2 as per item 23 above. It also seeks to enhance consistency with similar expressions in the Bill. |
| 282 | Clause 60(4) | To replace the original subcaluse (4) with the following – “(4) The reminder notice under subsection (2B) must be— (a) given to the instrument holder; (b) published in the Gazette; and (c) posted at a conspicuous place outside the columbarium.”. | Please see item 22 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 283 | Clause 60(4A) | To add a new subclause to stipulate that an instrument holder will be deemed as abandoning a columbarium if – (a) the notice about suspected abandonment has been given; but (b) the instrument holder fails to give a specified response within 2 months after the date of the notice about suspected abandonment. | Please see item 12 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 284 | Clause 60(5) | To replace “a notice” with “the reminder notice”. | It seeks to ensure consistency with similar expressions in the Bill. |

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| 285 | Clause 61(a) | To replace “已提出” with “提出” in the Chinese text. | Please see item 23 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 286 | Clause 61(c) | To replace “該骨灰” with “有關骨灰” in the Chinese text. | Please see item 24 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 287 | Clause 61A | To add a new clause to stipulate that if a notice about suspected abandonment has been given under clause 60 and a person has given a specified response by informing the Director or authorized officer that the person continues to operate the columbarium, the person must continue to operate the columbarium in respect of which a specified instrument is in force. | It seeks to better reflect our policy intention to ensure that a person that has undertaken in his specified response to continue to operate the columbarium would in fact do so. |
| 288 | Clause 62(1)(a) | To delete “a”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 289 | Clause 62(2)(a) | To replace “giving the undertaking” with “the date on which the undertaking is given”. | It seeks to enhance clarity. |
| 290 | Clause 62(2)(b) | To replace “the notice at the time specified in the” with “a commencement of ash disposal notice at the time specified in that”. | It seeks to enhance clarity. |
| 291 | Clause 63, heading | To replace “59, 60” with “59(1A), 60(1), 61A”. | Please see item 26 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. These CSAs also seek to include reference to the proposed clause 61A. |
| 292 | Clause 63 | To replace “59, 60” with “59(1A), 60(1), 61A”. | |
| 293 | Clause 64, heading | To replace “landlord” and substituting “owner”. | It seeks to enhance clarity. |

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| 294 | Clause 64(1) | To replace “landlord, mortgagee or based on any other interest in any premises that are a columbarium,” with “owner or mortgagee or based on any other interest in any premises that are a columbarium (but excluding the Government),”. | It seeks to enhance clarity. |
| 295 | | To replace reference to clause 8 with that to clause 9. | Please see item 28 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 296 | | To add “the date of” after “7 days after”. | It seeks to enhance clarity. |
| 297 | Clause 64(2) | To replace “if the person in possession acquired the premises subject to the obligation to carry out the prescribed ash disposal procedures” with “of the premises”. | It seeks to simplify the provision. |
| 298 | Clause 64(3) | To delete the subclause. | This subclause is no longer required after amendments to subclause (4) and the addition of subclause (4A) as per items 299 and 300 below. |
| 299 | Clause 64(4) | To delete everything after “subsection (2)” and substitute the following – “if— (a) the person is an owner or mortgagee who acquired an interest in the premises subject to the obligation to carry out the prescribed ash disposal procedures; and (b) the person fails to— (i) 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 subsection (1); or | It seeks to enhance clarity. |

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| | | <p>(ii) take a step specified in the commencement of ash disposal notice—</p> <p>(A) at the time specified in that notice for taking that step; and</p> <p>(B) in accordance with Part 2 of that Schedule.”.</p> | |
| 300 | Clause 64 | <p>To add the following clauses –</p> <p>“(4A) Despite subsection (2), a person in possession who is not a person referred to in subsection (4)(a) may—</p> <p>(a) invite, in writing, the Director to carry out the steps that the Director considers necessary for disposal of ashes in respect of the columbarium on-site; and</p> <p>(b) allow a specified officer to enter the columbarium premises for the purposes of carrying out those steps,</p> <p>for at least 12 months.</p> <p>(4B) A person in possession who is not a person referred to in subsection (4)(a) is regarded as having contravened subsection (2) if the person—</p> <p>(a) fails to—</p> <p>(i) 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 subsection (1); or</p> | <p>Please see item 95 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)).</p> <p>The proposed clause 64(4A) and (4B) applies 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”. 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).</p> <p>The proposed clause 64(4C) and (4D) aims to introduce legal sanctions for contravention of subclause (2) by a person in possession who is a person referred to in subclause (4)(a) and by a person in possession who is not a person referred to in subclause (4)(a).</p> <p>In the case of transfer, subject to the approval from the Licensing Board, the transferee will take over the operation of the columbarium and the columbarium should continue to be in operation. There is hence no need for the person in possession, if any, to carry out the prescribed ash disposal procedures as required under clause 64(2). The proposed clause 64(4E) therefore seeks to stipulate clearly that in case an application for transfer under clause 32 has been received by the Licensing Board, the relevant person in possession would not be required to act in accordance with subclause (2) until so specified by the Director.</p> |

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| | | <p>(ii) take a step specified in the commencement of ash disposal notice—</p> <p>(A) at the time specified in that notice for taking that step; and</p> <p>(B) in accordance with Part 2 of that Schedule; and</p> <p>(b) fails to act in accordance with subsection (4A).</p> <p>(4C) If a person in possession who is a person referred to in subsection (4)(a) contravenes subsection (2), that person commits an offence and is liable on conviction to a fine of \$500,000.</p> <p>(4D) If a person in possession who is not a person referred to in subsection (4)(a) contravenes subsection (2), that person commits an offence and is liable on conviction to a fine of \$250,000.</p> <p>(4E) Despite subsection (2), if an application for transfer under section 32 is received by the Licensing Board, a person in possession is not required, with the written permission of the Director, to—</p> <p>(a) act in accordance with that subsection; or</p> <p>(b) so act until after the period specified by the Director.”.</p> | |
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| 301 | Clause 64(5) | To replace “subsection (2), a person acquired” and substituting “subsection (4)(a), a person in possession acquired an interest in the”. | Please see item 30 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 302 | Clause 64(5)(a) | To replace the original paragraph (a) with the following – “(a) at the time of acquisition— (i) a certificate of columbarium use was registered under section 38 against the premises; and (ii) no certificate was registered under section 68 against the premises; or”. | Please see item 35 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 303 | Clause 64(5)(b) | To add “the interest in” after “who acquired”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 304 | Clause 64(5A) | To add a new subclause – “(5A) For the purposes of subsection (5)(a), the time of acquisition of an interest in the premises is— (a) if the person in possession is an owner—the time of acquiring the ownership of the premises by the person; or (b) if the person in possession is a mortgagee—the time of executing the mortgage deed by the person.”. | Please see item 30 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |

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| 305 | Clause 64(5B) | <p>To add a new subclause –</p> <p>“(5B) A person in possession may request a person who has operated, kept, managed or in any other way had control of the columbarium to produce any information (including any book, document, article, thing, record and register) that the person in possession reasonably considers necessary to facilitate the carrying out of the prescribed ash disposal procedures by the person in possession, and that person is required to produce the information to the person in possession.”.</p> | <p>Please see item 98 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)).</p> <p>A person in possession may request the operator to produce information (including personal data) that the person in possession reasonably considers necessary to facilitate the carrying out of the prescribed ash disposal procedures, and the operator is required to produce the information.</p> |
| 306 | Clause 64(6) | To replace “landlord,” with “owner or”. | It seeks to enhance clarity. |
| 307 | Clause 64(6)(a) | <p>To replace “of a tenancy, lease or mortgage in respect of the premises;” with “of the instrument—</p> <p>(i) entered into by the person in possession in the capacity as owner or mortgagee in respect of the premises with that other person; or</p> <p>(ii) by virtue of which the interest of the person in possession in the premises arises; or”.</p> | It seeks to ensure consistency with similar expressions in the Bill. |
| 308 | Clause 65, heading | To replace “ prescribed ash disposal procedures ” with “ steps necessary for disposal of ashes ”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 309 | Clause 65(1) | To delete the subclause. | The definition of “specified officer” has been moved to the section on interpretation in clause 2 as per item 23 above. |

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| 310 | Clause 65(2) | To replace “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” with “carry out any steps that the officer considers necessary for disposal of ashes in respect of a columbarium if the prescribed ash disposal procedures have, or any step in them has, not been”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 311 | Clause 65(3) | To replace “On” with “Without limiting subsection (2), a magistrate may, on”. | Please see item 60 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 312 | | To replace “59, 60, 62 or 64(2) or (3)” with “59(1A), 60(1), 61A, 62 or 64(2)”. | Please see item 37 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 313 | | To delete “the court may” in the English text. | This is a consequential amendment arising from the proposed amendments as per item 311 above. |
| 314 | Clause 65(3)(a) | To replace “and occupy the premises for a period specified in the order; and” with a semicolon. | It seeks to enhance clarity. |
| 315 | Clause 65(3)(ab) | To add a new subclause to empower a magistrate to make an occupation order empowering a specified officer to occupy the columbarium premises, or any part of them, for a period specified in the order. | |
| 316 | Clause 65(3)(b) | To replace “prescribed ash disposal procedures” with “steps that the officer considers necessary for disposal of ashes”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 317 | Clause 65(4) | To replace “order may be made under subsection (3)” with “occupation order may be made”. | Please see item 39 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |

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| 318 | Clause 65(4)(a) | To replace “59, 60, 62 or 64(2) or (3)” with “59(1A), 60(1), 61A, 62 or 64(2)”. | Please see item 38 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 319 | Clause 65(4)(b) | To add “or 64(4C) or (4D)” after “section 63”. | Please see item 4 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 11 June 2016 (LC Paper No. CB(2)1711/15-16(02)). |
| 320 | Clause 65(5) | To replace “or the on-site portion of the procedures as required by section 58, 62 or 64(2) or (3)” with “as required by section 58, 62 or 64(2)”. | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |
| 321 | Clause 65 | <p>To add the following new subclauses –</p> <p>“(5A) If a specified officer reasonably believes that a person has any information that the officer considers necessary to facilitate disposal of ashes by the officer under this Ordinance—</p> <p style="padding-left: 40px;">(a) the officer may request that person to produce the information to him or her; and</p> <p style="padding-left: 40px;">(b) that person is required to produce the information to the officer.</p> <p>(5B) A specified officer may, for the purpose of disposal of ashes under this Ordinance, consider and use any information—</p> <p style="padding-left: 40px;">(a) produced under subsection (5A);</p> <p style="padding-left: 40px;">(b) obtained during an inspection or search under this Ordinance; or</p> <p style="padding-left: 40px;">(c) obtained by the exercise of the powers under an occupation order.</p> | <p>A specified officer may request a person having information (including personal data) that the specified officer reasonably considers necessary to facilitate the disposal of ashes to produce the information to him or her, and the operator is required to produce the information.</p> <p>In the course of scrutinising the Bill, Members of the Bills Committee attach importance to having legislative provisions that are adequate for enabling the parties concerned to complete the ash disposal tasks as required. The proposed CSAs therefore seek to, among other things, empower a specified officer to consider and use the information referred to above, obtained during inspection or search under this Ordinance, and obtained by the exercise of the powers under an occupation order.</p> |

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| | | (5C) In subsections (5A) and (5B)— <i>information</i> (資料) includes any book, document, article, thing, record and register.”. | |
| 322 | Clause 65A | To add a new clause as follows – “65A. Power of court to order return of ashes (1) The court may, on application, make an order for the return of ashes as provided in section 9 of Schedule 5. (2) In this section— <i>court</i> (法院) means the District Court.”. | It seeks to clearly empower the court to make an order for the return of ashes apart from its power to determine competing claims as provided for in section 9 of Schedule 5. |
| 323 | Clause 67, heading | To replace “ obligation in respect of ” with “ obligations in respect of disposal of ”. | Please see item 40 of our response dated 1 December 2015 to ALA’s letter dated 13 October 2015. |
| 324 | Clause 67(2) | In the definition of “ash disposal requirement”, to delete everything after “means” and substitute “the requirement under section 58, 62 or 64(2) to carry out the prescribed ash disposal procedures.”. | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |
| 325 | Clause 67(3) | To delete the subclause. | A specified officer is not obligated under the Bill to carry out the prescribed ash disposal procedures, but is empowered to carry out any steps that the officer considers necessary for disposal of ashes in respect of a columbarium, if the prescribed ash disposal procedures have, or any step in them has, not been carried out. We therefore propose to remove this subclause to avoid confusion. |

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| 326 | Clause 68(1) | <p>To replace “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.” with “satisfied that—</p> <p>(a) the prescribed ash disposal procedures have been carried out in respect of a columbarium against the premises of which a certificate of columbarium use is registered under section 38; or</p> <p>(b) the steps that a specified officer considers necessary for disposal of ashes in respect of such a columbarium under this Ordinance have been carried out by the officer,</p> <p>issue a certificate that the premises cease to be a columbarium.”.</p> | <p>A specified officer is not obligated under the Bill to carry out the prescribed ash disposal procedures, but is empowered to carry out any steps that the officer considers necessary for disposal of ashes in respect of a columbarium, if the prescribed ash disposal procedures have, or any step in them has, not been carried out. The proposed CSA seeks to differentiate the two situations more clearly.</p> |
| 327 | Clause 68(2) | To delete “or”. | It is a technical amendment arising from the addition of a new paragraph (ba) as per item 328 below. |
| 328 | Clause 68(2)(ba) | To add a new paragraph to empower a person in possession within the meaning of clause 64 to make an application for the purpose of subclause (1). | The definition of “specified officer” has been moved to the section on interpretation in clause 2 as per item 23 above. |
| 329 | Clause 68(2)(c) | To delete “, as defined by section 65(1)”. | It is a consequential amendment arising from moving of the definition of “specified officer” to clause 2 as per item 23 above. |
| 330 | Clause 68(4) | To add a new subclause to require the Licensing Board to notify the applicant of its decision and the reasons for the refusal (if applicable) in respect of an application made under clause 68(1). | It seeks to ensure consistency with similar expressions in the Bill. |

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| 331 | Clause 70 | To delete the definition of “Appeal Board”. | The definition of “Appeal Board” has been moved to the section on interpretation in clause 2 as per item 19 above. |
| 332 | Clause 71 | To replace the original subclause (4) with the following – “(4) A panel member— (a) is to hold and vacate office in accordance with the panel member’s terms of appointment; and (b) on ceasing to be a panel member, is eligible for reappointment.”. | Please see item 1 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 333 | Clause 71(5) | To replace “subsection (2) or (3)” with “this section”. | It seeks to enhance clarity. |
| 334 | Clause 71(6) | To replace “of the” with “to the” in the English text. | Please see item 5 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 335 | Clause 72(1) | To replace “A person” with “An applicant or a holder of a specified instrument who is”. | It seeks to better reflect our policy intention. |
| 336 | Clause 72(1)(a) | To replace “of an application for” with “under section 13 (whether or not as modified under section 14) or section 15 or 16 of an application for the issue of”. | The original paragraph (a) covers “a refusal of an application for a specified instrument”, which comprises a refusal of an application for the issue of a specified instrument, as well as a refusal of an application for renewal or extension of a specified instrument. Items 336 and 337 seek to set out clearly the two scenarios. |
| 337 | Clause 72(1)(ab) | To add a new subclause as follows – “(ab) a refusal under section 33(1)(c)— (i) to renew a licence or exemption; or (ii) to extend a temporary suspension of liability;” | |

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| 338 | Clause 72(1)(b) | To add “under section 32(3A)” after “refusal”. | It seeks to enhance clarity. |
| 339 | Clause 72(1)(c) | To add “under section 33(1)(a)(i) or (b)” after “decision”. | It seeks to enhance clarity. |
| 340 | Clause 72(1) | To add the following subclauses – “(ca) a decision under section 33(1)(a)(ii) to revoke or suspend an authorization under a licence; (cb) a refusal of an application for permission for the purposes of section 45(1);”. | Please see item 6 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 341 | Clause 72(1)(d) | To replace the original paragraph (d) with the following – “(d) a decision under section 32(4) or 33(1)(d)— (i) to vary the conditions to which a specified instrument is subject; or (ii) to impose new conditions;”. | It seeks to enhance clarity. |
| 342 | Clause 72(1)(e) | To add “of an application made under section 34” after “refusal”. | It seeks to enhance clarity. |
| 343 | Clause 72(1)(ea) | To add the following subclause – “(ea) a refusal of an application made under section 35(1)(a) for the suspension of the operation of a decision under section 33(1) pending the determination of an appeal;”. | Please see item 7 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |

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| 344 | Clause 72(1)(f) | To replace “of the Director under section 54 to serve an enforcement notice.” with “under section 54 to serve an enforcement notice;”. | It seeks to simplify the provision and enhance consistency with similar expressions in the Bill. |
| 345 | Clause 72(1) | To add the following subclauses – “(g) a refusal of an application for the issue of a certificate under section 68; (h) a refusal of an application made under section 17(2) of Schedule 5 for the approval of an ash disposal plan.”. | Please see item 101 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 346 | Clause 72(2) | To add “the date on which” after “21 days after”. | It seeks to enhance clarity. |
| 347 | Clause 72(4)(a) | To replace “(b), (c), (d) or (e)” with “(ab), (b), (c), (ca), (cb), (d), (e), (ea) or (g)”. | These are technical consequential amendments. |
| 348 | Clause 72(4)(b) | To add “or (h)” after “(1)(f)”. | |
| 349 | Clause 73(2) | To replace “, if the Chairperson is absent or is otherwise unable to act, a Deputy Chairperson (according to the order of appointment) is to” with “a Deputy Chairperson may”. | It seeks to simplify the provision. |
| 350 | Clause 73(5) | To replace “has” with “have” in the English text. | It seeks to enhance clarity. |
| 351 | Clause 73(7) | To add “, or a panel member selected under subsection (5),” before “who is the presiding officer at an appeal”. | Please see item 9 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 352 | Clause 74(4)(a) | To replace “着手” with “逕行” in the Chinese text. | Please see item 5 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |

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| 353 | Clause 74(11)(b) | To add “or” after the semicolon. | Please see item 5 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |
| 354 | Clause 74(13) | To replace “of its decision, in writing, setting out” with “in writing of”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 355 | Clause 74(13)(a) | To add “Appeal Board’s” before “decision”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 356 | Clause 74(14) | To replace “Appeal Board’s decision and reasons” with “written notification under subsection (13)”. | Please see item 6 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |
| 357 | Clause 75(1)(a)(i) | To add “以” after “是” in the Chinese text. | It seeks to enhance clarity. |
| 358 | | To replace “的材料” with “提供的” in the Chinese text. | |
| 359 | Clause 75(1)(b) | To delete “signed by the presiding officer”. | Please see item 12 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 360 | Clause 75(1)(d) | To replace “and” with “or”. | It seeks to enhance clarity. |
| 361 | Clause 76 | To replace “For the purposes of” with “In relation to”. | Please see item 11 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |
| 362 | Clause 78(1)(a)(iv) | To replace “遵從任何” with “遵從” in the Chinese text. | Please see item 13 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 363 | Clause 78(2) | To replace “資料” with “材料” in the Chinese text. | Please see item 14 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |

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| 364 | Clause 78(3) | To delete “summary”. | Please see item 15 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 365 | Clause 79(1) | To replace “of the Appeal Board may” with “may”. | Please see item 16 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 366 | Clause 80(1) | To replace “Deputy Chairpersons” with “a Deputy Chairperson” in the English text. | Please see item 19 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 367 | | To delete “of the Appeal Board”. | Please see item 20 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 368 | Clause 80(2) | To replace “or” with “and” in the English text. | Please see item 21 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 369 | Clause 81, heading | To add “ and authorization ” after “ Delegation ”. | This is a consequential amendment arising from the consolidation of the relevant clauses (notably clause 48) under this clause. |
| 370 | Clause 81 | To renumber the clause as clause 81(1). | It seeks to enhance clarity. |
| 371 | Clause 81(1) | To replace “The” with “Subject to subsection (2), the”. | Please see item 36 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 372 | | To delete “, other than this power of delegation”. | |
| 373 | | Clause 81(2) | |
| 374 | Clause 81 | To add the following subclauses – “(3) The Director may appoint in writing a public officer as an authorized officer for | Please see item 1 of our response dated 3 January 2016 to ALA’s letter dated 20 November 2015. |

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| | | <p>the purposes of this Ordinance.</p> <p>(4) When exercising a power or performing a function under this Ordinance, an officer delegated under subsection (1) or an authorized officer—</p> <p>(a) may be assisted by such persons as the officer reasonably requires; and</p> <p>(b) must produce the officer’s written delegation or appointment for inspection by any person who reasonably requires to see it.”.</p> | |
| 375 | Clause 82(2) | To delete “ <i>enforcement</i> ” in the English text. | Please see item 37 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 376 | | To replace “enforcement authority” (wherever appearing) with “authority”. | |
| 377 | | To delete “enforcement”. | |
| 378 | | To replace “該等職能，則該” with “該職能，則”. | It seeks to enhance clarity. |
| 379 | Clause 84(1) | To replace “and” with “or”. | It seeks to enhance clarity. |

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| 380 | Clause 87(1) | <p>To replace everything after “offence” with the following –</p> <p>“if the person—</p> <p>(a) provides information that is false or misleading in a material particular in, or in connection with, an application the person makes under this Ordinance in respect of a columbarium; or</p> <p>(b) furnishes the Director, an authorized officer or a public officer with information under this Ordinance knowing that it is false or misleading in a material particular.”.</p> | <p>It seeks to consolidate the provisions relating to the offence of providing false and misleading information under one clause. Specifically, the original clause 52(1)(c) has been moved to this clause as clause 87(1)(b). Please see item 244.</p> |
| 381 | Clause 87(2) | <p>To replace “summary conviction to a fine at level 2 and to imprisonment for 6 months” with “conviction to a fine of \$500,000 and to imprisonment for 2 years”.</p> | <p>It seeks to strengthen the legal sanctions for the offence of providing false and misleading information.</p> |

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| 382 | Clause 88(4) | <p>To add a new subclause as follows –</p> <p>“(4) If—</p> <p>(a) a member of an unincorporated body commits an offence under this Ordinance; and</p> <p>(b) 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 other member or any manager, secretary or other similar officer of the unincorporated body,</p> <p>the other member or the manager, secretary or other similar officer commits the like offence.”.</p> | <p>Clause 88 originally provides for liability of the relevant personnel of a body corporate or partnership for an offence by the body corporate or another partner. The CSA seeks to cover the scenario in respect of an offence committed by an unincorporated association in order to hold the relevant person in charge of the columbarium (e.g. operation without a specified instrument) accountable.</p> |
| 383 | Clause 91(2) | To add “1,” before “6”. | It seeks to better reflect our policy intention. |
| 384 | Clause 92(2)(b) | To replace “it” with “them” in the English text. | It seeks to enhance clarity. |
| 385 | Clause 92(2)(ca) | To add a new subclause to empower the Secretary for Food and Health to make regulations restricting the imposition of any additional fees, charges or other sums in respect of an interment right beyond the amounts, or not in accordance with any mechanism for their future revision, specified or otherwise contained in any agreement for the sale of the interment right entered into before the Bill announcement time. | This empowering provision is consequential to the addition of clause 31A. |
| 386 | Clause 92(2)(d) | To add “發出” after “人士” in the Chinese text. | It seeks to enhance clarity. |

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| 387 | Clause 92(2)(e) | To replace “and” with “or”. | It seeks to enhance clarity. |
| 388 | Clause 92(3)(a) | To add “or” after the semicolon. | It seeks to enhance clarity. |
| 389 | Clause 94(2)(c) | To replace “an officer” with “a member of the staff” in the English text. | It seeks to enhance clarity. |
| 390 | Clause 94(3) | To replace “An” with “In relation to a person referred to in subsection (2)(d), an”. | It seeks to enhance clarity. |
| 391 | Clause 94A | <p>To add a new clause as follows –</p> <p>“94A. Service of documents, etc.</p> <p>(1) A notice, decision or other document required to be given, issued, notified or served on a person (other than the Appeal Board, the Licensing Board or a public officer) under this Ordinance may be given, issued, notified or served—</p> <p>(a) in the case of a natural person—</p> <p>(i) by delivering it by hand to the person;</p> <p>(ii) by sending it by post in a letter—</p> <p>(A) addressed to the person at the person’s usual place of residence or business or (if that place is unknown) at the person’s last known place of residence or business; or</p> <p>(B) if the person dies—addressed</p> | <p>It seeks to set out in general –</p> <p>(a) how a notice, decision, other document should be given, issued, notified or served by on a person other than the Appeal Board, the Licensing Board or a public officer, as well as the date on which such notice, decision or other document is to be taken to have been given, lodged or served; and</p> <p>(b) how a notice or other document required to be given to, lodged with or served on the Appeal Board, the Licensing Board or a public officer should be given, lodged and served, as well as the date on which such notice or other document is to be taken to have been given, lodged or served.</p> |

to the person's last known place of residence or business;

(iii) by sending it by fax transmission to the fax number of the person or (if that number is unknown) to the last known fax number of the person; or

(iv) by sending it by electronic mail transmission to the electronic mail address of the person or (if that address is unknown) to the last known electronic mail address of the person;

(b) in the case of a partner in a partnership—

(i) by delivering it by hand to the partner authorized in writing to act for and on behalf of the partnership;

(ii) by sending it by post in a letter—

(A) addressed to the partner authorized in writing to act for and on behalf of the partnership at that partner's usual place of residence or business or (if that place is unknown) at that partner's last known place of residence or business; or

(B) if that partner dies—addressed to that partner's last known place of

residence or business, and to the usual places of residence or business of the other partners in the partnership or (if those places are unknown) to the last known places of residence or business of those other partners;

(iii) by sending it by fax transmission to the fax number of the partner authorized in writing to act for and on behalf of the partnership or (if that number is unknown) to the last known fax number of that partner; or

(iv) by sending it by electronic mail transmission to the electronic mail address of the partner authorized in writing to act for and on behalf of the partnership or (if that address is unknown) to the last known electronic mail address of that partner; or

(c) in the case of a body corporate—

(i) by delivering it by hand to any place in Hong Kong at which the body corporate carries on business and giving it to any person in the place who appears to be concerned in the management of, or employed by, the body corporate;

(ii) by sending it by post in a letter addressed to the body corporate at its registered office in Hong Kong or at any place in Hong Kong at

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| | | <p>which the body corporate carries on business or (if that office or place is unknown) at the body corporate's last known place of business;</p> <p>(iii) by sending it by fax transmission to the fax number of the body corporate or (if that number is unknown) to the last known fax number of the body corporate; or</p> <p>(iv) by sending it by electronic mail transmission to the electronic mail address of the body corporate or (if that address is unknown) to the last known electronic mail address of the body corporate.</p> <p>(2) A notice, decision or other document given, issued, notified or served in accordance with subsection (1) is to be taken, in the absence of evidence to the contrary, to have been given, issued, notified or served—</p> <p>(a) if delivered by hand—on the day after the day on which it was so delivered;</p> <p>(b) if sent by post—on the second working day after the day on which it was posted;</p> <p>(c) if sent by fax transmission—on the day after the day on which it was transmitted; or</p> <p>(d) if sent by electronic mail transmission—on the day after the day on which it was transmitted.</p> | |
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| | | <p>(3) A notice or other document required to be given to, lodged with or served on the Appeal Board, the Licensing Board or a public officer under this Ordinance may be given, lodged or served—</p> <ul style="list-style-type: none"> (a) by delivering it by hand to the office of the Appeal Board, the Licensing Board or the officer (as the case requires) during office hours; (b) by sending it by post to the office of the Appeal Board, the Licensing Board or the officer (as the case requires); (c) by sending it by fax transmission to the fax number of the Appeal Board, the Licensing Board or the officer (as the case requires); or (d) by sending it by electronic mail transmission to the electronic mail address of the Appeal Board, the Licensing Board or the officer (as the case requires). <p>(4) A notice or other document given, lodged or served in accordance with subsection (3) is to be taken, in the absence of evidence to the contrary, to have been given, lodged or served—</p> <ul style="list-style-type: none"> (a) if delivered by hand—on the day after the day on which it was so delivered; (b) if sent by post—on the second working day after the day on which it was posted; (c) if sent by fax transmission—on the day | |
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| | | <p>after the day on which it was transmitted; or</p> <p>(d) if sent by electronic mail transmission—on the day after the day on which it was transmitted.</p> <p>(5) This section is subject to section 2 of, and item 73 of Schedule 1 to, the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B).”.</p> | |
| 392 | Clause 97(3) | <p>To delete the original paragraphs (a) and (b) and substitute –</p> <p>“(a) has been made but has not been determined;</p> <p>(b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or</p> <p>(c) has been refused, which refusal has been appealed against but the appeal has not yet been determined.”.</p> | <p>Please see item 5 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015.</p> |

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| 393 | Clause 97(4) | <p>To replace the original subclause (4) with the following –</p> <p>“(4) Subsection (3) does not apply if, in respect of an application referred to in that subsection, the occupation of land as is necessary for, or ancillary to, the operation of the pre-Bill columbarium (to the extent as shown in the plans required under section 19) includes unlawful occupation of unleased land but the applicant—</p> <p>(a) does not apply to the Director of Lands for lawful authority to occupy the unleased land; or</p> <p>(b) does not provide a written declaration to the Director of Lands that the applicant has no claim to the unleased land, whether based on possession of the unleased land before, on or after the date of application or on any other ground.”.</p> | Please see item 5 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 394 | Clause 97(5) | <p>To delete the original paragraphs (a) and (b) and substitute –</p> <p>“(a) has been made but has not been determined;</p> <p>(b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or</p> <p>(c) has been refused, which refusal has been appealed against and is suspended from operation under section 35 pending the determination of the appeal.”.</p> | Please see item 5 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |

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| 395 | Clause 97(5) | To replace “延期” with “延展” in the Chinese text. | Please see item 7 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 396 | Clause 97(6)(a) | To add “or extended” after “issued”. | It seeks to enhance clarity. |
| 397 | Clause 97(6)(b) | To replace “為準的，對營運” with “狀況為準的，對營辦” in the Chinese text. | Please see item 9 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 398 | Clause 97(9) | To add a new subclause as follows – “(9) In subsection (1), a reference to section 6(3) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) is to be construed as a reference to section 6(3) of that Ordinance to the extent that it relates to section 6(2)(b) (but not section 6(2A)(iii)) of that Ordinance.”. | Please see item 4 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 399 | Clause 98(1)(a) | To replace “作出” with “進行” in the Chinese text. | Please see item 10 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 400 | Clause 98(3) | To delete the original paragraphs (a) and (b) and substitute – “(a) has been made but has not been determined; (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or (c) has been refused, which refusal has been appealed against but the appeal has not yet been determined.”. | Please see item 11 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 401 | Clause 98(4) | To replace “作出” with “進行” in the Chinese text. | Please see item 10 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |

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| 402 | Clause 98(4)(b) | To add “書” after “通知” in the Chinese text. | Please see item 12 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 403 | Clause 98(5) | To delete the original paragraphs (a) and (b) and substitute – “(a) has been made but has not been determined; (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or (c) has been refused, which refusal has been appealed against and is suspended from operation under section 35 pending the determination of the appeal.”. | Please see item 11 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 404 | Clause 99(3) | To delete the original paragraphs (a) and (b) and substitute – “(a) has been made but has not been determined; (b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or (c) has been refused, which refusal has been appealed against but the appeal has not yet been determined.”. | Please see item 14 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 405 | Clause 99(4)(a) | To replace “24C(1)” with “issued under section 24C(1) (as the case requires)”. | Please see item 15 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |

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| 406 | Clause 99(5) | <p>To delete the original paragraphs (a) and (b) and substitute –</p> <p>“(a) has been made but has not been determined;</p> <p>(b) has been refused, and the period within which a notice of appeal may be lodged against the refusal has not yet expired; or</p> <p>(c) has been refused, which refusal has been appealed against and is suspended from operation under section 35 pending the determination of the appeal.”.</p> | Please see item 14 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 407 | | To add “如” before “有人”. | Please see item 17 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 408 | | To replace “文書相關申請” with “文書相關條件” | |

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| 409 | Clause 99(6) | <p>To delete the original paragraphs (a) and (b) and substitute –</p> <p>“(a) if a temporary suspension of liability is issued or extended in respect of the columbarium—the non-compliant structures necessary for, or ancillary to, the operation of the columbarium, as shown in the approved plans annexed to the temporary suspension of liability;</p> <p>(b) if a licence or exemption is issued or renewed in respect of the columbarium—the structures certifiable for a pre-Bill columbarium in, on or at the columbarium, as shown in the approved plans annexed to the licence or exemption (as the case requires); or</p> <p>(c) in any other case—the non-compliant structures necessary for, or ancillary to, the operation of the columbarium as at the Bill announcement time.”.</p> | It seeks to enhance clarity. |
| 410 | Clause 100(2) | <p>To replace “subsection (1), a specified period” with –</p> <p>“subsection (1)— <i>specified period</i> (指明期間)”.</p> | It seeks to streamline the presentation. |
| 411 | Clause 102 | To replace “6(5)” with “6(7)”. | Please see item 1 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 412 | | To replace “(6)” with “(8)”. | |

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| 413 | Clause 111(1) | In the proposed section 113(2AA), to add “, as defined by section 113A(1),” after “columbarium”. | It seeks to enhance clarity. |
| 414 | Clause 111(3) | In the proposed section 113(4), in the Chinese text, to replace “人” with “人士”. | Please see item 2 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 415 | Clause 112 | In the proposed section 113A(1), in the Chinese text, in the definition of 指明人士, to replace “人。” with “人士；”. | Please see item 2 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 416 | | <p>In the proposed section 113A(1), to add in alphabetical order—</p> <p>“<i>ashes</i> (骨灰) has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance (of 2016);</p> <p><i>columbarium</i> (骨灰安置所), subject to subsection (6), has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance (of 2016);</p> <p><i>inter</i> (安放) has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance (of 2016);</p> <p><i>interment right</i> (安放權) has the same meaning as it has in section 2(1) of the Private Columbaria Ordinance (of 2016);”.</p> | It seeks to include the definition of relevant terms in section 113A of the Public Health and Municipal Services Ordinance (Cap. 132) by making reference to their corresponding definition in the Bill. |
| 417 | | In the proposed section 113A(2)(a), in the Chinese text, to delete everything after “控制” and substitute “骨灰安置所的指明人士，已向主管當局提供關於該骨灰安置所的名稱及位置的資料；及”. | Please see item 4 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |

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| 418 | | In the proposed section 113A(5), in the Chinese text, to replace “該人管理和控制的私營” with “該人士管理和控制的”. | Please see items 2 and 3 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 419 | | In the proposed section 113A(6), in the Chinese text, to replace “骨灰” with “靈灰”. | It seeks to ensure consistency with similar expressions in the Public Health and Municipal Services Ordinance (Cap. 132). |
| 420 | Clause 116 | In the Chinese text, in the proposed definition of <i>私營墳場</i> , to replace “所。” with “所；”. | Please see item 7 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 421 | Clause 118 | By renumbering the proposed items 128 and 129 as items 132 and 133 respectively. | Please see item 8 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 422 | Clauses 119 and 120 | <p>To add the following new clauses –</p> <p style="text-align: center;">“Division 7—Amendment to Electronic Transactions (Exclusion) Order</p> <p>119. Electronic Transactions (Exclusion) Order amended</p> <p>The Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) is amended as set out in this Division.</p> <p>120. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)</p> <p>Schedule 1—</p> <p>Add</p> <p>“73. Private Sections Columbaria 16(2)(b)(ii), Ordinance 18(1)(a) and (3), (of 32(3)(a), (4A) and 2016) (4B), 33(3), 34(2)(a) and (3),</p> | It seeks to make consequential amendments to the Electronic Transactions (Exclusion) Order (Cap. 553B) by setting out the provisions in the Bill that are to be excluded from application of section 5 of the Electronic Transactions Ordinance (Cap. 553). |

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| | | 35(2)(a) and (4), 36(1), (2A)(b)(i) and (3), 41(3)(b) and (g), 42(1) and (1A), 45(1) and (4), 46B(2)(b), 46C(10), 53(2)(b), 61(b) and (c), 64(1), (4A)(a) and (4E), 68(4), 72(2), 74(3)(b) and (13), 75(1)(b), 81(1), (3) and (4)(b), 86(1), 94A(1)(b)(i), (ii)(A), (iii) and (iv) and 97(4)(b), sections 2(2)(b) and (c) and 5 of Schedule 3 and sections 3(4)(a), 12, 14(2) and 17(2A) and (2B) of Schedule 5”.”. | |
| 423 | Schedule 1 | To replace “[s. 6]” with “[ss. 6 & 91]”. | This is a technical amendment. |
| 424 | Schedule 1, section 1(6) | To add a new subsection as follows – “(6) The notification is not subsidiary legislation.”. | It seeks to better reflect our policy intention. |
| 425 | Schedule 1, section 3(1) | In the Chinese text, to add “其” before “委員會”. | It seeks to ensure consistency with similar expressions in the Bill. |

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| 426 | Schedule 1, section 3(2) | To delete everything after “The Licensing Board” and substitute “may appoint a member of the Licensing Board to be the Chairperson or a member of a committee.”. | It seeks to simplify the provision. |
| 427 | Schedule 1, section 4(2) | To delete everything after “must be” and substitute “the Chairperson of the Licensing Board.”. | Please see item 22 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 428 | Schedule 1, section 4(2A) | <p>To add—</p> <p>“(2A) If the Chairperson of the Licensing Board is absent or is otherwise unable to act—</p> <p style="padding-left: 40px;">(a) the Deputy Chairperson of the Licensing Board is to act as Chairperson of the Licensing Board; or</p> <p style="padding-left: 40px;">(b) if the Deputy Chairperson of the Licensing Board is absent or is otherwise unable to act—a member of the Licensing Board named by the Secretary is to act as Chairperson of the Licensing Board.”.</p> | Please see item 22 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 429 | Schedule 1, section 4(3A) | <p>To add—</p> <p>“(3A) If the Chairperson of a committee is absent or is otherwise unable to act, a member of the committee named by the Director is to act as Chairperson of the committee.”.</p> | Please see item 22 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |

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| 430 | Schedule 1, section 4(8) | <p>To add—</p> <p>“(8) To avoid doubt—</p> <p>(a) in subsections (2) and (4), a reference to the Chairperson of the Licensing Board includes a reference to a person who acts as Chairperson of the Licensing Board under subsection (2A); and</p> <p>(b) in subsections (3) and (4), a reference to the Chairperson of a committee includes a reference to a person who acts as Chairperson of the committee under subsection (3A).”.</p> | It seeks to better reflect our policy intention. |
| 431 | Schedule 1, section 5 | To replace “pecuniary interest, whether direct or indirect,” with “direct or indirect interest”. | Please see item 27 of our response dated 28 November 2015 to ALA’s letter dated 21 May 2015. |
| 432 | Schedule 1, section 5(a) | <p>To delete paragraph (a) and substitute—</p> <p>“(a) must disclose to the Licensing Board or committee (as the case requires) the nature of the interest—</p> <p>(i) before the meeting begins; or</p> <p>(ii) if it comes to the notice of the member after the meeting begins that he or she has such an interest—as soon as practicable after the meeting begins;”.</p> | It seeks to enhance clarity, having regard to a Member’s suggestion. |
| 433 | Schedule 2, heading | In the heading, to delete “, or Conditions Imposed on, ”. | It seeks to better reflect the content of Schedule 2. |

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| 434 | Schedule 2 | To replace “21 & 22]” with “17, 21 & 22]”. | This is a technical amendment. |
| 435 | Schedule 2, section 1(b) | To replace “lease, licence or other instrument under which the land on which the columbarium is situated is held from the Government, is” with “requirements in respect of the columbarium under the lease, short term tenancy or other instrument, under which the columbarium premises are held directly from the Government, are”. | It seeks to enhance clarity. |
| 436 | Schedule 2, section 3(1)(b)(ii) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 437 | Schedule 2, section 3(1)(b) | In the Chinese text, to replace “之內或之上” with “內或其上”. | It seeks to enhance clarity. |
| 438 | Schedule 2, section 3(3) | In the definition of <i>certifiable building</i> , to delete everything before paragraph (a) and substitute “ <i>certifiable building</i> (可核證建築物) means—”. | It seeks to streamline the presentation. |
| 439 | | In the definition of <i>certifiable building</i> , in paragraph (b)(ii), to replace “; or” with a semicolon. | This is a consequential amendment arising from the addition of paragraph (d) as per item 441 below. |
| 440 | | In the definition of <i>certifiable building</i> , in paragraph (c), to replace the full stop with “; or”. | This is a consequential amendment arising from the addition of paragraph (d) as per item 441 below. |
| 441 | | In the definition of <i>certifiable building</i> , to add— “(d) a building situated on land— (i) that was unleased land at the time the building was erected on that land; and | To avoid doubt, we consider it appropriate to expressly include such buildings as an additional category under the definition of “certifiable building”. |

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| | | <p>(ii) in respect of which—</p> <p>(A) a lease under which the columbarium premises are held directly from the Government; or</p> <p>(B) a short term tenancy under which the columbarium premises are occupied,</p> <p>is subsequently granted by the Government before the enactment date.”.</p> | |
| 442 | Schedule 2, section 4(1) | In the definition of <i>non-compliant structures</i> , to replace “the conditions” with “any of the requirements referred to”. | It seeks to enhance clarity. |
| 443 | Schedule 2, section 4(1) | In the English text, in the definition of <i>structures certifiable for a pre-Bill columbarium</i> , in paragraph (b)(iv), to replace “part of,” with “part, of”. | It seeks to enhance clarity. |
| 444 | Schedule 2, section 4(2) | <p>To delete everything after “subsection (1),” and substitute –</p> <p>“a reference to a building—</p> <p>(a) is a reference to any building (having the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123)), including such a building situated on land that was unleased land at the time the building was erected on that land—</p> <p>(i) without a licence issued under section 5 of the Land (Miscellaneous</p> | It seeks to enhance clarity. |

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| | | Provisions) Ordinance (Cap. 28); or (ii) in breach of such a licence; but (b) does not include a reference to a building situated in or on another building that complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123).”. | |
| 445 | Schedule 2, section 4(3)(a)(ii) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 446 | Schedule 2, section 6(4) | In the Chinese text, to replace “主要結構牆” with “外牆”. | It seeks to enhance clarity. |
| 447 | Schedule 2, section 6(5)(a) | To replace “7.62 m,” with “7.62 m—”. | It seeks to streamline the presentation. |
| 448 | Schedule 2, section 7 | To add “or section 2(1) of this Ordinance” after “in this Part”. | It seeks to enhance clarity. |
| 449 | Schedule 3, heading | In the Chinese text, to replace “規定” with “條文”. | It seeks to enhance clarity. |
| 450 | Schedule 3, section 2(2)(b) | To replace “partnership—by a partner” with “partner in a partnership—by the partner authorized in writing to act for and on behalf of the partnership”. | It seeks to ensure consistency with similar expressions in the Bill. We have also taken the opportunity to insert the requirement that the partner should be authorized in writing to act for and on behalf of the partnership, such that a partner could not go behind the back of the partnership to operate a columbarium without their authorization. |

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| 451 | Schedule 3, section 2(2)(c) | To replace the full stop with “authorized in writing to act for and on behalf of the body corporate.”. | We have taken the opportunity to insert the requirement that the director or other officer should be authorized in writing to act for and on behalf of the body corporate, such that a director or other officer could not go behind the back of the body corporate to operate a columbarium without their authorization. |
| 452 | Schedule 3, section 4, heading | To replace “ of licence applications and consideration of public views ” with “ etc. of notices of licence applications ”. | Please see item 20 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 453 | Schedule 3, section 4(1)(a) | In the Chinese text, to add “任何” before “其他方式”. | It seeks to enhance clarity. |
| 454 | Schedule 3, section 4(1)(c) | In the Chinese text, to delete the paragraph and substitute – “(c) 將該申請的通告，張貼於該骨灰安置所外的顯眼位置。”. | Please see item 23 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 455 | Schedule 3, section 4(2) | To add “or posted” after “published”. | Please see item 24 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 456 | Schedule 3, section 5 | To replace “for a specified instrument, the Licensing Board must notify the applicant of its decision, in writing, setting out” with “referred to in section 1(a) of this Schedule, the Licensing Board must notify the applicant in writing of”. | Please see item 25 of our response dated 27 November 2015 to ALA’s letter dated 17 April 2015. |
| 457 | Schedule 3, section 5(a) | To add “Licensing Board’s” before “decision”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 458 | Schedule 4 | To replace “[ss. 2, 40” with “[ss. 2”. | This is a technical amendment. |
| 459 | Schedule 4, section 1 | To add “all of” before “the following”. | It seeks to enhance clarity. |

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| 460 | Schedule 4, section 1(a) | To add “name of licensee, address of the licensed premises,” before “licence number”. | Please see item 7 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 461 | Schedule 4, section 1(b)(i) | <p>To delete everything after “seller is the” and substitute –</p> <p>“owner of the columbarium premises held directly from the Government under a lease and, if so—</p> <p>(A) whether the seller is the sole owner, the joint owners or the co-owners;</p> <p>(B) the name of the sole owner, or the names of the joint owners or the co-owners;</p> <p>(C) (in the case of co-ownership) each co-owner’s respective share or interest in the premises; and</p> <p>(D) the following particulars of the lease—</p> <p>(I) the lot number of the premises; and</p> <p>(II) the date on which the term of the lease is to end;”.</p> | Please see items 19 to 21 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |
| 462 | Schedule 4, section 1(b)(ii) | <p>To delete everything after “under a tenancy” and substitute –</p> <p>“and, if so—</p> <p>(A) the name of the landlord;</p> <p>(B) the periodic basis for the payment</p> | Please see items 19 to 21 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |

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| | | <p>of rent for the tenancy;</p> <p>(C) the terms in the tenancy agreement—</p> <p>(I) on the arrangements for the termination of the tenancy; and</p> <p>(II) on the arrangements for the renewal of the tenancy; and</p> <p>(D) the following particulars of the tenancy—</p> <p>(I) the lot number of the premises;</p> <p>(II) if applicable—the memorial number (where available) of the tenancy agreement;</p> <p>(III) for a short term tenancy—the short term tenancy number assigned by the Lands Department; and</p> <p>(IV) the date on which the term of the tenancy is to end;”.</p> | |
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| 463 | Schedule 4, section 1(b)(iii) | To delete “interest;” and substitute – “interest and, if so— (A) the name of the mortgagee or the person entitled to the benefit of, or to require payment or discharge of, the encumbrance (as the case requires); and (B) if applicable—the memorial number (where available) of the mortgage or encumbrance;”. | Please see items 19 to 21 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |
| 464 | Schedule 4, section 1(b)(iv) | To replace “particulars” with “the memorial number”. | Please see items 19 to 21 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 27 May 2016 (LC Paper No. CB(2)1589/15-16(01) (Updated)). |
| 465 | Schedule 4, section 1(b) | In the Chinese text, to replace “業權” with “擁有權”. | Please see item 8 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 466 | Schedule 4, section 1(c) | To delete the paragraph. | The relevant information in this paragraph has been covered by the revised paragraph 1(b). The paragraph could hence be deleted. |
| 467 | Schedule 4, section 1(d) | To delete the paragraph. | Please see item 16 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. We have merged paragraph (d) with paragraph (e) with a view to simplifying the provisions. |
| 468 | Schedule 4, section 1(e) | To add “involved with lump sum prepayment for an interment right for a long period” after “financial risks”. | |
| 469 | Schedule 4, section 2(b) | To replace “sold—” with “sold, specifying—”. | It seeks to enhance clarity. |

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| 470 | Schedule 4 section 2(b)(i) | To delete everything after “relates to a” and substitute – “niche— (A) the location, serial numbering and dimensions of the niche; and (B) the maximum number (if applicable) of containers of ashes that are permitted to be interred in the niche;”. | Please see item 18 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 471 | Schedule 4, section 2(b)(iii) | To delete the subparagraph. | Please see item 19 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 472 | Schedule 4, section 2(b)(iv) | To delete “particulars of”. | It seeks to enhance clarity. |
| 473 | | To replace “or with “and”. | Please see item 21 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 474 | Schedule 4, section 2 | To add— “(ba) any other services to be provided under the agreement;”. | Please see item 19 of our response dated 1 December 2015 to ALA’s letter dated 26 June 2015. |
| 475 | Schedule 4, section 2(c) | To replace “or other sums” with “and other sums”. | It seeks to enhance clarity. |
| 476 | Schedule 4, section 2(d) | To replace “, licence or other instrument under which the land on which the columbarium is situated is held” with “under which the columbarium premises are held directly from the Government”. | It seeks to ensure consistency with similar expressions in the Bill. |

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| 477 | Schedule 4, section 2(e) | <p>To add—</p> <p>“(ia) arrangements for authorizing a person to enforce the agreement; and”.</p> | <p>This is to meet a Member’s concerns that after a purchaser who is the dedicated person dies, there have been difficulties on the part of his/her relative / friend to enforce the agreement on his/her behalf, on grounds that that relative / friend is not a party to the contract. The CSA seeks to make the arrangements for authorizing a person to enforce the agreement as one of the “other essential terms” that need to be set out in the agreement.</p> |
| 478 | Schedule 4 | <p>To add—</p> <p style="text-align: center;">“Part 3</p> <p style="text-align: center;">Interpretative Provisions</p> <p>3. In this Schedule—</p> <p><i>memorial number</i> (註冊摘要編號) has the meaning given by regulation 2 of the Land Registration Regulations (Cap. 128 sub. leg. A);</p> <p><i>purchaser</i> (買方)—see section 41(1) of this Ordinance;</p> <p><i>seller</i> (賣方)—see section 41(1) of this Ordinance.</p> <p>4. This Schedule applies to an agreement for the sale of an interment right entered into on or after the enactment date.”.</p> | <p>It seeks to enhance clarity.</p> |
| 479 | Schedule 5 | <p>To replace “55, 62, 64, 65, 66, 69 & 91” with “46B, 55, 62, 64, 65, 65A, 66, 69, 72 & 91”.</p> | <p>This is a technical amendment.</p> |
| 480 | Schedule 5, section 1 | <p>In the definition of <i>instrument holder</i>, to replace the semicolon with a full stop;</p> | <p>This is a consequential technical amendment arising from the deletion of the definition of “specified officer” from this provision.</p> |

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| 481 | | In the definition of <i>instrument holder</i> , in the Chinese text, to replace “是否正有效、已屆滿(而不獲續期或延展)” with “是仍然有效、已期滿失效並且未獲續期或延展”. | Please see item 1 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 482 | Schedule 5, section 1 | To delete the definition of <i>specified officer</i> . | The definition of “specified officer” has been moved to clause 2 as per item 23 above. |
| 483 | Schedule 5 | To add— <p style="text-align: center;">“1A. Procedures for application for occupation order</p> <p style="text-align: center;">(1) The Chief Justice may, by practice directions, provide for the procedures for making an application for, or otherwise in relation to, an occupation order under section 65 of this Ordinance.</p> <p style="text-align: center;">(2) Practice directions referred to in subsection (1) are not subsidiary legislation.”.</p> | Please see item 3 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 484 | Schedule 5, section 2(1) | To replace “The court” with “A magistrate”. | Please see item 10 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 485 | | To delete “any premises that are”. | Please see item 5 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 486 | | In the Chinese text, to replace “不得” with “不可”. | Please see item 3 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |

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| 487 | Schedule 5, section 2(1)(a) | To replace “the Director or an authorized officer” with “a specified officer”. | We envisage that the procedures relating to an occupation order could be carried out by a public officer other than the Director or an authorized officer. We therefore consider using the term “specified officer” more appropriate. |
| 488 | Schedule 5, section 2(1)(a)(i)(A) | To add “columbarium” before “premises”. | It seeks to enhance clarity. |
| 489 | Schedule 5, section 2(1)(a)(i)(B) | In the Chinese text, to replace “關於該骨灰安置所的指明文書的” with “有關骨灰安置所的文書”. | It seeks to enhance clarity. |
| 490 | Schedule 5, section 2(1)(a)(ii) | In the Chinese text, to delete everything after “已” and substitute “將該通知張貼於有關骨灰安置所外的顯眼位置；及”. | It seeks to enhance clarity. |
| 491 | Schedule 5, section 2(1)(b) | To delete everything after “venue of the hearing” and substitute a full stop. | The CSA seeks to simplify the provision. |
| 492 | Schedule 5, section 2(2) | To replace “Director or an authorized officer” with “specified officer”. | We envisage that the procedures relating to an occupation order could be carried out by a public officer other than the Director or an authorized officer. We therefore consider using the term “specified officer” more appropriate. |
| 493 | Schedule 5, section 2(2)(a) | To delete everything after “notice of” and substitute – “the order— (i) to the owner of the columbarium premises; and (ii) to the instrument holder (if any) in respect of the columbarium;”. | Please see item 7 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |

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| 494 | Schedule 5, section 2(3) | To replace the original subsection with the following – “(3) An occupation order takes effect on the date set out in the order.”. | It seeks to simplify the provision by providing that an occupation order takes effect on the date set out in the order, irrespective of whether there is any appeal against the order. |
| 495 | Schedule 5, section 2 | To add— “(3A) Proceedings before a magistrate for the purposes of this section are deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap. 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) applies, with necessary modifications, to appeals against an occupation order.”. | Please see item 3 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 496 | Schedule 5, section 2(4) | To add “a notice posted under subsection (1)(a)(ii) or” after “defaces”. | Please see item 11 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 497 | Schedule 5, section 3, heading | To replace “ premises ” with “ columbarium ”. | Please see item 5 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 498 | Schedule 5, section 3(1) | To replace “Subject to subsection (3), when” with “When”. | This is a consequential amendment arising from the deletion of subsection (3) as per item 501 below. |
| 499 | | To add “premises, or any part of them” after “the columbarium”. | Please see item 9 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 11 June 2016 (LC Paper No. CB(2)1711/15-16(02)). Corresponding amendments are made to this provision as well. |

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| 500 | Schedule 5, section 3(2) | To replace “may not enter or remain on any columbarium subject to an occupation order” with “must not enter or remain on the premises of any columbarium subject to an occupation order, or any part of them,”. | Please see item 12 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 501 | Schedule 5, section 3 | To delete subsection (3). | Please see item 14 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 502 | Schedule 5, section 3(4)(a) | To add “premises, or any part of them,” after “columbarium”. | Please see item 5 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 503 | Schedule 5, section 3(4)(c) | To add “or” after the semicolon. | It seeks to enhance clarity. |
| 504 | | In the Chinese text, to add “該項” before “准許” (wherever appearing). | Please see item 15 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 505 | Schedule 5, section 3(4)(d) | To replace “to leave, and, if the person refuses to leave, remove the person from the columbarium” with “premises, or any part of them, to leave and, if the person refuses to leave, remove the person from the premises or part”. | Please see item 5 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 506 | Schedule 5, section 4 | In the heading, to add “ or cancellation ” after “ Variation ”. | Please see item 16 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 507 | Schedule 5, section 4(1) | To replace “subject to an occupation order may apply to the court” with “that are a columbarium subject to an occupation order, or the instrument holder (if any) in respect of the columbarium, may apply to a magistrate”. | It seeks to ensure consistency with similar expressions in the Bill. |

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| 508 | Schedule 5, section 5 | <p>To replace the original subsection with the following –</p> <p>“(1) In this Part, a reference to arranging for the return of the ashes interred in a columbarium on-site is a reference to making available the ashes for return at the columbarium at reasonable hours during a period (which period is referred to as an <i>on-site claim period</i> and is to be construed as including the 2 months referred to in section 9(2) of this Schedule).”.</p> | <p>On reflection, we consider it not practical to require an ash handler to arrange for the return of the ashes interred in a columbarium off-site, since any premises that are used, or claimed, represented or held out to be used, for keeping ashes will be considered a columbarium, the operation of which must be covered by a specified instrument. Sites available for on-site claim are limited. In addition, it is not desirable to move the ashes too many times (i.e. moved to an off-site venue and then delivered to the Director of Food and Environmental Hygiene) since it is liable to compound the difficulties inherent in establishing traceability.</p> |
| 509 | Schedule 5, section 5(2) | <p>In the definition of <i>eligible claimant</i>, to replace “, any plaque or any other” with “or any”;</p> | <p>Please see item 19 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015.</p> |
| 510 | | <p>In the definition of <i>eligible claimant</i>, in paragraph (a), to add “or” after the semicolon;</p> | <p>It seeks to enhance clarity.</p> |
| 511 | | <p>In the definition of <i>eligible claimant</i>, in paragraph (b), to delete everything after “of the item or” and substitute “the person to whom the ashes are to be returned (as the case requires) as determined in accordance with any law applicable to the item or ashes (as the case requires);”.</p> | <p>Please see item 19 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015.</p> |
| 512 | | <p>In the definition of <i>personal representative</i>, to add “, in relation to a deceased person,” before “means”;</p> | <p>It seeks to enhance clarity.</p> |
| 513 | | <p>In the definition of <i>personal representative</i>, in paragraph (b), in the Chinese text, to replace “收集, 並根據該條例第 15 條以簡易方式管理遺產” with “根據該條例第 15 條收集遺產, 並以簡易方式管理之”.</p> | <p>It seeks to enhance clarity.</p> |

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| 514 | | In the definition of <i>prescribed claimant</i> , to add “or the purchaser of the interment right” after “relative”. | Having reviewed the provision, we consider that a purchaser should be included in the definition of “prescribed claimant” such that the purchaser, who has an interest in the interment right, would have the right to claim for the return of the interred ashes, alongside an authorized representative, personal representative and relative. |
| 515 | | In the Chinese text, in the definition of 文書持有人, to replace “正有效、已屆滿(而不獲續期或延展)” with “是仍然有效、已期滿失效並且未獲續期或延展”. | Please see item 21 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 516 | | To delete the definition of <i>overall claim period</i> . | With the off-site claim period removed, there is no need to make reference to an “overall claim period”, hence the proposed deletion of the definition. |
| 517 | Schedule 5, section 6(1) | To replace “A person” with “Subject to section 17 of this Schedule, a person”. | Section 17 of Schedule 5 provides for the alternative ash disposal procedures. Section 6(1) of Schedule 5, which provides for the prescribed ash disposal procedures, should hence be subject to section 17 of Schedule 5. |
| 518 | | To delete “or (3)”. | This is a consequential technical amendment arising from the deletion of clause 64(3) as per item 298 above. |
| 519 | Schedule 5, section 6(1)(a)(i) | To replace “, (3) or (4)” with “or (3)”. | This is a consequential technical amendment arising from the deletion of section 6(4) of Schedule 5 as per item 527 below. |
| 520 | Schedule 5, section 6(1) | To add— “(ba) takes the steps required by the Director under section 12 of this Schedule; and”. | Please see item 53 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 521 | Schedule 5, section 6(1)(c) | To replace “disinterment” with “the procedures”. | Please see item 25 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |

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| 522 | Schedule 5, section 6(2)(b) | To replace the original paragraph with – “(b) after the expiry of the 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.”. | Please see item 26 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 523 | Schedule 5, section 6(3)(a) | To replace “2” with “8”. | Please see item 44 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 524 | Schedule 5, section 6(3)(b) | In the English text, to replace “on the” with “after the”. | Please see item 26 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 525 | Schedule 5, section 6(3)(b)(ii) | To delete “(whether or not after arranging also for the return of ashes off-site, allowing for an off-site claim period)”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 526 | Schedule 5, section 6(3)(b)(ii)(A) | In the Chinese text, to replace “所：” with “所內：”. | It seeks to enhance clarity. |
| 527 | Schedule 5, section 6(4) | To delete the subsection. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 528 | Schedule 5, section 6(5) | To replace “Subsections (2)(b) and (4)(c) have” with “Subsection (2)(b) has”. | This is a consequential amendment arising from the deletion of subsection (4) as per item 527 above. |
| 529 | Schedule 5, section 7 | To delete this section. | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |

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| 530 | Schedule 5, section 8(1) | To replace “sections 6(1)(a) and 7(1)(a) of this Schedule, a person who is required to carry out the prescribed ash disposal procedures or the on-site portion of the procedures must” with “section 6(1)(a) of this Schedule, a person who is required to carry out the prescribed ash disposal procedures must give a commencement of ash disposal notice, stating the person’s intention regarding disposal of the ashes,”. | Please see item 34 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 531 | | To delete everything after “starting to handle the ashes in the columbarium” and substitute a full stop. | |
| 532 | Schedule 5, section 8 | <p>To add—</p> <p>“(1A) A commencement of ash disposal notice must be—</p> <p>(a) published in 3 newspapers (of which 1 must be in English and 1 must be in Chinese) in general circulation in Hong Kong at least once in each of 2 consecutive weeks;</p> <p>(b) posted at a conspicuous place outside the columbarium;</p> <p>(c) served on the Licensing Board; and</p> <p>(d) served on each specified addressee (if any).”.</p> | Please see item 34 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 533 | Schedule 5, | To replace subsections (2) and (3) with the | It seeks to simplify the provision by consolidating subsections (2) and (3), and |

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| | section 8 | <p>following —</p> <p>“(2) In subsection (1A)—</p> <p><i>specified addressee</i> (指明收訊者), in relation to ashes interred under an agreement for the sale of an interment right, means—</p> <p>(a) an authorized representative (where available);</p> <p>(b) the purchaser; or</p> <p>(c) any other person available whose contact details are entered into any register or record kept under this Ordinance.”.</p> | inserting “purchaser” as a “specified addressee”. |
| 534 | Schedule 5, section 8(4) | To replace “notice required to be published and served under subsection (1)” with “commencement of ash disposal notice”. | Please see item 39 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 535 | Schedule 5, section 8(4)(a) | To delete “or the on-site portion of the procedures”. | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |
| 536 | Schedule 5, section 8(4)(b) | In the English text, to replace “intentions” with “intention”. | It seeks to enhance clarity. |
| 537 | Schedule 5, section 8(4)(b) | To replace subparagraph (i) with the following — | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |
| | | “(i) that the prescribed ash disposal procedures are to be carried out;”. | |

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| 538 | Schedule 5, section 8(4)(b) | To replace subparagraph (ii) with the following — “(ii) which of section 6(2) or (3) of this Schedule are the ashes to be handled in accordance with or (if applicable) that the ashes are to be handled in accordance with section 6(2) and (3) of this Schedule; and”. | This is a consequential amendment arising from the deletion of subsection 6(4) as per item 527 above. |
| 539 | Schedule 5, section 8(4)(b)(iii)(A) | To replace “dates on which the on-site claim period begins and ends” with “date on which the on-site claim period begins (which must be no earlier than the expiry of 14 days, and no later than the expiry of 30 days, immediately after the date of the commencement of ash disposal notice) and the date on which the on-site claim period ends”. | Please see item 34 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 540 | Schedule 5, section 8(4)(b)(iii) | To delete sub-subparagraph (B). | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 541 | Schedule 5, section 8(4)(b)(iii)(C) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 542 | Schedule 5, section 8(4)(b)(iii)(D) | To add “and” after the semicolon. | It seeks to enhance clarity. |
| 543 | Schedule 5, section 8(4) | To delete paragraph (c). | This is a consequential amendment arising from the deletion of section 10 of Schedule 5 as per item 565 below. |
| 544 | Schedule 5, section 8(4)(d) | To delete “or the on-site portion of the procedures”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |

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| 545 | Schedule 5, section 8(5) | To replace “notice must conform to the requirements of section 6(2), (3) or (4)” with “commencement of ash disposal notice must conform to the requirements of section 6(2) or (3), or section 6(2) and (3),”. | This is a consequential amendment arising from the deletion of subsection 6(4) as per item 527 above. |
| 546 | Schedule 5, section 9(1) | In the definition of <i>ash handler</i> , to delete everything after “disposal procedures” and substitute “are being carried out, means the person carrying out the procedures;”. | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |
| 547 | Schedule 5, section 9(1) | To add in alphabetical order— “ <i>court</i> (法院) means the District Court.”. | Please see item 10 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 548 | Schedule 5, section 9(2) | To replace “overall” with “on-site”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 549 | Schedule 5, section 9(3) | In the English text, to replace “On” with “After”. | Please see item 26 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 550 | Schedule 5, section 9(4)(a) | To replace “overall” with “on-site”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 551 | Schedule 5, section 9(5)(b) | To add “or of the purchaser” after “relative”. | This is a consequential amendment arising from the inclusion of “purchaser” into the definition of “prescribed claimant”. |
| 552 | Schedule 5, section 9(5) | To add— “(ba) a claim of a personal representative or relative has priority over that of the purchaser; and”. | This is a consequential amendment arising from the inclusion of “purchaser” into the definition of “prescribed claimant”. |
| 553 | Schedule 5, section 9(6)(a) | To replace “a prescribed claimant” with “a person”. | As an ash handler might also apply for a court order in respect of the competing claims for the return of ashes, the use of “a person” is more appropriate. |

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| 554 | Schedule 5, section 9(6)(b) | To replace “order is made by the expiry of 12 months after the overall” with “proceedings have been instituted by the expiry of 12 months after the on-site”. | Apart from enhancing clarity, the CSA is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 555 | Schedule 5, section 9(7)(a) | To replace “an item as one related to the ashes of a deceased person” with “a related item interred together with the ashes of a deceased person in the same niche (if applicable)”. | It seeks to enhance clarity. |
| 556 | Schedule 5, section 9(7)(b) | To replace “a prescribed claimant” with “any person”. | As an ash handler might also apply for a court order in respect of the competing claims for the return of ashes, the use of “a person” is more appropriate. |
| 557 | | To delete “, if the person also claims for the return of the ashes”. | Our policy intention is to disallow any person to only claim for the return of any items interred together with the ashes, without also claiming for the return of the ashes. The CSA seeks to better reflect our policy intention. |
| 558 | Schedule 5, section 9(8) | To delete paragraph (a). | Our policy intention is that the court may determine a competing claim in accordance with any law applicable to it, which could include, although not necessarily, subsections (3), (4), (5) and (6). We therefore propose to delete paragraph (a) to allow greater flexibility to the court. |
| 559 | Schedule 5, section 9(8) | To add— “(ab) the ash handler must return the specified item— (i) where the person who claims to be the owner of the item as referred to in subsection (7)(b) is a prescribed claimant— (A) if the ash handler receives only the claim for the return of the item or the | It seeks to provide clear rules on how the specified item should be returned. |

specified item from that person within the first 2 months—to that person after the expiry of the first 2 months; or

(B) if, by the expiry of the first 2 months, the ash handler does not receive any claim for the return of the item or the specified item and that person is the first one who makes a claim in the remainder of the on-site claim period—to that person; or

(ii) where the person who claims to be the owner of the item as referred to in subsection (7)(b) is not a prescribed claimant and if, throughout the on-site claim period, the ash handler does not receive any other claim for the return of the item or the specified item—to that person after the expiry of the on-site claim period;”.

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| 560 | Schedule 5, section 9(8)(b) | To replace “the court may determine competing claims for the specified item” with “if, before the specified item is returned in accordance with paragraph (ab), the ash handler receives another claim for the return of the item or the specified item, the court may determine the competing claims”. | It seeks to enhance clarity. |
| 561 | | To delete “apart from subsections (3), (4), (5) and (6)”. | Our policy intention is that the court may determine a competing claim in accordance with any law applicable to it, which could include, although not necessarily, subsections (3), (4), (5) and (6). We therefore propose to remove references to these provisions to allow greater flexibility to the court. |
| 562 | Schedule 5, section 9(8)(c)(i) | In the English text, to replace “the item” (wherever appearing) with “it”. | It seeks to enhance clarity. |
| 563 | Schedule 5, section 9(8)(c)(ii) | To replace “order is made by the expiry of 12 months after the overall” with “proceedings have been instituted by the expiry of 12 months after the on-site”. | Apart from enhancing clarity of the provision, the CSA is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 564 | Schedule 5, section 9 | To add— “(9) For the purposes of subsections (7) and (8), the ash handler is not under any obligation to open any container containing ashes in order to— (a) ascertain if there is any related item interred together with the ashes inside the container; or (b) return any related item interred together with the ashes inside the container, | Please see item 21 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |

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| | | <p style="text-align: center;">without returning the ashes together with it.</p> <p>(10) An application for a court order referred to in subsection (6)(a) or (8)(c)(i) may be made by originating summons.</p> <p>(11) Order 17 of the Rules of the District Court (Cap. 336 sub. leg. H) applies, with necessary modifications, in relation to an application for a court order referred to in subsection (6)(a) or (8)(c)(i) made by an ash handler as if it were an application for relief by way of interpleader; and the court has the powers under that Order accordingly despite section 32(3) of the District Court Ordinance (Cap. 336).</p> <p>(12) Despite subsections (10) and (11), the District Court Rules Committee established under section 17 of the District Court Ordinance (Cap. 336) may make rules to provide for the procedures for making an application for a court order referred to in subsection (6)(a) or (8)(c)(i).</p> <p>(13) On making a court order referred to in subsection (6)(a) or (8)(c)(i), the court may impose the conditions that it considers appropriate.”.</p> | |
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| 565 | Schedule 5 | To delete section 10. | Having reviewed the provision, we consider that whether an ash handler would claim for reimbursement of the expenses incurred for carrying out the prescribed ash disposal procedures from a person to whom a set of ashes is returned should be a private matter and need not be provided for in the law. We therefore propose deleting the relevant provision. |
| 566 | Schedule 5, section 11(1) | To delete “or the on-site portion of the procedures”. | This is a consequential amendment arising from the removal of the on-site portion of the prescribed ash disposal procedures from the Bill. |
| 567 | Schedule 5, section 11(2) | To delete “, not being the Director,”. | A specified officer (the Director, authorized officer or public officer) is not obligated under the Bill to carry out the prescribed ash disposal procedures, but is empowered to carry out any steps that a specified officer considers necessary for disposal of ashes in respect of a columbarium, if the prescribed ash disposal procedures have, or any step in them has, not been carried out. We therefore propose to remove this phrase from the provision to avoid confusion. |
| 568 | | To replace “overall” with “on-site”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 569 | Schedule 5, section 11(3)(b) | To replace “overall” with “on-site”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 570 | Schedule 5, section 11(4)(b) | To replace “overall” with “on-site”. | This is a consequential amendment arising from the removal of the off-site claim period from the Bill. |
| 571 | Schedule 5, section 12 | To delete “or (3)”. | This is a consequential technical amendment arising from the deletion of clause 64(3) as per item 527 above. |

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| 572 | | <p>To delete everything after “disposal procedures” and substitute—</p> <p>“to take any steps that the Director considers necessary to facilitate—</p> <p>(a) the return of ashes to their eligible claimants;</p> <p>(b) the delivery of ashes to the Director; or</p> <p>(c) the reinterment of ashes.”.</p> | <p>Please see item 53 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015.</p> |
| 573 | Schedule 5, section 13 | <p>In the heading, by deleting “completing prescribed ash disposal procedure” with “carrying out steps necessary for disposal of ashes”.</p> | <p>Please see the first point in item 567 for our thinking.</p> <p>The CSA therefore seeks to better reflect this understanding.</p> |
| 574 | Schedule 5, section 13(1) | <p>To delete everything after “Subsections (2)” and substitute “, (2A) and (3) apply if the Director has in his or her possession ashes in respect of which the prescribed ash disposal procedures have, or any step in them has, not been carried out, whether or not after a contravention of section 58, 59, 60, 61A, 62 or 64 of this Ordinance.”.</p> | <p>This mainly involves technical amendments arising from the addition and removal of certain provisions.</p> |
| 575 | Schedule 5, section 13(2) | <p>To delete everything after “Director” and substitute “may, under section 65(2) of this Ordinance, carry out the steps that the Director considers necessary for disposal of ashes (to the extent that there are steps in the prescribed ash disposal procedures that have not been carried out).”.</p> | <p>Please see the first point in item 567 for our thinking.</p> <p>The CSA therefore seeks to better reflect this understanding.</p> |

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| 576 | Schedule 5, section 13 | To add— “(2A) The Director must keep a record of the process of the steps carried out under section 65(2) of this Ordinance.”. | Please see the first point in item 567 for our thinking. Since section 11 of Schedule 5 applies only to “a person who carries out the prescribed ash disposal procedures” who does not include the Director, we propose moving the record keeping requirement in respect of the Director to this provision. |
| 577 | Schedule 5, section 13(3) | To delete everything after “Sections 6, 8” and substitute “and 9 of this Schedule apply, with any necessary modifications, to the Director for the purposes of disposal of ashes to the extent to which those sections provide for the steps that the Director considers necessary for the disposal.”. | Please see the first point in item 567 for our thinking. The CSA seeks to better reflect this understanding. |
| 578 | Schedule 5, section 14 | In the heading, by deleting “ abandoned ”. | It seeks to enhance clarity. |
| 579 | Schedule 5, section 14(1) | To replace “have been carried out (whether or not by the Director)” with “, or the steps that a specified officer considers necessary for disposal of ashes, have been carried out”. | Please see the first point in item 567 for our thinking. The CSA seeks to better reflect this understanding. |
| 580 | Schedule 5, section 15, heading | To replace “ prescribed ash disposal procedures ” with “ steps carried out for disposal of ashes ”. | Please see the first point in item 567 for our thinking. The CSA seeks to better reflect this understanding. |
| 581 | Schedule 5, section 15(1) | To delete everything after “in carrying out the” and substitute— “steps that the Director considers necessary for disposal of ashes in respect of a columbarium if the person— (a) is required under section 58, 62 or 64(2) of this Ordinance to carry out the prescribed ash disposal procedures; but | Please see the first point in item 567 for our thinking. The CSA seeks to better reflect this understanding. Please see also item 61 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |

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| | | (b) has not done so.”. | |
| 582 | Schedule 5, section 15 | To add— “(1A) To avoid doubt, for the purposes of subsection (1)(a), a person is regarded as being required under section 58 of this Ordinance to carry out the prescribed ash disposal procedures if the person— (a) has abandoned the columbarium as referred to in section 59 or 60 of this Ordinance; or (b) does not continue to operate the columbarium as required by section 61A of this Ordinance.”. | The CSA seeks to put beyond doubt that a person who has abandoned a columbarium as referred to in clause 59 or 60 or does not continue to operate a columbarium as required by clause 61A is subject to the obligation to carry out the prescribed ash disposal procedures. |
| 583 | Schedule 5, section 15(2) | To add “issue a certificate to” after “Director may”. | This seeks to facilitate the introduction of subsections (3A), (10) and (11) as per items 585 and 588 below. |
| 584 | Schedule 5, section 15(3) | To add “and legal costs” after “charges”. | As the Director might need to incur legal costs in carrying out the steps that the Director considers necessary for the disposal of ashes, we propose stating clearly that the expenses to be recovered by the Director may include legal costs. |

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| 585 | Schedule 5, section 15 | <p>To add—</p> <p>“(3A) The certificate must state that upon registration of it in the Land Registry under subsection (10) in the case referred to in that subsection, the expenses (including any interest recoverable under subsection (5)) constitute a legal charge on the columbarium premises.”.</p> | <p>With reference to the Legal Aid Ordinance (Cap. 91) and the Buildings Ordinance (Cap. 123), this CSA seeks to empower DFEH to register a legal charge against the property before the debt has been wholly recovered.</p> |
| 586 | Schedule 5, section 15(4) | <p>In the Chinese text, to replace “可” with “須”.</p> | <p>Please see item 63 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015.</p> |
| 587 | Schedule 5, section 15 | <p>In the Chinese text, to replace subsection (5) with —</p> <p>“(5) 凡署長於某日向根據第(1)款有法律責任繳付開支的人送達證明書，自該日後的1個月起以年利率10%計算的利息，可作為開支的一部分，向該人追討。”.</p> | <p>Please see item 64 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015.</p> |
| 588 | Schedule 5, section 15 | <p>To add—</p> <p>“(10) Where any person liable to pay the expenses is the owner of the columbarium premises, then at any time before the expenses (including the interest accrued) have been recovered in full, the certificate under subsection (2) may be registered in the Land Registry against the title of the premises.</p> <p>(11) Upon the recovery of the expenses (including the interest accrued) in full, the Director is to lodge, or</p> | <p>This is related to item 585 above.</p> |

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| | | cause to be lodged, in the Land Registry a memorial of satisfaction against the certificate.”. | |
| 589 | Schedule 5, section 16 | In the heading, in the Chinese text, to replace “在骨灰安置所處置骨灰後提供” with “提供關於骨灰安置所處置骨灰的”. | Please see item 67 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 590 | Schedule 5, section 16(1) | To replace “may keep—” with “must keep—”. | This is made in response to comments raised by the Chairman and members of the Bills Committee. |
| 591 | Schedule 5, section 16(1)(a)(i) | To delete “and”. | This is a consequential technical amendment arising from the introduction of subparagraphs (iii) and (iv) as per item 593 below. |
| 592 | Schedule 5, section 16(1)(a)(ii) | In the Chinese text to replace “已進行的” with “已進行”. | It seeks to enhance clarity. |
| 593 | Schedule 5, section 16(1)(a) | To add— “(iii) each columbarium in respect of which the steps that a specified officer considers necessary for disposal of ashes are being carried out; and (iv) each columbarium in respect of which the steps that a specified officer considers necessary for disposal of ashes have been carried out; and”. | Please see the first point in item 567 for our thinking. The CSA seeks to better reflect this understanding. |
| 594 | Schedule 5, section 16(1)(b) | To delete everything after “paragraph” and substitute “(a)(i) or (ii), a copy of the commencement of ash disposal notice given in accordance with section 8 of this Schedule.”. | This is a consequential amendment arising from the amendments to section 16(1)(a) of Schedule 5. |

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| 595 | Schedule 5, section 16(1) | To delete paragraph (c). | The purpose of this section is to impose a requirement on the Director to make available certain information for public inspection. Having reviewed the provision, we consider it not appropriate for the Director to make available the record of the prescribed ash disposal procedures delivered to the Director as it might involve personal data, hence the proposed deletion of paragraph (c). |
| 596 | Schedule 5, section 16(2) | To delete everything after “The Director” and substitute “must make available the information kept under subsection (1) for inspection by the general public during normal office hours free of charge.”. | Please see the first point in item 567 for our thinking. The CSA seeks to better reflect this understanding. |
| 597 | Schedule 5, section 17(2) | In the English text, to replace “it” with “the Director”. | Please see item 70 of our response dated 3 January 2016 to ALA’s letter dated 5 November 2015. |
| 598 | | To replace “to an eligible claimant” with “, or the reinterment of those ashes, under this Schedule”. | It seeks to better reflect our policy intention. |
| 599 | Schedule 5, section 17 | To add— “(2A) An application under subsection (2) must be made, in writing, within the 30 days referred to in section 62(2)(a) or 64(4)(b)(i) or (4B)(a)(i) (as the case requires) of this Ordinance as if a reference to a commencement of ash disposal notice in that section were a reference to the application. (2B) On determining an application under subsection (2), the Director must notify the applicant in writing of— (a) the Director’s decision; and | The proposed subsection (2A) seeks to provide the time limit for an application to the Director in respect of the alternative ash disposal procedures. The proposed subsection (2B) seeks to enhance consistency with similar expressions in the Bill. The proposed subsection (2C) seeks to provide the time limit for the person who is required to carry out the prescribed ash disposal procedures to kick-start the procedures, if the Director refuses his application in respect of the alternative ash disposal procedures. |

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| | | <p>(b) (if the application is refused) the reasons for the refusal.</p> <p>(2C) If the application is refused, the applicant must—</p> <p>(a) carry out the prescribed ash disposal procedures in accordance with section 6 of this Schedule; and</p> <p>(b) for the purposes of paragraph (a), give a commencement of ash disposal notice in accordance with section 8 of this Schedule within 30 days after the date on which the Director notifies the applicant of the Director’s decision.”.</p> | |
| 600 | Schedule 5, section 17 | <p>To add—</p> <p>“(4) An appeal under section 72 of this Ordinance against a decision to refuse an application made under subsection (2) does not suspend the operation of the decision, pending the determination of the appeal, unless the Director decides otherwise.”.</p> | It seeks to put beyond doubt that an appeal under clause 72 against a decision to refuse an application under section 17(1) of Schedule 5 does not suspend the operation of the decision. |
| 601 | Schedule 6 | To include the fee items in Schedule 6 with their corresponding timing of payment and fee amount. | It seeks to insert the fee schedule endorsed by the LegCo Panel on Food Safety and Environmental Hygiene on 14 June 2016. |

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| 602 | Schedule 7, section 1(1) | To replace everything after “applies to” with “a columbarium that was in operation immediately before the enactment date.”. | Please see item 3 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 603 | Schedule 7, section 1(2) | To replace “The person” with “A person who operates, keeps, manages or in any other way has control of a columbarium to which this section applies in the grace period”. | Please see item 48 of our response to the issues raised by Members of the Bills Committee at previous meetings issued on 3 June 2016 (LC Paper No. CB(2)1641/15-16(02)). |
| 604 | | To replace “section 8 of this Ordinance by continuing to operate the columbarium in the grace period” with “section 9 of this Ordinance”. | Please see item 9 of our response dated 3 January 2016 to ALA’s letter dated 1 December 2015. |
| 605 | Schedule 7, section 1(3)(a) | By deleting “at the expiry of 6 months” and substituting “on the expiry of 9 months”. | <p>The rationale for extending the preparatory time from three to six months, hence the grace period from six to nine months is two-fold –</p> <p>(a) We envisage that relevant departments will need to undertake voluminous preparatory work for the implementation of the Bill, including formulating and promulgating relevant guidelines, codes of practice, operation manual, sample agreement templates for sale/lease of niches, application forms for different specified instruments, etc. Besides, it will take time to set up the Licensing Board, which will involve the formulation of its rules and procedures, handbook and guidelines, declaration of interest arrangements, etc.</p> <p>(b) On the other hand, the Bill provides that an application for the issue of a specified instrument in respect of a pre-Bill columbarium must be made within three months after the preparatory time. Extending the preparatory time from three to six months will allow more time for relevant operators to make preparation (e.g. follow up on the rectification / regularisation process with a view to meeting the relevant requirements under the Bill). Also, a longer preparation time would allow more briefings for operators to be arranged, with a view to facilitating their understanding of the regulatory regime, including the application process.</p> <p>This will facilitate smooth implementation of the Bill.</p> |

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| 606 | Schedule 7, section 1(3)(b) | By deleting “6” and substituting “9”. | Please see our response to item 605 above. |
| 607 | Schedule 7, section 1(3) | To delete everything before “means” and substitute — “(3) In this section— <i>grace period</i> (寬限期)”. <i>grace period</i> (寬限期)”. | It seeks to streamline the presentation. |
| 608 | Schedule 7, section 1(4) | To replace “subsection (3)(b)” with “paragraph (b) of the definition of <i>grace period</i> in subsection (3)”. | This is a consequential technical amendment arising from the amendment to section 1(3) of Schedule 7 as per item 607 above. |
| 609 | Schedule 7, section 1(4)(a) | To replace “expiry of” with “time”. | It seeks to enhance clarity. |
| 610 | Schedule 7, section 1(4)(b) | To replace “finally disposed of” with “determined”. | It seeks to ensure consistency with similar expressions in the Bill. |
| 611 | Schedule 7 | To delete sections 2 and 3. | The relevant provisions are no longer required in light of the addition of clause 40(2) as per item 184 above. |

Note: There are 547 CSAs according to the submission to the Clerk to the Legislative Council on 25 June 2016. These 547 CSAs need to be broken down into individual items to facilitate explanation of the rationale for the amendments and hence there are 611 items in the above table.