

立法會
Legislative Council

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by the Administration)

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Panel on Food Safety and Environmental Hygiene

Minutes of meeting
held on Tuesday, 8 July 2014, at 2:30 pm
in Conference Room 2 of the Legislative Council Complex

- Members present** :
- Dr Hon Helena WONG Pik-wan (Chairman)
 - Hon Steven HO Chun-yin (Deputy Chairman)
 - Hon Tommy CHEUNG Yu-yan, SBS, JP
 - Hon Vincent FANG Kang, SBS, JP
 - Hon WONG Kwok-hing, BBS, MH
 - Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
 - Hon Cyd HO Sau-lan, JP
 - Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
 - Dr Hon LEUNG Ka-lau
 - Hon CHEUNG Kwok-che
 - Hon WONG Kwok-kin, SBS
 - Hon Alan LEONG Kah-kit, SC
 - Hon Claudia MO
 - Hon Michael TIEN Puk-sun, BBS, JP
 - Hon WU Chi-wai, MH
 - Hon CHAN Chi-chuen
 - Hon CHAN Han-pan, JP
 - Dr Hon Kenneth CHAN Ka-lok
 - Hon Alice MAK Mei-kuen, JP
 - Dr Hon KWOK Ka-ki
 - Hon Christopher CHUNG Shu-kun, BBS, MH, JP
- Member absent** :
- Hon WONG Yuk-man

Public Officers : Item II
attending

Professor Sophia CHAN Siu-chee, JP
Under Secretary for Food and Health

Mr Christopher WONG Kwok-bun, JP
Deputy Secretary for Food and Health (Food) 1

Dr Thomas SIT Hon-chung
Assistant Director (Inspection and Quarantine)
Agriculture, Fisheries and Conservation Department

Dr Mary CHOW Ka-wai
Senior Veterinary Officer (Animal Management
Development Division)
Agriculture, Fisheries and Conservation Department

Dr Esther TO Man-wai
Senior Veterinary Officer (Animal Management
Operations Division)
Agriculture, Fisheries and Conservation Department

Item III

Professor Sophia CHAN Siu-chee, JP
Under Secretary for Food and Health

Mr Christopher WONG Kwok-bun, JP
Deputy Secretary for Food and Health (Food) 1

Ms Diane WONG Shuk-han
Principal Assistant Secretary for Food and Health (Food) 2

Ms CHU Lan-ying, JP
Assistant Director (Grade Management and Development)
Food and Environmental Hygiene Department

Clerk in : Ms Alice LEUNG
attendance Chief Council Secretary (2) 2

Staff in : Miss Carrie WONG
attendance Assistant Legal Adviser 4

Mr Jove CHAN
Senior Council Secretary (2) 2

Mr Richard WONG
Council Secretary (2) 2

Miss Emma CHEUNG
Legislative Assistant (2) 2

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I. Information paper(s) issued since the last meeting
(LC Paper Nos. CB(2)1926/13-14(01), CB(2)1929/13-14(01),
CB(2)1987/13-14(01) &(02), CB(2)1993/13-14(01) and IN16/13-14))

Members noted that the following papers had been issued since the last meeting -

- (a) Administration's information paper on rodent prevention and control measures;
- (b) Referral from Legislative Council ("LegCo") Members' meeting with Sham Shui Po District Council members on 27 March 2014 concerning the health risk posed by avian influenza on the residents in the vicinity of the Cheung Sha Wan Temporary Wholesale Poultry Market and the nuisance caused by wild birds in Sham Shui Po;
- (c) Letter dated 23 June 2014 from Dr Hon KWOK Ka-ki on the confirmed local case of Japanese encephalitis;
- (d) Administration's response to the issues of concern raised in Dr Hon KWOK Ka-ki's letter on the confirmed local case of Japanese encephalitis;
- (e) Administration's information paper on the provision of one-off assistance to fish collector owners affected by the trawl ban; and
- (f) Updated information note on Taiwan's agricultural policy prepared by the Research Office of LegCo Secretariat.

II. Amendments to the Public Health (Animals and Birds) (Animal Traders) Regulations for better regulating pet trading
(LC Paper Nos. CB(2)1955/13-14(01) and (02))

2. At the invitation of the Chairman, Under Secretary for Food and Health ("USFH") briefed members on the legislative proposals to amend the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) ("the Regulations") to enhance animal health and welfare through better regulation of animal trading, as well as the breeding and selling of dogs, as detailed in the Administration's paper (LC Paper No. CB(2)1955/13-14(01)).

3. Members noted the updated background brief entitled "Regulation of pet trading" (LC Paper No. CB(2)1955/13-14(02)) prepared by LegCo Secretariat.

4. Members also noted the submission from the Happy Animals (LC Paper No. CB(2)2010/13-14(01)) tabled at the meeting.

Proposed licence/permit system for regulating the sale and breeding of dogs

5. In response to Mr Alan LEONG's enquiry about the regulation of animal breeders and pet owners, USFH explained that at present, pet owners could sell their own pets and their pet's offspring without an Animal Trader Licence ("ATL"). After the proposed amendments to the Regulations came into operation, any person who sold dogs would be subject to control and required to obtain a licence or permit, irrespective of the number of dogs involved, and whether the dog involved was the person's own pet or the offspring of his pet. A person who kept not more than four entire female dogs on one premises and sold his breeding dams or offspring of these dogs must obtain Animal Breeder Licence Category A ("ABLA"). If a person kept five or more entire female dogs on one premises, he was required to obtain Animal Breeder Licence Category B ("ABLB") to sell his breeding dams, offspring of the dams or other dogs. Pet owner who sold an individual dog that he owned must obtain a one-off permit and would be allowed to obtain a maximum of three one-off permits within a 10-year period.

6. Mr WONG Kwok-hing expressed support for the introduction of two-tier licensing regime for animal breeders, i.e. ABLA and ABLB. Expressing worries that an excessively high threshold for granting an animal breeder licence might lead to high prices of pet animals, which would affect the interest of consumers, Mr CHAN Han-pan considered the proposed requirements for obtaining ABLA and ABLB appropriate. The Deputy Chairman also expressed the support of the Democratic Alliance for the Betterment and Progress of Hong Kong for the proposed legislative proposals to further enhance the protection of animal welfare.

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7. Ms Cyd HO held the view that the threshold for granting of ABLA and ABLB was low, thus legitimating the illegal pet trading activities conducted by some commercial breeders who operated under the disguise of private pet owners. In her view, the Agriculture, Fisheries and Conservation Department ("AFCD") should stipulate a maximum number of offspring a breeding dam could give birth to in the licensing conditions of the animal breeder licences, and set up an effective mechanism to keep track of the whereabouts of all the offspring of the breeding dam.

8. USFH responded that licensees of ABLA and ABLB were required to comply with a set of licensing conditions. AFCD would conduct inspections to the premises under the licence and decoy operations for the purpose of monitoring licensees' compliance with the licensing conditions. Under the proposals, the maximum fine for a breach of licensing conditions would be raised from \$1,000 to \$50,000, representing a 50-fold increase relative to the existing fine levels. Deputy Secretary for Food and Health (Food) 1 ("DSFH(F)1") and Senior Veterinary Officer (Animal Management Development Division)/AFCD ("SVO(AMDD)/AFCD") supplemented that there were restrictions in the licensing conditions on the breeding age of and the maximum number of births for a female dog. AFCD would conduct monthly visit to the licensed premises and monitor the health conditions of the breeding dogs and the dogs' offspring as well as the hygiene of the premises. All dogs for sale in the licensed premises must be implanted with microchips which could provide information to facilitate AFCD's search for the breeders' contact details.

9. While considering that it was a great step forward for the Administration to tighten the proposed requirement by allowing a single applicant to obtain a maximum of three one-off permits within a 10-year period, Ms Claudia MO was dissatisfied with the Administration's reluctance to consider issuing a single licence applicable to all types of breeders despite repeated requests from animal welfare groups. She remained of her view that the one-off permit would encourage the owners to sell their own pets. She also expressed worries that private pet owners might circumvent the proposed restrictions by applying the permit through other persons.

10. Assistant Director (Inspection and Quarantine)/AFCD ("AD(IQ)/AFCD") explained that each one-off permit was valid for one transaction covering one dog only and a single applicant would be allowed to obtain a maximum of three one-off permits within a 10-year period. The Administration had all along encouraged life-long commitment to pets and considered that the proposed one-off permit requirement would help forestall possible abuse of the permit system.

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11. Ms Claudia MO was worried that the number of animal breeders would increase considerably if the Administration did not cap the number of licences issued. Expressing similar concern, Mr Alan LEONG asked whether the proposed amendments to the Regulations would lead to an increase in the number of private animal breeders and sought information about the number of existing private animal breeders.

12. AD(IQ)/AFCD advised that the estimated number of private animal breeders in the market was about 200 to 300. As the number of pet owners had remained steady, the Administration considered that the proposed legislative proposals would not result in a significant increase in hobby-breeding activities. On the contrary, the number of hobby-breeders might reduce if the breeding activities of hobby breeders were brought under regulation.

13. Expressing concern about the view that the doing way of the One-off Permit would constitute a breach of Article 105 of the Basic Law which was in relation to individual rights to property ownership, acquisition, use and disposal, Dr Kenneth CHAN did not subscribe to the Administration's stance of considering animals as properties of their owners. In his view, animals' lives should be respected and hobby breeding activities should be stringently regulated.

14. USFH reiterated that the proposed amendments to the Regulations sought to tighten up the regulation of animal trading and the breeding and selling of dogs. After the proposed amendments came into operation, any person who sold dogs would be required to obtain a licence or permit, irrespective of the number of dogs involved and whether the dogs involved were the person's own pet or the offspring of his pet. Substantial increase in the penalties for breaches of the licensing conditions and illegal trading of animals were also proposed.

15. On the Administration's response, Mr CHAN Chi-chuen said that he supported the proposed increases in the penalties and hoped that the courts would impose higher level of penalty for relevant offences in order to achieve greater deterrent effect.

Enforcement of the proposed amendments

16. The Deputy Chairman enquired about the enforcement against some unlicensed animal traders who sold their dogs under the disguise of "free transfer of ownership" and charging service fees for delivery and vaccination. AD(IQ)/AFCD responded that any transfer of dog ownership which involved monetary transaction would be regarded as the act of animal trading under the proposed legislative amendments.

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17. The Chairman, Ms Claudia MO, Mr Alan LEONG, Ms Cyd HO and Mr CHAN Chi-chuen expressed concerns about the adequacy of manpower resources of AFCD for the enforcement of the proposed legislative amendments. The Chairman enquired whether there was adequate manpower for enforcement if there was a significant increase in the number of hobby-breeders after the introduction of the two-tier licensing regime. Ms MO, Mr LEONG and Mr CHAN were concerned about the Administration's plan and strategies for regulating the breeding premises of hobby breeders, which were mostly found in residential buildings.

18. USFH advised that the introduction of the licensing system for persons who bred and sold dogs would facilitate the development of an extensive database of animal breeders, which could facilitate regular visits and inspections by AFCD officers to ensure compliance. DSFH(F)1 and SVO(AMDD)/AFCD supplemented that AFCD would, in accordance with the established mechanism, acquire additional manpower resources to enhance its enforcement capability. AFCD would adopt a risk-based approach in future inspections of the licensed premises of ABLA/ABLB holders where dogs were kept for breeding or sale purposes. AFCD would flexibly deploy its manpower resources as appropriate to meet its operational requirements. In response to the Chairman's enquiry, SVO(AMDD)/AFCD advised that there were currently about 20 officers in AFCD responsible for carrying out inspections of licensed premises and around five officers were tasked with monitoring the online trading of dogs.

19. Mr WONG Kwok-hing asked about the interim measures that the Administration would put in place to protect animal welfare before the proposed amendments came into operation. AD(IQ)/AFCD reiterated that under the current Regulations, all animal traders must obtain an ATL issued by the Director of Agriculture, Fisheries and Conservation. However, a person might sell his own pet and his pet's offspring without an ATL. In the circumstances, AFCD would have to rely on decoy operations to detect illegal pet trading activities conducted by some commercial breeders who operated under the disguise of a private pet owner, and institute prosecutions where appropriate. Mr WONG urged the Administration to expedite the legislative process for the proposals so as to safeguard animal welfare.

20. While expressing support for expeditious implementation of the proposed amendments, Miss Alice MAK urged the Administration to step up its effort in public education for promoting animal welfare. SVO(AMDD)/AFCD advised that AFCD had established a dedicated team to devise, implement and fortify public education and publicity programmes, such as seminars for school and housing estates, for promoting care for animals and responsible pet ownership. AFCD had also conducted various

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joint educational programmes with animal welfare organizations (for example, the Society for the Prevention of Cruelty to Animals) to raise children's awareness of animal welfare.

21. Miss Alice MAK asked whether the Administration had any measures to facilitate the operation of dog breeding business given limited land space in Hong Kong for the provision of proper animal breeding facilities. SVO(AMDD)/AFCD explained that operators of animal breeding facilities wishing to apply for an ATL from AFCD must meet the requirements of the Outline Zoning Plan. For those intending to use land zoned "Agriculture" on the Outline Zoning Plan for "Animal Boarding Establishment" use, they must apply for a planning permission from the Town Planning Board ("TPB") under Section 16 of the Town Planning Ordinance (Cap. 131). AFCD could assist applicants in liaising with the Planning Department and Lands Department for pursuing planning permission applications where necessary.

22. Noting that ABLA and ABLB licensees and their staff would be required to attend appropriate training and comply with the Codes of Practice as one of the licensing conditions, Ms Claudia MO and the Chairman enquired about the details of the training. SVO(AMDD)/AFCD advised that the Animal Welfare Advisory Group under AFCD would set out the syllabus and the minimum duration of the training programmes. Training providers would then devise the specific content of and the skill assessments for the training programmes in accordance with the syllabus. The attendees of the training programmes would need to pay the fees for the training programmes. At the request of the Chairman, SVO(AMDD)/AFCD agreed to provide the Panel with information about the training programmes, including such as the content of the programmes; and whether and how the breeders would be assessed after completion of such programmes, when ready. Miss Alice MAK suggested the Administration to arrange the training programmes for gaining recognition under the Qualifications Framework to ensure the competency of the trained breeders.

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Extending the proposed licensing system to other animals

23. Mr WONG Kwok-hing enquired about the timetable for extending the proposed licensing system to cats. Ms Claudia MO was concerned whether the proposed licensing system would be further extended to cover more species of animals such as reptiles. USFH explained that empirical data showed that dogs were by far the most vulnerable pet group as they comprised the largest share of the pet market. Based on past investigation records and conviction cases, the welfare of dogs that were kept for breeding purpose was compromised more frequently and to a greater extent than other types of pet. Since the microchip scheme for dogs had been in place, the

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proposed regulation would apply to dogs as a first step. The Administration would keep in view the effectiveness of the new regulatory measures and assess the need to extend the proposed licensing system to cover cats and other pet animals at a later stage.

Motion

24. Ms Claudia MO moved the following motion -

"本委員會要求當局重新考慮就「為加強規管寵物買賣而修訂《公眾衛生(動物及禽鳥)(動物售賣商)規例》」修訂中，改為發出劃一高門檻牌照，令條例更容易執行，動物權益及福利更受保障。"

(Translation)

"This Panel calls upon the Administration to consider afresh, as far as the 'amendments to the Public Health (Animals and Birds) (Animal Traders) Regulations for better regulating pet trading' are concerned, the issuance of a single licence with a high threshold instead, so as to allow easier enforcement of the Regulations and better protection of animal rights and welfare."

25. Mr Tommy CHEUNG said that the Administration's proposals to amend the Regulations to tighten the regulation of breeding and sale of dogs had been discussed at previous meetings of the Panel. According to his recollection, members had not expressed any views against the proposed two-tier licensing system. He therefore did not support Ms Claudia MO's proposal.

26. Mr Christopher CHUNG did not agree with Ms Claudia MO's view on setting a high threshold of licensing requirement and was worried that it would lead to the monopolization of pet breeding and trading market.

27. The Chairman put to vote the motion moved by Ms Claudia MO. Five members voted for and seven members voted against the motion and one member abstained from voting. The Chairman declared that the motion was negatived.

III. Columbarium policy - the three-pronged strategy
(LC Paper Nos. CB(2)1955/13-14(03) and (04))

28. At the invitation of the Chairman, USFH briefed members on the

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three-pronged strategy underpinning the Government's columbarium policy, as detailed in the Administration's paper (LC Paper No. CB(2)1955/13-14(03)).

29. Members noted the background brief entitled "The columbarium policy - the three-pronged strategy" (LC Paper No. CB(2)1955/13-14(04)) prepared by LegCo Secretariat.

30. Members also noted the submission from the Alliance for the Concern Over Columbarium Policy (LC Paper No. CB(2)2022/13-14(01)) tabled at the meeting.

Long-term supply of public niches

31. Regarding the 24 potential sites that the Administration had identified across the 18 districts for columbarium development, Mr Michael TIEN and the Chairman were concerned that the Administration had enlisted support from the relevant District Councils ("DCs") for only three sites. Mr TIEN enquired about the progress of the remaining 21 sites. The Chairman expressed doubt on whether the Administration had endeavoured to solicit support from DCs to provide new public columbarium facilities in all 18 districts. She considered that the Administration should provide the Panel with the implementation time-table for each columbarium development project.

32. USFH stressed that the Administration had endeavoured to provide new public columbarium facilities in all districts. She pointed out that different issues, including traffic assessments, feasibility studies, infrastructural facilities, etc. were being addressed having regard to the different circumstances of different sites. It might not be feasible to provide a concrete implementation timetable for all sites at this stage.

33. Dr KWOK Ka-ki noted from the Administration's paper that there were around 100 000 unallocated niches or new niches provided by columbaria developed in the coming two or three years, and that the supply of public niches would cumulatively increase to hundreds of thousands by 2031 if the proposed columbarium development projects in the 18 districts were supported. He was concerned whether the number of niches that could be provided by public and private columbarium facilities could meet the projected demand for columbarium niches. Dr KWOK requested the Administration to provide information on the current number of applicants on the waiting list for allocation of new public niches and the estimated number of applicants waiting for new public niches in 2031. He also suggested that the Administration should consider providing temporary ashes storage facilities for applicants waiting for allocation of permanent niches.

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34. Principal Assistant Secretary for Food and Health (Food) 2 ("PASFH(F)2") advised that the Food and Environmental Hygiene Department ("FEHD") had, with effect from 2 January 2014, relaxed the cap on the number of sets of ashes that might be stored in a niche, allowing applicants to deposit additional sets of ashes in a niche. In a similar vein, FEHD had also expanded the definition of "kinship". Separately, the Administration was planning to amend the Chinese Permanent Cemeteries Rules (Cap. 1112A) to relax the eligibility for shared use of the family niches of the Board of Management of the Chinese Permanent Cemeteries as well as grave spaces, through expanding the definition of "close relatives" and allowing the interment of ashes in exhumable lots. USFH agreed that the Administration would provide, after the meeting, the information requested by Dr KWOK Ka-ki.

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35. While expressing support for the relaxation of the cap on the number of sets of ashes stored in a public niche, Mr CHEUNG Kwok-che and Mr WU Chi-wai were dissatisfied that the Administration had not made adequate publicity effort in this respect. USFH responded that before the relaxation, two and four sets of ashes were allowed to be interred in a standard niche and a family niche respectively. The relaxation on the number of sets of ashes that might be stored in a niche could optimize the use of the columbaria.

Promotion of green burials

36. Dr KWOK Ka-ki and Mr CHEUNG Kwok-che expressed similar concern about the low usage of green burials, which included scattering of human ashes in Gardens of Remembrance ("GoRs") or at sea and paying tribute to the deceased through Internet Memorial Service. Dr KWOK pointed out that the usage of green burials amounted only around 8% of the annual number of deaths. He wondered whether the Administration had set any targets on the usage of green burials in Hong Kong.

37. Holding the view that the supply of niches could not meet the demand, Mr CHEUNG Kwok-che, Mr Christopher CHUNG, Mr CHAN Chi-chuen and the Deputy Chairman considered that green burials could address the problem of insufficient columbarium facilities. They urged the Administration to step up the promotion and public education to change the mindset of members of the public and to encourage more people to choose green burials. The Deputy Chairman said that the Administration could consider inviting principal officials and LegCo Members to sign a Charter for Green Burials to undertake that they would use green burials.

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38. USFH and PASFH(F)2 advised that -

- (a) the Administration was taking steps to encourage better utilization of niches, as well as to promote green burials by fostering a change in mindset and encouraging community acceptance of this more environmentally friendly and sustainable means of disposal of human ashes;
- (b) between 2007 and 2014 (up to 30 June 2014), there were 9 779 and 4 142 cases respectively of ashes scattered in GoRs and at sea. To encourage wider use of GoRs and allow more choices, new and bigger GoRs were constructed in new public columbarium facilities; and
- (c) it took time to change people's mindset and for green burials to take root in society.

39. In response to Mr CHEUNG Kwok-che's enquiry about the ferry service for the scattering of ashes at sea, Assistant Director (Grade Management and Development)/FEHD advised that to encourage the scattering of ashes at sea, FEHD had streamlined the application procedures and provided free ferry service for the public. The frequency of the free ferry service had been increased from once a month when it was introduced in 2010 to currently four times a month. Since January 2012, FEHD had enhanced the free ferry service by employing a bigger vessel which could accommodate over 300 passengers per sail (i.e. servicing about 25 families). There would also be facilities to accommodate different religious rituals. To facilitate the users of the ferry service, FEHD would communicate with the users in advance to confirm their preference for the memorial ceremonies for the deceased and the number of family members on board. The Administration would keep in view the demand for the ferry service and consider enhancing the service as needed.

40. The Deputy Chairman and Mr Christopher CHUNG raised similar concerns about the enforcement of rules governing the scattering of ashes at sea. They said that there were complaints from fishermen that urns were disposed to waters outside the designated area for disposal of ashes. They considered that the Administration should tighten the enforcement of rules governing the scattering of ashes at sea before stepping up efforts to promote green burials.

Proposed measures to increase the supply of public niches

41. Mr WU Chi-wai questioned why the Administration could not

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immediately implement the proposed measures, including designating different worship periods for different blocks of niches and limiting access during one or both of the grave-sweeping seasons (i.e. Ching Ming and Chung Yeung), to address the problem of the supply of niches.

42. Mr Michael TIEN said that the Government should seek collaboration with the Guangdong Province in building columbarium facilities there so as to increase the supply of niches for Hong Kong residents. He enquired whether the Administration had ever considered similar proposals and whether the Administration would follow up his suggestion with the Government of Guangdong Province.

43. DSFH(F)1 advised that the Administration had in earlier years liaised with the relevant authorities in Guangdong Province on the provision of public niches there for Hong Kong residents and noted that the supply of public cemeteries and niches for local residents in Guangdong Province was also insufficient. He said that while the Administration had an open mind about Mr TIEN's proposal, priority should be given to enhancing the supply of public niches in Hong Kong and the initiatives proposed in the Private Columbaria Bill ("the Bill").

44. With a view to increasing the supply of re-used niches, Mr CHAN Chi-chuen suggested the Administration to consider adopting time-limited occupation of niches in designated public columbarium facilities. He also suggested the Administration to make reference to the architectural design of columbarium facilities in Japan which looked more peaceful so as to reduce the adverse visual and psychological impact on the residents in the vicinity of the facilities. USFH appreciated Mr CHAN's suggestion and advised that the Administration had not ruled out the scenario where the Administration might have to introduce in future time-limited occupation of new niches.

Regulation of private columbaria

45. While members expressed support in principle for the proposed licensing scheme for private columbaria to enhance the protection of consumer interest, some members expressed worries that if the Bill did not commence early, there might be complications including issues arising from the cessation of the operations of the non-compliant private columbaria during the intervening period.

Grandfathering arrangements for pre-Bill columbaria

46. While supporting the Bill, Mr WONG Kwok-hing enquired about the Administration's rationale for defining dated columbaria as those commenced

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their operation before 1 January 1990. USFH advised that for the columbaria which were in operation before the Bill announcement time (i.e. 8:00 am on 18 June 2014) with interred ashes in niches ("pre-Bill columbaria"), previous public consultation revealed that the community was prepared to accept some form of grandfathering arrangements for such establishments which did not meet all the statutory and Government requirements, but such arrangements must be premised on tightly ring-fenced grounds. The Bill provided that the Bill announcement time would be set as the cut-off time for determining the status of pre-Bill columbarium operation. To be eligible to apply for exemption, the pre-Bill columbarium must have commenced columbarium operation before 1 January 1990 and ceased sale of new or unoccupied niches as from the Bill announcement time.

47. Mr WONG Kwok-hing expressed worries about the exemption arrangement for an operator of a dated columbarium to apply for exemption status to continue its operation. He was concerned that with the exemption status, the unauthorized structures of the dated columbarium would be tolerated if they were certified by qualified professionals as structurally safe. Dr Kenneth CHAN expressed similar concern.

48. USFH and PASFH(F)2 explained that to be eligible to apply for exemption, the pre-Bill columbarium must have (i) commenced columbarium operation before 1 January 1990; and (ii) ceased sale of new or unoccupied niches as from the Bill announcement time. By "commencement of columbarium operation", it meant by reference to the first set of ashes interred in a niche or the interment right in a niche first sold, whichever was the earlier. The columbarium concerned had frozen its scale of operation (i.e. he or she had ceased selling (including letting out) new or unoccupied niches since the Bill announcement time), and it could comply with other requirements under the Bill. Further guidance on how to seek compliance with the relevant requirements under the building fronts would be provided in due course.

Sale of niches by operators of unauthorized private columbaria

49. Pointing out that there was an absence of statutory regulation before the enactment of the Bill, the Chairman, Mr WONG Kwok-hing, Miss Alice MAK, Dr KWOK Ka-ki, Ms Cyd HO, Mr CHEUNG Kwok-che, and Dr Kenneth CHAN expressed deep concerns about the sale of niches by operators of unauthorized private columbaria after the Bill announcement time. These members requested the Administration to take stringent enforcement actions against such unacceptable practices. Miss MAK and Dr CHAN urged the Administration to enhance the public's understanding of the proposed licensing scheme for private columbaria and advise them to refrain from buying niches from non-compliant columbaria.

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50. Referring to the submission provided by the Alliance for the Concern Over Columbarium Policy, the Chairman said that members of the public were gravely concerned about the sale of niches by non-compliant private columbaria after the Bill announcement time. She opined that the Administration should not consider granting exemption or temporary suspension of liability ("TSOL"), to non-compliant private columbaria and columbaria located in private residential buildings.

51. While supporting the Administration's suggestion of making transitional arrangement to provide temporary storage for the ashes in the interred niches at unauthorized private columbaria, Ms Cyd HO held the view that the Administration should consider taking actions to assist consumers to recover their financial loss. She urged the Administration to consider seriously how to protect the interest of these consumers. Mr CHEUNG Kwok-che suggested that all of the transactions of the sale of niches completed after the Bill announcement time should be processed by solicitors and the money that the purchasers had paid should be kept by the solicitors. Subject to the successful application for licences or TSOL, the solicitors would release the money to the operators concerned.

52. USFH said that the Administration noted that some operators claimed before their private columbaria had yet to comply with the current legislation and requirements that they would definitely be granted a licence and the prices of their niches would rise, with a view to selling off their niches as soon as possible. This way of selling off their niches was unacceptable. She stressed that to apply for a licence, a pre-Bill columbarium must comply with the requirements in respect of land (including land instruments), town planning and applicable building safety arrangements, right to use the premises, and submission of a management plan. An operator of a pre-Bill columbarium seeking a licence or exemption status might apply to the Licensing Board for TSOL if he needed time to work towards meeting the relevant requirements. TSOL would enable the columbarium to continue operating and providing services before a licence or an exemption status was granted. During the validity period of TSOL, the columbarium concerned could not sell or let out any new or unoccupied niches.

53. USFH and PASFH(F)2 reminded members of the public that as the proposed Licensing Board was yet to be set up, no private columbarium could guarantee that it could obtain a licence to continue its operation after the commencement of the Bill, and foretell at present the maximum ash interment capacity that would be allowed for the licence. The Administration had launched a series of publicity efforts (through radios, press release and newspaper advertisements) to enhance public awareness of the possible risks inherent in buying niches from unauthorized private columbaria. The

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Administration would also collaborate with the Consumer Council to further encourage consumers to make thorough enquiries about whether the operation of the private columbarium concerned had complied with the relevant statutory requirements. If they had to enter into a transaction before the enactment of the Bill, consumers were well advised to consider renting rather than purchasing a niche and demand the operator to enter into a contract in which all related matters were clearly covered including arrangements of rescinding the contract, refund and compensation should the operator eventually fail to obtain a licence. The Administration had also reminded the operators of their responsibilities to provide consumers with accurate, true and relevant information on their product description, in order to avoid contravening the Trade Descriptions Ordinance ("TDO") (Cap. 362). The Customs and Excise Department ("C&ED") would look into complaints about non-compliance reported by the public. In handling individual cases, C&ED would take into account the actual circumstances and relevant factors to determine whether it had contravened TDO.

(Members agreed to extend the meeting by 15 minutes.)

54. Mr Christopher CHUNG expressed concern about a recent case of a private columbarium development in an industrial building. As the operator had claimed that hundreds of thousands of niches would be provided in the columbarium concerned, residents in the vicinity were worried about the traffic congestion problem as well as environmental and noise nuisances to be brought about by the columbarium development. He urged the Administration to address the residents' concerns. The Deputy Chairman and Dr Kenneth CHAN also raised concerns about how the Administration could address the views of the community on the private columbaria applying for a licence or TSOL as the operation of these columbaria would continue to cause nuisances to the nearby residents.

55. USFH and PASFH(F)2 stressed that there were multiple channels for the Administration to address the concerns of residents in the vicinity of private columbaria. The Licensing Board would take public interest into consideration when processing applications from private columbaria for a licence, and could impose appropriate conditions in the licence. Private columbaria applying for a licence were required to provide information on the control of traffic and pedestrian flows when they applied to TPB for planning permission or rezoning. Residents might also express their views when TPB processed such applications of private columbaria. TPB might impose conditions requesting the columbaria concerned to reduce the nuisances caused to the vicinity.

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Definition of the term "ashes" in the Bill

56. Members noted that under the proposed Bill, the term "ashes" meant ashes resulting from the cremation of human remains but excluded materials transformed from ashes such as synthetic diamonds. Dr Kenneth CHAN and Mr CHAN Chi-chuen were worried that if the cremated ashes being transformed into other crystalline structures were not included in the definition of "ashes", unauthorized columbaria might circumvent the regulation by selling niches for putting ashes of the deceased in form of synthetic diamonds, jewellery or ornaments.

57. PASFH(F)2 advised that the Administration had noticed that the good intention of allowing keeping ashes in environmentally-friendly forms by related persons had been exploited by some operators who chose to publicize that they were selling private niches for storing materials transformed from human ashes including synthetic diamonds, jewellery or ornaments. The Administration had issued a press release together with other publicity, to the effect that it would discuss with the Bills Committee on Private Columbaria Bill ("the Bills Committee") the best way to handle this situation, so as to eradicate any attempt to circumvent the licensing scheme through such means and operate private columbaria in disguise.

Unoccupied niches in dated private columbaria

58. Mr CHAN Han-pan and the Deputy Chairman noted that during the validity period of TSOL, the columbarium concerned could not sell or let out any new or unoccupied niches. For as long as the exemption status for pre-Bill columbarium operation was in force, the operator of the columbarium concerned should fulfil certain prescribed conditions including no sale of niches, and no intensification of use in terms of niches as well as containers during the exemption period. They pointed out that there were cases where consumers had already paid to unauthorized columbaria for niches before the Bill announcement time but had yet to place ashes of their deceased family members/relatives in these niches. They were concerned about the rights of the deceased who had paid for the niches before death and purchasers of niches earmarked for the future use by themselves or their relatives. Mr CHAN and the Deputy Chairman urged the Administration to adopt a more flexible approach regarding the requirement of freezing the number of interred ashes in niches for a dated private columbarium.

59. USFH explained that as exemption for dated private columbaria involved special arrangements (under which the columbaria could continue their operations without meeting all statutory and Government requirements and without obtaining a licence etc.), it was necessary to adopt a more

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stringent standard to prevent the mechanism from being abused. That said, the Administration kept an open mind on the handling the niches which had been sold before the announcement of the Bill but were yet to be occupied. With the information collected through FEHD's notification scheme and the relevant verification work, the Administration would have a better grasp of the actual situation on the ground, including the number of niches in private columbaria that had been sold but were not yet occupied. Under the pre-requisite of avoiding abuse, the Administration would discuss with the Bills Committee on a pragmatic way for handling such niches. In response to Mr CHAN Han-pan's further enquiry, USFH said that FEHD could provide temporary storage facility for ashes for the affected consumers if necessary. However, paying tribute to the deceased would not be allowed in the temporary storage facilities.

(Members agreed to further extend the meeting by 5 minutes.)

60. Mr CHAN Han-pan said that he originally planned to move a motion to urge the Administration to adopt a more flexible approach to allow ashes to be interred in unoccupied niches in dated private columbaria after the announcement of the Bill, provided that there was substantiated evidence that the niches were purchased before the Bill announcement time. However, as a quorum was not present at that point in time, he decided to withdraw his motion. He indicated that he would write to the Administration requesting for a written response on his concerns. The Chairman requested the Administration to respond expeditiously to Mr CHAN's concerns upon receipt of his letter.

Other issues discussed

61. Dr Kenneth CHAN said that many residents in Hung Hom were gravely concerned about the proposed exemption for undertakers from the licensing scheme under the Bill. They were worried that the undertakers might take advantage of the exemption arrangement for business extension. USFH noted Dr CHAN's concern and advised that separately, action under the existing legislation was in hand to tackle the arrangements that would be applicable to undertakers.

62. The Chairman, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Dr Kenneth CHAN were concerned about the enforcement actions taken by the Administration against a non-compliant private columbarium in Tuen Mun. PASFH(F)2 advised that the various government departments concerned, including the Planning Department, the Lands Department and the Buildings Department, had been vigorously enforcing their legislation and land leases where applicable, including issuing warning letters, enforcement

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notices and removal orders, as well as taking prosecution, litigation and other legal actions, with a view to curbing the proliferation of unauthorized private columbaria. She said that since legal proceedings about the non-compliant private columbarium in Tuen Mun were in progress, details about the enforcement actions could not be provided at this stage.

IV. Any other business

63. There being no other business, the meeting ended at 5:15 pm.

Council Business Division 2
Legislative Council Secretariat
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