

立法會
Legislative Council

LC Paper No. CB(2)542/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/BC/4/14

**Bills Committee on
Chinese Permanent Cemeteries (Amendment) Bill 2015**

**Minutes of the 2nd meeting
held on Friday, 27 November 2015, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Steven HO Chun-yin, BBS (Chairman)
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon IP Kwok-him, GBS, JP
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Dr Hon Helena WONG Pik-wan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Member absent : Hon YIU Si-wing, BBS

Public Officers attending : Item I

The Administration

Mr Laurie LO, JP
Deputy Secretary for Home Affairs (1)

Miss Gloria LO
Principal Assistant Secretary for Home Affairs (Civic Affairs) 3

Mr Jonathan LUK
Government Counsel, Law Drafting Division
Department of Justice

The Board of Management of the Chinese Permanent Cemeteries

Ms Brenda LO
Executive Director

Clerk in attendance : Miss Josephine SO
Chief Council Secretary (2) 2

Staff in attendance : Ms Vanessa CHENG
Assistant Legal Adviser 5

Ms Wendy LO
Senior Council Secretary (2) 2

Miss Emma CHEUNG
Legislative Assistant (2) 2

Action

I. Meeting with the Administration

(File Ref: HAB/CR 1/20/15, LC Paper Nos. CB(3)802/14-15, LS87/14-15, CB(2)110/15-16(02) to (06) and CB(2)323/15-16(01) & (02))

The Bills Committee deliberated (index of proceedings attached at **Annex A**).

Meeting arrangements

2. The Chairman informed members that by the deadline for registration, only one deputation had indicated intention to submit written submission to the Bills Committee in response to the Bills Committee's notice for invitation of public views placed on the website of the Legislative Council. As such, he decided that the Bills Committee should continue discussion with the Administration at this meeting, instead of receiving deputations' views on the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill").

(Post-meeting note: A submission was received after the meeting and was issued to members vide LC Paper No. CB(2)365/15-16(01) on 30 November 2015. On the instruction of the Chairman, the Administration was requested to provide a written response to the views and concerns raised in the submission.)

Action

Follow-up actions required of the Administration

Admin

3. The Administration was requested to provide written responses to issues/concerns raised by members and the Legal Adviser to the Bills Committee as set out in **Annex B**.

Clause-by-clause examination

4. The Bills Committee completed discussion on the policy aspects and commenced clause-by-clause examination of the Bill. At the invitation of the Chairman, the Administration took members through the Bill. The Bills Committee examined up to clause 13(3) of the Bill.

II. Any other business

Date of next meeting

5. The Chairman said that to avoid clashing with the anticipated continuation of the Council meeting commencing on 9 December 2015, the third meeting of the Bills Committee originally scheduled for 11 December 2015 might need to be rescheduled to another date. The Secretariat would inform members once rescheduling was confirmed necessary.

(Post-meeting note: A circular notifying members of the rescheduling of the third Bills Committee meeting was issued to members vide LC Paper No. CB(2)402/15-16 on 4 December 2015.)

6. There being no other business, the meeting ended at 11:00 am.

**Proceedings of the 2nd meeting of the
Bills Committee on Chinese Permanent Cemeteries (Amendment) Bill 2015
on Friday, 27 November 2015, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action Required
000412 - 000454	Chairman	The Chairman's opening remarks	
000455 - 001846	Chairman Admin	Briefing by the Administration on its response to issues raised at the Bills Committee meeting held on 27 October 2015 [LC Paper No. CB(2)323/15-16(02)].	
001847 - 002721	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's expression of support for the proposal to remove the restriction on the maximum number of set of ashes that could be deposited in ordinary and family niches in the Chinese Permanent Cemeteries ("CPCs") operated by the Board of Management of the Chinese Permanent Cemeteries ("the Board").</p> <p>Mr WONG's expression of concern about the traffic congestion problem along Cape Collinson Road, Chai Wan, during the Ching Ming and Chung Yeung festivals. He enquired about the latest developments of the issue including whether the proposal of opening the private road in the Holy Cross Catholic Cemetery for public use was viable. The Administration's advice that while discussion with the Holy Cross Catholic Cemetery and the Police was under way, a number of technical issues had to be resolved before consideration could be given to opening up the aforesaid private road, which was now under repair and maintenance, for the use of the public.</p>	
002722 - 003257	Chairman Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen considered the term "descendant" under clause 10(8)(e) of the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill") unclear. His view that if an exhaustive definition of the term "descendant" was not to be provided in the Chinese Permanent Cemeteries Rules (Cap. 1112A) ("the Rules"), the Administration should make reference to how the term "kinship" was defined in the relevant administrative guidelines adopted by the Food and Environmental Hygiene Department and consider empowering the Board to determine whether the subsequent deceased was in close relationship with the first deceased, so as to allow the Board	Admin (para. 1(b) of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
		<p>more flexibility in considering applications for subsequent burials or deposits in CPCs.</p> <p>The Administration's explanation on the difference between the drafting of legislation and administrative guidelines. It was noteworthy that the Bill proposed to expand the eligibility for subsequent burial or deposit in CPCs' cemetery facilities by removing all references to "close relative" from the existing Rules and substituting it by the term "relative" which had a wider definition as set out in clause 10(8) of the Bill. As regards the eligibility for first interment, burial or deposit, according to the proposed rule 4(3) of the Rules (to be amended by clause 11 of the Bill), the Board's decision on whether a deceased person met the description in rule 4(2)(a), (b) or (c) was final.</p>	
003258 - 004210	<p>Chairman Dr Kenneth CHAN Admin The Board of Management of the Chinese Permanent Cemeteries ("the Board")</p>	<p>In response to Dr Kenneth CHAN's concerns over the difference in definition of "ashes" as proposed under clause 10(11) of the Bill versus that under clause 2(1) of the Private Columbaria Bill, the Administration gave an account of the reasons for not tightening the definition of "ashes" in the Chinese Permanent Cemeteries Ordinance (Cap. 1112) ("the Ordinance") and the Rules to exclude "synthetic materials" [LC Paper No. CB(2)110/15-16(04)]. Given the different policy objectives of the two Bills, the Administration did not intend to change the definition of "ashes" in the current exercise to prohibit synthetic materials from being deposited in CPCs, so as to allow more flexibility for cemetery users. The Board also advised that it would not prohibit, though not encourage either, synthetic materials from being deposited in CPCs, if so requested by the permittee.</p> <p>Dr CHAN's view that the Administration should publicize the possible difference in the regulation for the deposit of synthetic materials in CPCs and private columbaria. The Administration undertook to follow up with the Food and Health Bureau in this regard.</p>	
<i>Clause-by-clause examination of the Bill</i>			
004211 - 004322	<p>Chairman Admin</p>	<p>Clause-by-clause examination of the Bill, with the aid of the Blue Bill and the marked-up copy of the relevant provisions to be amended by the Bill</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>prepared by the Legal Service Division [LC Paper Nos. CB(3)802/14-15 and CB(2)110/15-16(02)].</p> <p><u>Long Title of the Bill</u></p>	
004323 - 004336	Chairman Admin	<p><u>Part 1 - Preliminary</u></p> <p><i>Clause 1 which set out the short title and the commencement of the Bill</i></p>	
004337 - 004700	Chairman Admin	<p><u>Part 2 - Amendments to the Chinese Permanent Cemeteries Ordinance</u></p> <p><i>Clauses 2 to 6</i></p>	
004701 - 004826	Chairman Admin	<p><i>Clause 7 which sought to expand the ambit of donations that could be made by the Board</i></p> <p>In response to members' suggestion of improving the drafting of the expression "a particular sector of that community" for clarity sake, the Administration undertook to provide the revised wording of the proposed amended section 7(2) for members' consideration.</p>	Admin (para. 4 of Annex B refers)
004827 - 005004	Chairman Admin	<p><i>Clause 8 which sought to amend section 8 of the Ordinance to empower the Board to make rules</i></p>	
005005 - 005826	Chairman Admin Mr CHAN Chi-chuen	<p><u>Part 3 - Amendments to the Chinese Permanent Cemeteries Rules</u></p> <p><i>Clauses 9 and 10</i></p> <p>Regarding the proposed definition of the term "relative" as provided in clause 10(8) of the Bill, Mr CHAN Chi-chuen reiterated his view that the Administration should consider empowering the Board to determine whether the subsequent deceased was in close relationship with the first deceased if an exhaustive definition of the term "descendant" was not to be provided in the Rules. The Chairman's suggestion that as an alternative, the Administration should clearly stipulate in the amended rule 3 the types of persons intended to be covered under the term "descendant" for avoidance of doubt. The Administration undertook to consider members' suggestions and revert to the Bills Committee on whether Committee stage amendments would be proposed to the Bill.</p>	Admin (para. 1 of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
005827 - 011439	Chairman ALA5 Admin Mr CHAN Chi-chuen The Board	<p><i>Section 2 of the Ordinance and rule 3 of the Rules</i></p> <p>The Legal Adviser to the Bills Committee pointed out that six categories of persons were specified as permanent residents of the Hong Kong Special Administrative Region ("HKSAR") under paragraph 2 of Schedule 1 to the Immigration Ordinance (Cap. 115) ("IO") whereas "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules referred to the continuous residency requirement for a total of not less than seven years or the right to land and to remain free of conditions of stay in Hong Kong. Regarding the eligibility for the first interment, burial or deposit in CPCs, the Administration was requested to clarify whether those persons who had acquired the permanent resident status under paragraph 2 of Schedule 1 to IO (e.g. a "doubly non-permanent resident" child born in Hong Kong (whose parents were not Hong Kong permanent residents at the time of the birth of the child) after the establishment of HKSAR and died at the age of five) would be regarded as "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules.</p> <p>The advice of the Board and the Administration that -</p> <p>(a) under the existing rule 4 of the Rules, a child who died at an early age might be buried or deposited in CPCs if his/her father was a person of Chinese race permanently resident in Hong Kong; and</p> <p>(b) the new rule 4 of the Rules would stipulate that a person of Chinese race permanently resident in Hong Kong (regardless of the sex of that person) and the spouse and children of that person were eligible for the first interment, burial or deposit in CPCs.</p> <p>The Administration's advice that the scope of persons who were "permanently resident in Hong Kong" under section 2 of the Ordinance and the new rule 4(2)(a) of the Rules was wider than "Hong Kong permanent resident" under IO. As the current exercise purposed to broaden the scope of deceased persons of Chinese race eligible to be buried, interred or deposited in CPCs, the Administration did not intend to modify the</p>	<p>Admin (para. 3(a) of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>definition of "permanently resident in Hong Kong" by making direct reference to the relevant provisions of IO, which might unduly affect the eligibility.</p>	
<p>011440 - 013326 -</p>	<p>Chairman Mr IP Kwok-him Mr Christopher CHUNG ALA5 Admin</p>	<p>Enquiries of the Chairman and Mr IP Kwok-him on the Administration's rationale for adopting the expression "permanently resident in Hong Kong" instead of "Hong Kong permanent resident". They asked whether any categories of persons (e.g. those persons who were born in Hong Kong but had emigrated overseas before completion of the seven-year continuous residence requirement) would lose their eligibility for using CPCs' cemetery facilities in accordance with the definition "permanently resident in Hong Kong" prescribed in the Ordinance and the Rules.</p> <p>The Administration's explanation that the current construction of the relevant provisions did not bar the Administration from making reference to IO in determining the eligibility for the first interment, burial or deposit in CPCs, while at the same time provided a less stringent framework. It should be noted that under the definition of "permanently resident in Hong Kong" in section 2 of the Ordinance and rule 3 of the Rules, persons who had the right to land and to remain free of conditions of stay in Hong Kong were eligible for the first interment, burial or deposit in CPCs even if they did not fulfill the continuous residence requirement.</p> <p>Mr Christopher CHUNG expressed support for the continued use of the expression "permanently resident in Hong Kong".</p> <p>The Administration was requested to clarify the following issues raised by the Legal Adviser to the Bills Committee -</p> <p>(a) for the sake of clarity, whether the definition of "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules needed to be amended having regard to section 2A(1) of IO concerning the right of abode in Hong Kong enjoyed by Hong Kong permanent residents; and</p> <p>(b) to what extent the scope of persons who were "permanently resident in Hong Kong" under</p>	<p>Admin (para. 3(b) and 3(c) of Annex B refers)</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>section 2 of the Ordinance and rule 3 of the Rules was wider than "Hong Kong permanent resident" under section 2(1) and paragraph 2 of Schedule 1 to IO, with examples of the circumstances under which certain categories of persons who had not acquired permanent resident status under IO but could be regarded as "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules.</p> <p>Mr IP Kwok-him's view that for the sake of clarity, the Administration should consider amending the definition of "permanently resident in Hong Kong" under section 2 of the Ordinance and rules 3 of the Rules by making reference to section 2A(1) of IO.</p>	
013327 - 013615	Chairman Ms Cyd HO Admin	In response to Ms Cyd HO, the Administration's advice that the impact on the demand for cemetery facilities in CPCs arising from the broadened scope of deceased persons eligible to be buried, interred or deposited in CPCs would be minimal.	
013616 - 014616	Chairman Admin ALA5 Dr Helena WONG Chairman Ms Cyd HO Mr IP Kwok-him	<p><i>Clauses 10 and 11</i></p> <p>The Administration was requested to consider the following views and suggestions of the Legal Adviser to the Bills Committee -</p> <p>(a) to spell out clearly in the amended rule 3 that in deducing any relationship for the purposes of paragraphs (b), (c) and (e) of the definition of "relative" under clause 10(8) of the Bill, an adopted child would be treated as the child of a person by whom he was adopted; a step-child of a person would be treated as the child of a person; a child born out of wedlock would be treated as a legitimate child and any relationship of the half-blood would be treated as a relationship of the whole blood for the avoidance of doubt; and</p> <p>(b) in a similar vein to clause 10(8), to consider spelling out clearly in the Bill that "a child" under the proposed amended rule 4(2)(c) would include a step-child, adopted child and an illegitimate child.</p> <p>Dr Helena WONG's expression of support that the legislation should stipulate explicitly the policy</p>	Admin (para. 1 (a) and 2 of Annex B refers)

Time marker	Speaker	Subject(s)	Action Required
		<p>intent that a step child of a person would be treated as the child of a person, an adopted child would be treated as the child of a person by whom he was adopted and a child born out of wedlock would be treated as a legitimate child and any relationship of the half-blood would be treated as a relationship of the whole blood in deducing the relationship of "relative". She was opposed to the suggestion of empowering the Board to exercise discretion in considering the relevant applications as it might create grey area and disputes. Ms Cyd HO shared her view.</p> <p>The Chairman's views that the Administration should consider providing in the Rules a more detailed definition for the term "relative" to include those persons who were generally regarded as the family members of the first deceased. Where necessary and if a kind of relationship was not covered in the Rules, the applicants concerned should be requested to provide documentary proof to support the relationship of the subsequent deceased with the first deceased (e.g. as the foster son (義子) of the first deceased) for consideration by the Board.</p> <p>Mr IP Kwok-him's query about the need and propriety of providing in the Rules an exhaustive definition for the terms "descendant" and "relative". His view that the present drafting could be interpreted to cover different categories of persons.</p> <p>The Administration confirmed the policy intent that a step child, an adopted child and a child born out of wedlock would be treated as a legitimate child and hence, covered by the term "a child" in the proposed amended rule 4(2)(c). It however undertook to consider the views and suggestions of members/the Legal Adviser to the Bills Committee on the drafting of the relevant provisions.</p>	
014617 - 014807	Chairman Admin	<i>Clauses 12, 13(1) and 13(2)</i>	
014808 - 020047	Chairman Admin Ms Cyd HO Dr Helena WONG Dr Kenneth CHAN The Board	<i>Clause 13(3)</i> Discussion on the proposed amendment to rule 7(2) of the Rules which stipulated the dimension of grave spaces in CPCs.	

Time marker	Speaker	Subject(s)	Action Required
		The Administration was requested to provide (i) the rationale for proposing the amendment; (ii) pictures or pictograms illustrating how the revised dimension was to be applied; (iii) information on the actions to be taken by the Board if the requirement concerning the dimension of grave spaces was not complied with.	Admin (para. 5 of Annex B refers)
020048 - 020152	Chairman	Date of next meeting. The Chairman's closing remarks.	

Council Business Division 2
Legislative Council Secretariat
30 December 2015

**Bills Committee on
Chinese Permanent Cemeteries (Amendment) Bill 2015**

**List of follow-up actions arising from the discussion
at the meeting on 27 November 2015**

1. Members noted that clause 10(8) of the Chinese Permanent Cemeteries (Amendment) Bill 2015 ("the Bill") proposed to expand the eligibility for subsequent burial or deposit in cemetery facilities by removing all references to "close relative" as defined under rule 3 of the Chinese Permanent Cemeteries Rules (Cap. 1112A) ("the Rules") and substituting it by "relative". Regarding the definition of "relative", although the Administration confirmed the policy intent that a step child of a person would be treated as the child of a person, an adopted child would be treated as the child of a person by whom he was adopted and a child born out of wedlock would be treated as a legitimate child and any relationship of the half-blood would be treated as a relationship of the whole blood in deducing the relationship of "relative", there were concerns about the clarity of the relevant provisions under the Rules. A member considered that the term "descendant" under clause 10(8)(e) is unclear. The Administration was requested to consider the following suggestions of members/the Legal Adviser to the Bills Committee and revert to the Bills Committee on whether Committee stage amendments would be proposed to the Bill -

- (a) to spell out clearly in the amended rule 3 that in deducing any relationship for the purposes of paragraphs (b), (c) and (e) of the definition of "relative" under clause 10(8) of the Bill, an adopted child would be treated as the child of a person by whom he was adopted; a step-child of a person would be treated as the child of a person; a child born out of wedlock would be treated as a legitimate child and any relationship of the half-blood would be treated as a relationship of the whole blood for the avoidance of doubt; and
- (b) if an exhaustive definition of the term "descendant" was not to be provided in the Rules, the Administration should make reference to how the term "kinship" was defined in the relevant administrative guidelines adopted by the Food and Environmental Hygiene Department and consider empowering the Board of Management of the Chinese Permanent Cemeteries ("the Board") to determine whether the subsequent deceased was

in close relationship with the first deceased, so as to allow the Board more flexibility in considering applications for subsequent burials or deposits in the Chinese Permanent Cemeteries ("CPCs").

2. Regarding the first eligible deceased (in relation to the eligibility for the first interment, burial or deposit in CPCs) who was a child under the proposed amended rule 4(2)(c) of the Rules (clause 11), the Administration confirmed that a child was intended to cover a step-child, adopted child and an illegitimate child. In a similar vein to clause 10(8), the Administration was also requested to consider whether it would spell out clearly in the Bill that a child under the proposed amended rule 4(2)(c) would include a step-child, adopted child and an illegitimate child.

3. The Legal Adviser to the Bills Committee pointed out that six categories of persons were specified as permanent residents of the Hong Kong Special Administrative Region under paragraph 2 of Schedule 1 to the Immigration Ordinance (Cap. 115) ("IO") whereas "permanently resident in Hong Kong" under section 2 of the Chinese Permanent Cemeteries Ordinance (Cap. 1112) ("the Ordinance") and rule 3 of the Rules referred to the continuous residency requirement for a total of not less than seven years or the right to land and to remain free of conditions of stay in Hong Kong. The Administration was requested to clarify the following issues in relation to the eligibility for the first interment, burial or deposit in CPCs -

- (a) whether those persons who had acquired the permanent resident status under paragraph 2 of Schedule 1 to IO would be regarded as "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules;
- (b) for the sake of clarity, whether the definition of "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules needed to be amended having regard to section 2A(1) of IO concerning the right of abode in Hong Kong enjoyed by Hong Kong permanent residents; and
- (c) to what extent the scope of persons who were "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules was wider than "Hong Kong permanent resident" under section 2(1) and paragraph 2 of Schedule 1 to IO, with examples of the circumstances under which certain categories of persons who had not acquired permanent resident

status under IO but could be regarded as "permanently resident in Hong Kong" under section 2 of the Ordinance and rule 3 of the Rules.

4. Regarding the proposed amendment to section 7(2) of the Ordinance which sought to expand the ambit of donations that could be made by the Board, the Administration had indicated its willingness to take on board members' suggestion of improving the drafting of the expression "a particular sector of that community" for clarity sake. The Administration undertook to provide the revised wording of the proposed amended section 7(2) for members' consideration.

5. Members noted that an amendment was proposed to rule 7(2) of the Rules which stipulated the dimension of grave spaces in CPCs. The Administration was requested to provide (i) the rationale for proposing the amendment; (ii) pictures or pictograms illustrating how the revised dimension was to be applied; (iii) information on the actions to be taken by the Board if the requirement concerning the dimension of grave spaces was not complied with.

Council Business Division 2
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