

Bills Committee on Private Columbaria Bill

Finalised Version of the Committee Stage Amendments Proposed by the Government

Purpose

We informed the Bills Committee at its meeting on 16 March 2017 that the Government would fine-tune its proposed Committee Stage Amendments (“CSAs”), and would submit its finalised CSAs to the Bills Committee. This paper sets out the finalised CSAs and highlights the major changes made since the version was last considered by the Bills Committee.

Finalised CSAs

2. With reference to LC Paper No. CB(2)986/16-17(01), a revised **Annex 3** showing the finalised CSAs by items listed in Annexes 1 and 2 of the aforementioned paper is at **Annex A**. The changes made since the last version have been highlighted in yellow for ease of reference.

3. In gist, the changes are mainly textual refinements, save for the following three CSAs–

	Amendments	Rationale
1	<p>To revise the definition of <i>ashes</i> in clause 2(1) and related provisions to make clear that <i>ashes</i> include the container of such ashes, as well as any items interred together with such ashes in the same container (if applicable).</p> <p><i>(Please refer to the revisions under “Item 3 of Annex 2” of <u>Annex A</u>.)</i></p>	<p>This CSA is made in response to a Member’s comments at the Bills Committee meeting on 16 March 2017.</p>

	Amendments	Rationale
2	<p>To revise section 10(1) of Schedule 5 to make clear that the authority for specifying the form and other information relating to the keeping of records on the prescribed ash disposal procedures (“record-keeping”) is the Director of Food and Environmental Hygiene (“the Director”) rather than the Private Columbaria Licensing Board.</p> <p><i>(Please refer to the revisions under “Item 3 of Annex 2” of <u>Annex A.</u>)</i></p>	<p>This CSA is made out of consistency and timeliness considerations.</p> <p>It is provided in the Private Columbaria Bill that the Director is the one conferred with the power to specify the manner in which the delivery of ashes is to be made. It is only logical for the Director to specify the relevant information relating to record-keeping under section 10(1) of Schedule 5 as well.</p> <p>Given the prescribed ash disposal procedures could be triggered as soon as the Private Columbaria Ordinance is enacted, making clear the authority would enable the Director to promulgate the guidelines on ash disposal expeditiously.</p>
3	<p>To streamline section 14(5) and (12) of Schedule 5, with a view to making clear the legal effect.</p> <p><i>(Please refer to the revisions under “Item 6 of Annex 2” of <u>Annex A.</u>)</i></p>	<p>This CSA seeks to make clear the legal effect of registration of the certificate in the Land Registry (i.e. constituting a legal charge on the columbarium premises), as well as streamlining the presentation and improving the flow.</p>

4. For Members’ reference, the full set of CSAs in the conventional format is at **Annex B.**

Advice Sought

5. Members are invited to note the content of the paper.

Food and Health Bureau
March 2017

Proposed CSAs to relevant provisions of the Bill¹
(shown as marked-up version)

CSAs for Item 1 of Annex 1

Schedule 5

[ss. 2, 4, 10, 44, 54, 63, 71, 73,
74, 75, 76, 79, 82 & 101]

Occupation Order and Ash Disposal Procedures

...

6. Interpretation of Part 2 of Schedule 5

...

(2) In this Part—

...

prescribed claimant (訂明申索人), in relation to the ashes of a deceased person,
means—

- (a) ~~an authorized representative;~~
- (b) a personal representative or relative;
- (c) a related person; or
- (d) ~~the purchaser of the interment right;~~

related person (相關人士), in relation to a deceased person, means a person who—

- (a) was living with the deceased person in the same household immediately before the date of the death of the deceased person; and
- (b) had been living with the deceased person in the same household for at least 2 years before that date;

...

9. Handling claims for ashes

...

- (5) The following rules apply in determining the priority of competing claims among prescribed claimants for the return of the ashes of a deceased person—
 - (a) among competing claims from 2 or more authorized representatives—
 - (i) the order of priority follows that stated in the agreement for the sale of the interment right concerned; or
 - (ii) if no order of priority is stated, the claims have equal priority;
 - (b) an authorized representative's claim has priority over that of a personal representative, ~~or~~ relative or related person or of the purchaser;

¹ Changes since the version for the Bills Committee meeting on 16.3.2017 are highlighted in yellow.

- (c) a claim of a personal representative or relative has priority over that of a related person or of the purchaser; ~~and~~
- (d) a personal representative's claim and a relative's claim have equal priority; and
- (e) a related person's claim has priority over that of the purchaser.

CSAs for Item 2 of Annex 1

8. Establishment of Licensing Board

- (1) A board is established with the name “Private Columbaria Licensing Board” in English and “私營骨灰安置所發牌委員會” in Chinese.
- (2) Schedule 1 (which makes provisions about the constitution, administration and proceedings of the Licensing Board) has effect.

...

Schedule 1

[ss. 8 & 101]

Private Columbaria Licensing Board

...

6. Delegation

- (1) The Licensing Board may, in writing, delegate any of its functions or powers to a public officer.
- (2) However, the Licensing Board may not delegate its power to do any of the following things—
 - (a) delegate under subsection (1);
 - (b) approve or refuse an application for a specified instrument;
 - (c) approve or refuse an application for the transfer of a specified instrument;
 - (d) revoke or suspend a specified instrument or an authorization under a licence to sell interment rights;
 - (e) impose or vary any condition to which a specified instrument is subject;
 - (f) approve a management plan of a columbarium for the purpose of an application for a licence;
 - (g) endorse a register required for the purpose of an application for an exemption;
 - (h) approve plans of a columbarium for the purpose of an application for a specified instrument;
 - (i) vary any particular shown in approved plans or contained in an endorsed register or vary any matter covered in an approved management plan—~~or vary any particular contained in an endorsed register or shown in approved plans;~~
 - (j) determine the validity period of a specified instrument;
 - (k) determine any date for review of a licence;
 - (l) suspend the operation of a decision of the Licensing Board;
 - (m) approve or refuse an application for permission for alteration or addition to columbarium premises;

(n) amend any Schedule (or part of it) to this Ordinance;

(o) appoint a committee or the Chairperson or a member of a committee.

131. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)

Schedule 1—

Add

“73.	Private Columbaria Ordinance (of 2016)	Sections 20(2)(b)(ii), 22(1)(a) and (3), 38(3)(a), (6) and (7), 39(3), 40(2)(a) and (3), 41(2)(a) and (4), 42(1), (3)(b)(i) and (5), 47(3)(b) and (g), 48(1) and (2), 51(1) and (4), 54(2)(b), 55(10), 61(2)(b), 69(b) and (c), 73(1), (4)(a) and (8), 78(4), 82(2), 84(3)(b) and (13), 85(1)(b), 91(1), (3) and (4)(b), 96(1), 105(1)(b)(i), (ii)(A), (iii) and (iv) and 108(4)(b), <u>section 6(1) of Schedule 1,</u> sections 2(2)(b) and (c) and 5 of Schedule 3 and sections 4(3)(a), 11, 13(2) and 16(3) and (4) of Schedule 5”.
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CSAs for Item 3 of Annex 1

2. Interpretation

(1) In this Ordinance—

...

approved management plan (經批准管理方案), in relation to a columbarium, means—

(a) the management plan required under section 17(2) that is approved for the purposes of an application for the issue of a licence in respect of the columbarium; or

(b) if such a plan is varied under section 40A, the plan as varied;

...

approved plans (經批准圖則), in relation to a columbarium, means—

(a) —plans approved under section 25 (as read with section 26(3), if applicable) in respect of the columbarium that are, on the issue of a specified instrument in respect of the columbarium, annexed to the instrument; or

(b) if such plans are varied under section 40A, the plans as varied;

...

endorsed register (經批註登記冊), in relation to a pre-cut-off columbarium, means—

(a) a register required under section 23 that is endorsed and attached to the approved plans of the columbarium, as referred to in section 25(3)(b); or

(b) if such a register is varied under section 40A or updated under section 54(2)(a), the register as varied or updated;

...

29. Licence—conditions about ash interment, non-compliant structures and management plan

A licence in respect of a columbarium is subject to the following conditions—

...

(c) that the licence holder must operate and manage the columbarium in accordance with the approved management plan ~~approved for the purposes of section 17(2) in respect~~ of the columbarium.

...

39. Revocation, suspension, refusal to renew or extend and variation of conditions

(1) Subject to subsections (2) and (2A), the Licensing Board may—

...

(d) vary any conditions to which any of the following is subject or impose new conditions on it—

(i) a licence;

(ii) the authorization under a licence to sell interment rights in respect of the columbarium concerned;

- (iii) an exemption;
- (iv) a temporary suspension of liability.

...

(2A) The Licensing Board may also exercise the powers under subsection (1)(d) if the Licensing Board considers it necessary or expedient to do so for the better regulation, supervision or control of the columbarium concerned.

...

40A. Variation of approved plans, endorsed registers, etc.

(1) The Licensing Board may, in the circumstances specified in subsection (3), vary any of the particulars or matters specified in subsection (2) in respect of a columbarium.

(2) The particulars or matters are—

(a) the following particulars shown in the approved plans of a columbarium—

(i) particulars specified in section 25(2) that are authorized or permitted by the specified instrument in respect of the columbarium;

(ii) particulars specified in section 26(1);

(iii) particulars specified in section 26(3);

(b) particulars contained in an endorsed register of a pre-cut-off columbarium;
or

(c) matters covered in the approved management plan of a columbarium.

(3) The Licensing Board may vary a particular or matter in respect of a columbarium under subsection (1)—

(a) if, at the time when the Licensing Board considers exercising the power in respect of the columbarium, circumstances exist that would have entitled the Licensing Board to approve or endorse the plans, register or management plan with the particulars or matters as varied had it been necessary to determine at that time whether to approve or endorse the plans, register or management plan; or

(b) if the Licensing Board considers that the variation is necessary or expedient for the better regulation, supervision or control of the columbarium.

(4) If the Licensing Board varies any particular or matter in respect of a columbarium under subsection (1), the Licensing Board must notify the person holding the specified instrument in respect of the columbarium in writing of—

(a) the Licensing Board's decision;

(b) the reasons for the decision; and

(c) the date on which the decision is to take effect.

41. Licensing Board's decision may be suspended from operation

(1) If a person in respect of whom the Licensing Board made a decision under section 39(1) or 40A(1) appeals against the decision under section 82, the Licensing Board—

(a) may, on application by the person, suspend the operation of the decision, pending the determination of the appeal; or

(b) may, on its volition, suspend the operation of the decision, pending the determination of the appeal.

...

53. Interment of ashes by exercising interment right sold before cut-off time

The ashes of a dedicated person may be interred after the cut-off time in a niche in a pre-cut-off columbarium in respect of which an exemption has been issued if—

- (a) the interment right in respect of the niche was sold before the cut-off 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
- (b) the name of the dedicated person has been entered into—

- (i) an endorsed register ~~referred to in section 25(3)(b); or~~
- (ii) ~~the register updated under section 54(2).~~

54. Records on unused or partially used niches, etc.

- (1) The holder of an exemption in respect of a pre-cut-off columbarium must not replace the name of a dedicated person contained in an endorsed register ~~referred to in section 25(3)(b) or the register updated under subsection (2)~~, or cause such a name to be replaced, by the name of another person unless—
 - (a) the purchaser so requests;
 - (b) that other person is a relative (as defined by section 6(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.

...

- (3) If—

- (a) the name of a dedicated person contained in an endorsed register ~~referred to in section 25(3)(b), or the register updated under subsection (2)~~, is replaced by the name of another person otherwise than in accordance with subsection (1); or
- (b) the name of the dedicated person shown on the niche in the pre-cut-off columbarium is different from that entered into such a register,

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.

...

57. Power to inspect columbaria, etc.

- (1) The Director or an authorized officer has power to do all or any of the things set out in subsection (2) for the purposes of ascertaining whether all or any of the following is being, or has been, complied with—
 - (a) this Ordinance;
 - (b) the conditions of a specified instrument;
 - (c) the approved management plan ~~approved for the purposes of section 17(2) in respect~~ of a columbarium.

82. Appeals

- (1) An applicant or a holder of a specified instrument who is aggrieved by any of the following decisions under this Ordinance may appeal to the Appeal Board—

...

- (h) a refusal of an application made under section 40 to vary the conditions to which a specified instrument is subject;

(ha) a decision under section 40A(1) to vary a particular or matter;

- (i) a refusal of an application made under section 41(1)(a) for the suspension of the operation of a decision under section 39(1) pending the determination of an appeal;

...

- (4) The secretary to the Appeal Board must, as soon as practicable, give a copy of the notice of appeal—

- (a) if subsection (1)(a), (b), (c), (d), (e), (f), (g), (h), **(ha)**, (i) or (k) applies—to the Licensing Board; or
(b) if subsection (1)(j) or (l) applies—to the Director.

...

131. Schedule 1 amended (provisions excluded from application of section 5 of Ordinance)

Schedule 1—

Add

“73.	Private Columbaria Ordinance (of 2016)	Sections 20(2)(b)(ii), 22(1)(a) and (3), 38(3)(a), (6) and (7), 39(3), 40(2)(a) and (3), <u>40A(4)</u> , 41(2)(a) and (4), 42(1), (3)(b)(i) and (5), 47(3)(b) and (g), 48(1) and (2), 51(1) and (4), 54(2)(b), 55(10), 61(2)(b), 69(b) and (c), 73(1), (4)(a) and (8), 78(4), 82(2), 84(3)(b) and (13), 85(1)(b), 91(1), (3) and (4)(b), 96(1), 105(1)(b)(i), (ii)(A), (iii) and (iv) and 108(4)(b), sections 2(2)(b) and (c) and 5 of Schedule 3 and sections 4(3)(a), 11, 13(2) and 16(3) and (4) of Schedule 5”.
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CSAs for Item 1 of Annex 2

Schedule 3

[ss. 43 & 101]

Further Provisions on Applications Relating to Specified Instruments

1. Applications to which Schedule 3 applies

This Schedule applies to—

- (a) an application for a specified instrument under section 13 of this Ordinance;
- (b) an application for the transfer of a specified instrument under section 38 of this Ordinance; and
- (c) an application for varying a condition of a specified instrument under section 40 of this Ordinance.

2. Who may make application

(1) An application to which this Schedule applies may only be made by—

- (a) a person who operates, keeps, manages or in any other way has control of a columbarium; or
- (b) a person who intends to operate, keep, manage or in any other way have control of a columbarium.

(2) The application must be signed—

- (a) if the applicant is a natural person—by the applicant;
- (b) if the applicant is a partner in a partnership—by the partner authorized in writing to act for and on behalf of the partnership;
- (c) if the applicant is a body corporate—by a director or other officer concerned in the management of the body corporate authorized in writing to act for and on behalf of the body corporate.

...

CSAs for Item 2 of Annex 2

2. Interpretation

(1) In this Ordinance—

...

in force (有效), in relation to a specified instrument—see section 15A;

...

15. Validity period of specified instrument

...

~~(6) A specified instrument in respect of which an application for renewal or extension is made in accordance with section 14, and which expires prior to the determination by the Licensing Board of the application, remains in effect until the determination of the application unless—~~

~~(a) the application is withdrawn;~~

~~(b) the specified instrument is revoked under section 39;~~

~~(c) for a licence (despite subsection (2)(b)) the term referred to in subsection (2)(a)(i) or (ii) expires; or~~

~~(d) for an exemption the term referred to in subsection (3)(a) or (b) expires.~~

...

15A. Specified instrument in force despite certain events

(1) A specified instrument remains in force despite a suspension under section 39 if all the requirements, terms and conditions imposed by the Licensing Board upon suspending the instrument (*suspension requirements*) are complied with.

(2) For the purposes of sections 45, 57 and 68, a specified instrument is also regarded as in force despite a suspension under section 39 even if the suspension requirements are not complied with.

(3) A specified instrument remains in force despite the expiry of its validity period if—

(a) the following application was made before the expiry—

(i) an application under section 14 for the renewal or extension of the instrument; or

(ii) an application under section 38 for the transfer of the instrument; and

(b) the instrument expires before the Licensing Board determines the application.

(4) However, the specified instrument remains in force only until the earlier of the following—

(a) the determination of the application;

(b) the occurrence of any of the following events—

(i) the withdrawal of the application;

(ii) the revocation of the instrument under section 39;

(iii) if the instrument is a licence—the expiry of the term referred to in section 15(2)(a)(i) or (ii);

- (iv) if the instrument is an exemption—the expiry of the term referred to in section 15(3)(a) or (b).
- (5) A specified instrument remains in force despite the death or dissolution of its holder.
- (6) In this section—
specified instrument (指明文書), in relation to a specified instrument that is a licence, does not include any authorization under the licence to sell interment rights.

CSAs for Item 3 of Annex 2

2. Interpretation

(1) In this Ordinance—

...

ashes (骨灰)—

(a) means ashes resulting from the cremation of human remains, and (except in section 5) includes synthetic diamonds, jewellery, ornaments and any other materials transformed from human ashes; and

(b) ~~(except in section 66(2)(a)(iii)(B), (C) and (D) and in the definition of eligible claimant in section 6(2) of, and in sections 9(7) and 10(4) of, Schedule 5)~~ includes the container of such ashes, as well as any related items interred together with such ashes in the same niche container (if applicable), except for the following provisions—

(i) section 66(2A)(d)(ii), (iii), (iv) and (v);

(ii) the definitions of *eligible claimant* and *related item* in section 6(2) of Schedule 5; and

(iii) sections 9A, 9B(4)(b)(i) and 10(4) of Schedule 5;

...

75. 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~~9B of Schedule 5.

(2) In this section—

court (法院) means the District Court.

...

Schedule 5

[ss. 2, 4, 10, 44, 54, 63, 71, 73,
74, 75, 76, 79, 82 & 101]

Occupation Order and Ash Disposal Procedures

...

Part 2

Ash Disposal Procedures

6. Interpretation of Part 2 of Schedule 5

(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 *on-site claim period* and is to be construed as including the 2 months referred to in section 9(2) or 9A(3)(a)(i) of this Schedule).

(2) In this Part—

...

court (法院), except in section 13(2)(b) of this Schedule, means the District Court;

eligible claimant (合資格申索人), in relation to the ashes of a deceased person or any related items ~~interred together with the ashes~~, means—

- (a) unless paragraph (b) applies, a prescribed claimant; or
- (b) the owner of the item or the person to whom the ashes are to be returned (as the case requires) as determined in accordance with any **applicable law applicable to the item or ashes (as the case requires)**;

...

related item (相關物品), in relation to ashes, means—

- (a) the container of the ashes; or
- (b) an item interred together with the ashes in the same container;

relative (親屬), in relation to the ashes of a deceased person, means—

...

- (p) the spouse of any person mentioned in paragraph (j), (k), (l), (m), (n) or (o);

return order (交還令) means an order for the return of ashes made under section 75 of this Ordinance.

...

7. **Prescribed ash disposal procedures**

(1) Subject to section 16 of this Schedule, an ash handler carries out the prescribed ash disposal procedures in respect of a columbarium (*columbarium A*) if the ash handler—

- (a) gives a commencement of ash disposal notice stating the person's intention—
 - (i) to handle the ashes interred in the columbarium in the specified manner within the meaning of subsection (2) or (3); and
 - (ii) to handle claims for the return of ashes in accordance with sections 9 and 9A of this Schedule;

...

(4) Subsection (2)(b) has effect subject to sections 9(6) and ~~(8)~~ 9A(5)(b) of this Schedule.

...

9. **Handling claims for ashes—general**

~~(1) In this section—~~

~~**court** (法院) means the District Court.~~

(1) This section applies subject to section 9A of this Schedule.

- (2) The ashes of a deceased person may only be returned on the expiry of the first 2 months ~~(the first 2 months)~~ of the on-site claim period ~~(the first 2 months)~~.
- (3) After the expiry of the first 2 months, the ash handler must return the ashes of a deceased person—

- (a) if the ash handler receives only 1 claim for the return of the ashes from a prescribed claimant—to the prescribed claimant; or
- (b) if the ash handler receives competing claims for the return of the ashes from 2 or more prescribed claimants—
 - (i) to the prescribed claimant whose claim has the highest priority under subsection (5); or
 - (ii) if the competing claims are of equal priority—in accordance with subsection (6).
- (4) If, by the expiry of the first 2 months, the ash handler does not receive any claim for the return of the ashes of a deceased person from a person who is a prescribed claimant—
 - (a) the ash handler must return the ashes to a prescribed claimant who first makes a claim in the remainder of the on-site claim period; or
 - (b) if competing claims are received from 2 or more prescribed claimants before the ashes are returned under paragraph (a)—
 - (i) the ash handler must return the ashes to the prescribed claimant whose claim has the highest priority under subsection (5); or
 - (ii) if the competing claims are of equal priority—the ash handler must return the ashes in accordance with subsection (6).
- (5) The following rules apply in determining the priority of competing claims among prescribed claimants for the return of the ashes of a deceased person—
 - (a) among competing claims from 2 or more authorized representatives—
 - (i) the order of priority follows that stated in the agreement for the sale of the interment right concerned; or
 - (ii) if no order of priority is stated, the claims have equal priority;
 - (b) an authorized representative's claim has priority over that of a personal representative or relative or of the purchaser;
 - (c) a claim of a personal representative or relative has priority over that of the purchaser; and
 - (d) a personal representative's claim and a relative's claim have equal priority.
- (6) If the ash handler receives competing claims as referred to in subsection (3)(b)(ii) or (4)(b)(ii), the ash handler—
 - (a) must keep the ashes until ~~a person obtains a court return order is made~~ for their return to ~~the one or more~~ prescribed claimants and must return the ashes as ordered; or
 - (b) if no court proceedings have been instituted by the expiry of 12 months after the on-site claim period—must deliver the ashes to the Director.

9A. Handling claims for ashes—if there is claim for related item

- (71) ~~Subsection (8)~~ This section applies instead of section 9 of this Schedule, applies if—
- ~~(a) the ash handler is in possession of a related item interred together with the ashes of a deceased person in the same niche (if applicable); and~~
 - ~~(b) before the ashes of a deceased person (together with the any related items) are returned to any person under that this section, a person claims to be the owner of the a related item. (the item (together with the ashes) is called specified item).~~

(2) In this section—

(a) specified item (指明物品) means the ashes of the deceased person, together with all related items (if applicable); and

(b) claim for return (交還申索) means any claim for the return of the ashes of the deceased person or a related item, or both.

(83) ~~In the circumstances specified in subsection (7)—~~

~~(a) The ash handler must return the specified item—~~

(i) where the person who claims to be the owner of the related item as ~~referred to in subsection (7)(b)~~ is a prescribed claimant—

(A) if the ash handler receives only the claim for return ~~the return of the item or the specified item~~ from that person within the first 2 months of the on-site claim period (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 return ~~the return of the item or the specified item~~ and that person is the first one who makes such 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 related 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 return ~~claim for the return of the item or the specified item~~—to that person after the expiry of the on-site claim period;

(b4) Subsection (5) applies if, before the specified item is returned in accordance with ~~paragraph subsection (3)(a)~~, the ash handler receives another claim for return ~~the return of the item or the specified item~~.

(5) In the circumstances specified in subsection (4)—

(a) the court may determine the ~~competing claims~~ claims for return in accordance with any applicable law ~~applicable to it~~; and

(e) the ash handler—

(i) must keep the specified item until ~~a person obtains a court return order is made for its return of it to the one or more persons~~ and must return it as ordered; or

(ii) if no court proceedings have been instituted by the expiry of 12 months after the on-site claim period—must deliver the specified item to the Director.

(96) For the purposes of ~~subsections (7) and (8)~~ this section, 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~~, without returning the ashes together with it.

9B. Court order for return of ashes

(1) An application for a return order may be made, by originating summons, by—

(a) a prescribed claimant;

(b) a person who claims to be the owner of a related item;

- (c) an ash handler to which section 9(6) or 9A(5)(b) of this Schedule applies;
or
- (d) if the Director is in possession of the ashes by virtue of any provision of this Ordinance—the Director.
- ~~(10) An application for a court order referred to in subsection (6)(a) or (8)(c)(i) may be made by originating summons.~~
- ~~(11) If an application for a return order is made by an ash handler or the Director—~~
 - ~~(a) Order 17 of the Rules of the District Court (Cap. 336 sub. leg. H) applies, with necessary modifications, in relation to the application 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~~
 - ~~(b) the court has the powers under that Order accordingly despite section 32(3) of the District Court Ordinance (Cap. 336).~~
- ~~(12) Despite subsections (1) and (2) (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 return order court order referred to in subsection (6)(a) or (8)(c)(i).~~
- ~~(13) On making a return order court order referred to in subsection (6)(a) or (8)(c)(i), the court—~~
 - ~~(a) —may impose any the conditions that it considers appropriate; and~~
 - ~~(b) may order that the ashes be returned in any manner it thinks fit, including—~~
 - ~~(i) separating any related item (except the container of the ashes) from the ashes; and~~
 - ~~(ii) returning different related items to different persons.~~

10. Record

- (1) An ash handler must keep a record of the steps that the ash handler has taken to carry out the prescribed ash disposal procedures, which record—
 - (a) must be in the specified form specified by the Director; and
 - (b) must contain the information that the Licensing Board Director requires about ashes and claims handled in carrying out the procedures.
- ...
- (3) If section 9(6) of this Schedule applies to the ashes of a deceased person, the period within which the ash handler must deliver the part of the record, relating to the ashes of the deceased person, to the Director is 30 days after the earlier of the following—
 - (a) the return of the ashes ~~of the deceased~~ under that section;
 - (b) the expiry of 12 months after the on-site claim period.
- (4) If section ~~9(8)~~ 9A(5)(b) of this Schedule applies to the ashes of a deceased person and any related items ~~interred together with the ashes~~, the period within which the ash handler must deliver the part of the record, relating to the ashes of the deceased person and the items, to the Director is 30 days after the earlier of the following—
 - (a) ~~on the claims for the ashes and items being finally disposed of in accordance with the law referred to in the return of the ashes and items under~~ that section;

- (b) the expiry of 12 months after the on-site claim period.

...

12. Director carrying out steps necessary for disposal of ashes

...

- (4) Sections 7, 8, ~~and 9~~ and 9A 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.

...

CSAs for Item 4 of Annex 2

19. Exemption for pre-cut-off columbarium—eligibility based on datedness, legal compliance and premises held from Government or right to occupation

...

- (2) The Licensing Board may decide not to refuse the application only because the applicant fails to prove the matter mentioned in subsection (1)(b) if the applicant proves to the satisfaction of the Licensing Board that—

(a) the increase in the ash interment quantity since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and

(b) each new set of ashes is either—

(i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or

(ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.

~~(a) if—~~

~~(i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred before the enactment date; and~~

~~(ii) the interment right in respect of those ashes was sold before the cut-off time; or~~

~~(b) if—~~

~~(i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred in a religious ash pagoda (as defined by section 55(14)) before the enactment date; and~~

~~(ii) no fees, charges or other sums were paid, or are payable, for the interment of the ashes.~~

...

20. Temporary suspension of liability for pre-cut-off columbarium—eligibility based on accompanying application for licence or exemption, etc.

...

- (4) The Licensing Board may decide not to refuse the application (made together with a related application for the issue of an exemption) only because the applicant fails to prove the matter mentioned in subsection (2)(a)(iii) if the applicant proves to the satisfaction of the Licensing Board that—

(a) the increase in the ash interment quantity since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and

(b) each new set of ashes is either—

(i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or

- (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- ~~— (a) if the applicant proves to the satisfaction of the Licensing Board that —~~
 - ~~— (i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred before the enactment date; and~~
 - ~~— (ii) the interment right in respect of those ashes was sold before the cut-off time; or~~
- ~~— (b) if the applicant proves to the satisfaction of the Licensing Board that —~~
 - ~~— (i) the increase in the ash interment quantity since the cut-off time is limited to ashes interred in a religious ash pagoda (as defined by section 55(14)) before the enactment date; and~~
 - ~~— (ii) no fees, charges or other sums were paid, or are payable, for the interment of the ashes.~~

...

52. Number of sets of ashes interred restricted

...

- (2) Subject to subsection (2A)~~sections 53 and 55~~, the holder of an exemption ~~or temporary suspension of liability~~ in respect of a pre-cut-off 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 ~~material time~~ cut-off time, as shown in the approved plans.

(2A) The holder of an exemption does not contravene subsection (2) if—

- (a) any increase in the total number of sets of ashes since the cut-off time is caused only by—
 - (i) sets of ashes interred in the columbarium between the cut-off time and the enactment date; or
 - (ii) sets of ashes interred in the columbarium under section 53 or 55; and
- (b) for each set of ashes mentioned in paragraph (a)(i), it is either—
 - (i) ashes interred or to be interred in a niche, where—
 - (A) the interment right in respect of the niche was sold before the cut-off time; and
 - (B) the name of the dedicated person has been entered into an endorsed register; or
 - (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.

(2B) Subject to subsection (2C), the holder of a temporary suspension of liability in respect of a pre-cut-off 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 following time, as shown in the approved plans—

- (a) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium—the beginning of the enactment date; or

(b) if an application for the issue of an exemption is pending in respect of the columbarium—the cut-off time.

(2C) The holder of a temporary suspension of liability does not contravene subsection (2B)(b) if—

(a) any increase in the total number of sets of ashes since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and

(b) each new set of ashes is either—

(i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or

(ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.

~~(3) In subsection (2) —~~

~~*material time* (關鍵時間) means —~~

~~(a) in relation to an exemption — the cut off time; or~~

~~(b) in relation to a temporary suspension of liability —~~

~~(i) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium — the enactment date;~~

~~(ii) if an application for the issue of an exemption is pending in respect of the columbarium — the cut-off time.~~

(4) A person who contravenes subsection (1) ~~or~~, (2) or (2B) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

53. Interment of ashes by exercising interment right sold before cut-off time

The ashes of a dedicated person may be interred ~~after the cut-off time~~ in a niche in a pre-cut-off columbarium in respect of which an exemption ~~has been issued~~ is in force if—

(a) the interment right in respect of the niche was sold before the cut-off 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

...

55. Interment of ashes in religious ash pagodas

(1) If a pre-cut-off columbarium in respect of which an exemption ~~has been issued~~ is in force 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 pagoda specified under that subsection after the publication of the notice under that subsection.

...

CSAs for Item 5 of Annex 2

66. Operator's obligations in disposal of ashes

- (1) A person who has operated, kept, managed or in any other way had control of a columbarium must not improperly dispose of ashes interred in the columbarium.
- (2) For the purposes of subsection (1), a person who disposes of ashes interred in a columbarium does so improperly unless—

- (a) the disposal complies with the requirements specified in subsection (2A); or
- (b) the disposal forms part of the prescribed ash disposal procedures carried out in respect of the columbarium.

(2A) For the purposes of subsection (2)(a), the requirements are—

(a) either—

- (i) the person holds a specified instrument in respect of the columbarium ~~and—~~ or
- (ii) the columbarium was in operation immediately before the enactment date, and the ashes are disposed of within the grace period;

- ~~(ib)~~ the ashes are disposed of not because of cessation of operation of the columbarium;
- ~~(ic)~~ the ashes are disposed of in accordance with the terms of any agreement for the sale of an interment right in respect of the ashes; and
- ~~(iid)~~ the following particulars of disposal are entered into the record on interment and disinterment of ashes kept under section 49(4) (if paragraph (a)(i) applies), or into a record of ash disposal (if paragraph (a)(ii) applies)—

~~(Ai)~~ the name of the dedicated person;

~~(Bii)~~ if the ashes are interred in a niche—

~~(IA)~~ the location and serial numbering of the niche;

~~(HB)~~ photos showing the exterior and interior of the niche before disposal; and

~~(HHC)~~ the number of containers of ashes, ~~and any related items interred together with the ashes, in the same~~ disinterred from the niche;

(iii) if the ashes are interred in an area other than a niche—

(A) the location of the area;

(B) photos showing the area before disposal; and

(C) the number of containers of ashes disinterred from the area;

(Civ) the name, the Hong Kong identity card number (if applicable) and the contact details of the person who has collected the ashes (together with their container) and ~~the any related items (if any)~~ interred together with the ashes in the same niche container ~~(related items)~~ (if applicable);

(Dv) the date of return of the ashes, container and the related items (if any) to the person referred to in sub-subparagraph (C)-subparagraph (iv); and

(Evi) any—

(IA) breach of the agreement for the sale of the interment right on the part of the purchaser or authorized representative; or

(HB) other reason for the disposal; ~~or,~~

~~—(b) the person carries out the prescribed ash disposal procedures.~~

(3) Without affecting sections 10 and 11, ~~if a columbarium in respect of which no specified instrument is in force is still in operation after the grace period, the a~~ person who operates, keeps, manages or in any other way has control of the a columbarium in the circumstances specified in subsection (3A) 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 in respect of the columbarium.

(3A) The circumstances are—

(a) for a columbarium that was in operation immediately before the enactment date—that the columbarium is in operation, after the grace period, while no specified instrument is in force in respect of it; or

(b) for any other columbarium—that the columbarium is in operation while no specified instrument is in force in respect of it.

(4) In this section—

grace period (寬限期) means the period beginning on the enactment date and ending—

(a) on the expiry of 9 months beginning on the enactment date; or

(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.

...

CSAs for Item 6 of Annex 2

2. Interpretation

...

- (5) In this Ordinance, a reference to occupation of land as is necessary for, or ancillary to, the operation of a columbarium is a reference to the occupation of land by—

(a) any building or building works containing niches used or intended to be used for the interment of ashes; ~~or~~

(ab) any area other than a niche used for the interment of ashes; or

(b) furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a), or the area referred to in paragraph (ab), to be used as referred to in that paragraph.

Unlawful occupation of unleased land as is necessary for, or ancillary to, the operation of a columbarium is to be construed accordingly.

...

- (7) In this Ordinance, a reference to structures necessary for, or ancillary to, the operation of a columbarium is a reference to—

(a) building or building works—

(i) —that contain niches used or intended to be used for the interment of ashes; or

(ii) that are otherwise used for the interment of ashes; or

(b) building or building works that are furnaces for burning offerings and any other essential ancillary facilities supporting the building or building works referred to in paragraph (a) to be used as referred to in that paragraph.

...

11. Offences relating to section 10

...

- (2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; ~~and or~~

(b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

...

12. Interpretation of Part 4

In this Part—

...

ash interment layout (骨灰安放布局), in relation to a columbarium, means the following particulars—

(a) the location and serial numbering of niches in the columbarium;

- (b) ~~if a licence is applied for or is issued in respect of the columbarium~~—any area in the columbarium in which ashes may be interred otherwise than in niches; and
- (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 55—the location of the religious ash pagoda (as defined by section 55(14));

ash interment quantity (骨灰安放數量), in relation to a columbarium, means the following particulars—

- (a) the number of containers of ashes interred in each niche in the columbarium and the total number of sets of ashes interred in the niches;
- (b) ~~if a licence is applied for or is issued in respect of the columbarium~~—the number of sets of ashes that are interred otherwise than in niches in any area in the columbarium; and
- (c) the total number of sets of ashes that are interred in the columbarium.

...

20. Temporary suspension of liability for pre-cut-off columbarium—eligibility based on accompanying application for licence or exemption, etc.

...

- (2) The Licensing Board may refuse an application for the issue of a temporary suspension of liability in respect of a pre-cut-off columbarium if—
 - (a) the applicant fails to prove to the satisfaction of the Licensing Board one or more of the following matters—
 - ...
 - (ii) if the applicant also applies for the issue of a licence in respect of the columbarium—that the ash interment capacity is limited to that as at the cut-off time and the ash interment quantity is limited to that as at the beginning of the enactment date;
 - ...

25. Approved plans to be endorsed

- (1) The Licensing Board may approve plans of a columbarium for the purposes of an application for a specified instrument only if—
 - (a) it is satisfied that ~~either—~~
 - ~~(i) —the current site situation of the columbarium premises conforms to the plans in all respects including the particulars specified in subsection (2); or~~
 - ~~(ii) if not, the difference identified on the plans (as required under section 24(4)(b)) is not contradictory to the particulars to be authorized or permitted as mentioned in paragraph (b); and~~
 - (b) having regard to sections 16, 17, 18, 19, 20 and 21, the Licensing Board decides to grant the application and authorize or permit the particulars specified in subsection (2) as shown in the plans.

...

26. Application concerning pre-cut-off columbarium—evidence of ash interment layout and quantity, etc. and plans

- (1) An application for a specified instrument in respect of a pre-cut-off columbarium, to which an eligibility-related provision is relevant, must be accompanied by evidence of the following particulars (each is called an *eligibility-related particular*)—

...

- (c) for an application for the issue or renewal of an exemption, or for the issue or extension of a temporary suspension of liability—

(i) the ash interment quantity as at the cut-off time; and

(ii) if the applicant wishes the Licensing Board to apply section 19(2) or 20(4)—the ash interment quantity as at the beginning of the enactment date;

...

- (2) In addition to showing the ~~plans-particulars~~ required under section 24(3), the plans accompanying an application for a specified instrument in respect of a pre-cut-off columbarium must also ~~be accompanied by a set of plans that~~ meet the following requirements—

- (a) they must show the eligibility-related particulars; and

- (b) they must identify the extent (if any) to which the particulars to be authorized or permitted as referred to in section 24(3) differ from those as referred to in paragraph (a).

...

27. Notification scheme: proof of particulars about pre-cut-off columbarium

- (1) In this section—

...

- (d) *batch 1 particulars* (第 1 組詳情) means any of the eligibility-related particulars referred to in section 26(1)(a), (b), (c)(i) or (f) or the particulars of furnaces for burning offerings existing in the columbarium concerned as at the cut-off time;

...

38. Transfer of specified instrument

...

- (2) Subject to subsections (3), (4), (4A) and (5) ~~and (8)~~, the Licensing Board may, on application, approve the transfer from a person in respect of whom an instrument referred to in subsection (1) is in force to another person (*transferee*). The fact of the transfer must be endorsed on the instrument.

...

- (4) The Licensing Board may refuse an application for the transfer of an instrument referred to in subsection (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 mentioned in section 18(3)(b) or 19(1)(h)(ii) (as the case requires).

(84A) ~~Subsection (2) does not apply to~~ The Licensing Board may also refuse an application for the transfer of an instrument referred to in subsection (1) if—

- (a) a notice of revocation or suspension has been given by the Licensing Board under section 39 in respect of the instrument; or
- (b) an application for the renewal or extension of the instrument has been refused.

...

(6) On determining an application made under this section, the ~~Licensing~~ 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.²

...

46. Interpretation of Division 1 of Part 5

(1) In this Division—

purchaser (買方)—see section 47(1);

seller (賣方)—see section 47(1).

...

51. No alteration or addition in material deviation from approved plans, etc.

- (1) Except with the written permission of the Licensing Board, a person holding a specified instrument in respect of a columbarium must not cause or permit any alteration or addition to the columbarium premises that would result in material deviation from the approved plans ~~in respect~~ of the columbarium.

...

55. Interment of ashes in religious ash pagodas

...

- (4) The holder of an exemption in respect of a pre-cut-off columbarium must ensure that the number of sets of ashes that ~~may be~~ are 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).³

...

(11) A person commits an offence if the person—

- (a) wilfully obstructs the exercise of a power under subsection (10)(a) or (c); or
- (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).

...

² For clause 38(6), only the English text is amended.

³ For clause 51(1), only the English text is amended.

71. Breach of undertaking to carry out prescribed ash disposal procedures

(1) If—

- (a) ~~the Director's~~ a notice about suspected abandonment has been given under section 67 or 68; and
- (b) a person has given a specified response within the meaning of section 69(c) by giving an undertaking to carry out the prescribed ash disposal procedures,

the person must comply with the undertaking, whether or not the person has ever operated, kept, managed or in any other way had control of the columbarium.

...

72. Offence for contravention of section 66, 67(1), 68(1), 70 or 71

A person who contravenes section 66, 67(1), 68(1), 70 or 71 commits an offence and is liable—

- (a) on summary conviction to a fine of \$2,000,000 and to imprisonment for 3 years; ~~and or~~
- (b) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years.

...

82. Appeals

...

- (2) A person who wishes to appeal under subsection (1) must lodge a notice of appeal, in writing and in the specified form, with the Appeal Board within 21 days after the date on which the notice, ~~in writing~~, of the decision under appeal is given to the person.

...

Schedule 1

[ss. 8 & 101]

Private Columbaria Licensing Board

...

3. Committees

- (1) The Licensing Board may appoint committees to perform any of the functions of the Licensing Board.
- (2) The Licensing Board may —
 - (a) ~~—~~appoint a member of the Licensing Board to be the Chairperson of a committee; and
 - (b) ~~—or appoint any person to be~~ a member of a committee.

...

Schedule 2

[ss. 2, 18, 19, 21, 26 & 27]

Requirements Relevant to Eligibility for Specified Instruments

...

3. Compliance with building-related requirements

(1) A columbarium complies with the building-related requirements only if—

- (a) the columbarium complies with the requirements for approval and consent to the commencement of building works under section 14 of the Buildings Ordinance (Cap. 123) and every other requirement specified by the Licensing Board including requirements relating to design, construction, structure, fire precautions, health, sanitation or safety; or⁴

...

(3) In this section—

certifiable building (可核證建築物) means—

...

(d) a building situated on land—

- (i) that was unleased land at the time the building was erected; and
(ii) in respect of which—

- (A) a lease under which the columbarium premises are held directly from the Government; or
(B) a short term tenancy under which the columbarium premises are occupied,

~~is subsequently granted by the Government before the enactment date.~~

is subsequently granted by the Government before the enactment date.⁵

(4) For the purposes of this section—

...

pre-1961 NT building (1961 年前新界建築物) means a building in the New Territories built before 1 January 1961 ~~if where~~ there has been no alteration, ~~or~~ addition ~~to,~~ or reconstruction of, the building in contravention of the Buildings Ordinance (Cap. 123) on or after that date;⁶

...

4. Requirements applicable to structures certifiable for a pre-cut-off columbarium

(1) In this section—

⁴ For section 3(1)(a) of Schedule 2, only the Chinese text is amended.

⁵ For paragraph (d) of the definition of *certifiable building* in section 3(3) of Schedule 2, only the English text is amended.

⁶ For the definition of *pre-1961 NT building* in section 3(4) of Schedule 2, only the English text is amended.

...
structures certifiable for a pre-cut-off columbarium (可就截算前骨灰安置所核證的構築物) means non-compliant structures existing immediately before the cut-off time that—

- (a) fall within the following description—
 - (i) they contain niches used or intended to be used for the interment of ashes where at least a niche in the structures was so used immediately before the cut-off time;~~or~~
 - (ia) they are otherwise used for the interment of ashes and were so used immediately before the cut-off time; or
 - (ii) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium; and
- (b) fall within the following description—
 - (i) they are on-grade outdoor structures with niches;
 - (ii) they form the whole, or a part, of a single-storey building;
 - (iii) they form the whole, or a part, of the ground storey of a multi-storey building but do not form the whole, or any part, of any other storey of the building; or
 - (iv) they form the whole, or a part, of a multi-storey building that is an NT small building (as defined by section 3(4) of this Schedule)—
 - (A) that came into existence on or after 16 October 1987; and
 - (B) in respect of which a certificate of exemption has not been issued under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121).

- ...
- (2) In paragraph (b) of the definition of *structures certifiable for a pre-cut-off columbarium* in subsection (1), a reference to a building—
 - (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—
 - (i) without a licence issued under section 5 of the Land (Miscellaneous 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).⁷
 - (3) The ~~R~~requirements applicable to structures certifiable for a pre-cut-off columbarium for the purposes of sections 18(2) and 19(1)(g)(ii) of this Ordinance are—⁸
- ...

⁷ For section 4(2)(b) of Schedule 2, only the Chinese text is amended.

⁸ For section 4(3) of Schedule 2, only the English text is amended.

6. **Meaning of height, roofed-over area, building, etc. in section 5 of this Schedule**

...

- (5) If a building is divided into separate units by means of one or more party walls, each such unit is to be considered to be a separate building for the purposes of section 5 of this Schedule, if any such party wall ~~meets the following descriptions~~—
- (a) if that building is of a height of not more than 7.62 m—is a load-bearing brick wall of not less than 225 mm thick;
 - (b) if that building is of a height of more than 7.62 m but not more than 8.23 m—
 - (i) for the lowest storey—is a load-bearing brick wall of not less than 340 mm thick; and
 - (ii) for any higher storey—is a load-bearing brick wall of not less than 225 mm thick; or
 - (c) is a load-bearing reinforced concrete wall of not less than 175 mm thick.

...

Schedule 4

[ss. 2, 47 & 101]

**Prescribed Information, Recommendations and Essential Terms in
Agreement for Sale of Interment Right**

Part 2

Essential Terms

2. An agreement for the sale of an interment right must set out—

...

- (f) ~~other~~ the following essential terms—
- (i) arrangements for naming a dedicated person and effecting changes of the dedicated person;
 - (ii) arrangements for appointing and replacing authorized representatives;
 - (iii) arrangements for authorizing a person to enforce the agreement; and
 - (iv) the circumstances and the manner in which the operation of the agreement may be temporarily suspended or the agreement may be terminated otherwise than on the expiry of the term of the interment right; and

...

Schedule 5

[ss. 2, 4, 10, 44, 54, 63, 71, 73,
74, 75, 76, 79, 82 & 101]

Occupation Order and Ash Disposal Procedures

...

7. Prescribed ash disposal procedures

...

- (3) The ash handler also handles the ashes in the specified manner for the purposes of subsection (1)(a)(i) if the ash handler—
- (a) arranges for the return of ashes on-site, allowing for an on-site claim period of at least 8 months; and
 - (b) after the expiry of the on-site claim period—
 - (i) arranges for the removal from columbarium A of the ashes that are not returned to an eligible claimant; and
 - (ii) arranges for the reinterment of the ashes—
 - (A) in a columbarium (*columbarium B*) in respect of which a licence is in force and not suspended or to which this Ordinance does not apply because of section 4 of this Ordinance; and
 - (B) on terms no less favourable than the terms governing interment of the ashes in columbarium A.

...

14. Director recovering expenses of steps carried out for disposal of ashes

...

~~(5) The certificate must state that upon registration of it in the Land Registry under subsection (12) in the case referred to in that subsection, the expenses (including any interest recoverable under subsection (7)) constitute a legal charge on the columbarium premises.~~

...

- (12) Where any person liable to pay the expenses is the owner of the columbarium premises, then—
- (a) ~~—at any time before the expenses (including the interest accrued) have been recovered in full, the certificate under subsection (3) may be registered in the Land Registry against the title of the premises; and~~
 - (b) upon the registration, the expenses (including any interest recoverable under subsection (7)) constitute a legal charge on the columbarium premises.

...

Schedule 7

[ss. 101 & 106]

Transitionals

1. Grace period for columbarium to continue operation without selling interment right

...

- (2) 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 does not commit an offence under section 11 of this Ordinance ~~in so far~~ so long as the person does not sell any interment right in respect of the columbarium in that period.⁹

...

⁹ For section 1(2) of Schedule 7, only the English text is amended.

Private Columbaria Bill

Committee Stage

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>In the definition of <i>approved plans</i>, by deleting everything after “means” and substituting—</p> <p>“__</p> <p>(a) plans approved under section 25 (as read with section 26(3), if applicable) in respect of the columbarium that are, on the issue of a specified instrument in respect of the columbarium, annexed to the instrument; or</p> <p>(b) if such plans are varied under section 40A, the plans as varied;”.</p>
2(1)	<p>In the definition of <i>ashes</i>, by deleting paragraph (b) and substituting—</p> <p>“(b) includes the container of such ashes, as well as any items interred together with such ashes in the same container (if applicable), except for the following provisions—</p> <p>(i) section 66(2A)(d)(iv) and (v);</p> <p>(ii) the definitions of <i>eligible claimant</i> and <i>related item</i> in section 6(2) of Schedule 5; and</p> <p>(iii) sections 9A, 9B(4)(b)(i) and 10(4) of Schedule 5;”.</p>
2(1)	<p>By adding in alphabetical order—</p> <p><i>“approved management plan</i> (經批准管理方案), in relation to a columbarium, means—</p> <p>(a) the management plan required under section 17(2)</p>

that is approved for the purpose of an application for the issue of a licence in respect of the columbarium; or

- (b) if such a plan is varied under section 40A, the plan as varied;

endorsed register (經批註登記冊), in relation to a pre-cut-off columbarium, means—

- (a) a register required under section 23 that is endorsed and attached to the approved plans of the columbarium, as referred to in section 25(3)(b); or
- (b) if such a register is varied under section 40A or updated under section 54(2)(a), the register as varied or updated;

in force (有效), in relation to a specified instrument—see section 15A;”.

- 2(5)
 - (a) In paragraph (a), by deleting “; or” and substituting a semicolon.
 - (b) By adding—
 - “(ab) any area other than a niche used for the interment of ashes; or”.
 - (c) In paragraph (b), by adding “, or the area referred to in paragraph (ab),” after “paragraph (a)”.

- 2(7)(a) By deleting everything after “building works” and substituting—
 - “—
 - (i) that contain niches used or intended to be used for the interment of ashes; or
 - (ii) that are otherwise used for the interment of ashes; or”.

- 8(2) By adding “, administration” after “constitution”.

- 11(2)(a) By deleting “; and” and substituting “; or”.

- 12 In the definition of *ash interment layout*, in paragraph (b), by deleting “if a licence is applied for or is issued in respect of the columbarium—”.
- 12 In the definition of *ash interment quantity*, in paragraph (b), by deleting “if a licence is applied for or is issued in respect of the columbarium—”.
- 15 By deleting subclause (6).
- New By adding—

“15A. Specified instrument in force despite certain events

- (1) A specified instrument remains in force despite a suspension under section 39 if all the requirements, terms and conditions imposed by the Licensing Board upon suspending the instrument (*suspension requirements*) are complied with.
- (2) For the purposes of sections 45, 57 and 68, a specified instrument is also regarded as in force despite a suspension under section 39 even if the suspension requirements are not complied with.
- (3) A specified instrument remains in force despite the expiry of its validity period if—
 - (a) the following application was made before the expiry—
 - (i) an application under section 14 for the renewal or extension of the instrument; or
 - (ii) an application under section 38 for the transfer of the instrument; and
 - (b) the instrument expires before the Licensing Board determines the application.
- (4) However, the specified instrument remains in force only until the earlier of the following—

- (a) the determination of the application;
- (b) the occurrence of any of the following events—
 - (i) the withdrawal of the application;
 - (ii) the revocation of the instrument under section 39;
 - (iii) if the instrument is a licence—the expiry of the term referred to in section 15(2)(a)(i) or (ii);
 - (iv) if the instrument is an exemption—the expiry of the term referred to in section 15(3)(a) or (b).
- (5) A specified instrument remains in force despite the death or dissolution of its holder.
- (6) In this section—

specified instrument (指明文書), in relation to a specified instrument that is a licence, does not include any authorization under the licence to sell interment rights.”.

- 19(2) By deleting everything after “subsection (1)(b)” and substituting—
- “if the applicant proves to the satisfaction of the Licensing Board that—
- (a) the increase in the ash interment quantity since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and
 - (b) each new set of ashes is either—
 - (i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or
 - (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.”.

- 20(2)(a)(ii) By adding “the beginning of” before “the enactment date”.
- 20(4) By deleting everything after “subsection (2)(a)(iii)” and substituting—
- “if the applicant proves to the satisfaction of the Licensing Board that—
- (a) the increase in the ash interment quantity since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and
 - (b) each new set of ashes is either—
 - (i) ashes interred or to be interred in a niche, where the interment right in respect of the niche was sold before the cut-off time; or
 - (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.”.
- 25(1)(a) By deleting everything after “satisfied that” and substituting—
- “either—
- (i) the current site situation of the columbarium premises conforms to the plans in all respects including the particulars specified in subsection (2); or
 - (ii) if not, the difference identified on the plans (as required under section 24(4)(b)) is not contradictory to the particulars to be authorized or permitted as mentioned in paragraph (b); and”.
- 26(1)(c) By deleting everything after “liability” and substituting—
- “—
- (i) the ash interment quantity as at the cut-off time; and
 - (ii) if the applicant wishes the Licensing Board to apply section 19(2) or 20(4)—the ash interment quantity as at the beginning of the enactment date;”.

- 26(2) (a) By deleting “the plans required under section 24,” and substituting “showing the particulars required under section 24(3), the plans accompanying”.
- (b) By deleting “be accompanied by a set of plans that”.
- 27(1)(d) By deleting “(c)” and substituting “(c)(i)”.
- 29(c) By deleting “management plan approved for the purposes of section 17(2) in respect” and substituting “approved management plan”.
- 38(2) By deleting “(5) and (8)” and substituting “(4A) and (5)”.
- 38 By adding—
- “(4A) The Licensing Board may also refuse an application for the transfer of an instrument referred to in subsection (1) if—
- (a) a notice of revocation or suspension has been given by the Licensing Board under section 39 in respect of the instrument; or
- (b) an application for the renewal or extension of the instrument has been refused.”.
- 38(6) In the English text, by deleting “Licencing” and substituting “Licensing”.
- 38 By deleting subclause (8).
- 39(1) By deleting “subsection (2)” and “subsections (2) and (2A)”.
- 39 By adding—
- “(2A) The Licensing Board may also exercise the powers under subsection (1)(d) if the Licensing Board considers

it necessary or expedient to do so for the better regulation, supervision or control of the columbarium concerned.”.

New

By adding—

“40A. Variation of approved plans, endorsed registers, etc.

- (1) The Licensing Board may, in the circumstances specified in subsection (3), vary any of the particulars or matters specified in subsection (2) in respect of a columbarium.
- (2) The particulars or matters are—
 - (a) the following particulars shown in the approved plans of a columbarium—
 - (i) particulars specified in section 25(2) that are authorized or permitted by the specified instrument in respect of the columbarium;
 - (ii) particulars specified in section 26(1);
 - (iii) particulars specified in section 26(3);
 - (b) particulars contained in an endorsed register of a pre-cut-off columbarium; or
 - (c) matters covered in the approved management plan of a columbarium.
- (3) The Licensing Board may vary a particular or matter in respect of a columbarium under subsection (1)—
 - (a) if, at the time when the Licensing Board considers exercising the power in respect of the columbarium, circumstances exist that would have entitled the Licensing Board to approve or endorse the plans, register or management plan with the particulars or matters as varied had it been necessary to determine at that time whether to approve or endorse the plans, register or management plan; or

(b) if the Licensing Board considers that the variation is necessary or expedient for the better regulation, supervision or control of the columbarium.

(4) If the Licensing Board varies any particular or matter in respect of a columbarium under subsection (1), the Licensing Board must notify the person holding the specified instrument in respect of the columbarium in writing of—

- (a) the Licensing Board’s decision;
- (b) the reasons for the decision; and
- (c) the date on which the decision is to take effect.”.

41(1) By adding “or 40A(1)” after “section 39(1)”.

46 In the heading, by adding “**Division 1 of**” before “**Part 5**”.

51(1) In the English text, by deleting “plans in respect of” and substituting “plans of”.

52(2) (a) By deleting “sections 53 and 55” and substituting “subsection (2A)”.

(b) By deleting “or temporary suspension of liability”.

(c) By deleting “material time” and substituting “cut-off time”.

52 By adding—

“(2A) The holder of an exemption does not contravene subsection (2) if—

(a) any increase in the total number of sets of ashes since the cut-off time is caused only by—

(i) sets of ashes interred in the columbarium between the cut-off time and the enactment date; or

(ii) sets of ashes interred in the columbarium under

section 53 or 55; and

- (b) for each set of ashes mentioned in paragraph (a)(i), it is either—
 - (i) ashes interred or to be interred in a niche, where—
 - (A) the interment right in respect of the niche was sold before the cut-off time; and
 - (B) the name of the dedicated person has been entered into an endorsed register; or
 - (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.
- (2B) Subject to subsection (2C), the holder of a temporary suspension of liability in respect of a pre-cut-off 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 following time, as shown in the approved plans—
 - (a) if an application for the issue of a licence (but no application for the issue of an exemption) is pending in respect of the columbarium—the beginning of the enactment date; or
 - (b) if an application for the issue of an exemption is pending in respect of the columbarium—the cut-off time.
- (2C) The holder of a temporary suspension of liability does not contravene subsection (2B)(b) if—
 - (a) any increase in the total number of sets of ashes since the cut-off time is caused only by sets of ashes interred in the columbarium between the cut-off time and the enactment date (*new sets of ashes*); and
 - (b) each new set of ashes is either—
 - (i) ashes interred or to be interred in a niche, where the interment right in respect of the

niche was sold before the cut-off time; or

- (ii) ashes interred in a religious ash pagoda (as defined by section 55(14)), where no fees, charges or other sums were paid, or are payable, for the interment of ashes.”.

- 52 By deleting subclause (3).
- 52(4) By deleting “(1) or (2)” and substituting “(1), (2) or (2B)”.
- 53
 - (a) By deleting “after the cut-off time”.
 - (b) By deleting “has been issued” and substituting “is in force”.
- 53(b) By deleting everything after “entered into” and substituting “an endorsed register.”.
- 54(1) By deleting “referred to in section 25(3)(b) or the register updated under subsection (2)”.
- 54(3)(a) By deleting “referred to in section 25(3)(b), or the register updated under subsection (2),”.
- 55(1) By deleting “has been issued” and substituting “is in force”.
- 55(4) By deleting “may be” and substituting “are”.
- 55(11)(a) By deleting “(10)” and substituting “(10)(a) or (c)”.
- 57(1)(c) By deleting “management plan approved for the purposes of section 17(2) in respect” and substituting “approved management plan”.
- 66(2) By deleting everything after “unless” and substituting—

“—

- (a) the disposal complies with the requirements specified in subsection (2A); or
- (b) the disposal forms part of the prescribed ash disposal procedures carried out in respect of the columbarium.”.

66

By adding—

“(2A) For the purposes of subsection (2)(a), the requirements are—

- (a) either—
 - (i) the person holds a specified instrument in respect of the columbarium; or
 - (ii) the columbarium was in operation immediately before the enactment date, and the ashes are disposed of within the grace period;
- (b) the ashes are disposed of not because of cessation of operation of the columbarium;
- (c) the ashes are disposed of in accordance with the terms of any agreement for the sale of an interment right in respect of the ashes; and
- (d) the following particulars of disposal are entered into the record on interment and disinterment of ashes kept under section 49(4) (if paragraph (a)(i) applies), or into a record of ash disposal (if paragraph (a)(ii) applies)—
 - (i) the name of the dedicated person;
 - (ii) if the ashes are interred in a niche—
 - (A) the location and serial numbering of the niche;
 - (B) photos showing the exterior and interior of the niche before disposal; and
 - (C) the number of containers of ashes disinterred from the niche;
 - (iii) if the ashes are interred in an area other than a niche—

- (A) the location of the area;
- (B) photos showing the area before disposal;
and
- (C) the number of containers of ashes
disinterred from the area;
- (iv) the name, the Hong Kong identity card number
(if applicable) and the contact details of the
person who has collected the ashes (together
with their container) and any items interred
together with the ashes in the same container (if
applicable);
- (v) the date of return of the ashes, container and
items (if any) to the person referred to in
subparagraph (iv); and
- (vi) any—
 - (A) breach of the agreement for the sale of the
interment right on the part of the purchaser
or authorized representative; or
 - (B) other reason for the disposal.”.

66

By deleting subclause (3) and substituting—

“(3) Without affecting sections 10 and 11, a person who operates, keeps, manages or in any other way has control of a columbarium in the circumstances specified in subsection (3A) 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 in respect of the columbarium.

(3A) The circumstances are—

- (a) for a columbarium that was in operation immediately before the enactment date—that the columbarium is in operation, after the grace period, while no specified instrument is in force in respect of it; or
- (b) for any other columbarium—that the columbarium is in operation while no specified instrument is in

force in respect of it.”.

- 71(1)(a) By deleting “the Director’s” and substituting “a”.
- 71(1)(b) In the Chinese text, by deleting “符合”.
- 72(a) By deleting “; and” and substituting “; or”.
- 75(1) By deleting “9” and substituting “9B”.
- 82(1) By adding—
 “(ha) a decision under section 40A(1) to vary a particular or matter;”.
- 82(2) (a) By adding “in writing and” after “notice of appeal,”.
 (b) By deleting “, in writing,”.
- 82(4)(a) By adding “(ha),” after “(h),”.
- 131 In the proposed item 73—
 (a) by adding “40A(4),” after “40(2)(a) and (3),”;
 (b) by adding “section 6(1) of Schedule 1,” after “and 108(4)(b),”.
- Schedule 1, section 3(2) By deleting everything after “may” and substituting—
 “__
 (a) appoint a member of the Licensing Board to be the Chairperson of a committee; and
 (b) appoint any person to be a member of a committee.”.
- Schedule 1 By adding—
 “6. Delegation

- (1) The Licensing Board may, in writing, delegate any of its functions or powers to a public officer.
- (2) However, the Licensing Board may not delegate its power to do any of the following things—
 - (a) delegate under subsection (1);
 - (b) approve or refuse an application for a specified instrument;
 - (c) approve or refuse an application for the transfer of a specified instrument;
 - (d) revoke or suspend a specified instrument or an authorization under a licence to sell interment rights;
 - (e) impose or vary any condition to which a specified instrument is subject;
 - (f) approve a management plan of a columbarium for the purpose of an application for a licence;
 - (g) endorse a register required for the purpose of an application for an exemption;
 - (h) approve plans of a columbarium for the purpose of an application for a specified instrument;
 - (i) vary any particular shown in approved plans or contained in an endorsed register or vary any matter covered in an approved management plan;
 - (j) determine the validity period of a specified instrument;
 - (k) determine any date for review of a licence;
 - (l) suspend the operation of a decision of the Licensing Board;
 - (m) approve or refuse an application for permission for alteration or addition to columbarium premises;
 - (n) amend any Schedule (or part of it) to this Ordinance;
 - (o) appoint a committee or the Chairperson or a

member of a committee.”.

- | | |
|--------------------------------|---|
| Schedule 2,
section 3(1)(a) | <p>In the Chinese text—</p> <p>(a) by deleting “建築工程的批准及對展開該等工程的” and substituting “展開建築工程的批准及”;</p> <p>(b) by deleting “消防” and substituting “防火”.</p> |
| Schedule 2,
section 3(3) | <p>In the English text, in the definition of <i>certifiable building</i>, by deleting everything after paragraph (d)(ii)(A) and substituting—</p> <p style="padding-left: 40px;">“(B) a short term tenancy under which the columbarium premises are occupied,</p> <p style="padding-left: 40px;">is subsequently granted by the Government before the enactment date.”.</p> |
| Schedule 2,
section 3(4) | <p>In the English text, in the definition of <i>pre-1961 NT building</i>, by deleting “if there has been no alteration, addition or reconstruction of” and substituting “where there has been no alteration or addition to, or reconstruction of,”.</p> |
| Schedule 2,
section 4(1) | <p>In the definition of <i>structures certifiable for a pre-cut-off columbarium</i>—</p> <p>(a) in paragraph (a)(i), by deleting “; or” and substituting a semicolon;</p> <p>(b) by adding—</p> <p style="padding-left: 40px;">“(ia) they are otherwise used for the interment of ashes and were so used immediately before the cut-off time; or”.</p> |
| Schedule 2,
section 4(2)(b) | <p>In the Chinese text, by adding “之下” after “第 14 條”.</p> |
| Schedule 2,
section 4(3) | <p>In the English text, by deleting “Requirements” and substituting “The requirements”.</p> |

- Schedule 2,
section 6(5) By deleting “meets the following descriptions”.
- Schedule 3,
section 2(1) By deleting everything after “made by” and substituting—
“___
(a) a person who operates, keeps, manages or in any other way has control of a columbarium; or
(b) a person who intends to operate, keep, manage or in any other way have control of a columbarium.”.
- Schedule 4,
section 2(f) By deleting “other” and substituting “the following”.
- Schedule 5,
section 6(1) By adding “or 9A(3)(a)(i)” after “section 9(2)”.
- Schedule 5,
section 6(2) In the definition of *eligible claimant*—
(a) by deleting “interred together with the ashes”;
(b) in paragraph (b), by deleting “law applicable to the item or ashes (as the case requires)” and substituting “applicable law”.
- Schedule 5,
section 6(2) In the definition of *prescribed claimant*, by deleting everything after “means” and substituting—
“___
(a) an authorized representative;
(b) a personal representative or relative;
(c) a related person; or
(d) the purchaser of the interment right;”.
- Schedule 5,
section 6(2) In the English text, in the definition of *relative*, in paragraph (p), by deleting the full stop and substituting a semicolon.

- Schedule 5,
section 6(2)
- By adding in alphabetical order—
- “**court** (法院), except in section 13(2) of this Schedule, means the District Court;
- related item** (相關物品), in relation to ashes, means—
- (a) the container of the ashes; or
 - (b) an item interred together with the ashes in the same container;
- related person** (相關人士), in relation to a deceased person, means a person who—
- (a) was living with the deceased person in the same household immediately before the date of the death of the deceased person; and
 - (b) had been living with the deceased person in the same household for at least 2 years before that date;
- return order** (交還令) means an order for the return of ashes made under section 75 of this Ordinance.”.
- Schedule 5,
section
7(1)(a)(ii)
- By deleting “section 9” and substituting “sections 9 and 9A”.
- Schedule 5,
section
7(3)(b)(ii)(A)
- By adding “and not suspended” after “in force”.
- Schedule 5,
section 7(4)
- By deleting “section 9(6) and (8)” and substituting “sections 9(6) and 9A(5)(b)”.
- Schedule 5,
section 9
- In the heading, by adding “—**general**” after “ashes”.
- Schedule 5,
section 9
- By deleting subsection (1) and substituting—
- “(1) This section applies subject to section 9A of this

Schedule.”.

Schedule 5,
section 9(2) In the English text, by deleting “(*the first 2 months*) of the on-site claim period” and substituting “of the on-site claim period (*the first 2 months*)”.

Schedule 5,
section 9(5) (a) In paragraph (b), by deleting “or relative” and substituting “, relative or related person”.

(b) In paragraph (c), by deleting “of the purchaser; and” and substituting “of a related person or the purchaser;”.

(c) In paragraph (d), by deleting the full stop and substituting “; and”.

(d) By adding—

“(e) a related person’s claim has priority over that of the purchaser.”.

Schedule 5,
section 9(6)(a) By deleting “a person obtains a court order for their return to the prescribed claimant” and substituting “a return order is made for their return to one or more prescribed claimants”.

Schedule 5,
section 9 By deleting subsections (7) to (13).

Schedule 5 By adding—

“9A. Handling claims for ashes—if there is claim for related item

(1) This section applies instead of section 9 of this Schedule if, before the ashes of a deceased person (together with any related items) are returned to any person under that section, a person claims to be the owner of a related item.

(2) In this section—

(a) *specified item* (指明物品) means the ashes of the deceased person, together with all related items (if applicable); and

- (b) ***claim for return*** (交還申索) means any claim for the return of the ashes of the deceased person or a related item, or both.
- (3) The ash handler must return the specified item—
 - (a) where the person who claims to be the owner of the related item is a prescribed claimant—
 - (i) if the ash handler receives only the claim for return from that person within the first 2 months of the on-site claim period (***the first 2 months***)—to that person after the expiry of the first 2 months; or
 - (ii) if, by the expiry of the first 2 months, the ash handler does not receive any claim for return and that person is the first one who makes such a claim in the remainder of the on-site claim period—to that person; or
 - (b) where the person who claims to be the owner of the related item is not a prescribed claimant and if, throughout the on-site claim period, the ash handler does not receive any other claim for return—to that person after the expiry of the on-site claim period.
- (4) Subsection (5) applies if, before the specified item is returned in accordance with subsection (3), the ash handler receives another claim for return.
- (5) In the circumstances specified in subsection (4)—
 - (a) the court may determine the claims for return in accordance with any applicable law; and
 - (b) the ash handler—
 - (i) must keep the specified item until a return order is made for its return to one or more persons and must return it as ordered; or
 - (ii) if no court proceedings have been instituted by the expiry of 12 months after the on-site claim period—must deliver the specified item to the Director.

- (6) For the purposes of this section, 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 inside the container; or
 - (b) return any related item without returning the ashes together with it.

9B. Court order for return of ashes

- (1) An application for a return order may be made, by originating summons, by—
 - (a) a prescribed claimant;
 - (b) a person who claims to be the owner of a related item;
 - (c) an ash handler to which section 9(6) or 9A(5)(b) of this Schedule applies; or
 - (d) if the Director is in possession of the ashes by virtue of any provision of this Ordinance—the Director.
- (2) If an application for a return order is made by an ash handler or the Director—
 - (a) Order 17 of the Rules of the District Court (Cap. 336 sub. leg. H) applies, with necessary modifications, in relation to the application as if it were an application for relief by way of interpleader; and
 - (b) the court has the powers under that Order accordingly despite section 32(3) of the District Court Ordinance (Cap. 336).
- (3) Despite subsections (1) and (2), 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 return order.
- (4) On making a return order, the court—
 - (a) may impose any conditions that it considers appropriate; and

(b) may order that the ashes be returned in any manner it thinks fit, including—

- (i) separating any related item (except the container of the ashes) from the ashes; and
- (ii) returning different related items to different persons.”.

Schedule 5,
section 10(1)

- (a) In paragraph (a), by deleting “specified form” and substituting “form specified by the Director”.
- (b) In paragraph (b), by deleting “Licensing Board” and substituting “Director”.

Schedule 5,
section 10(3)(a)

By deleting “of the deceased”.

Schedule 5,
section 10(4)

- (a) By deleting “9(8)” and substituting “9A(5)(b)”.
- (b) By deleting “items interred together with the ashes” and substituting “related items”.
- (c) By deleting paragraph (a) and substituting—
“(a) the return of the ashes and items under that section;”.

Schedule 5,
section 12(4)

By deleting “and 9” and substituting “, 9 and 9A”.

Schedule 5,
section 14

By deleting subsection (5).

Schedule 5,
section 14(12)

By deleting everything after “then” and substituting—
“___

- (a) at any time before the expenses (including the interest accrued) have been recovered in full, the certificate under subsection (3) may be registered in the Land Registry against the premises; and

- (b) upon the registration, the expenses (including any interest recoverable under subsection (7)) constitute a legal charge on the columbarium premises.”.

Schedule 7,
section 1(2)

In the English text, by deleting “in so far” and substituting “so long”.