

## **Bills Committee on Private Columbaria Bill**

### **Government's Response to the Draft Committee Stage Amendment** **Proposed by Hon Fernando CHEUNG**

#### **Purpose**

Dr Hon Fernando CHEUNG (“Hon Cheung”) has proposed a draft Committee stage amendment (“CSA”) at **Annex**. This paper sets out the Government’s response to the proposed CSA.

#### **Government’s response**

##### **Background**

2. Part 7 of, and Schedule 5 to, the Bill provide for the arrangements that an ash handler must follow for disposing of the ashes interred in a private columbarium (“the prescribed ash disposal procedures”). The prescribed ash disposal procedures would not be triggered under normal circumstances if the relevant private columbarium continues to operate with a valid specified instrument issued under the Bill (i.e. a licence, exemption or temporary suspension of liability). It will however be triggered when the private columbarium has ceased business or has been abandoned.

3. In case the prescribed ash disposal procedures have been triggered, a “prescribed claimant” may claim for the return of ashes interred in the columbarium. “Prescribed claimant”, in relation to the ashes of a deceased person, is defined in section 6(2) of Schedule 5 to the Bill to mean, in descending order of priority of claim –

- (a) an “authorized representative”;
- (b) a “personal representative” or “relative”; or
- (c) the “purchaser of the interment right”.



4. To facilitate the ash handler to return the ashes and related items to claimants, section 6(2) of Schedule 5 to the Bill stipulates the definition of “relative”. The definition was formulated based on existing Hong Kong legislation, listing out different relationships (including “spouse”).

5. Should there be competing claims from two or more “prescribed claimants” of the same priority, their claims shall be determined by the court.

Hon Cheung’s proposed CSA

6. Hon Cheung proposes, through his CSA, to broaden the scope of the definition of “relative” in section 6(2) of Schedule 5 to the Bill by adding the following paragraph after paragraph (a) –

In Chinese: “(ab) 與死者締結，在香港以外，按照當地當時施行的法律而舉行婚禮或締結的婚姻、民事伴侶或民事結合的另一方，而該另一方與死者屬同一性別；”

In English: “(ab) the other party in a marriage, civil partnership or civil union with the deceased in which that other party and the deceased are of the same sex and which was celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage, civil partnership or civil union was performed;”

Arrangements already allowed under the current provisions in the Bill

7. According to the current provisions in the Bill, a same-sex partner married at a place outside Hong Kong may already claim for the return of the ashes of the deceased in the following capacities, which do not require the claimant to have any connection with the deceased by blood or marriage –

- (a) authorized representative;
- (b) personal representative; or



(c) purchaser

8. A same-sex partner, depending on the actual circumstances, may also be an “eligible claimant” (see its definition in section 6(2) of Schedule 5 to the Bill) and as such claim for the return of a related item together with the ashes, as provided in section 9(8) of Schedule 5.

9. In the circumstances provided for in section 13 of Schedule 5, namely that the ashes are in the possession of the Director of Food and Environmental Hygiene and no legal proceedings are pending, the Director may, by exercising her discretion, hand the ashes to, among others, a same-sex partner married at a place outside Hong Kong as she deems appropriate.

*With Government’s proposed CSA*

10. With a view to further facilitating relevant related persons to claim for the return of ashes, we have proposed to add “related person” as an additional category of “prescribed claimant” (please see the Government’s proposal in LC Paper No. CB(2)986/16-17(01)). We have made reference to other existing legislation, including the Fatal Accidents Ordinance (Cap. 22) and the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23), in formulating the definition of “related person”, which is recapitulated below for reference –

**“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”

11. With this CSA, different related persons may come forward to claim for the return of the deceased’s ashes so long as he/she could meet the above requirement about having lived together, irrespective of his/her relationship with the deceased. This will provide an opportunity to the



related persons to make a claim for the return of the deceased's ashes, and whether the related person would eventually make such a claim is a matter of personal choice.

## **Conclusion**

12. We consider that the current provisions in the Bill, together with the CSA proposed by the Government as elaborated at paragraphs 10 to 11 above, are sufficient to facilitate for the return of ashes to relevant related persons. It would hence be unnecessary to further amend the definition of "relative" under section 6(2) of Schedule 5, which will arouse serious controversy in our society.

**Food and Health Bureau**  
**March 2017**



Private Columbaria Bill

**Committee Stage**

Amendment to be moved by the Honourable Fernando CHEUNG Chiu-hung

Clause

Amendment Proposed

Schedule 5,      In the definition of *relative*, by adding —  
section 6(2)

“(ab)      the other party in a marriage, civil partnership or civil union with the deceased in which that other party and the deceased are of the same sex and which was celebrated or contracted outside Hong Kong in accordance with the law in force at the time and in the place where the marriage, civil partnership or civil union was performed;”.