

Advisory Council on Food and Environmental Hygiene

Private Columbaria Bill

Purpose

This paper briefs Members on the Private Columbaria Bill (“the Bill”) (at **Annex A**) which was introduced into the Legislative Council (“LegCo”) on 25 June 2014 and the notification scheme referred to in paragraphs 29 to 32 below, launched on 18 June 2014.

The Three-Pronged Strategy

2. Currently, the prevailing practice after cremation of human remains is to inter ashes in a columbarium. It is likely that this trend will continue for some time as it takes time to fortify the mindset changes necessary for turning green burials into the mainstream mode for handling human ashes. Whilst the Government is committed to promoting green burials, a robust supply of public niches and regulation of private columbaria form the other two pillars of our three-pronged strategy in the policy on columbaria. **Annex B** sets out the measures that we are taking to (a) promote green burials; and (b) enhance supply of public niches.

Policy Objectives

3. Properly regulated private columbaria could complement public columbaria and serve a useful role in meeting social needs for ancestral worship, in terms of added supply and more importantly choice of niches and related services. One point comes out clearly from our previous two rounds of public consultations (launched in July 2010 and December 2011 respectively) on this subject, namely that the community supports regulating private columbaria through a licensing scheme. We receive diverse views over how best certain unauthorised columbaria should be handled. Residents who are neighbours of unauthorised columbaria demand stringent regulation that would put an end to the nuisances they cause. On the other hand, others remind us of the value attached

to ancestral worship in the Chinese culture. Upsetting the resting place of the deceased should not be contemplated lightly. Against the above backdrop, we propose to introduce a licensing scheme that serves the following policy objectives -

- (a) ensuring compliance with statutory and Government requirements, with suitable grandfathering arrangements for pre-Bill columbaria¹ in tightly ring-fenced circumstances;
- (b) enhancing protection of consumer interests; and
- (c) ensuring a sustainable mode of operation.

From the outset, we have to recognise that the proposed licensing scheme could not offer a panacea to each and every problem inherited from the past. Nor could we offer perfect solutions to some of the unwieldy situations that might eventually come about.

Key Features of the Bill

(1) Compliance with statutory and Government requirements

4. Following commencement of the new legislation, all private columbaria which are not exempted or given temporary suspension of liability (“TSOL”) must obtain a licence for operating their columbaria. Without a licence, no operator could offer niches for sale.

5. The following are required of applicants seeking a licence –

- (a) lease conditions and land occupation – the operation of the columbarium on private land must comply with the lease, licence or any other land instrument. In addition, the operation of the columbarium should not involve unlawful occupation of unleased land;
- (b) statutory requirements – the premises used for operation as a columbarium must comply with statutory requirements, such as those –

¹ A pre-Bill columbarium means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the Bill announcement time.

- (i) under the Town Planning Ordinance (Cap. 131); and
 - (ii) for approval and consent to commencement of building works under the Buildings Ordinance (Cap. 123) and other requirements specified by the Licensing Board² (*except where as stated in paragraph 8 below (on grandfathering arrangements), for a pre-Bill columbarium, this requirement is modified to the extent that structures certifiable for a pre-Bill columbarium³ might be tolerated, subject to certification by AP/RSE to be structurally safe*);
- (c) right to use the premises – The premises used for operation as a columbarium must be self-owned by the operator (*except where as stated in paragraph 8 below (on grandfathering arrangements), for a pre-Bill columbarium, this requirement is modified to the extent*

² By this, it also includes a structure that forms the whole, or a part, of a certifiable building, which is certified by an Authorised Persons / Registered Structural Engineers (“AP/RSE”) as structurally safe.

As defined in the Bill, a certifiable building means –

- (a) an New Territories (“NT”) small building erected on or after 16 October 1987 with a certificate of exemption issued;
- (b) an NT small building erected on or after 1 January 1961 and before 16 October 1987; and
- (c) a pre-1961 NT building, if there has been no alteration, addition or reconstruction of the building in contravention of Cap. 123 on or after that date.

A certifiable building is not in contravention of Cap. 123, as the relevant provisions of Cap. 123 do not apply to them.

³ Structures certifiable for a pre-Bill columbarium is defined to mean non-compliant structures that fall within the following description –

- (a) 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 Bill announcement time; or
- (b) they form the whole, or a part, of any essential ancillary facilities supporting the operation of the columbarium immediately before the Bill announcement time.

In this definition, a building means any building, including a building situated on unleased land at the time the building was erected on that land without a licence (under Cap. 28) or in breach of such a licence.

that if it does not run on self-owned premises, the operator must prove that he or she has the right to use the premises for at least five years from the grant of a licence); and

- (d) management plan – the operator should submit to the Licensing Board, for its approval, a management plan covering, among other things, traffic and crowd control management, in respect of the columbarium.

The above (taken together with the consumer protection measures described in paragraph 15 below as well as the provisions governing the cessation of columbarium operation in paragraphs 16 to 20 below) would lead to better regulation of the trade, thus helping to address some of the problems associated with unauthorised columbaria, provide some degree of consumer protection and choice of service, as well as facilitate sustainable operation.

(2) Grandfathering arrangements for pre-Bill columbaria

6. For pre-Bill columbaria, previous public consultation reveals that the community is prepared to accept some form of grandfathering arrangements for such establishments which do not meet all the statutory and Government requirements, but such arrangements must be premised on tightly ring-fenced grounds. Failing sensitive handling, potentially, interred ashes in as many as 283 000 occupied niches⁴ could be displaced and need to be handled, at a huge cost to society. In addition, there could be other small-scale private columbaria operating without the Government's knowledge.

7. The Bill provides that the **Bill announcement time** (8:00 a.m. on 18 June 2014) would be set as the cut-off time for determining the status of pre-Bill columbarium operation.

8. Such a status allows an operator to apply for –

- (a) TSOL status for pre-Bill columbarium operation, under which the columbarium may continue operation (without selling interment rights) whilst action is being taken by the operator to seek regularisation / rectification in order to obtain a licence or exemption.

An application for TSOL cannot be submitted on a stand-alone basis,

⁴ This is a conservative estimate, with reference to figures (where available) using DEVB's List as at 28 June 2013 as the basis.

but must accompany an application for a licence and / or exemption. The future Licensing Board will decide on the period of TSOL in respect of each columbarium after considering each application, but it will be set at no more than three years for the first time, and may be extended for no more than three years if warranted⁵.

We intend to adopt a pragmatic threshold that allows pre-Bill columbaria with prospect of regularisation to apply for TSOL⁶. We will make it clear that the TSOL status conferred does **not** mean that the holder could get a licence or exemption upon expiry of TSOL status or extension of such.

- (b) exemption status for pre-Bill columbarium operation, under which the columbarium may continue operation (without selling interment rights). For as long as the exemption status is in force:
 - (i) unauthorised development as is necessary for, or ancillary to, the operation of the columbarium might be tolerated;
 - (ii) structures certifiable for a pre-Bill columbarium might be tolerated, subject to certification by AP/RSE to be structurally safe;
 - (iii) unlawful occupation of unleased land in existence immediately before the Bill announcement time and breach of lease conditions (relating to leased land) might be regularised, upon application.

To be eligible to apply for exemption, the pre-Bill columbarium

⁵ As set out in the Bill, TSOL may not be extended more than once, unless exceptional circumstances exist.

⁶ The Licensing Board may refuse to grant TSOL status –

- (a) where the columbarium is located on unlawfully-occupied unleased land, if the operator -
 - (i) does not apply for lawful authority to occupy the land; or
 - (ii) does not provide a written declaration on no claim to the land based on adverse possession; and
- (b) if the operator fails to prove that the columbarium has been certified as not posing any obvious or imminent danger in terms of building safety and fire safety.

must have –

- (i) commenced columbarium operation before 1 January 1990. By “Commencement of columbarium operation”, it means by reference to the first set of ashes interred in a niche or the interment right in a niche first sold, whichever was the earlier; and
 - (ii) **ceased sale of new or unoccupied niches as from the Bill announcement time.**
- (c) licence status for pre-Bill columbarium operation, under which the columbarium may continue operation and sell interment rights, provided that planning and land related requirements are complied with. For as long as the licence status is in force, structures certifiable for a pre-Bill columbarium might be tolerated subject to certification by AP/RSE to be structurally safe.

9. To assist the future Licensing Board to determine the pre-Bill columbarium status of the relevant columbarium, we have devised an administrative⁷ notification scheme the details of which are set out in paragraphs 29 to 32 below.

(3) *Certain enforcement provisions not applicable*

10. To give effect to the grandfathering arrangements in paragraph 8 above, there are also express provisions in the Bill providing that in respect of pre-Bill columbaria, certain tightly ring-fenced enforcement provisions under the land regime against unlawful occupation of unleased land, the planning regime against unauthorised development, and the building regime against structures certifiable for a pre-Bill columbarium, as applicable, do not apply, provided that certain tightly prescribed conditions are fulfilled by the operators.

11. The scope covered by the aforesaid tightly ring-fenced enforcement provisions is set out below –

- (a) relevant enforcement provisions under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) do not apply to the relevant proposed licensed or exempted area (as the case may be) in respect

⁷ Before enactment of the Bill, the Food and Environmental Hygiene Department (“FEHD”) does not have legal backing to enter a private columbarium to undertake inspection and obtain a snapshot of the information as at the Bill announcement time.

of a columbarium conferred with TSOL status, as well as when such status is (1) under application to the Private Columbaria Licensing Board or (2) under appeal to the Private Columbaria Appeal Board (with operation of the Licensing Board's decision suspended);

(b) relevant enforcement provisions under the Town Planning Ordinance (Cap. 131) do not apply to –

(i) the relevant proposed licensed or exempted area (as the case may be) in respect of columbaria conferred with TSOL status; or

(ii) the exempted area in respect of columbaria conferred with exemption status,

as well as when such status are (1) under application to the Private Columbaria Licensing Board or (2) under appeal to the Private Columbaria Appeal Board (with operation of the Licensing Board's decision suspended); and

(c) relevant enforcement provisions under the Buildings Ordinance (Cap. 123) do not apply to –

(i) the relevant proposed licensed or exempted area (as the case may be) in respect of columbaria conferred with TSOL status;

(ii) the exempted area in respect of columbaria conferred with exemption status; or

(iii) the licensed area in respect of columbaria conferred with licence status,

as well as when such status is (1) under application to the Private Columbaria Licensing Board or (2) under appeal to the Private Columbaria Appeal Board (with operation of the Licensing Board's decision suspended).

12. The arrangements in paragraph 11 above are subject to the operators fulfilling the following tightly prescribed conditions –

- (a) the TSOL status is in force, which is in turn subject to fulfilling the following conditions during the TSOL period –
 - (i) no sale of niches, no intensification of use in terms of niches (as well as containers), no additional structures certifiable for a pre-Bill columbarium and no additional unlawfully-occupied unleased land; and
 - (ii) submitting expeditiously applications to the relevant authorities seeking compliance with the planning, land and building related requirements, as applicable.
- (b) the exemption status is in force, which is in turn subject to fulfilling the conditions including no sale of niches, no intensification of use in terms of niches (as well as containers) and no additional structures certifiable for a pre-Bill columbarium during the exemption period.
- (c) the licence status is in force, which is in turn subject to fulfilling the condition of no additional structures certifiable for a pre-Bill columbarium during the licence period.

13. The above approach does **not** legalise / legitimise what remain illegal / unauthorised. Also, it does **not** in any way prejudice the Government's other powers and civil rights and remedies, including taking of enforcement actions after the expiry or revocation of the TSOL, licence or exemption status against any breaches in question thereafter, or the Government's rights at any time to enforce against the areas outside the licensed or exempted areas (or the proposed ones) as shown in the relevant plans. To avoid doubt, enforcement actions already taken before receipt of an application for a regulatory instrument will not be affected⁸.

⁸ It means that enforcement actions already taken under the respective regimes will not be affected –

- (a) if a notice served or prosecution instituted under Cap. 131 is in force;
- (b) if a removal order served or a notice served under section 24 or 24C of Cap. 123 is in force; and
- (c) if a notice issued under Cap. 28 is in force. Upon receipt of an application for regularisation, it will be processed as usual and enforcement actions may not be

14. As regards breach of lease conditions (relating to leased land), upon receipt of an application for regularisation, the enforcement actions against the relevant proposed licensed or exempted area (as the case may be) in respect of a pre-Bill columbarium referred to in paragraph 11(a) will be administratively withheld on a temporary basis similarly. For pre-Bill columbaria confirmed to be eligible for exemption status, D of Lands might, upon application, consider administratively regularising the breach of lease conditions and/or unlawful occupation of unleased land for the proposed exempted area before and during the exemption period, by way of a waiver and / or a short term tenancy (“STT”), with the relevant waiver fees, STT rentals and administrative fees waived, depending on the circumstances and merits of each application. If any interred ashes are removed (such as claimed back by descendants), such vacated niches are not allowed to be “refilled”. We will make it clear that regularisation in respect of the pre-Bill columbarium **cannot** be deemed to grant any exemption from or permit any contravention of any other enactments.

(4) Consumer protection

15. Upon commencement of the Bill, a columbarium operator will have to obtain a licence, before he or she can sell (or offer for sale) interment rights. The Bill will mandate the signing of contracts for sale of interment right in a columbarium. To tackle undesirable practices observed in some past cases, we will, through express provisions in the Bill –

- (a) make an agreement unenforceable by the operator (or voidable by the consumers) if such interment rights sold are purported to extend beyond expiry of the term of the lease or land instrument under which the columbarium premises are held (e.g. claiming to be permanent); and
- (b) make it a mandatory requirement for a licensee that a contract for sale of interment rights must –
 - (i) be made in writing, assisting proof and determination of the question of enforceability in case of dispute;
 - (ii) record all information, including that about –
 - the seller’s licence;
 - ownership, tenancy, encumbrances and restrictions on use and disposition;

taken by the Director of Lands during processing of such an application.

- Government lease or land instrument, including the expiry date; and
 - risk involved and other consumer advice, including alerting consumers on the availability or lack of an optional maintenance fund under a separate account and the authorised uses of such fund; and a warning on the financial risks involved if pre-payment upfront is adopted;
- (iii) record all essential terms, including –
- names of parties to the contract;
 - description of the interment right sold and the duration of the contract;
 - a comprehensive list of all fees, charges or other sums payable, future revision mechanism and payment methods;
 - arrangements for renewal of interment right after expiry of the contract;
 - the naming of dedicated nominee(s) and authorised representatives; and
 - the handling of interred ashes in the event of termination of the contract.

Failure to include the above information and essential terms in the contract will make the contract unenforceable by the operator. The consumer may also avoid (or cancel) the contract and get a refund. In addition, before commencement of the licensing scheme, the Licensing Board will, through promulgating a Code of Practice, provide contract templates covering the information and essential terms set out in (b) (ii) and (iii) of this paragraph.

(5) *Proper handling of ashes upon cessation of a columbarium operation*

16. In the event of cessation of a columbarium operation following confirmation that the private columbarium could not be licensed or exempted or where the operators choose to abscond or fold up⁹ before or after obtaining a regulatory instrument, or where the premises concerned fall into the possession of innocent third parties¹⁰, the Bill provides a skeleton framework for the prescribed

⁹ We have given great care to devising, under the Bill, measures that would help to ensure proper handling of interred ashes by operators prior to ceasing their columbarium operation, as it is their responsibility to do so. Failure to do so is subject to criminal sanction, punishable by a fine and imprisonment.

¹⁰ There may be occasions (such as where the operators fail to pay for their debts or have absconded) whereby innocent third parties, including the Lands Department, the Official

ash disposal procedures for application to FEHD, operators and innocent third parties. The Bill provides that FEHD may apply to the Court for an Occupation Order to occupy the columbarium premises for a period of time to facilitate the removal of the ashes and related items. This is applicable to the case of enforcement actions by the Government; abandonment of a columbarium by the operator; or innocent third parties failing to follow through the ash disposal procedures. As to the claiming back of the items, how the Bill works is explained in paragraphs 17 to 20 below¹¹.

17. Whom the ashes (together with the related item interred with the ashes) (“the items”) are to be returned to depends on whether a claim by the owner of the related item interred together with the ashes based on property rights is made. Should this be made, the rules set in the Bill as mentioned in **Annex C** will not apply. Instead, the items will be dealt with under the general common law.

18. A columbarium operator is required to attend to the return of the items for a period of at least 12 months, during which time the items are to be made available for return to the claimant on site in the columbarium in at least the first 2 months. A purchaser or mortgagee who acquires the columbarium premises¹² from holder of the licence, exemption or TSOL is subject to the same obligation on taking possession of the columbarium premises and thus required to adhere to the 12-month procedures applicable to a columbarium operator. The landlord of an operator who absconds or the operator’s pre-existing mortgagee has the option to make available the items for return for the first 2 months, if he or she does not opt for the full 12-month procedures¹³. After the stipulated

Receiver’s Office (as trustee or liquidator), landlords, mortgagees, receivers, trustees and liquidators become bailees for the ashes and/or belongings (“the items”) passed on to them upon possession of the premises concerned. At common law, a bailee is not entitled to dispose of such chattels unless their owners have shown the intention to abandon and there is certain physical act of relinquishment. Accordingly, the Bill will require the third parties to arrange for return of the items (by publishing notices in newspapers and liaising with persons authorised to claim back the ashes if the contact information is available).

¹¹ Allowing one to claim ashes for the purpose of this Ordinance does not carry any implication on the determination of the claimant's priority of claims to the estates of the deceased.

¹² A certificate of columbarium use is registered in the Land Registry on the issue of a licence, exemption or TSOL in respect of premises owned by the operator, thus notifying potential purchasers or mortgagees of the ash disposal obligations.

¹³ For the scenario applicable to the landlord of an operator who absconds or the operator’s pre-existing mortgagee, after they have discharged their obligations for the first 2 months, FEHD would carry out the remaining obligations for the following 10-month period.

period as applicable expires, they may pass to FEHD the items not returned.

19. The Bill prescribes the period within which a claim may be established for the return of ashes (namely at least 12 months or, if there are contesting claims, 24 months). By the time this period expires, any unclaimed items are to be delivered to FEHD. If the prescribed ash disposal procedures have duly been completed (be this by the ash handler or FEHD) and the items are left unclaimed after a reasonable period, the Director of Food and Environmental Hygiene (“DFEH”) may, at her discretion, arrange for the final disposal of such abandoned ashes and/or belongings in any manner as she sees fit¹⁴.

20. The Bill provides for the alternative of operators and innocent third parties submitting an ash disposal plan to DFEH for approval. DFEH may, on application, approve such a plan if he or she is satisfied that the procedures in the plan are as effective as the prescribed procedures in the Bill. Also, under the Bill, a person who is required but fails to carry the procedures is liable to pay to FEHD all expenses that FEHD incurs in carrying out the procedures¹⁵.

(6) Exclusions and exemptions

21. The Bill does not apply to –

- (a) a columbarium that is built, operated, administered or maintained by the Government, including one in a Government crematorium specified in Part 5 of the Fifth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132);
- (b) an authorised private crematorium in Part 6 of the Fifth Schedule to Cap. 132 to the extent that the keeping of ashes in it is transient and incidental to its operation as a crematorium;

¹⁴ This could cater for other scenarios requiring exercising discretion, such as handing over to the following after undergoing a due process –

(a) a co-habitee; or

(b) a benevolent NGO; etc.

¹⁵ The Licensing Board may, on application and if satisfied that the procedures have been carried out in respect of the columbarium, issue a certificate that the premises cease to be a columbarium. A person to whom such a certificate of cessation of columbarium use is issued may register the certificate against the premises in the Land Registry.

- (c) a columbarium in a private cemetery specified in Part 2 of the Fifth Schedule to Cap. 132, but it will continue to be regulated under the Private Cemeteries Regulation (Cap. 132 BF);
- (d) a columbarium (if any in future) operated by the Board of Management of Chinese Permanent Cemeteries (“BMCP”) outside private cemeteries specified in Cap. 132, but it will be made subject to regulation under Cap. 132BF;
- (e) undertakers with their licences not prohibiting storage of ashes in their place of business, but they will continue to be regulated under the Undertakers of Burial Regulations (Cap. 132CB) and will be subject to the provisions in this Bill on proper handling of interred ashes before ceasing their columbarium operation; and
- (f) the keeping of no more than 5 containers of ashes (with each container containing the ashes of one person only) in domestic premises.

22. We deem it appropriate to include the case in paragraph 21(d) in the list of exclusion. Apart from being regulated under Cap. 132BF as other private cemeteries, BMCP is further governed by the Chinese Permanent Cemeteries Ordinance (Cap. 1112). It is a public or quasi-public body in nature, with their cemeteries (cum columbaria) being more akin to public cemeteries (cum columbaria). The purpose of BMCP is to provide, maintain and administer cemeteries (inclusive of columbaria) etc. for persons of the Chinese race permanently resident in Hong Kong. Its Board consists of three ex-officio members (with the Secretary for Home Affairs as the Chairman, the Director of Lands and the DFEH as members) and between 8 and 16 other members appointed by the Chief Executive (“CE”). Audited accounts shall be laid before the Board at the annual general meeting. Its fees (at a modest level) are set out in subsidiary legislation subject to negative vetting by LegCo.

23. As regards paragraph 21(e), undertakers are licensed to handle human remains and most of them provide one-stop service for after-death arrangements. At present, there remain 81 undertakers whose licences do not debar temporary storage of ashes within their premises¹⁶. Since these undertakers are already regulated under Cap. 132 CB, and the storage of ashes in their premises is of a temporary nature, they will be exempted from the requirement to obtain a licence under the Bill. We will impose more stringent

¹⁶ As for applications for an undertaker’s licence received since December 2008, even if granted, temporary storage of ashes would not be allowed.

conditions under their undertakers' licences through Cap. 132CB to tighten up our regulation over their temporary storage of ashes (e.g. maximum storage capacity, minimising environmental nuisances that may be caused to the neighbourhood, etc.). Also, they will be made subject to the provisions concerning proper handling of interred ashes upon the cessation of their columbarium operation.

(7) *Proposed Licensing Board*

24. We will set up a statutory licensing authority, the Private Columbaria Licensing Board. With CE as the appointment authority, we will ensure a balanced mix of officials and non-officials in the Board composition. We propose that DFEH should be the chairperson of the Board. FEHD will be the executive arm and enforcement agency of the Licensing Board. In considering an application for a regulatory instrument, the Licensing Board would, among other things, have regard to the public interest. Such public interest considerations may include the overall supply of niches in the territory, views from residents or district bodies, as well as the interests of patrons of columbaria.

(8) *Offences*

25. The Bill proposes making it an offence to operate a columbarium (including sale of interment right) without a licence. However, an exemption or TSOL (available to a pre-Bill columbarium only) suffices if the operation does not involve selling interment right in respect of the columbarium. Improper handling of interred ashes and/or abandoning a columbarium will also be made offences. Sanction will take the form of heavy penalties punishable by a fine and imprisonment. For the offence of operating a columbarium without a regulatory instrument, there will be statutory defences for the person charged to establish that at the time of the alleged offence that –

- (a) the person did not know and could not have reasonably known that the premises were a columbarium; or
- (b) the person believed on reasonable grounds that the person operating, keeping, managing or otherwise having control of the columbarium held, in respect of the columbarium, a licence, exemption or TSOL.

(9) *Commencement and appeals*

26. Most of the provisions in the Bill will commence operation upon the enactment of the Ordinance. These include, for protecting consumer interest –

- (a) restriction on sale of interment right, as there should not be any sale of interment right until and unless the operators have obtained a licence; and
- (b) proper handling of interred ashes upon abandonment of a columbarium, and FEHD applying for an Occupation Order to handle the aftermath of “fly-by-night” cases etc.

The Licensing Board will undertake preparatory work within the first three months following the enactment of the Ordinance. Applications from pre-Bill columbaria for a licence, exemption and TSOL will have to be submitted within the following three months. Under the Bill, a period of 6 months from the enactment of the Ordinance will be allowed for a columbarium in operation before the commencement date to continue to operate without a regulatory instrument, but the columbarium still must not sell interment right. If a TSOL application is made in respect of the columbarium, the period will be extended until the application is finally disposed of.

27. Any aggrieved applicant could appeal to the Private Columbaria Appeal Board. The chairman and members of the Appeal Board would be appointed by CE. The Licensing Board will have the discretion to withhold enforcement actions pending determination of appeals.

The Bill

28. The Bill bears the following long title: “A Bill to provide for the licensing of non-Government columbaria for keeping cremated human remains, the establishment of the Private Columbaria Licensing Board and for incidental and connected matters”. It gives effect to the proposed measures for regulating the private columbarium industry. Under the proposed licensing scheme, a private columbarium is any premises that are used, or intended to be used, for keeping ashes¹⁷. The main provisions of the Bill are –

- (a) clauses 2 and 3 introduce definitions for use under the Private Columbaria Ordinance;
- (b) clauses 4 and 5 set out the scenarios where the Ordinance does not apply (policy explained in paragraphs 21 to 23 above);

¹⁷ The term “ashes” means ashes resulting from the cremation of human remains, but excludes materials transformed from ashes, such as synthetic diamonds, jewellery or ornaments.

- (c) Part 2 (clauses 6 and 7) and Schedule 1 set up the Private Columbaria Licensing Board (policy explained in paragraph 24 above);
- (d) Part 3 (clauses 8 and 9) requires a licence for operating a columbarium but also provides that an exemption or TSOL suffices for operating a columbarium without selling interment rights (policy explained in paragraph 25 above);
- (e) Part 4 (clauses 10 to 39) and Schedules 2 and 3 introduce a regulatory system for private columbaria (policy explained in paragraphs 4 to 7 above);
- (f) Part 5 (clauses 40 to 47) and Schedule 4 set out requirements relating to day-to-day operation of columbaria (policy about the information and terms to be included in a contract for sale of interment rights is explained in paragraph 15 above);
- (g) Part 6 (clauses 48 to 53) provides for the powers to inspect, enter, search and arrest to facilitate DFEH to secure compliance with the legislation. It also provides for the offence of obstruction and for enforcement notices;
- (h) Part 7 (clauses 54 to 68) and Schedule 5 deal with obligations in disposing of ashes generally as well as on a columbarium ceasing operation (policy explained in paragraphs 16 to 20 above);
- (i) Part 8 (clauses 69 to 79) allows aggrieved persons to appeal to the Private Columbaria Appeal Board (policy explained in paragraph 27 above);
- (j) Part 9 (clauses 80 to 94) covers delegation by DFEH, issue of guidelines and a Code of Practice, and other miscellaneous matters;
- (k) Part 10 (clauses 95 to 99) provides that certain provisions under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123) about enforcement actions, as applicable, do not apply to columbaria in respect of which a regulatory instrument is in force or an application for a regulatory instrument is being processed or a refusal of the application is appealed against (policy explained in paragraphs 10 to 13 above);

- (l) Part 11 (clauses 100 to 119) provides for related and consequential amendments made to other Ordinances (including amendments to the Public Health and Municipal Services Ordinance (Cap. 132) to make a columbarium operated by BMCPC a private cemetery) (policy explained in paragraph 22 above); and
- (m) Schedule 6 on prescribed fees (currently left blank) will be filled in by legislative amendments¹⁸.

Notification Scheme

29. As referred to in paragraph 9 above, we have rolled out an administrative notification scheme. SFH announced the scheme through a press release at 8:00 a.m. and a press conference thereafter on 18 June 2014. Operators taking part in the notification scheme were required to respond to a notice served by FEHD and provide details of his/her columbarium operation and, within a relevant deadline, allow FEHD to enter and inspect the columbarium premises for the purpose of verifying the information provided.

30. Specifically, the information sought comprised the following data as at the Bill announcement time –

- (a) in batch 1 on the following niche-related particulars, including:
 - (i) the number of columbarium blocks and the number of outdoor niche walls;
 - (ii) in respect of (i) where niches with interred ashes are in existence, the categories and number of niches, the number of sold and occupied niches, the number of sold but not yet occupied niches, and the number of niches available for sale;
 - (iii) the date of sale of first niche and the date of first interment in a niche,as well as furnaces (if any) in the columbarium; and

¹⁸ The exact levels of fees and charges, if incorporated in the Bill at this stage, would become outdated by the time of enactment. Our intention is to reach an understanding with LegCo at the Bills Committee stage for these to be introduced as Committee Stage Amendments, so that these could take effect upon commencement of the licensing scheme.

- (b) in batch 2 on any other facilities (if any) in the columbarium that are claimed by the operator to be “necessary for, or ancillary to, the operation of the columbarium”, to the extent that they are not covered in batch 1.

The verification process had to take place as soon as practicable, with batch 1 and batch 2 completed / to be completed by 30 June 2014 and 31 August 2014 respectively. By implication, the land/structures on/in which such facilities are located form part and parcel of the information collected. FEHD will compile a record on the information received and verified by FEHD, including plans marking where such facilities are located. After compilation, a copy will be retained by FEHD and sent to the operator respectively.

31. We made it clear that information collected in paragraph 30 above will not pre-empt the decisions of the Licensing Board, which might draw up relevant criteria for determining what are essential ancillary facilities supporting the purpose of interment of ashes which in turn determine what is “necessary for, or ancillary to, the operation of a columbarium”. Facilities that are not such essential ancillary facilities (and the land/structures on/in which they are located) will be excluded from the approved plan. Once excluded, the grandfathering arrangements would not apply to them.

32. Such information will form the basis for determining the pre-Bill columbarium status of the relevant columbaria and their eligibility for seeking TSOL, a licence and / or exemption in future. When the Licensing Board considers their applications in due course, the information collected and verified by FEHD under the notification scheme is admissible in evidence on its production (e.g. for satisfying the Board that the operator has ceased the sale of niches since the Bill announcement time and is hence eligible for seeking exemption status). For operators who have not participated in the notification scheme, the Licensing Board may, in its sole and absolute discretion, consider their applications, if they prove that they were precluded from participating in the notification scheme by circumstances beyond their control and they produce evidence of comparable probative value.

Advice Sought

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

**Food and Health Bureau
Food and Environmental Hygiene Department
July 2014**