



**PROPOSED AMENDMENTS TO
PRIVATE COLUMBARIA ORDINANCE (CAP. 630)
THE LAW SOCIETY'S SUBMISSIONS**

The Food and Environmental Hygiene Department of the HKSAR Government (“**FEHD**”) proposes to amend the Private Columbaria Ordinance (Cap. 630) and issued a consultation paper on 2 May 2024 (“**Consultation Paper**”) to seek views on its proposed amendments.

In response, the Law Society provides the following submissions. Unless otherwise defined, the same abbreviations and definitions appearing in the Consultation Paper are used in this paper.

GENERAL COMMENT

We agree that the Private Columbaria Ordinance (Cap. 630) (the “**Ordinance**”) should be amended and updated, with a view to enhancing the implementation of the Ordinance, for a more effective execution of the regulatory regime on private columbaria.

In respect of the consultation questions put forward in the Consultation Paper, our responses are as follows.

CONSULTATION QUESTIONS

Q1. *Do you agree that the Government should continue to regulate private columbaria that were in operation before the implementation of the Ordinance*

(pre-cut-off columbaria)¹ through a pragmatic and sympathetic approach, so as to avert massive displacement of interred ashes? (see paragraph 1.2 of the Consultation Paper)

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

The above is a sensible and pragmatic arrangement, taking into account the interests of various stakeholders and the impact to the community as a whole.

Q2. *Do you agree with offering the option of applying for exemption to eligible “pre-cut-off columbaria” which have only submitted licence applications; so as to avert the need for ash disposal due to their inability in fulfilling the licence requirements, the disturbance the deceased concerned, and harm to the interests of their families? (see paragraphs 3.2 – 3.6 of the Consultation Paper)*

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

We repeat our remarks to our answer to Q1.

Q3. *Further to Question 2, do you agree that such “pre-cut-off columbaria” should fulfil specified conditions in order to be eligible to the option of applying for exemption; so to avert disturbance to the deceased and the interests of their families, whilst minimising impact on nearby traffic and environment and the neighbourhood as well as demonstrating deference to town planning procedures? (see paragraphs 3.2 – 3.6 of the Consultation Paper)*

Law Society's response:

Agree/~~Disagree~~.

¹ “Pre-cut-off columbaria” refers to columbaria that were in operation, and in which ashes were interred in niches, immediately before the cut-off time (i.e. 8 a.m. on 18 June 2014). It was the moment when the Government first announced its proposal to establish a licencing regime regulating the operation of private columbaria. – see footnote 1 to the Consultation Paper (p.2)

Other remarks:

According to the Consultation Paper, “[a]s at 31 March 2024, among the 60 “pre-cut-off columbaria” that have submitted licence applications, 27 of them have not met the planning-related requirements... Among the 27 “pre-cut-off columbaria”, 24 of them did not apply for an exemption because they either failed to meet the two basic eligibility criteria for exemption or they wished to continue to sell niches ...” (para 3.2 of the Consultation Paper). And of these 24 private columbaria, 13 can meet the proposed new conditions (para 3.5). The paper is not clear as to position of the remaining 11 private columbaria, and whether any proposals in the Consultation Paper are to be applied to these 11 private columbaria (see e.g. para 3.6)².

Q4. *Do you agree with increasing the maximum penalty for non-compliance with enforcement notices (to a fine of \$500,000 and imprisonment for 6 months on summary conviction; or a fine of \$5 million and imprisonment for 2 years on conviction on indictment) to enhance deterrence against breaches of the conditions of specified instruments? (see paragraphs 3.7 – 3.8 of the Consultation Paper)*

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

The proposed fines are reasonable as the fine set at level 3 (i.e. \$10,000) under Section 64 of the Ordinance is not sufficient to deter such holders from ignoring enforcement notices.

Q5. *Do you agree with introducing a new offence to prohibit licence holders’ sale of interment rights exceeding the “ash interment capacity” and the sale of niches / interment of ashes in niches not covered in the approved plans (i.e. “overselling” niches), in order to protect consumer interests (with the maximum penalty for such new offences to be a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment)? (see paragraphs 3.9 – 3.11 of the Consultation Paper)*

² Para 3.6 states that “This proposal is not applicable to “pre-cut-off columbaria” currently applying for an exemption given that they have already submitted supporting documents proving their fulfillment of the two basic eligibility criteria and thus do not need such additional option.”

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

Licensed sale of niches within ash interment capacity can be a lucrative business whose underlying commercial benefits (which might be huge) may attract unethical license holders to abuse the prescribed statutory regime. The proposed fines under the new offence are therefore reasonable in the circumstances, as the fine set at level 3 (i.e. \$10,000) under Section 54 of the Ordinance is not sufficient to deter such holders from over-selling niches for their pecuniary benefits.

By way of further observations, please see Remarks in our answer to Q.9 below, *mutatis mutandis*.

Q6. *Do you agree with correspondingly increase the maximum penalty for keeping ashes exceeding the “ash interment capacity” (i.e. “over-placing” ashes) to the same level as of “overselling” niches, i.e. a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment, to protect consumer interests? (see paragraph 3.12 of the Consultation Paper)*

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

We repeat our remarks in our answer to Q5, *mutatis mutandis*.

Q7. *Do you agree with introducing a new offence to prohibit licence holders’ sale of interment rights when their authorisation to sell interment rights has been revoked or suspended by the PCLB (i.e. unlicensed sale of niches), so as to protect consumer interests (with the maximum penalty for such new offence to be a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment)? (see paragraphs 3.13 – 3.14 of the Consultation Paper)*

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

We repeat our remarks in our answer to Q5, *mutatis mutandis*.

Q8. *Do you agree with setting out explicitly the conditions to be met for PCAB to consider new evidence submitted by appellants, so to prevent appellants from unjustifiably stalling the submission of documents or information when making applications to the PCLB? (see paragraphs 3.15 – 3.16 of the Consultation Paper)*

Law Society's response:

Agree/~~Disagree~~.

Other remarks:

This accords with the principle of procedural fairness.

Q9. *Do you agree that, in view of the operational needs of masons in temporarily keeping ashes, it should be stipulated that the Ordinance is not applicable to eligible masons, so to bring the Government's current administrative measures regulating the temporary ash-keeping by masons under the umbrella of the Ordinance? (see paragraphs 3.17 – 3.18 of the Consultation Paper)*

Law Society's response:

Agree in principle with the following comments/~~Disagree~~.

Other remarks:

We note apparently there is not much analysis in the Consultation Paper on enforcement actions taken by the Government. In para 2.13 of the Consultation Paper, the Government states it “has [from the enactment of the Ordinance (June 2017) to 31 March 2024] received a total of around 590 complaints against private columbaria, including around 240 concerning suspected illegal operation of private columbaria.” Other than the 240 illegal operation cases, it is not clear from the Consultation Paper on what the other complaints are. In our views, if there could be more information and analysis of the enforcement actions, that

would lay the foundation for further discussion and also any future review of the Ordinance.

We also repeat to the Government the following. Sale of interment rights could be a lucrative business and that can be potentially exploited by the unethical operation of masons (that involves the temporary keeping of ashes within the premises of masons). At the moment, operations of masons are not regulated under the Ordinance. The Government should take this opportunity to close any potential loophole of exploitation.

On the other hand, we note that under Proposal 4 of the Consultation Paper (p.25 of the Consultation Paper), the Government says that “[a]fter the enactment of the Ordinance, the Government put in place administrative measures to allow masons registered with the FEHD and / or a private cemetery, and not situated in any “Residential (Group A)” zone on statutory plans, to temporarily keep ashes at their premises on the condition of their compliance with the specified conditions”. In the small-prints of footnote 17 (on p.25, ditto) the Government puts forwards five “specified conditions”. For the specified condition (1) as proposed, the Government suggests that “each set of ashes may not be kept at the premises of the eligible masons for more than seven calendar days...” We are of the view that this specified period of “7 calendar days” is too short and may not be sufficiently accommodating, especially when the specific duration falls within or straddles long holiday such as Chinese New Year or Christmas.

As for the proposed condition (3) in footnote 17 of the Consultation Paper, the Government suggests that “paying worship and giving ritual offerings to any deceased person in the workplace of the eligible masons are not allowed”. We suggest the Government to give further thoughts to this proposal as prima facie this condition may not be agreeable in all cases, in the light of Chinese traditions and customs.

**The Law Society of Hong Kong
28 May 2024**