

立法會
Legislative Council

LC Paper No. CB(1) 102/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/08/2

**Bills Committee on
Genetically Modified Organisms (Control of Release) Bill**

**Minutes of third meeting
held on Thursday, 8 October 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon Margaret NG
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon Tanya CHAN
Dr Hon LEUNG Ka-lau

Members absent : Hon KAM Nai-wai, MH
Hon CHAN Hak-kan

**Public officers
attending** : **For Item II**

Environmental Protection Department

Mr Albert LAM
Deputy Director of Environmental Protection (2)

Mr Vincent TANG
Assistant Director (Nature Conservation & Infrastructure
Planning)

Miss Vivien LI
Senior Administrative Officer (Nature Conservation)

Agriculture, Fisheries and Conservation Department

Mr C C LAY
Assistant Director (Conservation)

Mr Simon CHAN
Senior Conservation Officer (Biodiversity) (Atg)

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Miss Elaine NG
Government Counsel

**Attendance by
invitation**

: Hai Kang Life Corporation Limited

Dr LAU Lok-ting
Chief Operating Officer & General Manager

Clover Seed Company Limited

Mr Anthony TSE
Managing Director

The University of Hong Kong

Professor Si Lok
Scientific Director

World Wide Fund for Nature Hong Kong

Mr LEE Siu-fung
Conservation Officer

Greenpeace

Mr FANG Li-feng
Campaigner

Produce Green Foundation

Ms LAU Yuen-yee
Executive Secretary

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 2543/08-09 — Minutes of the meeting held on 13 July 2009)

The minutes of the meeting held on 13 July 2009 were confirmed.

II. Meeting with deputations and the Administration

Meeting with deputations

2. The Chairman invited views from the following deputations -

(a) Hai Kang Life Corporation Limited
LC Paper No. CB(1) 2646/08-09(01) (*English version only*)

(b) Clover Seed Company Limited
LC Paper No. CB(1) 2646/08-09(02) (*English version only*)

(c) Professor Si Lok, The University of Hong Kong

(d) World Wide Fund for Nature Hong Kong
LC Paper No. CB(1) 2646/08-09(03) (*English version only*)

(e) Greenpeace
LC Paper No. CB(1) 2646/08-09(04) (*English version only*)

(f) Produce Green Foundation
LC Paper No. CB(1) 2646/08-09(05) (*Chinese version only*)

3. The Chairman also drew members' attention to the following submissions from deputations not attending the meeting -

LC Paper No. CB(1) 2646/08-09(06) — Submission from Advisory Council on the Environment

LC Paper No. CB(1) 2749/08-09(01) — Submission from Hong Kong Biotechnology Organization Limited (*English version only*)

Meeting with the Administration

(LC Paper No. CB(1) 2646/08-09(07) — List of follow-up actions arising from the discussion at the meeting on 13 July 2009

LC Paper No. CB(1) 2646/08-09(08) — Administration's response to CB(1) 2646/08-09(07)

LC Paper No. CB(1) 2646/08-09(09) — Assistant Legal Adviser's letter dated 31 July 2009 to the Administration

LC Paper No. CB(1) 2646/08-09(10) — Administration's response to CB(1) 2646/08-09(09))

Relevant papers

(LC Paper No. CB(1) 2224/08-09(02) — Assistant Legal Adviser's letter dated 2 July 2009 to the Administration

LC Paper No. CB(1) 2224/08-09(03) — Administration's response to CB(1) 2224/08-09(02))

4. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
5. The Administration was requested to -
 - (a) provide a written response (in tabular form) to the views of deputations as set out in their submissions;
 - (b) advise how local institutions could ensure that a genetically modified organism (GMO) involved in an operation was in "contained use";
 - (c) provide a paper setting out the Administration's stance on the need for a threshold on adventitious presence of GMO;
 - (d) provide a paper setting out the studies conducted before formulation of the Bill, policy intent of the enforcement provisions and the plan to enforce these provisions, as well as efforts being contemplated to promote public awareness of the Bill. To illustrate the application of the enforcement regime with practical examples, including papaya, tomato, cantaloupe, pumpkin, soya bean, peanut, mango, potato and yam; and
 - (e) explain the difference between proposed sections 29 and 30. To also advise the circumstances under which a dwelling house was "used exclusively as a dwelling house", and whether a dwelling house with the presence of a GMO would still be considered as a dwelling house under proposed section 29(2). To further advise whether an authorized officer was empowered not only to enter and inspect any place or premises without notice, but also seize, remove and detain things without notice. If so, this might be a cause of concern for institutions, such as laboratories and academies, where the presence of GMOs was not uncommon.

6. Members agreed to continue discussion on the Bill at the next meeting scheduled for Tuesday, 27 October 2009, at 2:30 pm.

III. Any other business

7. There being no other business, the meeting ended at 10:33 am.

Council Business Division 1
Legislative Council Secretariat
20 October 2009

**Bills Committee on
Genetically Modified Organisms (Control of Release) Bill**

**Proceedings of the third meeting
on Thursday, 8 October 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000001 - 000326	Chairman	The minutes of meeting held on 13 July 2009 (LC Paper No. CB(1) 2543/08-09) were confirmed.	
<i>Agenda Item II - Meeting with deputations and the Administration</i>			
000327 - 000635	Dr LAU Lok-ting, Hai Kang Life Corporation Limited (HKLCL)	Expression of views (LC Paper No. CB(1) 2646/08-09(01)).	
000636 - 000819	Mr Anthony TSE, Clover Seed Company Limited (CSCL)	Expression of views (LC Paper No. CB(1) 2646/08-09(02)).	
000820 - 000845	Professor Si Lok, The University of Hong Kong (HKU)	Expression of views.	
000846 - 001219	Mr LEE Siu-fung, World Wide Fund for Nature Hong Kong (WWF)	Expression of views (LC Paper No. CB(1) 2646/08-09(03)).	
001220 - 001638	Mr FANG Li-feng, Greenpeace	Expression of views (LC Paper No. CB(1) 2646/08-09(04)).	
001639 - 002745	Ms LAU Yuen-yea, Produce Green Foundation (PGF)	Expression of views (LC Paper No. CB(1) 2646/08-09(05)).	
002746 - 003314	Chairman Administration	Summary response of the Administration to deputations' views - (a) the Bill aimed to extend the Convention on Biological Diversity (the Convention) and the Cartagena Protocol on Biosafety (the Protocol) to Hong Kong;	The Administration to provide a written response (in tabular form) to the views of deputations as set out in their submissions.

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		<p>(b) the Bill intended to regulate the release of genetically modified organisms (GMOs) into environment, and import and export of GMOs intended for release, and did not apply to or in relation to GMOs that were in transit, or intended for direct consumption as food, feed or processing;</p> <p>(c) the meaning of "contained use" had been set out in clause 3 of the Bill;</p> <p>(d) agreed to the precautionary principle, and hence the Advance Informed Agreement procedure was adopted to require the exporting party to obtain the consent of the importing party before a GMO could be exported for first intentional introduction into the environment at the importing end;</p> <p>(e) confidentiality of information on GMO was governed by clause 14 under which non-disclosure requests were allowed. However, certain information on GMO, such as the general description and risk assessment, would have to be disclosed; and</p> <p>(f) consultation would be held to address the trades' concerns about adventitious presence of GMO in conventional seeds for growing.</p>	
003315 - 004151	Dr Margaret NG Chairman Administration	<p>Dr Margaret NG's concerns -</p> <p>(a) overly excessive powers given to authorized officers in the Bill which were comparable to those vested in anti-terrorism legislation;</p> <p>(b) the extensive power vested in the expert group which could deal with any question in connection</p>	

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		<p>with “the administration of the Bill” referred to by the Director;</p> <p>(c) heavy penalties for contravention; and</p> <p>(d) the innocent public might be unnecessarily caught under the Bill.</p> <p>Administration's elaboration on the penalty provisions under clauses 5, 6, 7, 12(6) and (9), 23(5), 24(4), 38(5), 40(3), 41(2), 46(3) of the Bill. These provisions were in line with that of the Wild Animals Protection Ordinance (Cap.170) and the Protection of Endangered Species of Animals and Plants Ordinance (Cap 586). The penalties had reflected the gravity of offences, and should be able to achieve the desired deterrent effect.</p>	
004152 - 004551	Dr Margaret NG Administration Chairman	<p>Discussion on the role of the expert group.</p> <p>The Administration explained that the proposed function, operation and composition of the expert group had been set out in LC Paper No. CB(1) 2646/08-09(08).</p>	
004552 - 005351	Ms LAU Yuen-yee/PGF Dr Margaret NG Mr Anthony TSE/CSCL	<p>Ms LAU Yuen-yee's request for Government's assistance in providing a clean source of non-GM seeds.</p> <p>Mr Anthony TSE's concern that the innocent public would be caught under the Bill for growing papayas from seeds which had been genetically modified (GM).</p> <p>Administration's response -</p> <p>(a) the Bill intended to protect biodiversity;</p> <p>(b) locally grown GM papayas would unlikely affect the biodiversity in Hong Kong;</p>	

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		<p>(c) public education on the growth of non-GM crops would be stepped up;</p> <p>(d) consideration could be given to providing a clean source of non-GM seeds for growing papayas and other crops; and</p> <p>(e) enforcement actions would only be taken when strictly necessary.</p> <p>Chairman's requests for the Administration to -</p> <p>(a) respond to the views of PGF with particular reference to the suggestions of providing a clean source of non-GM seeds, and exchanging GM papaya trees with non-GM breeds; and</p> <p>(b) provide a paper setting out the Administration's stance on the need for a threshold on adventitious presence of GMO.</p>	<p>The Administration was requested to provide a paper setting out its stance on the need for a threshold on adventitious presence of GMO.</p>
005352 - 010534	Ms Cyd HO Administration Chairman	<p>Ms Cyd HO's concerns -</p> <p>(a) the proposed legislation to control the release of GMOs was not adequate. Consideration should be given to introducing a regulatory regime to control and label GM foods to protect human health; and</p> <p>(b) a person might be construed as "has control of a GMO" under clause 6 for inadvertently growing crops containing GMOs.</p> <p>Administration's response -</p> <p>(a) the Bill was meant to extend to Hong Kong the Convention and the Protocol which were widely accepted international agreements on the protection of biodiversity;</p>	

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		<p>(b) GM food was regulated by other international organizations;</p> <p>(c) unintentional release of GMOs into the environment would not be caught under the Bill; and</p> <p>(d) need for the Bill to empower authorized officers to eradicate GMOs which were a threat to biodiversity.</p>	
010535 - 011031	Ms Cyd HO Administration Chairman	<p>Ms Cyd HO's enquiry on the "contained use" of GMOs</p> <p>Administration's explanation -</p> <p>(a) scientific researchers using GMOs in "contained use" should take steps to prevent their release into environment; and</p> <p>(b) application for approval of GMOs for release into environment had to be accompanied by a risk assessment on the possible adverse effects on biological diversity.</p>	
011032 - 011745	Dr Margaret NG Administration Chairman	<p>Dr Margaret NG's requests for the Administration to -</p> <p>(a) explain the policy intent behind the enforcement provisions in the Bill as she was concerned that the Administration was extending an international agreement to Hong Kong without assessing its implications and practicality of enforcement;</p> <p>(b) provide a paper setting out the studies conducted before formulation of the Bill; and</p> <p>(c) illustrate the enforcement regime with practical examples, including papaya, tomato, cantaloupe, pumpkin, soya bean, peanut, mango, potato and yam.</p>	<p>The Administration to provide a paper setting out the studies conducted before formulation of the Bill, policy intent of the enforcement provisions and the plan to enforce these provisions, as well as efforts being contemplated to promote public awareness of the Bill. To illustrate the application of the enforcement regime with practical examples, including papaya, tomato, cantaloupe, pumpkin, soya bean, peanut, mango, potato and yam.</p>

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011746 - 012058	Mr WONG Ting-kwong Chairman Administration Ms LAU Yuen-yea/PGF	<p>Mr WONG Ting-kwong's enquiries -</p> <p>(a) whether authorized officers were required to wear uniforms when carrying out duties under the Bill; and</p> <p>(b) whether authorized officers would force entry into premises.</p> <p>Administration's explanation that apart from rangers in country parks, staff of Agriculture, Conservation and Fisheries Department did not wear uniforms when carrying out their duties.</p> <p>Ms LAU Yuen-yea's concern about the enforcement provisions of the Bill.</p>	
012059 - 012639	Professor Si Lok/HKU Administration Dr Margaret NG	<p>Professor Si Lok's view that clause 29, which empowered authorized officers to inspect place or premises without notice, was unjustified given that authorized officers should have enough time to apply for warrants; and</p> <p>Dr Margaret NG's concern that the enforcement provisions in the Bill were comparable to that in anti-terrorism legislation.</p> <p>Administration's explanation -</p> <p>(a) clause 29 aimed to enable an authorized officer to verify compliance with the Bill if he/she had reason to suspect that a GMO was being kept in the place or premises;</p> <p>(b) clause 29 did not apply to premises that were used exclusively as a dwelling house; and</p> <p>(c) a warrant would normally be obtained before searching the premises in question except in very urgent circumstances.</p>	

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012640 - 013410	Mr WONG Ting-kwong Mr LEE Siu-fung/WWF Administration Chairman	<p>Mr WONG Ting-kwong's enquiries -</p> <p>(a) need for an authorized officer to use necessary force to enter and search a place under clause 30(3), given that the Bill was meant to control GMOs and not any serious offences; and</p> <p>(b) the public might be more at ease to allow authorized officers in uniforms to enter and search their places.</p> <p>Administration's explanation -</p> <p>(a) enforcement provisions of the Bill were modelled after Cap. 170 and Cap. 586;</p> <p>(b) necessary power was required in order to enforce the Bill; and</p> <p>(c) assistance from the disciplinary forces would be called for as and when necessary.</p> <p>Chairman's views -</p> <p>(a) there might be a need to spell out in clause 27 the class of public officer to be appointed as authorized officers under Part 5 of the Bill; and</p> <p>(b) it would be more advisable for authorized officers to wear uniforms when carrying out enforcement duties.</p>	
013411 - 014039	Miss Tanya CHAN Administration Chairman	<p>Miss Tanya CHAN's request for explanation on the differences between clauses 29 and 30.</p> <p>Administration's explanation-</p> <p>(a) clause 29 empowered an authorized officer to inspect place or premises if he/she had reason to suspect that a GMO was being kept; and</p>	<p>The Administration to explain the difference between proposed sections 29 and 30.</p>

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		<p>(b) clause 30 provided that a magistrate might issue a warrant authorizing an authorized officer to enter and search any place or premises if there were reasonable grounds to suspect that an offence had been committed.</p>	
014040 - 014816	<p>Ms Cyd HO Chairman Administration Dr Margaret NG</p>	<p>Ms Cyd HO views and concerns -</p> <p>(a) control on GMOs was necessary to prevent Hong Kong from being used as the centre for manufacture of GM food;</p> <p>(b) control on GMOs should be targeted at large enterprises using GMOs rather than the general public who might have inadvertently grown or kept GMOs; and</p> <p>(c) the power under clause 33 which empowered authorized officers to require identification and to stop and board vessels, vehicle train or aircraft.</p> <p>Dr Margaret NG's views -</p> <p>(a) for offences of a serious nature, there was a need for large powers but such should be exercised in a restrained manner; and</p> <p>(b) justifications would be needed for the extensive power under the Bill which only aimed to control GMOs.</p> <p>Administration's explanation -</p> <p>(a) the enforcement provisions under Part 5 of the Bill were modelled after Cap. 170 and Cap. 586;</p> <p>(b) force was rarely used in the enforcement of the provisions under Cap. 170 and Cap. 586; and</p>	

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		(c) sufficient power was required in order to enforce the provisions in the Bill.	
014817 - 015446	Professor Si Lok/HKU Chairman Dr LAU Lok-ting/ HKLCL	<p>Professor Si Lok's concerns about clauses 29 and 31 which not only empowered an authorized officer to enter and inspect any place or premises without notice, but also to seize, remove and detain things.</p> <p>Dr LAU Lok-ting views -</p> <p>(a) institutions, such as laboratories and academies, might be caught under the Bill since the presence of GMOs was not uncommon; and</p> <p>(b) some scientific researchers might not be aware of the presence of GMOs in their laboratories until tests were completed. Consideration should be given to exempting test laboratories from the Bill.</p> <p>Administration's explanation -</p> <p>(a) GMOs being kept and tested in laboratories would be regarded as in "contained use" and would be exempted from the Bill; and</p> <p>(b) Institutions had to ensure that GMOs in "contained use" would not be released into the environment.</p>	<p>The Administration to advise whether an authorized officer was empowered not only to enter and inspect any place or premises without notice, but also seize, remove and detain things without notice. If so, this might be a cause of concern for institutions, such as laboratories and academies, where the presence of GMOs was not uncommon.</p>
015447 - 015854	Dr Margaret NG Chairman	<p>Dr Margaret NG's views -</p> <p>(a) need for clear explanation on the enforcement provisions in the Bill;</p> <p>(b) would welcome further views from deputations on the implementation details of the Bill; and</p> <p>(c) need to advise whether a dwelling house with the presence</p>	<p>The Administration to advise <u>the circumstances under which a dwelling house was "used exclusively as a dwelling house"</u>, and whether a dwelling house with the presence of a GMO would still be considered as a dwelling house under proposed section 29(2).</p>

Time marker	Speaker	Subject(s)	Action required
		of a GMO would still be considered as a dwelling house under clause 29(2).	
015855 - 020038	Chairman Mr LEE Siu-fung/WWF	Discussion on the need to spell out the precautionary principle in the Bill. Mr LEE Siu-fung stressed the need for a comprehensive risk assessment on GMOs intended for release into the environment.	
020039 - 020616	Ms Cyd HO Administration Chairman	Ms Cyd HO's enquiries - (a) whether biotechnology companies and tertiary institutions involved in the study of GMO had been consulted; and (b) how local institutions could ensure that a GMO involved in an operation was in "contained use". Administration's explanation - (a) consultation had been held with affected parties; and (b) most of the studies undertaken by local institutions would be regarded as in "contained use".	The Administration to advise how local institutions could ensure that a GMO involved in an operation was in "contained use".