

立法會
Legislative Council

LC Paper No. CB(1)814/09-10
(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 seventh meeting
held on Tuesday, 8 December 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon Margaret NG
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Tanya CHAN
Dr Hon LEUNG Ka-lau
- Member absent** : Hon WONG Ting-kwong, BBS, JP
- Public officers attending** : 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

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. Meeting with the Administration

- (LC Paper No. CB(1) 583/09-10(01) — List of follow-up actions arising from the discussion at the meeting on 30 November 2009
- LC Paper No. CB(1) 583/09-10(02) — Administration's response to CB(1) 583/09-10(01))

Relevant papers

- (LC Paper No. CB(3) 624/08-09 — The Bill
Ref: EP 86/21/25 (09) Pt.8 — The Legislative Council Brief
LC Paper No. LS 77/08-09 — Legal Service Division Report
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)
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)
LC Paper No. CB(1) 488/09-10(01) — List of follow-up actions arising from the discussion at the meeting on 11 November 2009
LC Paper No. CB(1) 488/09-10(02) — Administration's response to CB(1) 488/09-10(01))

The Bills Committee deliberated (Index of proceedings attached in **Annex**).

2. The Administration was requested to -
 - (a) include in the speech to be delivered by the Secretary for the Environment at the resumption of the Second Reading debate on the Bill that the Administration would retain information in relation to non-disclosure requests for record purpose;
 - (b) consider setting out in clause 15(2) the criteria for assessing non-disclosure requests. To also consider specifying in the Bill the types of information that would be classified as confidential information with reference to Article 21(5) of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity;
 - (c) re-consider the need for returning to the applicant any record or document containing confidential information in relation to an application/request or withdrawal of an application/request under clauses 20(2)(b) and 21(2)(b);
 - (d) consider replacing the phrase “a person” in clause 39(1) with “an applicant” if only the latter was allowed to lodge an appeal against the Director’s decision; and
 - (e) clarify whether the appeals under clause 39(1) also applied to any condition attached by the Director to the approval. To also provide the relevant parts of the Administrative Appeals Board Ordinance (Cap. 442) which were applicable to the Bill.
3. Members agreed to the following schedule of meetings -
 - (a) Monday, 21 December 2009 at 8:30 am;
 - (b) Wednesday, 6 January 2010 at 8:30 am; and
 - (c) Thursday, 21 January 2010 at 10:45 am.

II. Any other business

4. There being no other business, the meeting ended at 4:30 pm.

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

**Proceedings of the seventh meeting
on Tuesday, 8 December 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
000623 - 000718	Chairman	Discussion on the schedule of meetings.	
000719 - 001109	Chairman Administration	Administration's explanation on its response to the list of follow-up actions arising from the meeting on 30 November 2009 (LC Paper No. CB(1) 583/09-10(02)).	
001110 - 002254	Chairman Administration Ms Cyd HO	Discussion on flowcharts I and II Ms Cyd HO's views that there was a need to maintain a record on genetically modified organism (GMO) approval applications, including non-disclosed information, to facilitate future reference, given that some GMOs might have long-term effects on the environment.	The Administration to include in the speech to be delivered by SEN at the resumption of the Second Reading debate on the Bill that the Administration would retain information in relation to non-disclosure requests for record purpose.
002255 - 004236	Chairman Administration Ms Margaret NG Ms Cyd HO	Discussion on non-disclosure requests. Chairman's enquiries - (a) whether "confidential information" under clause 15 referred to the information in a non-disclosure request under clause 14; (b) there might be a need to specify in the Bill the types of information which an applicant might request the Director not to enter into the register under a non-disclosure request; and (c) reference could be made to Article 21(5) of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Protocol) on the types of information which could be classified as confidential information.	The Administration to consider setting out in clause 15(2) the criteria for assessing non-disclosure requests. To also consider specifying in the Bill the types of information that would be classified as confidential information with reference to Article 21(5) of the Protocol.

Time marker	Speaker	Subject(s)	Action required
		<p>Ms Margaret NG's queries/requests -</p> <ul style="list-style-type: none"> (a) whether the non-entry into the register under clause 15(2) was equivalent to non-disclosure of information; (b) possibility that information under a non-disclosure request would be disclosed for public reference; and (c) clause 15(2) should be set as a criterion for assessing non-disclosure requests. <p>Ms Cyd HO's suggestion for the Director to keep two separate registers, one for information that could be open to the public and the other for confidential information under non-disclosure request.</p> <p>Administration's explanation -</p> <ul style="list-style-type: none"> (a) all information on a GMO approval application would be entered into the register, except for confidential information under non-disclosure request which would be kept for record purpose; (b) information in relation to applications which had been withdrawn would be returned to applicants; and (c) consideration would be given to specifying in the Bill the types of information that would be classified as confidential information with reference to Article 21(5) of the Protocol. 	
004237 - 004802	Chairman Administration Ms Cyd HO ALA5 Ms Margaret NG	<p>Continuation of clause-by-clause examination of the Bill.</p> <p>Clause 17 - Entry of non-confidential information in register</p> <p>Discussion on the definition of "non-confidential information" under clause 17(5).</p>	
004803 - 005509	Chairman Administration Ms Margaret NG	<p>Clause 18 - Entry of decision on GMO approval applications and variation request in register</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Ms Margaret NG's concerns -</p> <p>(a) the need to specify in clause 18 that the decision in respect of a GMO approval application/variation request should be entered in the register; and</p> <p>(b) the flexibility for the Director to enter the decision in the register as soon as practicable.</p> <p>Administration's explanation that the entry of decision in the register had to be explicitly set out since a GMO could only be released into the environment under clause 5(4) if an "approval is entered in the register under section 18".</p>	
005510 -011009	Chairman Administration Ms Margaret NG	<p>Discussion on appeals.</p> <p>Chairman's queries -</p> <p>(a) whether appeals could be made to the conditions attached by the Director under clause 10(3) to the approval of GMO applications and if so, reference to section 10(1)(a) under clause 39(1) on appeals should be amended accordingly;</p> <p>(b) whether any person, other than the applicant, could appeal against the Director's decision on the release of GMO into the environment; and</p> <p>(c) whether a decision in the register could be amended in the event of subsequent changes to the decision.</p> <p>Administration's explanation -</p> <p>(a) clause 39(1) mentioned that a person might appeal within 28 days after receiving notice of the decision (on a GMO application or variation request), it followed that the "person" who could lodge an appeal would refer to the "applicant";</p> <p>(b) the entry of decision in the register would only be made -</p> <p>(i) if no appeal had been lodged within the 28-day period; or</p>	<p>The Administration to -</p> <p>(a) consider replacing the phrase "a person" in clause 39(1) with "an applicant" if only the latter was allowed to lodge an appeal against the Director's decision;</p> <p>(b) clarify whether the appeals under clause 39(1) also applied to any condition attached by the Director; and</p> <p>(c) provide the relevant parts of the Administrative Appeals Board Ordinance (Cap. 442) which were applicable to the Bill.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(ii) if an appeal had been lodged, after the appeal had been dealt with.</p> <p>Ms Margaret NG's requests for the Administration to -</p> <p>(a) replace the phrase "a person" in clause 39(1) with "an applicant" if only the latter was allowed to lodge an appeal against the Director's decision; and</p> <p>(b) provide the relevant parts of the Administrative Appeals Board Ordinance (Cap. 442) which were applicable to the Bill.</p>	
011010 - 012207	<p>Ms Margaret NG Chairman Administration ALA5 Ms Cyd HO</p>	<p>ALA5's questions on the application of clause 18 –</p> <p>(a) as no time limit was imposed on the requests for variation of decision under clauses 11 and 12, such requests could be made years after the entry of decisions and well beyond the appeal period of 28 days under clause 39; and</p> <p>(b) decision which had been entered in the register would remain in the register until the decisions of the Director was varied.</p> <p>Ms Margaret NG's views -</p> <p>(a) the 28-day appeal period should be counted from the date when the Director issued a written notice to the applicant in respect of a variation request; and</p> <p>(b) decision which had been entered in the register should be considered in order until this was successfully challenged or changed.</p> <p>Administration's agreement to Ms Margaret NG's views on clause 18.</p>	
012108 - 012230	<p>Chairman Administration Ms Cyd HO</p>	<p>Discussion on the propriety of using the phrase "a person" or "an applicant" in clause 39(1).</p> <p>Ms Cyd HO's insistence that any person should be allowed to lodge an appeal against</p>	

Time marker	Speaker	Subject(s)	Action required
		the Director's decisions on GMO approval applications.	
012231 - 012729	Chairman Administration Ms Cyd HO	<p>Clause 19 - Provision of additional information or supporting documents on GMO applications and variation requests</p> <p>Ms Cyd HO's concern whether there would be record on the meeting between the applicant and the Director provided under clause 19(1)(b).</p> <p>Administration's explanation -</p> <p>(a) the Director could request an applicant to appear before him to answer any question raised or to provide any clarification in relation to the application; and</p> <p>(b) decision notes for meetings and confirmation would be prepared as appropriate.</p>	
012730 - 014503	Chairman Ms Margaret NG Administration	<p>Clause 20 - Withdrawal of GMO approval applications or variation requests</p> <p>Clause 21 - Withdrawal of information or document provided</p> <p>Ms Margaret NG's queries -</p> <p>(a) the need to return to an applicant any record or document containing confidential information in relation to an application/request or withdrawal of the application/request under clauses 20(2)(b) and 21(2)(b);</p> <p>(b) whether the return of information in respect of withdrawn applications was a common practice adopted by other Government departments; and</p> <p>(c) whether it was necessary to retain the information for future reference.</p> <p>Ms Cyd HO's enquiries/concerns -</p> <p>(a) whether the arrangements for the return of confidential information to applicants were modelled after the Protocol; and</p>	The Administration to re-consider the need for returning to the applicant any record or document containing confidential information in relation to an application/request or withdrawal of an application/request under clauses 20(2)(b) and 21(2)(b).

Time marker	Speaker	Subject(s)	Action required
		<p>(b) there might be a need to retain certain confidential information to facilitate future reference.</p> <p>Chairman's concern that there might be different interpretation between the Director and applicants on what should be regarded as confidential information to be returned to the applicants.</p> <p>Administration's explanation -</p> <p>(a) only confidential information in relation to an application/request or withdrawal of an application/request would be returned to applicants and “confidential information” was defined in clause 2 to be information that was not to be entered in the register according to the decision of the Director or the Administrative Appeals Board;</p> <p>(b) while Article 21(5) of the Protocol had specified the need to respect the confidentiality of information, it did not have any requirement for the return of confidential information to applicants;</p> <p>(c) applicants could submit non-disclosure request, specifying what information was to be classified as confidential information and hence not to be disclosed. Such information could be returned upon withdrawal of applications ; and</p> <p>(d) other relevant information in respect of an application would be kept on record.</p>	
014504 - 014519	Chairman Administration	Part 3 Clause 22 - Application of this part	
014520 - 014814	Administration	Clause 23 - Restrictions on export of GMOs intended for release into environment	
014815 - 014932	Chairman Administration	Clause 24 - Copies of export notifications and approvals to be sent to Director	

Time marker	Speaker	Subject(s)	Action required
014933 - 015016	Chairman	Member's agreement to the following schedule of meetings - Monday, 21 December 2009 at 8:30 am Wednesday, 6 January 2010 at 8:30 am Thursday, 21 January 2010 at 10:45 am	

Council Business Division 1
Legislative Council Secretariat
5 January 2010