

立法會
Legislative Council

LC Paper No. CB(1) 933/09-10
(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 ninth meeting
held on Wednesday, 6 January 2010, at 8:30 am
in Conference Room B 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 KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Tanya CHAN
Dr Hon LEUNG Ka-lau

**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

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) 814/09-10 — Minutes of the meeting held on
8 December 2009)

The minutes of the meeting held on 8 December 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 816/09-10(01) — List of follow-up actions arising
from the discussion at the meeting
on 21 December 2009

LC Paper No. CB(1) 816/09-10(02) — Administration's response to
CB(1) 816/09-10(01)

LC Paper No. CB(1) 816/09-10(03) — Assistant Legal Adviser's letter
dated 22 December 2009 to the
Administration

LC Paper No. CB(1) 816/09-10(04) — Administration's response to
CB(1) 816/09-10(03))

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))

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) delete the word "immediately" in clause 34, and to make it clear in the clause that disposal did not include sale of the things in question. To also include in the speech to be delivered by the Secretary for the Environment (SEN) at the Resumption of Second Reading debate on the Bill that all necessary care would be taken to maintain the seized genetically modified organism (GMO), particularly if it was a live animal;
 - (b) review clause 37 to provide application for compensation regardless whether prosecution had been brought in respect the thing being seized;
 - (c) advise the rationale for empowering SEN to grant exemption under clause 42;
 - (d) provide the draft Committee Stage amendments for clause 46;
 - (e) review clauses 49 and 50 to impose penalties for non-compliance with the requirements under clause 50 during the transitional period. To also consider deleting clauses 50(1)(a) and (b) given that the Bill had no retrospective effect.
4. Members agreed to continue discussion on the Bill at the next meeting scheduled for Thursday, 14 January 2010 at 8:30 am.

III. Any other business

5. There being no other business, the meeting ended at 10:50 am.

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

**Proceedings of the ninth meeting
on Wednesday, 6 January 2010 at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000019 - 000043	Chairman	The minutes of the meeting held on 8 December 2009 were confirmed (LC Paper No. CB(1) 814/09-10).	
<i>Agenda Item II - Meeting with the Administration</i>			
000044 - 001134	Chairman Administration	Administration's explanation on its response to the list of follow-up actions arising from the discussion at the meeting on 21 December 2009 (LC Paper No. CB(1) 816/09-10(02)).	
001135 - 003100	Chairman Administration Ms Cyd HO Mr WONG Ting-kwong Dr Margaret NG ALA5	<p>Discussion on the proposed amendments to clause 34 regarding Director's power to dispose of certain things immediately after seizure</p> <p>Chairman's concerns -</p> <p>(a) the word "dispose" would include the element of "sell"; and</p> <p>(b) clause 37 did not provide for claims for compensation in respect of things seized in the case of unsuccessful prosecutions.</p> <p>Ms Cyd HO's concerns -</p> <p>(a) clause 37 required the things seized under clause 34 to be disposed of immediately after seizure; and</p> <p>(b) there might be a need to allow time to notify owners before disposal of the things seized.</p> <p>Dr Margaret NG shared the concerns of the Chairman and Ms Cyd HO.</p>	The Administration to delete the word "immediately" in clause 34, and to make it clear in the clause that disposal did not include sale of the things in question.

Time marker	Speaker	Subject(s)	Action required
		<p>Mr WONG Ting-kwong's request to make it clear in clause 34 that disposal did not include sale of the things in question.</p> <p>ALA5's enquiry on whether owners could claim compensation for the things which had been disposed of after seizure.</p> <p>Administration's explanation -</p> <p>(a) clause 34 was meant to deal with things that were not practicable for the Director to keep and hence the need for immediate disposal after seizure. Things that were forfeited and could be kept would be dealt with under clause 38;</p> <p>(b) Director's power to dispose of things after seizure under clause 34 would include storage or disposal at landfills where appropriate;</p> <p>(c) clause 37(4) provided that where no prosecution had been brought, a person who was aggrieved by the forfeiture of things could complain to the court or magistrate, which could decide on the need for compensation under clause 37(5); and</p> <p>(d) there were no provisions for compensation for things seized if prosecution had been brought.</p>	
003101 - 003429	<p>Chairman Administration Dr Margaret NG Ms Cyd HO</p>	<p>Clause 31 - Powers to seize, remove and detain things</p> <p>Dr Margaret NG's concern about the extent of power conferred upon authorized officers to seize, remove and detain things.</p> <p>Administration's response that the provisions in clause 31 were necessary for proper discharge of enforcement duties, in particular with</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>respect to seizing unapproved genetically modified organisms (GMOs) for the protection of natural environment.</p>	
003430 - 005039	<p>Dr Margaret NG Chairman Administration Ms Cyd HO</p>	<p>Dr Margaret NG's reiteration of her concerns on clause 34 -</p> <ul style="list-style-type: none"> (a) immediate disposal of things after seizure, particularly if these were live animals; and (b) need to notify owners before disposal of live animals after seizure. <p>Ms Cyd HO's requests -</p> <ul style="list-style-type: none"> (a) separate arrangements for disposal of plants and live animals; and (b) need to notify owners before disposal of the things, which might be of sentimental value. <p>Administration's explanation -</p> <ul style="list-style-type: none"> (a) efforts would be made to keep the things after seizure if these were live animals. Only under the conditions set out in clause 34(2)(a) would the live animals be disposed of after seizure; (b) there might be difficulties in notifying owners if they could not be found; and (c) the operation manual would set out the procedures which staff of the Agriculture, Fisheries and Conservation Department would need to follow in taking care of and maintaining GMOs after seizure. <p>Chairman's request for the Administration to include in the speech to be delivered by the Secretary for the Environment (SEN) at the Resumption of Second</p>	<p>The Administration to include in the speech to be delivered by SEN at the Resumption of Second Reading debate on the Bill that all necessary care would be taken to maintain the seized GMO, particularly if it was a live animal.</p>

Time marker	Speaker	Subject(s)	Action required
		Reading debate on the Bill that all necessary care would be taken to maintain the seized GMOs, particularly if it was a live animal.	
005040 - 005314	Dr Margaret NG Administration Chairman Mr WONG Ting-kwong	Mr WONG Ting-kwong's request for including a provision for application for compensation under Part 6 in respect of things being seized, particularly those which had limited or specified life span, to make up for the losses of owners as a result of the seizure. Administration's explanation - (a) clauses 37(4) and (5) had provided for a compensation mechanism under limited circumstances, and only if no prosecution was brought; and (b) however no compensation for things seized if prosecution had been brought.	The Administration to review clause 37 to provide application for compensation regardless of whether prosecution had been brought in respect of the thing being seized.
005515 - 011606	Chairman Administration Ms Cyd HO Mr WONG Ting-kwong	Clause 35 - Return and forfeiture of things seized in respect of offences under section 5, 7 and 23 Clause 36 - Return and forfeiture of things seized in respect of offences under other sections Clause 37 - Return and forfeiture of things seized if no prosecution for offences Clause 38 - Director's powers to sell or dispose of and to give directions on disposal of forfeited things Members' attention was drawn to the fact that the disposal arrangements under clause 38(3) were to implement Article 25(2) of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity Ms Cyd HO's request that clause 37 be reviewed to provide application	

Time marker	Speaker	Subject(s)	Action required
		for compensation regardless of whether prosecution had been brought in respect of the thing being seized.	
011607 - 012339	Chairman Administration ALA5 Mr WONG Ting-kwong Ms Cyd HO	Clause 39 - Appeals Administration's explanation on the application of clause 39 as set out in LC Paper No. CB(1) 816/09-10(04) Ms Cyd HO's reiteration of her views that any party should be allowed to lodge an appeal under clause 39 if he/she was aggrieved by the Director's decision.	
012340 - 012625	Chairman Administration Mr WONG Ting-kwong	Clause 40 - Offences on obstruction and failure to comply with requirements Clause 41 - Provision of false information	
012626 - 013424	Chairman Administration Mr WONG Ting-kwong Ms Cyd HO	Clause 42- Secretary's power to grant exemption Mr WONG Ting-kwong's query on the rationale for empowering SEN to grant exemption. Administration provided an example that there might be circumstances where exemption would be required to facilitate the import of GM vaccines by veterinary surgeons in the treatment of animals. Clause 43 - Expert group Administration's explanation on the proposed amendments to clause 43 as set out in LC Paper No. CB(1) 488/09-10(02).	The Administration to advise the rationale for empowering SEN to grant exemption under clause 42
013425 - 013825	Chairman Administration	Clause 44 - Director's power to specify forms Clause 45 - Secretary's power to amend Schedules Clause 46 - Director's power to make regulations	The Administration to provide the draft Committee Stage amendments for clause 46.

Time marker	Speaker	Subject(s)	Action required
013826 - 014109	Chairman Administration	Clause 47 - Prescribed fees not refundable Clause 48 - Interpretation	
014110 - 021722	Chairman Administration Ms Cyd HO Mr WONG Ting-kwong	<p>Clause 49 - Maintenance of lives of released GMOs during the transitional period</p> <p>Clause 50 - Notification of or application for approval of released GMOs during transitional period</p> <p>Members' concerns/enquiries -</p> <p>(a) the need for clauses 50(1)(a) and (b) given that the Bill had no retrospective effect; and</p> <p>(b) consequences in the event of non-compliance with the notification/application requirements for maintenance of GMOs during the transitional period when clause 50(2) carried no penalty provision.</p> <p>Administration's explanation -</p> <p>(a) the transitional arrangements were meant to facilitate compliance in the run up to the commencement of the Ordinance;</p> <p>(b) no actions would be taken against the maintenance of GMOs during the six-month transitional period; and</p> <p>(c) no penalties for non-compliance with notification/application requirements during the transitional period.</p>	The Administration to review clauses 49 and 50 to impose penalties for non-compliance with the requirements under clause 50 during the transitional period. To also consider deleting clauses 50(1)(a) and (b) given that the Bill had no retrospective effect.
021723 - 021740	Chairman	Date of next meeting	