

Genetically Modified Organisms (Control of Release) Bill
Application of Clause 39

This paper seeks to set out the application of clause 39 of the Genetically Modified Organisms (Control of Release) Bill (“the Bill”). Clause 39 of the Bill stipulates that –

“39. Appeals

(1) If a person is aggrieved by a decision under section 10(1)(a), 11(5)(a), 12(1) or 16(3)(a), or a direction under section 12(7) or 38(3), the person may, within 28 days after receiving notice of the decision or direction, appeal to the Administrative Appeals Board against that decision or direction.

(2) After lodging an appeal under subsection (1), the person must, pending the Administrative Appeals Board’s decision on the appeal, cause the GMO that is the subject of the appeal to be kept in a manner that effectively limits its contact with, and its impact on, the environment.

(3) Subsection (2) does not apply if the GMO has already been released into the environment.

(4) If an appeal is lodged against a direction referred to in subsection (1), the person is not required to carry out the direction pending the Administrative Appeals Board’s decision on the appeal. “

2. The following table sets out (a) the eligible appellants under clause 39; (b) the subject matter of their respective appeals; and (c) the provisions under which the appeals arise.

	Provision under which the decision on the subject matter of the appeal is made (Clause)	Eligible appellant	Subject matter of the appeal
1.	10(1)(a)	An applicant under the GMO approval application	Decision made by the Director of Agriculture, Fisheries and Conservation (“DAFC”) in respect of the GMO

	Provision under which the decision on the subject matter of the appeal is made (Clause)	Eligible appellant	Subject matter of the appeal
			application, including the approval or refusal of the application, as well as the conditions that may be attached to the approval.
2.	11(5)(a)	An applicant under the GMO approval application who, in accordance with clause 11(1) or clause 11(2), requested to vary the decision made by the DAFC in respect of the GMO approval application	Decision made by the DAFC in respect of a request for variation of the decision on the GMO approval application.
3.	12(1)	An applicant under the GMO application	Decision made by the DAFC to vary, on his or her own initiative, the decision he or she made on a GMO approval application or variation request under clause 10(1)(a) or 11(5)(a)
4.	16(3)(a)	An applicant under the GMO approval application or a variation request who lodged a non-disclosure request under clause 14 (1).	Decision made by the DAFC upon a review under clause 16 of a decision made under clause 15(1)(a) on a non-disclosure request.
5.	12(7)	An applicant under the GMO approval	Direction given by the DAFC to the applicant

	Provision under which the decision on the subject matter of the appeal is made (Clause)	Eligible appellant	Subject matter of the appeal
		application	under the GMO approval application on the safekeeping or disposal of the GMO or any container containing the GMO, after the approval of the GMO has been revoked by a decision of the DAFC under clause 12(1)(b)
6.	38(3)	A person who has been convicted of an offence under clauses 5, 7 or 23	Direction given by the DAFC to the person being convicted of an offence under clause 5, 7 or 23 to dispose of any thing in connection with the offence that was forfeited to the Government

Eligibility to apply for Judicial Review

3. As a matter of administrative law, a third party who is not an eligible appellant under clause 39 may apply for judicial review if he has sufficient interest in the subject matter. Clause 39 does not affect the operation of section 21K(3) of the High Court Ordinance (Cap. 4), which provides that the Court shall not grant leave to make an application for judicial review unless it considers that an applicant has a sufficient interest in the matter to which the application relates.

**Environmental Protection Department
Agriculture, Fisheries and Conservation Department
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