

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

**List of follow-up actions arising from the discussion
at the meeting on 6 January 2010**

This paper seeks to respond to the issues raised at the meeting of the Bills Committee on Genetically Modified Organisms (Control of Release) Bill (the Bill) held on 6 January 2010, which are listed at Appendix I of the letter dated 6 January 2010 from the Bills Committee Secretariat –

- (1) To delete the word “immediately” in clause 34, and to make it clear in the clause that disposal does 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 will be taken to maintain the seized genetically modified organism (GMO), particularly if it is a live animal.
- (2) To review clause 37 to include a provision for compensation regardless whether prosecution has been brought in respect the thing being seized.
- (3) To advise the rationale for empowering SEN to grant exemption under clause 42.
- (4) To provide the draft Committee Stage amendments for clause 46.
- (5) 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 has no retrospective effect.

To delete the word “immediately” in clause 34

2. Having considered Members’ views, we will revise clauses 34(1) shown in **Annex A**. We also confirm that all necessary care would be taken to keep the seized GMO prior to its return to owner or forfeiture to the Government, unless it is not practicable to keep or it is perishable. This undertaking will be included in the speech to be delivered by the Secretary for the Environment at the Resumption of Second Reading debate on the Bill.

To review clause 37 to include a provision for compensation

3. Having considered Members' views, we will revise clause 37 as shown in **Annex B** so that if the owner of a thing seized has suffered loss and no prosecution is brought in respect of the thing, the owner may commence proceedings to claim for compensation from the Government. The provision has the effect of expanding the circumstances under which compensation may be sought from the Government.

4. As for things seized where prosecution is brought, we are of the view that no provision for compensation should be provided in the Bill to make specific statutory provisions for the defendant, whether or not convicted of an offence in the proceedings, to claim compensation. Members may wish to note that authorized officers of AFCD will strictly follow guidelines laid down in the Operation Manual in investigating any offence under the Bill, and that no prosecution would be brought unless there is strong evidence indicating that an offence under the Bill is committed. If a person is convicted of an offence under section 5, 7 or 23, the seized GMO should be forfeited to the Government and disposed of properly to prevent the GMO from posing any adverse biosafety impacts to the natural environment. In all other cases where prosecution is brought, irrespective of whether any defendant is convicted of an offence, it will be the decision of the court or magistrate to order anything seized to be returned to the defendant or forfeited to the Government.

5. In any event, a person who wishes to claim compensation against the Government in respect of anything seized during an operation under the Bill has the option of instigating civil proceedings for the purpose.

Rationale for empowering SEN to grant exemption under clause 42

6. Members may wish to note our response to the list of follow-up actions arising from the discussion at the meeting on 27 October 2009 (CB(1)311/09-10(02)) to a similar enquiry raised by the Bills Committee. The response is reproduced as follows - .

“4. Clause 42 of the Bill provides that SEN may, by notice published in the Gazette, exempt any person, any group or description of persons, or any

GMO from the application of Clauses 5, 7 or 23. An exemption may take effect generally or for any purposes or by reference to any circumstances, and either conditionally or unconditionally. This provision allows SEN to exempt, for example, any GMO that is identified in a decision of the Conference of the Parties to the Cartagena Protocol on Biosafety (the Protocol) as being not likely to have adverse effects on the conservation and sustainable use of biological diversity¹, or any GMO that the Administration, after consultation with the expert group, considers as being unlikely to have adverse effects on local biological diversity when being released into the environment.

5. *As an example, a particular type of GM papaya is considered as being unlikely to have any adverse effects on local biological diversity after risk assessment and consultation with the expert group, and is granted an exemption from the application of Clauses 5 and 7 without any condition attached.*

6. *If a particular GM potato is identified in a decision of the Conference of the Parties to the Protocol as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, consideration would be given by SEN to exempt the GM potato from the application of Clauses 5, 7 and 23.*

7. *Under certain circumstances, it might also be necessary to grant exemptions to a person or group/description of persons from the application of Clauses 5, 7 or 23. For example, a GM veterinary vaccine would be considered as being released into the environment if the vaccine is applied to animals. To cater for the genuine need of application of veterinary vaccines, in particular in emergency situation or under special circumstances, if the Director is satisfied that the possible adverse biosafety effect of the concerned GM vaccines is acceptable, an exemption may be granted to veterinary surgeons from the restrictions imposed on the import and use (release) of a GM veterinary vaccine under Clauses 5 and 7 of the Bill on certain conditions (for example, that the use complies with the relevant legislative requirements and that copies of the relevant documents required for the import of GMOs intended for release into environment have to be submitted to AFCD for record purpose prior to its use”.*

To provide the draft Committee Stage amendments for clause 46

7. The proposed amendments to clause 46, which are consequential to the insertion of clauses 24A and 24B (for the provision of documentation requirements in the main body of the Bill) as explained in our response to the list of follow-up actions arising from the discussion at the meeting on 11 November 2009 (CB(1) 488/09-10(02)), are in **Annex C**.

To impose penalties for non-compliance during the transitional period

8. The proposed penalty level for non-compliance with the requirements under clause 50(2) during the transitional period is a fine at level 1. The draft revisions to clause 50 are in **Annex D**.

**Environmental Protection Department
Agriculture, Fisheries and Conservation Department
January 2010**

34. Director's power to ~~sell or~~ dispose of certain things immediately after seizure

(1) If any of the things specified in subsection (2) has been seized under section 31, the Director may, ~~immediately~~ after the seizure, ~~sell the thing or~~ disposed of the thing in any ~~other~~ way (except by way of sale).

(2) The things are –

(a) any live animal –

(i) that, for any reason, it is not practicable for the Director to keep in captivity; or

(ii) that is likely to die or to be subject to unnecessary suffering if it is kept in captivity;

(b) any live plant that, for any reason, it is not practicable for the Director to keep; and

(c) any thing –

(i) that, for any reason, it is not practicable for the Director to keep; or

(ii) that is perishable.

~~(3) Subject to sections 35, 36 and 37, the proceeds of sale of any thing sold under subsection (1) must be paid into the general revenue.~~

37. Return, and forfeiture of things seized, compensation for seizure, etc. if no prosecution for offences

(1) This section applies if a thing has been seized under section 31 but no prosecution has been brought in respect of that thing under this Ordinance.

(2) An authorized officer may apply to the court or magistrate for an order in respect of ~~that~~ thing seized under section 31 and on such ~~or any proceeds of sale of that thing.~~

~~(2) — On an application under subsection (1), the court or magistrate may, subject to subsection (3), order the thing concerned or any proceeds of sale of that thing —~~

(a) to be returned to the person from whom it was seized or to its owner; or

(b) to be forfeited to the Government.

(3) The court or magistrate must, if satisfied that the owner of the thing concerned is unknown or cannot be found, order the thing concerned ~~or any proceeds of sale of that thing~~ to be forfeited to the Government.

(4) The Government is liable to compensate the owner of a thing seized under section 31 for any loss suffered by the owner —

(a) by reason of the seizure; or

(b) by reason that the thing dies, perishes, deteriorates, or is lost or damaged, during the time when the thing is seized or detained.

(5) In any proceedings against the Government in respect of a claim for compensation on any of the grounds referred to in subsection (4), the amount of the

compensation recoverable is an amount that is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of –

- (a) the owner of the thing seized;
- (b) the person in charge of the thing at the time it was seized;
- (c) the agents of the person specified in paragraphs (a) and (b);
and
- (d) authorized officers, public officers and other persons concerned.

(6) No proceedings is maintainable in respect of any claim for compensation on any of the grounds referred to in subsection (4) unless the proceedings are commenced –

- (a) in the case of a claim for compensation in respect of any thing that was seized but subsequently delivered to its owner by order of a court or magistrate or by any person having authority to deliver the thing to the owner, not later than 6 months after the delivery;
- (b) in the case of a claim for compensation on the ground that the thing died, perished or deteriorated, or was lost or damaged, during the time when the thing was seized or detained, not later than 6 months from whichever is the earlier of the following –
 - (i) the discovery by the owner of the existence of the ground;

(ii) the date on which the owner could, by the existence of reasonable diligence, have discovered the existence of the ground.

~~(4) — If a thing forfeited to the Government pursuant to an order under subsection (3) is sold or disposed of under section 38(1), a person who considers that he, she or it is aggrieved by the sale or disposal may complain to the court or magistrate within 6 months after the sale or disposal.~~

~~(5) — On a complaint under subsection (4), the court or magistrate may, if satisfied as to the complainant's title to the thing concerned, order such amount of compensation to be paid to the complainant as the court or magistrate considers just.~~

46. Secretary's power to make regulations

(1) The Secretary may make regulations for all or any of the following purposes –

- (a) to provide for ~~the requirements relating to~~ the documents ~~to be furnished for the import and export of~~required to accompany –
 - (i) ~~a~~GMOs that are intended for direct consumption as food or feed, or for processing;
 - (ii) ~~a~~GMOs that are intended for contained use; or
 - (iii) ~~a~~GMOs that are intended for release into the environment,
when the GMOs are being imported or exported;
- (b) to provide for the percentage referred to in section 24B(5)(a) in relation to –
 - (i) GMOs that are intended for direct consumption as food or feed, or for processing;
 - (ii) GMOs that are intended for contained use;
- (c) to enable any part of a Protocol instrument to have the force of law in Hong Kong with or without modification;
- (~~d~~e) to provide generally for the better carrying out of the purposes of this Ordinance.

(2) A regulation under subsection (1) may –

- (a) make different provisions for different circumstances and provide for a particular case or class of case;
- (b) be made so as to apply only in specified circumstances; and

- (c) contain such incidental, supplementary, consequential, transitional or saving provision as may be necessary or expedient in consequence of the regulation.
- (3) A regulation under subsection (1) may provide –
 - (a) that it is an offence for a person to contravene a provision of the regulation; and
 - (b) that such an offence is punishable by a fine not exceeding level 6 and imprisonment for a term not exceeding 6 months.

50. Notification of or application for approval of released GMOs during transitional period

~~(1) This section applies if a person knows that –~~

~~(a) the person caused a released GMO to be so released;~~

~~(b) the person, before the commencement date, maintained the life of a released GMO that was in a state of being released into the environment; or~~

~~(c) the person, during the transitional period, maintains the life of a released GMO that is in a state of being released into the environment.~~

(12) If a person, during the transitional period, knowingly maintains the life of a released GMO that is in a state of being released into the environment, the person must, during the transitional period before that period expires –

(a) inform the Director of the ~~release or~~ maintenance by written notice; or

(b) submit a GMO approval application in accordance with section 8 in respect of the released GMO.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 1.

(3) On receiving a notice under subsection (12)(a), the Director may –

(a) direct an authorized officer to enter the place or premises in or on which the released GMO was released or maintained during reasonable hours to dispose of the GMO; or

(b) direct the person to dispose of the released GMO.

(4) Section 5 does not prohibit a person who has informed the Director of the ~~release or~~ maintenance of a released GMO under subsection (12)(a) from knowingly maintaining the life of the GMO that is in a state of being released into the environment, during the period from the date of the notice to the date when the GMO is disposed of.

(5) Section 5 does not prohibit a person who has submitted a GMO approval application under subsection (12)(b) from knowingly maintaining the life of the released GMO that is in a state of being released into the environment, during the period from the date of the application to the date when the decision on the application is entered in the register under section 18.

(6) A notice under subsection (12)(a) must contain the information set out in Schedule 6.