

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

**Administration's Response to the
List of follow-up actions arising from the discussion at the meeting on
11 November 2009**

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 11 November 2009, which are listed at Appendix I of the letter dated 12 November 2009 from the Bills Committee Secretariat –

- (1) To consider specifying clearly in the proposed Committee Stage amendments to clause 43(1) that apart from the official representatives, all other members of the expert groups are from non-governmental organizations.
- (2) To advise whether the proposed documentation requirements in relation to import and export of genetically modified organisms (GMOs) for different purposes are strict liabilities, and whether a defence provision would be included to ensure that no one would be unnecessarily caught.
- (3) To consider specifying in clause 6(2) that notification of the release of a GMO by any one of the persons who have control of a GMO will suffice.

Clause 43(1)

2. We have considered Members' advice and proposed to further amend Clause 43(1) as set out in **Annex A**.

Offence in relation to the proposed documentation requirements

3. We have prepared a draft clause on documentation requirements at **Annex B** for Members' reference. As set out in the draft clause, the provisions of the proposed documentation requirements are strict liabilities. On the other hand, we recognize that there are circumstances in which the importer/exporter may have exercised due diligence in checking the contents of their shipments and still do not know that their shipments of goods are GMOs or contain

GMOs, in particular for GMOs-FFP (e.g. the supplier has provided false information to the importer/exporter). Hence, we consider it necessary to provide appropriate defence provision in the Bill to ensure that no one would be unnecessarily caught for the contravention of the specified documentation requirements. The draft defence provision is set out under sub-clause 24B(4) at **Annex B**.

Report on release of GMOs

4. We have considered Members' suggestion set out in para. 1(3) above, and have prepared draft amendments to Clause 6(2) as set out in **Annex C** for Members' reference.

Environmental Protection Department
Agriculture, Fisheries and Conservation Department
November 2009

43. Expert group

(1) The Secretary ~~must~~may establish an expert group consisting of ~~members appointed by the Secretary.~~ =

(a) members who are public officers; and

(b) members who are not public officers and who are appointed from different sectors including the farming, biotechnology, environmental protection, academic and trading sectors.

(1A) A member must be appointed by the Secretary.

(2) The Director may refer any question in connection with the administration of this Ordinance, including the processing of individual GMO approval applications, variation requests and non-disclosure requests, and the granting of exemptions, to the expert group, or individual members of the group, for advice.

PART 3A

DOCUMENTATION REQUIREMENTS FOR IMPORT AND
EXPORT OF GMOs

[24A]. Application of this Part

This Part does not apply to or in relation to a GMO that is a pharmaceutical product for use by human beings.

**[24B]. Documentation required for import and
export of GMOs**

- (1) GMOs –
- (a) that are intended for direct consumption as food or feed, or for processing;
 - (b) that are intended for contained use; or
 - (c) that are intended for release into the environment,

must be accompanied by the prescribed documents when being imported or exported.

(2) Subsection (1) does not apply to GMOs falling within paragraph (a) or (b) of that subsection if –

- (a) the GMOs are imported or exported in a lot together with other living organisms;
- (b) the GMOs are unintentionally mixed with those other living organisms; and
- (c) the percentage of the amount of the GMOs to the total amount of living organisms in the lot does not exceed the prescribed percentage.

(3) If subsection (1) is contravened, the person who imports or exports the GMOs commits an offence and is liable on conviction to a fine at level 3.

(4) In any proceedings for an offence under subsection (1), it is a defence for the person charged to establish that the person did not know and could not with reasonable diligence have known that GMOs were being imported or exported.

(5) For the purposes of subsection (2)(c) –
“prescribed percentage” (), in relation to GMOs falling within subsection (1)(a) or (b), means -

- (a) the percentage prescribed by the Secretary by regulation made under section 46 for the GMOs; or
- (b) if no percentage is prescribed, zero-percent.

6. Notification to Director of certain releases of GMOs

(1) This section applies where a person who has control of a GMO knows that –

- (a) if the GMO is an approved GMO –
 - (i) the GMO has been released into the environment;
and
 - (ii) any condition for the approval of the GMO, as set out in the register, has not been complied with;
- (b) if the GMO is exempted under section 42 from the application of section 5 –
 - (i) the GMO has been released into the environment;
and
 - (ii) any condition for the exemption of the GMO, as set out in the register, has not been complied with; or
- ~~(bc)~~ if the GMO is not an approved GMO and is not exempted under section 42 from the application of section 5 –
 - (i) the GMO has been released into the environment;
and
 - (ii) the GMO is not a pharmaceutical product for use by human beings.

(2) As soon as practicable after the person knows of the release, the person must, by written notice, inform the Director of the release.

(2A) Subsection (2) does not require a person to inform the Director of the release if –

(a) another person also has control of the GMO; and

(b) that other person has informed the Director of the release in compliance with that subsection.–

(3) A person who contravenes subsection (2) commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.

(4) A notice under subsection (2) must contain the information set out in Parts 1 and 2 of Schedule 1.

(5) On receiving a notice under subsection (2), the Director may –

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

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