

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

**List of follow-up actions arising from the discussion
at the meeting on 8 December 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 8 December 2009, which are listed at Appendix I of the letter dated 9 December 2009 from the Bills Committee Secretariat –

- (1) To 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 will retain information in relation to non-disclosure requests for record purpose.
- (2) 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 will be classified as confidential information with reference to Article 21(5) of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.
- (3) 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 clause 20(2)(b) and 21(2)(b) respectively.
- (4) To consider replacing the phrase “a person” in clause 39(1) with “an applicant” if only the latter is allowed to lodge an appeal against the Director’s decision.
- (5) To clarify whether the appeals under clause 39(1) also apply 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 are applicable to the Bill.

Retention of information in relation to non-disclosure requests for record purpose

2. We confirm that the points raised by the Bills Committee 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.

Non-disclosure request

3. We have further considered Members’ request and have revised clause 15(2) as shown in **Annex A**.

Returning to the applicant record or document containing confidential information upon withdrawal of application

4. We have considered Members' requests. We are of the view that so long as we keep the information properly, even if we do not return the confidential information to the applicant upon their withdrawal of the application, our practice would still be consistent with Article 21(5) of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Protocol). We have therefore revised clauses 20(2) and 21(2) accordingly, as shown in **Annex B and C** respectively.

Clause 39 (1)

5. Under clause 39(1), the persons who may lodge an appeal to the Administrative Appeals Board include an applicant under a GMO approval application or variation request (against decisions under clauses 10(1)(a), 11(5)(a), 12(1), 16(3)(a) and directions under clause 12(7)) and a person who has been convicted of an offence under clauses 5, 7 or 23 (against directions under clause 38(3) for disposal of forfeited things). As the persons who may lodge an appeal under clause 39(1) are not limited to applicants under GMO approval applications or variation requests, we have decided not to replace "a person" by "an applicant" in the clause.

Parts of the Administrative Appeals Board Ordinance (Cap. 442) which are applicable to the Bill

6. The appeal provisions under clause 39(1) also apply to any condition attached by the Director to the approval. Clause 39(1) stipulates that "*if a person is aggrieved by a decision under section 10(1)(a).....the person may, within 28 days after receiving note of the decision or direction, appeal to the Administrative Appeals Board against that decision or direction*". Clause 10(1)(a) should be read in conjunction with clause 10(3), which stipulates that the Director, in approving a GMO for release into the environment, may attach any condition that he thinks fits to the approval. The approval conditions form part of the approval to the application, and hence, the appeal provisions under clause 39(1) also apply to the conditions attached by the Director to the approval.

7. The Administrative Appeals Board (the Board) is established under the Administrative Appeals Board Ordinance (AAB Ordinance), Cap. 442. The Board will hear and determine appeals against an administrative decision that falls under its jurisdiction. Clause 51 amends the Schedule to the AAB Ordinance so that the Director's decisions that are set out in the clause would come under the jurisdiction of the Board when the Bill is enacted. The provisions in the AAB Ordinance (including those on the powers of the Board, and procedural requirements on the lodging and hearing of appeals) would apply to appeals lodged against those decisions accordingly.

**Environmental Protection Department
Agriculture, Fisheries and Conservation Department
December 2009**

15. Director's decisions on non-disclosure requests

(1)

(2) The Director may decide not to enter certain proposed confidential information in the register if the Director is satisfied that -

(a) entering the information would adversely affect the applicant's interest;
and

(b) not entering ~~non-disclosure of~~ the information would not be contrary to the public interest.

20. Withdrawal of GMO approval applications or variation requests

- (1) An applicant under a GMO approval application or variation request may, in writing, withdraw the application or request at any time before the Director makes a decision on the application or request.
- (2) If a GMO approval application or variation request is withdrawn under subsection (1), the Director must —
 - ~~(a) — cease to process the application or request; and~~
 - ~~(b) — return to the applicant any record or document, or part of the record or document, containing any confidential information in relation to the application or request.~~

21. Withdrawal of information or document provided

- (1) An applicant under a GMO approval application or variation request may, in writing, withdraw any information or document provided for the purposes of the application or request at any time before the Director makes a decision on the application or request.
- (2) Where any information or document provided for the purposes of a GMO approval application or variation request is withdrawn under subsection (1), the Director must —
 - ~~(a)~~ continue to process the application or request as if the information or document had not been provided; ~~and~~
 - ~~(b)~~ if the information withdrawn is confidential information, return to the applicant any record or document, or part of the record or document, containing the information.