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From : Clerk to the Legislative Council
To : All Members of the Legislative Council

Council meeting on 10 March 2010

Genetically Modified Organisms (Control of Release) Bill

Committee stage amendments

The Second Reading debate on the above Bill will be resumed on 10 March 2010. Subject to the bill receiving a Second Reading, the President has given permission for the Secretary for the Environment to move amendments to the Bill at its Committee stage.

2. As directed by the President, the amendments are attached for Members' consideration.

(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

GENETICALLY MODIFIED ORGANISMS (CONTROL OF RELEASE) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	In the Chinese text, in the definition of “署長”, in paragraph (c), by deleting “漁農自然護理署任何一名” and substituting “任何一名漁農自然護理署”.
3(2)(a)	In the Chinese text, by deleting “在某一設施、裝置或其他實體屏障內進行的作業涉及該生物” and substituting “該生物屬在某一設施、裝置或其他實體屏障內進行的作業所涉及者”.
6(1)	<p>(a) In paragraph (a)(ii), by deleting “or”.</p> <p>(b) By adding –</p> <p>“(aa) if the GMO is not an approved GMO but is exempted under section 42 from the application of section 5 –</p> <p>(i) the GMO has been released into the environment;</p> <p>and</p> <p>(ii) any condition for the exemption of the GMO, as set out in the register, has not been complied with; or”.</p> <p>(c) In paragraph (b), by adding “and is not exempted under section 42 from the application of section 5” after “approved GMO”.</p>

- 6 By adding –
- “(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.”.
- 15(2) By deleting everything after “that” and substituting –
- “–
- (a) entering the information would adversely affect the applicant’s interest; and
- (b) not entering the information would not be contrary to the public interest.”.
- 20(2) By deleting everything after “must” and substituting “cease to process the application or request.”.
- 21(2) By deleting everything after “must” and substituting “continue to process the application or request as if the information or document had not been provided.”.
- New By adding –

“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 requirements for import and export of GMOs

(1) When being imported or exported –

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

must be accompanied by the documents prescribed by regulations made under section 46(1).

(2) Subsection (1) does not require GMOs falling within paragraph (a) or (b) of that subsection to be accompanied by the prescribed documents 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 quantity of the GMOs to the total quantity of living organisms in the lot does not exceed the prescribed percentage.

(3) If subsection (1) is not complied with, the person

who imports or exports the GMOs commits an offence and is liable to a fine at level 3.

(4) In any proceedings for an offence under subsection (3), 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 falling within subsection (1)(a), (b) or (c) were being imported or exported.

(5) In subsection (2)(c) –
 “prescribed percentage” (訂明百分比) means –

- (a) the percentage prescribed by regulations made under section 46(1) for the purposes of that subsection in relation to GMOs falling within subsection (1)(a) or (b); or
- (b) if no percentage is prescribed, 0%.”.

25(2) By deleting “, including in a form other than a documentary form”.

25(3) By deleting everything after “public” and substituting –
 “, free of charge –

- (a) through the Internet; and
- (b) at the office of the Agriculture, Fisheries and Conservation Department during normal business hours.”.

26(3) By deleting everything after “contain” and substituting –
 “–

- (a) any confidential information in relation to a GMO approval application or variation

request; or

- (b) any GMO approval application or variation request, or any information provided for the purposes of the application or request, that has been withdrawn before it is to be entered in the register in accordance with section 13.”.

27 By deleting “or class of public officer” and substituting “of the Agriculture, Fisheries and Conservation Department not below the rank of Field Officer II”.

- 28(1)
- (a) By deleting “has reason to suspect” and substituting “reasonably suspects”.
 - (b) By adding “about” before “to be committed”.

- 28(2)
- (a) By deleting “has reason to suspect” and substituting “reasonably suspects”.
 - (b) By adding “about” before “to commit”.

- 29(1)
- (a) By deleting “has reason to suspect” and substituting “reasonably suspects”.
 - (b) In paragraph (b), by deleting “has reason to believe” and substituting “reasonably suspects”.

- 29(2)
- (a) In paragraph (a), by deleting everything after “used” and substituting “wholly or principally for dwelling purposes; or”.
 - (b) In paragraph (b), by deleting everything after “used” and

substituting “wholly or principally for dwelling purposes.”.

- 30(1)(a) By adding “about” before “to be committed”.
- 30(2) By deleting “A” and substituting “Unless otherwise specified in it, a”.
- 30(3)(a) By adding “at the time specified in the warrant or, if no time is specified,” after “may”.
- 31(1) By deleting “appears to the officer” and substituting “the officer reasonably suspects”.
- 32(1)(a) By deleting “has reason to believe” and substituting “reasonably suspects”.
- 33(1) (a) By deleting “has reason to suspect” and substituting “reasonably suspects”.
- (b) By adding “about” before “to commit”.
- (c) By deleting “this Ordinance” and substituting “section 5, 7, 23, 24B or 40”.
- New By adding immediately after clause 33 –
- “33A. Power to require production of documents related to import or export**
- If an authorized officer reasonably suspects that a GMO is being imported or exported, the officer may, for the purpose of verifying compliance with section 24B, require a

person who has control of the thing suspected to be the GMO to produce any document that is related to the import or export of the thing for inspection.”.

34 In the heading, by deleting “**sell or dispose of certain things immediately**” and substituting “**dispose of certain things**”.

34(1) By deleting everything after “may,” and substituting “after the seizure, dispose of the thing in any way (except by way of sale).”.

34 By deleting subclause (3).

35(1) By deleting “, or any proceeds of sale of that thing are,”.

35(2) By deleting “, or any proceeds of sale of that thing”.

35(3) By deleting “, or any proceeds of sale of that thing”.

35 By adding –

“(4) This section does not apply to a thing seized under section 31 if it has been disposed of under section 34.”.

36 By renumbering the clause as clause 36(1).

36(1) By deleting “, or any proceeds of sale of that thing”.

36 By adding –

“(2) This section does not apply to a thing seized

under section 31 if it has been disposed of under section 34.”.

- 37(1) By deleting “or any proceeds of sale of that thing”.
- 37(2) By deleting “or any proceeds of sale of that thing”.
- 37(3) By deleting “concerned or any proceeds of sale of that thing”.
- 37 By deleting subclauses (4) and (5) and substituting –
“(4) This section does not apply to a thing seized
under section 31 if it has been disposed of under section 34.”.
- 38 In the heading, by deleting “**sell or**”.
- 38(1) By deleting “sell, or dispose of in any other way,” and substituting
“dispose of in any way (except by way of sale)”.
- 38 By deleting subclause (2).
- New By adding immediately after clause 38 –
“38A. Compensation for seizure etc.
(1) Subject to subsection (2), if a thing has been seized
under section 31, the Government is liable to compensate the
owner of the thing for any loss suffered by the owner –
(a) by reason of the seizure; or
(b) by reason that the thing dies, perishes or
deteriorates, or is lost or damaged, during
the time when the thing is seized or

detained.

(2) The owner is not entitled to compensation for the loss if –

- (a) the owner has been convicted of an offence under this Ordinance in relation to the thing; or
- (b) the thing is forfeited to the Government by an order of the court or magistrate under section 35, 36 or 37 (except where the thing is forfeited pursuant to section 37(3)).

(3) In any proceedings against the Government in respect of a claim for compensation on any of the grounds referred to in subsection (1), 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 when it was seized;
- (c) the agents of the persons specified in paragraphs (a) and (b); and
- (d) authorized officers, public officers and other persons concerned.

(4) No proceedings are maintainable in respect of a claim for compensation on any of the grounds referred to in subsection (1) unless the proceedings are commenced –

- (a) in the case of a claim for compensation in respect of any thing that was seized but

subsequently returned to its owner by order of the court or magistrate or by any person having authority to return the thing to the owner, not later than 6 months after the return of the thing;

- (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 of the following is the earlier –
 - (i) the discovery by the owner of the existence of the ground;
 - (ii) the date on which the owner could, by the exercise of reasonable diligence, have discovered the existence of the ground.

(5) A claim for compensation under this section may be made –

- (a) in the Small Claims Tribunal, if the claim is within the jurisdiction of the Tribunal; or
- (b) in the District Court, irrespective of the amount claimed.”.

- 39(1)
- (a) By deleting “a person” and substituting “an applicant under a GMO approval application or variation request”.
 - (b) By deleting “or 38(3), the person” and substituting “, the applicant”.

39 By adding –

“(1A) If a person who is directed under section 38(3) to dispose of a thing is aggrieved by the direction, the person may, within 28 days after receiving notice of the direction, appeal to the Administrative Appeals Board against that direction.”.

39(2) (a) By deleting “person” and substituting “applicant”.

(b) By deleting “that is the subject of the appeal” and substituting “to which the appeal relates”.

39(4) (a) By adding “or (1A)” after “(1)”.

(b) By adding “applicant or” before “person”.

42 By adding –

“(3) The Secretary must not grant an exemption under subsection (1) unless the Secretary is satisfied that the possible adverse biosafety effect that may result from the exemption is acceptable or manageable.”.

43 By deleting subclause (1) and substituting –

“(1) The Secretary must establish an expert group consisting of –

(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) Members are appointed by the Secretary.”.

43(2) By adding “and the granting of exemptions,” after “non-disclosure requests,”.

46(1) (a) By deleting paragraph (a) and substituting –
 “(a) to prescribe the documents required to accompany
 GMOs falling within section 24B(1)(a), (b) or (c) when
 those GMOs are being imported or exported;”.

(b) By adding –
 “(aa) to prescribe the percentage referred to in paragraph (a)
 of the definition of “prescribed percentage” in section
 24B(5);”.

50 By deleting subclause (1).

50(2) By deleting everything before paragraph (b) and substituting –
 “(2) 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,
 before that period expires –
 (a) inform the Director of the maintenance by
 written notice; or”.

50 By adding –
 “(2A) A person who contravenes subsection (2)
 commits an offence and is liable to a fine at level 1.”.

- 50(3)(a) By deleting “released or”.
- 50(4) By deleting “release or”.
- 51 In the proposed item 67, in the Chinese text, by deleting “漁農自然護理署任何一名” wherever it appears and substituting “任何一名漁農自然護理署”.