

立法會
Legislative Council

LC Paper No. CB(1) 460/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/08/2

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

**Minutes of fifth meeting
held on Wednesday, 11 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon Margaret NG
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Tanya CHAN
Dr Hon LEUNG Ka-lau

Member absent : Hon WONG Ting-kwong, BBS, JP

Public officers attending : Environmental Protection Department

Mr Albert LAM
Deputy Director of Environmental Protection (2)

Miss Vivien LI
Senior Administrative Officer (Nature Conservation)

Agriculture, Fisheries and Conservation Department

Mr C C LAY
Assistant Director (Conservation)

Mr Simon CHAN
Senior Conservation Officer (Biodiversity) (Atg)

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Miss Elaine NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 288/09-10 — Minutes of the meeting held on
27 October 2009)

The minutes of the meeting held on 27 October 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 311/09-10(01) — List of follow-up actions arising
from the discussion at the meeting
on 27 October 2009

LC Paper No. CB(1) 311/09-10(02) — Administration's response to
CB(1) 311/09-10(01))

Relevant papers

LC Paper No. CB(3) 624/08-09 — The Bill

Ref: EP 86/21/25 (09) Pt.8 — The Legislative Council Brief
*(issued by the Environmental
Protection Department and the
Agriculture, Fisheries and
Conservation Department on
20 May 2009)*

LC Paper No. LS 77/08-09 — Legal Service Division Report
(issued on 2 June 2009)

LC Paper No. CB(1) 2224/08-09(02) — Assistant Legal Adviser's letter
(issue for the meeting on 13 July 2009) dated 2 July 2009 to the
Administration

LC Paper No. CB(1) 2224/08-09(03) — Administration's response to
(issue for the meeting on 13 July 2009) CB(1) 2224/08-09(02)

LC Paper No. CB(1) 2646/08-09(09) — Assistant Legal Adviser's letter
(*issued for the meeting on* dated 31 July 2009 to the
8 October 2009) Administration

LC Paper No. CB(1) 2646/08-09(10) — Administration's response to
(*issued for the meeting on* CB(1) 2646/08-09(09)
8 October 2009)

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) consider specifying clearly in the proposed Committee Stage amendments to clause 43(1) that apart from official representatives, all other members of the expert group were from non-governmental organizations;
 - (b) advise whether the proposed documentation requirements in relation to import and export of genetically modified organisms (GMOs) for different purposes were strict liabilities, and whether a defence provision would be included to ensure that no one would be unnecessarily caught; and
 - (c) consider specifying in clause 6(2) that notification of the release of a GMO by any one of the persons who had control of a GMO would suffice.
4. The Chairman noted that the objective of the Bill to give effect to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Protocol) was clearly spelt out in the long title of the Bill. However, such objective was not spelt out in other legislation of similar nature, such as the Bunker Oil Pollution (Liability and Compensation) Bill. To ensure consistency in making reference to international conventions in long titles of bills, the Clerk was requested to refer the issue to the Panel on Administration of Justice and Legal Services for necessary follow up.
5. Members agreed to continue discussion on the Bill at the next meeting scheduled for Monday, 30 November 2009, at 8:30 am.

III. Any other business

6. There being no other business, the meeting ended at 10:30 am.

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

**Proceedings of the fifth meeting
on Wednesday, 11 November 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000001 - 000247	Chairman	The minutes of the meeting held on 27 October 2009 (LC Paper No. CB(1) 288/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000248 - 001559	Administration Chairman Ms Cyd HO	<p>Administration's explanation on its response to the list of follow-up actions arising from the discussion at the meeting on 27 October 2009 (LC Paper No. CB(1) 311/09-10)(02)).</p> <p>Discussion on the composition of the expert group.</p> <p>Ms Cyd HO's view that it should be set out clearly in the Bill that members of the expert group appointed from the environmental protection sector should be representatives from green groups and not government officials.</p> <p>Administration's explanation that environmental protection sector referred to environmental non-governmental organizations and as stated in paper (LC Paper No. CB(1) 2646/08-09(08)), members of the expert group would comprise both government officials and experts from various sectors.</p>	The Administration to consider specifying clearly in the proposed Committee Stage amendments to clause 43(1) that apart from official representatives, all other members of the expert groups were from non-governmental organizations.
001600 - 001905	Administration	Administration's explanation on the exemption under clause 42 of the Bill.	
001906 - 004800	Chairman Administration Ms Cyd HO	<p>Administration's explanation on the documentation requirements in relation to import and export (I/E) of genetically modified organisms (GMOs) for different purposes.</p> <p>Chairman's concern whether there was a defence for persons who unknowingly imported/exported GMOs.</p>	The Administration to advise whether the proposed documentation requirements in relation to I/E of GMOs for different purposes were strict liabilities, and whether a defence provision would be

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		<p>Administration's response -</p> <p>(a) it was still considering whether the proposed documentation requirements in relation to I/E of GMOs for different purposes were strict liabilities, and whether a defence provision should be included;</p> <p>(b) the trades were well aware of the requirements in relation to I/E of GMOs as these were also adopted in other jurisdictions which were Parties to the Protocol; and</p> <p>(c) stakeholders would be consulted on the proposed subsidiary legislation on detailed requirements on the documentation to accompany GMOs for intended food or feed or for processing, for contained use and for release into the environment. The subsidiary legislation concerned would be subject to the negative vetting procedure.</p>	<p>included to ensure that no one would be unnecessarily caught.</p>
004801 - 005445	Chairman Administration	<p>Clause-by-clause examination of the Bill</p> <p>Long title of the Bill</p> <p>Chairman's concerns -</p> <p>(a) the objective of the Bill to give effect to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Protocol) was clearly spelt out in the long title, but this was not the case in other legislation of similar nature, such as the Bunker Oil Pollution (Liability and compensation) Bill; and</p> <p>(b) need to explain the criteria for making reference to international conventions in long titles to bills.</p> <p>Administration's response -</p> <p>(a) there was no hard and fast rule in making reference to international conventions in long titles to bills;</p> <p>(b) reference to international conventions in long titles to bills would depend on a</p>	<p>The Clerk to refer the subject on the need for consistency in making reference to international conventions in long titles to bills to the Panel on Administration of Justice and Legal Services for follow up.</p>

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		<p>number of factors, including –</p> <ul style="list-style-type: none"> (i) the extent to which the bills were related to the international conventions; (ii) whether the international conventions were to be implemented by “direct approach” (the local legislation would declare the Convention text to have the force of law); and (iii) whether the conventions only set out broad principles and whether a lot of adaptations were required in local legislation. 	
005446 - 005514	Chairman Administration	<p>Clause 1 - Short title and commencement</p> <p>Members noted that the Bill was expected to come into operation in early 2010.</p>	
005515 - 013644	Chairman Administration	<p>Clause 2 - Interpretation</p> <p>"authorized officer" - Members noted that Committee Stage amendments (CSA) would be made to clause 27 to specify the ranking of authorized officer.</p> <p>"confidential information" - Members noted that confidential information mainly referred to business information of a confidential nature e.g. patented materials.</p> <p>"GMO" - Members noted that the Bill used the term GMO instead of "living modified organism" in the Protocol because the former stated the nature of the organisms more explicitly and was widely used in domestic legislation around the world.</p>	ALA5 to advise whether the provisions on confidentiality in the Bill were consistent with that in the Protocol.
013645 - 014219	Chairman Administration	<p>Clause 3 - Meanings of "released into environment" and "contained use"</p> <p>It was accepted that the revised Chinese version of clause 3(2)(a) as set out in LC Paper No. CB(1) 311/09-10(02) was better than the original one. As it would be difficult to determine the wording for the clause on the spot, deference was given to the drafters.</p>	

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014220 - 014830	Chairman Administration ALA5	Clause 4 - Ordinance applies to Government Members examined various environment-related legislation in Annex B to LC Paper No. CB(1) 2224/08-09(03) which had similar provisions.	
014831 - 015234	Chairman Administration	Part 2 - Release of GMOs into environment and import of GMOs intended for release Clause 5 - Restrictions on release into environment and maintenance of lives of GMOs	
015235 - 020100	Chairman ALA5 Ms Cyd HO Administration	Clause 6 - Notification to Director of certain releases of GMOs Members' enquiry on the circumstances under which a person was deemed to have "control" of GMOs. Administration's explanation - (a) "control" would mean exercising power or influence over; (b) a person would be deemed to have "control" of a GMO if he had actual possession, ownership or right to possess/own a GMO, and could exercise power or influence over the GMO concerned. The Administration indicated that a new clause 6(1)(c) would be introduced to impose notification requirement if an exempted GMO was released into the environment without complying with any of the conditions for exemption. ALA5's enquiry on whether all persons who had control of a GMO would be required to make a notification on the release of the GMO concerned.	The Administration to consider specifying in clause 6(2) that notification of the release of a GMO by any one of the persons who had control of a GMO would suffice.
020101 - 020150	Chairman	Date of next meeting	