

立法會
Legislative Council

LC Paper No. CB(1) 863/09-10
(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 eighth meeting
held on Monday, 21 December 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon WONG Ting-kwong, BBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon Tanya CHAN

Member absent : Dr Hon Margaret NG
Hon CHAN Hak-kan
Dr Hon LEUNG Ka-lau

Public officers attending : Environmental Protection Department

Mr Vincent TANG
Assistant Director
(Nature Conservation & Infrastructure Planning)

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) 724/09-10 — Minutes of the meeting held on
30 November 2009)

The minutes of the meeting held on 30 November 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 726/09-10(01) — List of follow-up actions arising
from the discussion at the meeting
on 8 December 2009

LC Paper No. CB(1) 726/09-10(02) — Administration's response to
CB(1) 726/09-10(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
LC Paper No. LS 77/08-09 — Legal Service Division Report
LC Paper No. CB(1) 2224/08-09(02) — Assistant Legal Adviser's letter
dated 2 July 2009 to the
Administration

LC Paper No. CB(1) 2224/08-09(03) — Administration's response to
CB(1) 2224/08-09(02)

LC Paper No. CB(1) 2646/08-09(09) — Assistant Legal Adviser's letter
dated 31 July 2009 to the
Administration

LC Paper No. CB(1) 2646/08-09(10) — Administration's response to
CB(1) 2646/08-09(09)

LC Paper No. CB(1) 488/09-10(01) — List of follow-up actions arising
from the discussion at the
meeting on 11 November 2009

LC Paper No. CB(1) 488/09-10(02) — Administration's response to
CB(1) 488/09-10(01)

LC Paper No. CB(1) 583/09-10(01) — List of follow-up actions arising
from the discussion at the
meeting on 30 November 2009

LC Paper No. CB(1) 583/09-10(02) — Administration's response to
CB(1) 583/09-10(01))

2. The Bills Committee deliberated (Index of proceedings attached in **Annex**).
3. The Administration was requested to -
 - (a) review and amend Parts 5 and 6 of the Bill since the matters to be regulated by the Bill might be different from those covered by the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586), the basis from which the relevant provisions were modelled after. To also respond to the following concerns on individual clauses -
 - (i) clause 26(3) as drafted might pre-empt future amendments to the confidentiality of information. Consideration might be given to deleting the clause and if not, there might be a need to include in the clause the different time frames for various requests, and the condition that not entering the information would not be contrary to the public interest;
 - (ii) the criterion of "critical condition" should be expressly provided in clauses 28 and 29 to justify the power to search without warrant;
 - (iii) consideration should be given to replacing the word "exclusively" under clause 29(2)(b) with "mainly" as it might be difficult to identify premises used exclusively as a dwelling house;
 - (iv) "reasonable grounds" or phrases to this effect should be used to replace the word "reason" in clauses 28, 29, 32 and 33 to more accurately reflect the legislative intention, and to ensure consistency with clause 30(1);
 - (v) clause 30(2) as drafted had pre-empted the magistrate to specify the duration of, time and/or date for the execution of a search warrant. Consideration should be given to amending the clause leaving these matters to the magistrate who issued the warrant;
 - (vi) clause 31(1) might have conferred an authorized officer extensive power to seize, remove and detain any thing that appeared to be or to contain evidence of the commission of an offence. To advise whether similar provisions could also be found in other ordinances, apart from Cap. 586;
 - (vii) the scope of clause 33 should be confined to an offence under clauses 5, 7 or 23. Consideration should also be given to combining clauses 28 and 33; and
 - (viii) the rationale for empowering the Director to sell certain things immediately after seizure under clause 34, which might run

contrary to the objective of the Bill to control release of genetically modified organisms into the environment.

- (b) review clause 39 to clarify the Administration's intention on the identity of an aggrieved person, other than an applicant, who would have the right to appeal to the Administrative Appeal Board.
- (c) provide the wordings of the undertakings which the Secretary for the Environment would deliver at the resumption of the Second Reading debate on the Bill.

4. Members agreed to continue discussion on the Bill at the next meeting scheduled for 6 January 2010 at 8:30 am.

(Post-meeting note: With the concurrence of the Chairman, two additional meetings had been scheduled for 14 and 21 January 2010.)

III. Any other business

5. There being no other business, the meeting ended at 10:40 am.

Council Business Division 1
Legislative Council Secretariat
11 January 2010

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

**Proceedings of the eighth meeting
on Monday, 21 December 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
001038 - 001111	Chairman	Confirmation of minutes of meeting on 30 November 2009 (LC Paper No. CB(1) 724/09-10).	
001112 - 001709	Chairman Administration	Administration's explanation on its response to the list of follow-up actions at the meeting on 8 December 2009 (LC Paper No. CB(1) 726/09-10(02)).	
001709 - 002739	Ms Cyd HO Chairman ALA5 Administration	<p>Discussion on clause 39(1) on the person who had the right to appeal to the Administrative Appeal Board (AAB).</p> <p>Chairman's concerns that clause 39(1) as drafted was not clear about who should have the right of appeal. The aggrieved person referred to in the clause could be anyone, such as an affected neighbour or a green group.</p> <p>Administration's explanation -</p> <p>(a) the persons who might appeal under clause 39(1) included an applicant of a GMO approval application/variation request who was aggrieved by a decision under clauses 10(1)(a), 11(5)(a), 12(1), 16(3)(a) or a person aggrieved by a direction under clause 12(7) or 38(3), and a person who was convicted of an offence under clauses 5, 7 or 23;</p> <p>(b) the person referred to might appeal to AAB within 28 days after receiving notice of the decision/direction;</p> <p>(c) the right to appeal under clause 39(1) was consistent with that</p>	The Administration to review clause 39 to clarify its intention on the identity of an aggrieved person, other than an applicant, who would have the right to appeal to AAB

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		<p>under the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Protocol) which was applicable to many member countries. Deviation from the international practice, such as extending the right of appeal to any aggrieved party, might give rise to operational difficulties in the import/export of genetically modified organisms (GMOs); and</p> <p>(d) green groups concerning about the impacts of GMOs on the environment could convey their views to the expert group which would advise on the proper control over GMOs.</p> <p>ALA5's views that clause 39(1) as drafted appeared to refer to a person aggrieved by the decision/ direction and such person might not necessarily be confined to the recipient of the notice.</p> <p>Ms Cyd HO's opinions that given the far-reaching implications of the release of GMOs to the environment, the right of appeal to AAB should apply to all parties, including an affected neighbour or a green group, so long as they were aggrieved by a decision/direction, similar to the statutory process in the development of major infrastructure projects. Hence, she would object to clause 39(1) as drafted from a policy point of view.</p>	
002740 - 003243	Chairman Administration	Chairman's request for the Administration to provide the wordings of the undertakings which the Secretary for the Environment (SEN) would deliver at the resumption of the Second Reading debate on the Bill.	The Administration to provide the wordings of the undertakings which SEN would deliver at the resumption of the Second Reading debate on the Bill.

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003244 - 003949	Chairman ALA5 Administration Ms Cyd HO	<p>Continuation of clause-by-clause examination of the Bill.</p> <p>Examination of clauses 24A and 24B pertaining to new Part 3A on documentation requirements for import and export of GMOs (Annex B to LC Paper No. CB(1) 488/09-10(02)).</p> <p>In response to members' question, the Administration advised that the percentage prescribed by SEN by regulation made under section 46 for GMOs would be subject to the negative vetting procedures.</p>	
003950 -005505	Chairman Administration Ms Cyd HO Mr KAM Nai-wai	<p>Part 4 - Register</p> <p>Clause 25 - Director must establish and maintain register</p> <p>Administration's explanation that the proposed amendment to clause 25 as set out in Annex B to LC Paper No CB(1) 583/09-10(02) had taken into account members' view on the need to upload the register onto the Internet.</p> <p>Clause 26 - Contents of register</p> <p>Administration's explanation that a new clause 26(3)(b) would be added to provide that the register would not contain GMO approval applications, variation requests and submitted information that had been withdrawn before they were entered in the register.</p> <p>Ms Cyd HO's query on the need to set out in clause 26(3) that the register "must not contain any confidential information" in relation to a GMO application or variation request as this might pre-empt future amendments to the confidentiality of information.</p> <p>Administration's explanation -</p> <p>(a) the requirement for protection of confidential information was set out in Article 21 of the Protocol; and</p>	<p>Clause 26(3) as drafted might pre-empt future amendments to the confidentiality of information.</p> <p>Consideration might be given to deleting the clause and if not, there might be a need to include in the clause the different time frames for various requests, and the condition that not entering the information would not be contrary to the public interest.</p>

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		<p>(b) clause 26(3) served to reiterate clause 15(2) which provided that confidential information under a non-disclosure request would not be entered in the register if this would not be contrary to public interest. Clause 26(3) did not add any new rule on the treatment of “confidential information”.</p> <p>Chairman's concern about the different timeframes associated with GMO applications/variation requests.</p> <p>Mr KAM Nai-wai's request to set out in clause 26(3) the condition that not entering the information would not be contrary to the public interest.</p>	
005506 - 010439	<p>Chairman Administration Mr WONG Ting-kwong Ms Cyd HO Mr KAM Nai-wai ALA5</p>	<p>Part 5 - Enforcement</p> <p>Clause 27 - Appointment of authorized officers</p> <p>Clause 28 - Powers to search vessels, detain persons etc.</p> <p>Mr WONG Ting-kwong's enquiries/concerns -</p> <p>(a) whether military vehicle or aircraft would include private vehicle or aircraft hired by the army;</p> <p>(b) need to qualify the "reason" under clause 28(2); and</p> <p>(c) whether the "property of the person" referred to in clause 28(2)(a) included data stored in computers.</p> <p>Administration's response -</p> <p>(a) military vehicle or aircraft would include those used for military purpose;</p> <p>(b) “reasonable grounds” or phrases to this effect would be used to replace the word “reason”; and</p>	<p>The Administration to consider using “reasonable grounds” or phrases to this effect to replace the word “reason” in clauses 28, 29, 32 and 33 so as to more accurately reflect the legislative intention, and to ensure consistency with clause 30(1).</p>

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		(c) "property of the person" would include computers.	
010440 - 011810	<p>Chairman Ms Cyd HO Administration Mr KAM Nai-wai ALA5</p>	<p>Chairman's concerns -</p> <p>(a) the power of search without warrant conferred upon authorized officers under Part 5 of the Bill could be exercised not only in control points, but at other premises as well; and</p> <p>(b) it might be difficult to ascertain what should be regarded as "any premises that were used exclusively as a dwelling house" under clause 29(2).</p> <p>Mr KAM Nai-wai's concern about the powers of search and detention under clause 28(1).</p> <p>Administration's response -</p> <p>(a) the power of search without warrant was necessary, without which the control on the import and export of living organisms could not be effectively enforced;</p> <p>(b) there would be clear guidelines on the enforcement of the Bill for staff from the Agriculture, Fisheries and Conservation Department who stationed at control points for enforcing control on the import and export of living organisms, including GMOs and endangered species; and</p> <p>(c) the enforcement provisions of the Bill were modeled after that under the recently enacted Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). Given that the matters to be regulated under the Bill might be different from those under Cap. 586, the enforcement provisions of the Bill would be reviewed.</p>	<p>The Administration to -</p> <p>(a) review and amend Parts 5 and 6 of the Bill since the matters to be regulated by the Bill might be different from those covered by the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586), the basis from which the relevant provisions were modelled after; and</p> <p>(b) consider replacing the word "exclusively" under clause 29(2)(b) with "mainly" as it might be difficult to identify premises used exclusively as a dwelling house.</p>

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011811 - 012204	ALA5 Chairman Administration	<p>ALA5's enquiries on the different powers conferred upon authorized officers in the enforcement provisions under Part 5 of the Bill.</p> <p>Administration's response -</p> <p>(a) the power of search without warrant would only be exercised in critical cases ;</p> <p>(b) if time allowed, authorized officers would apply for warrants when exercising the power of search; and</p> <p>(c) clear guidelines on enforcement would be provided in the operational manual.</p>	<p>The Administration to provide the criterion of "critical condition" in clauses 28 and 29 to justify the power to search without warrant.</p>
012205 - 014229	Chairman Administration Mr WONG Ting-kwong Ms Cyd HO ALA5	<p>Clause 33 - Power to require identification</p> <p>Ms Cyd HO's queries/views -</p> <p>(a) the need for a separate clause 33 to empower authorized officers to require identification when clause 28 had already provided them with the power to search and detain; and</p> <p>(b) the scope of clause 33 should be confined to an offence under clauses 5, 7 or 23 to avoid abuse of power</p> <p>Mr WONG Ting-kwong's enquiry on whether it was a common practice in other ordinances, apart from Cap. 586, to provide a separate section for power to require identification</p> <p>ALA5's views -</p> <p>(a) the power of search and detention under clause 28 could be exercised if there was reason to suspect that an offence was committed under clauses 5,7 or 23; and</p>	<p>The Administration to consider -</p> <p>(a) confining the scope of clause 33 to an offence under clauses 5, 7 or 23; and</p> <p>(b) combining clauses 28 and 33.</p>

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		<p>(b) the power to require identification under clause 33 could be exercised if there was reason to suspect that an offence had been committed under the Bill.</p> <p>Chairman's request that consideration be given to combining clauses 28 and 33</p> <p>Administration's response -</p> <p>(a) the enforcement provisions under Part 5 of the Bill were modelled after Cap. 586, both of which were meant to protect biodiversity;</p> <p>(b) explicit provisions to require identification were necessary in addition to the power to search and detain; and</p> <p>(c) care would be taken in exercising the power to require identification.</p>	
014230 - 014818	<p>Mr WONG Ting-kwong ALA5 Chairman Administration Ms Cyd HO</p>	<p>Clause 30 - Power to enter and search place or premises on issue of warrant</p> <p>Mr WONG Ting-kwong and Ms Cyd HO's concerns about the extensive power of authorized officers with a warrant who could enter and search any premises at any time using necessary force.</p> <p>ALA5 pointed out that clause 30(2) as drafted had pre-empted the magistrate to specify the duration of, time and/or date for the execution of a search warrant.</p>	<p>Clause 30(2) as drafted had pre-empted the magistrate to specify the duration of, time and/or date for the execution of a search warrant.</p> <p>Consideration should be given to amending the clause leaving these matters to the magistrate who issued the warrant.</p>
014818 - 015630	<p>Chairman Ms Cyd HO Administration Mr WONG Ting-kwong</p>	<p>Clause 31 - Powers to seize, remove and detain</p> <p>Chairman's concern about the extensive power conferred upon an authorized officer to seize, remove and detain any thing that appeared to be or to contain evidence of the commission of an offence.</p>	<p>Clause 31(1) might have conferred an authorized officer extensive power to seize, remove and detain any thing that appeared to be or to contain evidence of the commission of an offence. To advise whether similar</p>

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		<p>Ms Cyd HO's enquiry on whether similar provisions could be found in other ordinances, apart from Cap. 586.</p> <p>Mr WONG Ting-kwong's enquiries -</p> <p>(a) whether the Government would be held liable for civil claims under clause 31(2); and</p> <p>(b) whether a list and a receipt of the things seized would be issued to the person concerned and if so, whether such requirement would be set out in the Bill.</p> <p>Administration's explanation -</p> <p>(a) the Government would be liable for civil claims under clause 31(2); and</p> <p>(b) a record on the list of things seized would be kept. Reference would be made to other legislation on whether such record was an administrative or legislative requirement.</p>	<p>provisions could also be found in other ordinances, apart from Cap. 586.</p>
<p>015631 - 020539</p>	<p>Chairman Administration Ms Cyd HO Mr WONG Ting-kwong</p>	<p>Part 6 - Disposal and forfeiture of things seized</p> <p>Clause 34 - Director's power to sell or dispose of certain things immediately after seizure</p> <p>Ms Cyd HO's concern about the rationale for empowering the Director to sell certain things immediately after seizure under clause 34, which might run contrary to the objective of the Bill to control release of GMOs into the environment.</p> <p>Mr WONG Ting-kwong's views -</p> <p>(a) the things seized should be returned to the owner if their release would not affect the environment;</p>	<p>The Administration to explain the rationale for empowering the Director to sell certain things immediately after seizure under clause 34, which might run contrary to the objective of the Bill to control release of GMOs into the environment.</p>

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		<p>(b) the Administration should arrange for proper disposal of the things seized if their release would affect the environment; and</p> <p>(c) in any case, the Administration should not sell the things seized as this would not be fair to the owner.</p> <p>Administration's explanation -</p> <p>(a) arrangements would be made to sell or dispose the things seized if it was not practicable for the Director to keep them; and</p> <p>(b) it would be for the court or magistrate to decide on the manner in which the things seized should be handled.</p>	
020540 - 020710	Chairman Administration	Chairman's view that additional meetings should be held in January 2010 to discuss the Bill.	