立法會
Legislative Council

LC Paper No. CB(1) 1060/09-10

Ref : CB1/BC/6/08

Paper for the House Committee meeting on 5 February 2010

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

Purpose

This paper reports on the deliberations of the Bills Committee on Genetically Modified Organisms (Control of Release) Bill (the Bills Committee).

Background

2. Genetically modified organism (GMO) refers to any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology. The Cartagena Protocol on Biosafety (the Protocol) under the Convention on Biological Diversity (the Convention) was adopted in 2000 to provide for the safe transfer, handling and use of GMOs that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health. There are currently over 190 Parties to the Convention, including China, but the Convention has yet to be extended to Hong Kong. According to the Convention, a party may not participate in a protocol unless it is, or becomes at the same time, a party to the Convention. Hence, the Protocol cannot be extended to Hong Kong unless the Convention is applicable to Hong Kong.

3. According to Article 153 of the Basic Law, the application of international agreements, to which the People's Republic of China is or becomes a party, to the Hong Kong Special Administrative Region (HKSAR) shall be decided by the Central People's Government (CPG) in accordance with the circumstances and needs of HKSAR, and after seeking the views of the HKSAR Government. The Convention and the Protocol are important international agreements on protection of biological diversity and global sustainable development. Their extension to Hong Kong can reinforce Hong Kong's commitment in cooperating with the international community to protect the natural environment. Moreover, as an international city, Hong Kong is expected to share similar international obligations relating to the protection and sustainable use of biological diversity. It also needs to follow the Protocol's

requirements where its trading partners have joined the Protocol. Hence, the Administration has obtained the agreement-in-principle of CPG to extend the application of both the Convention and the Protocol to Hong Kong, subject to the passage of the proposed legislation

4. According to the Administration, the existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention. The only major area in the Convention on which further measures have to be developed is the regulation, management and control of the risks associated with the use and release of GMOs into the environment. The Convention and the Protocol cannot be extended to Hong Kong unless these measures are put in place. Therefore, a new piece of legislation is required to provide the legal basis for the requirements set out in the Protocol in relation to the regulation of GMOs. Subject to the passage of the proposed legislation, and upon completion of other necessary preparatory work, the Administration will request CPG to complete the formalities on the extension.

The Bill

5. The object of the Bill is to give effect to the Protocol, control the release of GMOs into the environment, control the import and export of GMOs, as well as provide for incidental and related matters.

The Bills Committee

6. At the House Committee meeting held on 5 June 2009, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Audrey EU Yuet-mee, the Bills Committee has held 11 meetings. The membership list of the Bills Committee is in **Appendix I**. Apart from examining the Bill with the Administration, the Bills Committee has also invited views from the trade and related sectors. Eight groups have made written and/or oral representation to the Bills Committee. A list of these groups is in **Appendix II**.

Deliberations of the Bills Committee

7. The Bills Committee generally supports the policy intent of the Bill. In the course of deliberation, members have examined issues relating to reference to international conventions in long titles of bills, prevalence of GMOs in Hong Kong, adventitious presence of GMOs, restrictions on release of GMOs into the environment, approval of GMOs, entry of information and decisions on GMO approval applications and variation requests in register, register, enforcement, disposal and forfeiture of thing seized, miscellaneous provisions, transitional provisions and schedules.

Reference to international conventions in long titles of bills

8. The Bills Committee has noted that the object to give effect to the Protocol is clearly spelt out in the long title of the Bill. However, this may not be the case in other bills that relate to international conventions, such as the Bunker Oil Pollution (Liability and Compensation) Bill. Some members have enquired about the criteria for making reference to international conventions in long titles of bills. According to the Administration, there is no hard and fast rule in making reference to international conventions in long titles of bills. Factors, including the extent to which the bills are related to the international conventions, whether the international conventions are to be implemented by "direct approach" (i.e. the local legislation will declare the convention text to have the force of law), whether the conventions only set out broad principles, and whether a lot of adaptations are required in local legislation, will be taken into account. While acknowledging the Administration's explanation, the Bills Committee remains of the view that there is a need for consistency in making reference to international conventions in long titles of bills. The subject has been subsequently referred to the Panel on Administration of Justice and Legal Services for follow up.

Prevalence of GMOs in Hong Kong

9. The Bills Committee has enquired if the Administration has conducted any research to ascertain the presence of GMOs in Hong Kong before formulating the Bill. According to the Administration, a preliminary survey for the presence of GMOs in various imported and locally grown crops from local markets and farm has been conducted during the period from December 2008 to February 2009. Over 200 samples of 23 types of crops representing different brands and sources have been collected from local markets to test for the presence of GM traits. The outcome of the survey has revealed that only some papayas and a small amount of soybeans are tested positive as genetically modified. For papaya fruits, about half of the samples and 70% home-grown papaya plants are genetically modified. All GM soybeans are intended to be used as food, feed or processing (FFP) only. It is also found that there are some GMOs produced/used in laboratories of local research institutes but they are mostly for contained use. Overall, except for home-grown papaya, GMO is not considered to be of widespread presence in Hong Kong. Since the outcome of the survey is quite different from the public perception that GMOs are quite common in Hong Kong nowadays, the Administration is requested to set out in the speech to be delivered by the Secretary for the Environment (SEN) at the resumption of Second Reading debate on the Bill the research done so far.

Adventitious presence of GMOs

10. In view of the seed trade's concern about possible contamination of traditional seeds for growing with GM seeds through unintentional mixing (such as cross-pollination of GM crops with non-GM crops, seed spillages during harvesting and grain residues left in a harvester etc.), the Bills Committee has enquired about the need for a threshold on adventitious presence of GMOs.

11. According to the Administration, mixing of products from different sources, including GM varieties, is inevitable in commercial agricultural production, storage and transportation of agriculture produces. Therefore, adventitious thresholds are set for non-GMO-FFP in some countries, such as European Union (0.9%), South Korea (3%), Thailand (5%) and Japan (5%). Taking into account the small scale of local agricultural industry and the fact that most non-GMO-FFP are not grown in Hong Kong, it is recommended that the adventitious threshold for non-GMO-FFP to be set at 5%. In other words, if the percentage of GMOs in a shipment of agricultural produces for FFP exceeds 5%, the shipment must be accompanied by documents identifying the presence of GMOs. The proposed threshold reflects a pragmatic and realistic level for the Administration to manage the possible risks to biological diversity, and the trade to comply with. The same level has also been adopted in some overseas countries, such as Japan and Thailand. However, a zero tolerance of adventitious presence of GMOs is recommended for seeds intended to be released to the environment. This is because if seeds have GMOs mixed with them and are released into the environment, they may have potential adverse impacts on the local biodiversity. The zero tolerance level is also adopted by the Mainland and other countries, including European Union and South Korea. Notwithstanding, the Administration will keep in view the latest development in the international arena to ensure that the relevant requirements are in line with those of the Protocol and standards recommended by the International Seed Federation.

Restrictions on release of GMOs into the environment

Meanings of "released into environment" and "contained use"

12. Clause 3 of the Bill provides that a GMO is released into the environment if it is not in contained use, and it is exposed to a condition in which it may grow or reproduce. A GMO is in contained use if it is involved in an operation that is undertaken within a facility, installation or other physical barrier, and it is controlled by specific measures that effectively limits its contact with and impact on the environment.

13. According to the Administration, examples of contained use of GMOs include the culture of GM micro-organisms in sealed vessels, storage and use of GMOs in laboratories or warehouses, keeping of GM animals inside cages in a laboratory, rearing of aquarium fish in an indoor aquarium, and the growing of GM plants in greenhouses etc. The Bills Committee has questioned how local institutions can ensure that a GMO involved in an operation is in contained use. The Administration's explanation is that the level of containment required varies according to the risk and the type of GMOs involved. Under normal circumstances, the routine operation and biosafety/containment measures (e.g. inside sealed containers) being adopted in laboratories of local institutions could effectively limit the contact of the experimenting organisms with the external environment. Therefore, researches undertaken in laboratories with appropriate biosafety/containment measures would generally be considered as contained uses. Growing of GM plants inside growth

chambers would also be considered as contained use if the growth chamber could act as an effective physical barrier to prevent the GM plants growing inside from coming into contact with the external environment. GM plants growing inside greenhouses should be equipped with effective physical barriers to prevent insect pollinators from visiting the GM plants growing inside if the GM plants are insect-pollinated. For this purpose, the institution may cover the greenhouse with nets or cover the whole plant or the flowers with nets/plastic bags. A filtering system in the ventilation system may also be necessary to prevent any pollen from escaping into the external environment in case wind-pollinated GM plants are grown in an enclosed greenhouse.

Notification to Director of certain releases of GMOs

14. Clause 6 of the Bill requires a person who has control of a GMO (other than one that is pharmaceutical product for use by human beings) to report to the Director if the person knows that the GMO concerned has been released into the environment under certain prescribed circumstances.

15. The Bills Committee has sought elaboration on the situations where a person is deemed to have control of a GMO. According to the Administration, "control" would mean "exercising power or influence over". A person would be deemed to have control of a GMO if he has actual possession, ownership or right to possess/own a GMO, and could exercise power or influence over the GMO concerned. Some members have expressed concern that the provision as drafted might imply that all persons who have control of a GMO would need to notify the Director of the release of the GMO. In the light of members' concern, the Administration would move a Committee Stage amendment (CSA) to the effect that a person is not required to inform the Director of the release if another person who also has the control of the GMO concerned has informed the Director of the release.

Restrictions on import of GMOs intended for release into environment

16. Clause 7 of the Bill sets out the conditions that must be met before GMOs which are intended for release into the environment may be imported. However, the restrictions on import do not apply to GMOs that are in transit or transshipment, intended for direct consumption as FFP, or pharmaceutical products for use by human beings.

17. The Bills Committee has enquired whether approval is required for the import of a GMO intended for release into the environment. According to the Administration, the Bill provides that a person must not knowingly import a GMO that is intended for release into the environment unless the GMO concerned is an approved GMO. "Approved GMO" is defined in the Bill as a GMO that is approved for release into the environment by a decision of the Director or the Administrative Appeal Board (AAB) as appropriate. The Bill also sets out in detail the requirements on an application for approval. Therefore, it is clear that a GMO that is intended for release into the environment must have been approved. To facilitate traders to

understand the application requirements, the Administration will set out these requirements in clear and laymen terms in the guidelines on the legislative requirements of the Bill for stakeholders.

18. Some members have also enquired about the need to report to the Director in the event that a GMO is lost in transit or transshipment. According to the Administration, the main concern in the case where a GMO is lost in transit or transshipment is the unintentional release of the GMO concerned into the environment. While the restrictions on import of GMOs intended for release into the environment do not apply to a GMO that is in transit or transshipment in accordance with the Protocol, the Bill requires a person who has control of a GMO to report to the Director if the person knows that the GMO concerned has been released into the environment under certain prescribed circumstances. In case the lost GMO is found to be released under such circumstances, the person has to report to the Director of the release so that the Director can either direct an authorized officer or the person to properly dispose of the GMO concerned.

Approval of GMOs

Acknowledgement of receipt of GMO approval applications and approval of GMOs

19. Clause 9 of the Bill provides that the Director must issue a written acknowledgment to the applicant within 90 days after receiving a GMO approval application, and clause 10 provides that the Director must decide whether the GMO concerned is approved for release into the environment, and give a written notice of the decision to the applicant within 270 days after receiving the GMO approval application.

20. Some members have expressed concern about the long lead time for approval of GMO applications, particularly the 90-day period for acknowledging receipt of an application. The Administration has explained that the different time frames under the Bill are set according to the Protocol. In practice, written acknowledgment would be issued to applicants in an expeditious manner and in any case less than 90 days as specified in the Bill. A performance pledge to this effect would be spelt out in the guidelines as well as in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill. At members' request, the Administration has provided two flow charts illustrating the regulations on GMOs in Hong Kong and the approval application process (Annex A and B to LC Paper No. CB(1) 583/09-10(02)).

Variation of decisions on GMO approval applications or variation requests on Director's own initiative

21. Clause 12 of the Bill empowers the Director to vary his/her prior decision on a GMO approval application or variation request if there is a change in circumstances, or additional scientific or technical information, that may influence the Director's assessment on the possible adverse biosafety effect of the GMO concerned, or if the

Director considers it in the public interest to do so. If the approval of a GMO has been revoked and the GMO concerned has been released under the approval, the applicant under the GMO approval application must inform the Director of the release. The Bill also empowers the Director to give directions on the safekeeping or disposal of a GMO or any container containing the GMO concerned if the approval of which has been revoked.

22. Some members have opined that there may be a need to provide specifications for containers of GMOs to prevent inadvertent release into the environment. According to the Administration, it will provide in the guidelines recommended requirements for storing GMOs, particularly for GMOs intended for FFP, with a view to reducing their risk of being inadvertently released into the environment. It is also worth noting that when applying for approval of a GMO for release into the environment, the applicant needs to submit, inter alia, suggested method for storage of the GMO concerned. When approving a GMO for release into the environment, the Director may also attach specific conditions on how the GMO concerned should be stored or contained taking into account the need of each case.

Entry of information and decisions on GMO approval applications and variation requests in register

23. Clauses 13, 17 and 18 of the Bill set out the time frame within which the information received from a GMO approval application or variation request, and the Director's decision on the application or request should be entered in the register. Clauses 14 to 16 provide for a mechanism under which an applicant under a GMO approval application or variation request may request the Director not to enter certain information on the application or request in the register (non-disclosure request).

24. The Bills Committee has enquired about the criteria which the Director will adopt in assessing non-disclosure requests. The Administration has explained that when submitting an approval application, an applicant is required to provide to the Director all the information required under the Bill. All information submitted by an applicant on a GMO approval application or variation request will be entered in the register which is available for inspection by the public. If the applicant does not want any of the submitted information to be entered in the register, he/she may submit a written request to the Director and provide justifications for the request. However, key information, such as a general description and summary of the risk assessment on the possible adverse biosafety effect of the GMO concerned, cannot be withheld. The Director may, upon receipt of a non-disclosure request, decide that none, only some, or all of the information specified in the non-disclosure request is to be entered in the register. However, the Director may decide not to enter any of such specified information in the register only if he/she is satisfied that not disclosing the information to the public would not be contrary to the public interest. In view of members' concern, the Administration has undertaken to set out the criteria for assessing non-disclosure requests in the Bill, and will move CSAs to this effect.

25. While agreeing that non-disclosure of information, such as trade secret or sensitive commercial information, is essential to respecting the intellectual property rights of the producer or designer of a GMO, some members have pointed out the need to maintain a record of such non-disclosed information to facilitate future reference, given that some GMOs may have long-term effects on the environment. In this connection, the Administration has been requested to include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that the Administration will retain information in relation to non-disclosure requests for record purpose.

Withdrawal of GMO approval applications/variation requests or information/document provided

26. Clauses 20 and 21 of the Bill provide that if a GMO approval application/variation request or any information/document provided therein is withdrawn, the Director must return to the applicant any record/document or part of the record/document in relation to the application/request that contains any confidential information. Confidential information under the Bill is defined as information that is not to be entered in the register according to the decision of the Director or AAB.

27. Some members have enquired if the requirement for the return of information/document containing confidential information in relation to a withdrawn application is modelled after the Protocol, given that there may be a need to retain certain confidential information for future reference. The Administration has explained that while the Protocol has specified the need to respect the confidentiality of information, it does not have any requirement for the return of confidential information to applicants. Having considered members' view, the Administration has advised that so long as it keeps the information submitted by applicants properly, not returning the confidential information to applicants upon withdrawal of their applications would still be consistent with the Protocol. A CSA will be moved to dispense with the requirement on return of confidential information to applicants.

<u>Register</u>

28. Clause 26 of the Bill provides that the register must not contain any confidential information in relation to a GMO approval application or variation request.

29. Some members have expressed concern that the provision may pre-empt future amendments to the confidentiality of information. According to the Administration, the provision aims to clarify that the register would not contain confidential information. The provision would not change the decision on the confidentiality of the information and should be retained for the sake of clarity. The Administration will also move a CSA to clarify that the register would not contain GMO approval applications, variation requests and information that have been withdrawn before they are to be entered in the register.

Enforcement

30. As the Bill only aims to control GMOs, the Bills Committee generally considers that the enforcement powers under the Bill are overly excessive and the penalties for contravention too heavy, and that persons who have inadvertently grown or kept GMOs might be unnecessarily caught under the Bill. According to the Administration, the enforcement provisions of the Bill are in line with other existing ordinances of similar nature, including the Wild Animals Protection Ordinance (Cap. 170) and the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586). Considering that growing of GM crops in Hong Kong may have adverse impacts on the local biodiversity, sufficient power is required to enforce the provisions in the Bill. As GM crops are mainly produced by overseas biotechnology companies, it is expected that enforcement would mainly focus on the control of import of GMOs and target at large enterprises producing or using GMOs. Persons who might have inadvertently grown or kept GMOs would not be the target. Instead, the Administration will promote public awareness of GMOs and protection of local biodiversity to educate the public on and seek their support for the implementation of the Protocol. At members' request, the Administration has undertaken to state clearly the policy intent in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill.

Appointment of authorized officers

31. Clause 27 of the Bill provides that the Director may, in writing, appoint any public officer or class of public officer to be an authorized officer.

32. Given that authorized officers are vested with extensive powers to board and search vessels, vehicles, trains or aircraft, search persons, inspect and search places or premises etc, the Bills Committee has emphasized the need to specify in the Bill the rank of officers to be appointed as authorized officers to ensure that such powers are properly used. Some members have also asked if authorized officers are required to wear uniforms when carrying out the enforcement duties.

33. The Administration has taken on board members' view and will move CSAs to make it clear that only public officers not below the rank of Field Officer II will be appointed as authorized officers. Though not uniformed staff, the authorized officers will carry warrant cards and wear vests with the logo of the Agriculture, and Fisheries and Conservation Department (AFCD) for identification purpose. To ensure proper use of powers, an operation manual is being drafted to provide guidelines for authorized officers to discharge enforcement duties under the Bill with reference to the established procedures in the Operation Manual for Enforcement Officers being used for Cap. 586. At members' request, the Administration has undertaken to include in the speech to be delivered by SEN at the resumption of Second Reading debate on the Bill that the gist of the operation manual will be made available for public inspection.

Circumstances under which an authorized officer may board and search vessels, vehicles, trains or aircraft, search persons, inspect and search places or premises, and require persons to produce proof of identity

34. Clause 28 of the Bill provides that an authorized officer may stop, board and search any transport means if he has reason to suspect that a prescribed offence has been, is being or is about to be committed on the transport means. An authorized officer may also stop, search, and detain a person for a reasonable period without warrant if he has reason to suspect that the person has committed, is committing or is about to commit a prescribed offence. Clause 29 provides that an authorized officer who has reason to suspect that a GMO is being kept in any place or premises could enter and inspect the place or premises, without notice, for the purpose of verifying compliance with the Ordinance. However, the powers of entry and inspection are not exercisable in relation to any premises used exclusively as a dwelling house.

35. The Bills Committee has asked the Administration to justify the need for the power to search without warrant or notice under clauses 28 and 29. According to the Administration, the power to search any transport means under clause 28 is necessary to enable an authorized officer to take appropriate enforcement action under circumstances that would require an immediate search of the transport means containing suspected GMOs that would pose adverse biosafety effects on the natural environment. Before exercising the power, an authorized officer must seek the consent from a senior officer. The authorized officer will show his warrant card and explain the purposes of the search. A seizure receipt will be issued if any specimens or things are seized. A personal data note will also be issued to the person concerned if any personal particulars are collected. When an operation is completed, the authorized officer will ask the person concerned if he has any complaint. All these procedures and requirements will be set out in the operation manual to ensure that the authorized officer will discharge his duties in a proper and lawful manner. As regards the power under clause 29, the Administration has advised it only allows the officer to inspect premises, require production of things suspected to be GMOs and documentation for the purpose of verifying compliance with the provisions of the Bill. Before exercising the powers under clause 29, an authorized officer will show his warrant card and state the purpose of the visit to the owner or responsible person before entering and inspecting the place or premises where GMOs are suspected to be present. The authorized officer will also inform the person before collecting samples for purposes of verifying compliance with the Bill.

36. Some members have suggested replacing the word “reason” with “reasonable grounds” or phrases to this effect to more accurately reflect the legislative intention. They have also pointed out the difficulties in defining premises used exclusively as a dwelling house. To address members’ concern, the Administration will move CSAs to amend the relevant clauses such that an authorized officer may only exercise the power when he “reasonably suspects” that offences have been, are being or are about to be committed. A CSA will also be moved to replace the phrase “exclusively as a dwelling house” with “wholly or principally for dwelling purposes” in clause 29. At

members' request, SEN will clarify the powers of entry and inspection in relation to premises wholly or principally for dwelling purposes during the resumption of Second Reading debate on the Bill.

37. Clause 30 of the Bill provides that a warrant continues in force until the purposes for which the entry is necessary have been satisfied. Some members have expressed concern about the extensive power of authorized officers with a warrant who could enter and search any premises at any time using necessary force. The clause as drafted will also pre-empt the magistrate to specify the duration of, time and/or date for the execution of a search warrant. The Administration has taken on board the Bills Committee's view and will move a CSA to allow the magistrate to specify the duration of, time and/or date for the execution of a search warrant.

Disposal and forfeiture of thing seized

Director's power to sell or dispose of certain things immediately after seizure

38. Clause 34 of the Bill provides that the Director may sell or dispose of the things seized immediately after the seizure.

39. Some members have questioned the rationale for empowering the Director to sell certain things immediately after seizure as this might run contrary to the object of the Bill to control release of GMOs into the environment. The seized thing should be returned to the owner if its release would not affect the environment. In any case, the Director should not sell the seized thing as this would not be fair to the owner. According to the Administration, arrangements would be made to sell or dispose of the seized things if it was not practicable for the Director to keep them. Besides, it would be for the court or magistrate to decide on the manners in which the seized things should be handled. Since the situation necessitating the Director to sell the seized things will rarely arise, the Administration has decided to delete this power from the Bill and will move CSAs to that effect. SEN will also state in his speech to be delivered at the resumption of Second Reading debate on the Bill that all necessary care will be taken to keep the seized GMOs prior to its return to owner or forfeiture to the Government, unless it is not practicable to keep or it is perishable.

Return and forfeiture of things seized if no prosecution for offences

40. Clause 37 of the Bill provides that in the case where no prosecution has been brought in respect of a seized thing, the court or magistrate must order the thing to be forfeited to the Government if the owner of the thing is unknown or cannot be found. However, the court or magistrate may, if satisfied as to the complainant's title to the thing concerned, order such amount of compensation to be paid to the complainant as the court or magistrate considers just.

41. The Bills Committee considers it unfair that claim for compensation is only allowed if no prosecution is brought. Some members have pointed out the need for compensation for seized things, particularly those which have limited or specified life span, to make up for the losses of owners as a result of the seizure. According to the Administration, authorized officers will strictly follow guidelines laid down in the operation manual in investigating any offence under the Bill, and no prosecution will be brought unless there is strong evidence indicating that an offence under the Bill is committed. As for things seized where prosecution is brought, the Administration has advised that no provision for compensation should be provided in the Bill to make specific statutory provisions for the defendant, whether or not convicted of an offence in the proceedings, to claim compensation. However, having considered members' views, the Administration is prepared to revise clause 37 and insert a new clause in the Bill. The new clause has the effect of allowing, under prescribed circumstances, the owner of a thing seized in the course of enforcement of the Bill, to claim for compensation from the Government in respect of the thing, irrespective of whether prosecution has been brought or not.

Miscellaneous provisions

Appeals

42. Clause 39 of the Bill provides that a person may appeal to AAB against decisions made by the Director regarding a GMO approval application/variation request/review of a non-disclosure request, and directions given by the Director regarding the safekeeping or disposal of GMOs or containers containing GMOs, or disposal of forfeited things through repatriation or destruction.

43. Some members have sought clarification on the applicability of clause 39 to a third party, other than an applicant under a GMO approval application/variation request, who is aggrieved by the decisions/directions of the Director. The Administration has explained that as a matter of administrative law, a third party who is not an eligible appellant under clause 39 may apply for judicial review if he has sufficient interest in the subject matter. Clause 39 does not affect the operation of section 21K(3) of the High Court Ordinance (Cap. 4), which provides that the Court shall not grant leave to make an application for judicial review unless it considers that an applicant has a sufficient interest in the matter to which the application relates. A CSA will be moved to clearly set out the policy intention.

Secretary's power to grant exemption

44. Clause 42 of the Bill empowers SEN to make notices to provide for exemptions from the provisions regulating the release of GMOs into the environment, maintenance of lives of GMOs that are in a state of being released, as well as import and export of GMOs that are intended for release into the environment.

45. The Bills Committee has enquired about the rationale for empowering SEN to grant exemptions. According to the Administration, the provision aims to allow SEN to exempt, for example, any GMO that is identified in a decision of the Protocol as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, or any GMO that the Administration, after consultation with the expert group, considers as being unlikely to have adverse effects on local biological diversity when being released into the environment. There are also certain circumstances which necessitate the granting of exemptions. For example, a GM veterinary vaccine would be considered as being released into the environment if the vaccine is applied to animals. To cater for the genuine need of application of veterinary vaccines, particularly in emergency situation, an exemption may be granted to veterinary surgeons if the Director is satisfied that the possible adverse biosafety effect of the GM vaccines is acceptable. It is worth noting that an exemption granted by SEN will be a piece of subsidiary legislation subject to the negative vetting procedure. Notwithstanding, the Administration has taken on board members' suggestion and will move a CSA to set out the general factors which SEN may take into account in granting exemptions.

Expert group

46. Clause 43 of the Bill provides for the establishment of an expert group from which the Director may seek advice on questions in connection with the administration of the Bill.

47. According to the Administration, the expert group will comprise official and non-official members. Apart from representatives from AFCD, official representatives from the Environmental Protection Department and Department of Health will also be invited to attend the expert group meeting on a need basis. To ensure that the Director will be able to benefit from relevant expert advice when different areas of GMO issues emerge, the expert group should comprise a pool of experts from the farming, biotechnology, environmental protection, academic and trading sectors. The Bills Committee considers it necessary to spell out clearly in the Bill that apart from official representatives, all other members of the expert group are from non-governmental organizations. The Administration has agreed to move a CSA to this effect.

Secretary's power to make regulations

48. Clause 46 of the Bill empowers SEN to make regulations to, among others, provide for the requirements relating to the documents to be furnished for the import and export of a GMO intended for direct consumption as FFP.

49. The Bills Committee has questioned the legality of the provision since a GMO intended for direct consumption as FFP is not a subject of control under the Bill. The Administration has explained that according to Article 18 of the Protocol, each contracting party shall take measures to require documentation to accompany import

and export of GMOs intended for FFP, contained use and release into the environment. The purposes of the requirement are to enable easy identification of their GMO status, facilitate tracing of GMO shipments if necessary, and provide information which may help to contain the damage to the environment in the event of an accidental release during shipment. In view of members' concern, the Administration is prepared to add a new clause to provide for documentation requirements for import and export of GMOs intended for FFP, contained use and release into the environment. Separately, the Administration is preparing a piece of subsidiary legislation to set out the detailed requirements on the documentation, and stakeholders will be further consulted before the subsidiary legislation is laid before the Legislative Council for negative vetting.

50. Some members have enquired if the documentation requirements are strict liabilities and if so, whether a defence provision will be provided to ensure that no one will be unnecessarily caught. The Administration has advised that while the documentation requirements are strict liabilities, there are circumstances where the importers/exporters may not know that the shipments of goods are GMOs or contain GMOs, particularly for GMO-FFP, even if they have exercised due diligence in checking the contents of their shipments. To ensure that no one would be unnecessarily caught for contravention of the specified documentation requirements, the Administration will include a defence provision in the proposed new clause.

Transitional provisions

Notification of or application for approval of released GMOs during transitional period

51. Clause 50 of the Bill provides that a person must, during the transitional period, inform the Director if he caused a GMO to be released before the commencement date of the Bill (if enacted), or maintained the life of a released GMO that was in a state of being released into the environment before the commencement date.

52. As the Bill has no retrospective effect, the Bills Committee has questioned the need for the person to inform the Director of GMOs which were released or maintained before the commencement date. The Administration has taken on board members' views and will move CSAs in this regard. As regards members' concern about the transitional arrangements if no actions would be taken against non-compliance, the Administration will move a CSA to the effect that non-compliance with the requirements during the transitional period will be subject to a fine at level 1.

Schedules

53. Schedules 1, 2, 4 and 6 set out the different types of information to be provided under the Bill while Schedule 3 sets out the requirements on a risk assessment to be carried out on the possible adverse biosafety effect of a GMO.

54. The Bills Committee has requested the Administration to use GM papaya as an example to illustrate how the required information/risk assessment under the Schedules should be filled out in the specified form. The sample is given in Annex C to LC Paper No. CB(1)935/09-10(02).

55. The Bills Committee has also examined other technical aspects of the Bill.

Committee Stage amendments

56. A set of CSAs to be moved by the Administration is in **Appendix III**. The Bills Committee will not move any CSAs in its name.

Recommendation

57. The Bills Committee supports the Administration's proposal to resume the Second Reading debate on the Bill on 10 March 2010.

Advice sought

58. Members are requested to note the deliberations and recommendation of the Bills Committee.

Prepared by
Council Business Division 1
Legislative Council Secretariat
4 February 2010

Appendix I

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

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Dr Hon Margaret NG Hon WONG Ting-kwong, BBS, JP Hon KAM Nai-wai, MH Hon Cyd HO Sau-lan Hon CHAN Hak-kan Hon Tanya CHAN (up to 28 January 2010) Dr Hon Priscilla LEUNG Mei-fun (up to 13 July 2009) Dr Hon LEUNG Ka-lau (Total : 7 Members)
Clerk	Miss Becky YU
Legal Adviser	Miss Kitty CHENG
Date	29 January 2010

Appendix II

List of organizations which have made written and/or oral representations to the Bills Committee

(a) Advisory Council on the Environment

(b) Clover Seed Company Limited

(c) Greenpeace

(d) Hai Kang Life Corporation Limited

(e) Hong Kong Biotechnology Organization Limited

(f) Produce Green Foundation

(g) Professor Si LOK, The University of Hong Kong

(h) World Wide Fund for Nature Hong Kong

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 not an approved GMO but 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

(*c*) 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.

15. Director's decisions on non-disclosure requests

(1) Within 30 days after receiving a non-disclosure request on a GMO approval application or variation request, the Director must –

(*a*) decide –

(i) that none of the proposed confidential information is to be entered in the register;

(ii) that only some of the proposed confidential information is to be entered in the register; or

(iii) that all of the proposed confidential information is to be entered in the register; and

(*b*) give the applicant a written notice of the decision and the reason for it.

(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 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 cease to process 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 continue to process the application or request as if the information or document had not been provided.

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 prescribed documents.

(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 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 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" ( ) means -

(*a*) the percentage prescribed by the Secretary for the purposes of that subsection in relation to GMOs falling within subsection (1)(*a*) or (*b*); or

(*b*) if no percentage is prescribed, zero-percent.

25. Director must establish and maintain register

(1) The Director must establish and maintain a register for the purposes of this Ordinance.

(2) The Director may keep the register in such form as the Director considers appropriate.

(3) The register must be available for inspection by members of the public, free of charge –

(*a*) through the Internet; and

(*b*) at the office of the Agriculture, Fisheries and Conservation Department during normal business hours.

26. Contents of register

(1) The register must contain –

(*a*) subject to subsection (3) –

(i) every GMO approval application, and any information received by the Director for the purposes of the application; and

(ii) every variation request, and any information received by the Director for the purposes of the request;

(*b*) every decision of the Director made under section 10(1)(*a*), 11(5)(*a*) or 12(1);

(*c*) every decision of the Administrative Appeals Board on any appeal lodged against a decision of the Director made under section 10(1)(*a*), 11(5)(*a*) or 12(1); and

(*d*) every exemption granted by the Secretary under section 42.

(2) The register may also contain any other information relating to the administration of this Ordinance or implementation of the Protocol that the Director considers appropriate.

(3) The register must not contain –

(*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 submitted 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. Appointment of authorized officers

The Director may, in writing, appoint any public officer not below the rank of Field Officer II to be an authorized officer for the purposes of this Ordinance.

28. Powers to search vessels, detain persons, etc.

(1) An authorized officer may stop, board and search any vessel, vehicle, train or aircraft (other than a ship of war, military vehicle or military aircraft) if the officer reasonably suspects that an offence under section 5, 7 or 23 has been, is being or is about to be committed in or on the vessel, vehicle, train or aircraft.

(2) If an authorized officer reasonably suspects that a person has committed, is committing or is about to commit an offence under section 5, 7 or 23, the officer may without warrant –

(*a*) stop and search the person, and search the property of the person, for anything that is likely to be relevant (whether by itself or together with anything else) to the investigation of the offence; and

(*b*) detain the person for a reasonable period while the officer inquires about the suspected commission of the offence.

29. Powers to inspect place or premises, take copies of documents, etc. for verifying compliance with this Ordinance

(1) If an authorized officer reasonably suspects that a GMO is being kept in any place or premises, the officer may, for the purpose of verifying compliance with this Ordinance, without notice –

(*a*) enter and inspect the place or premises during reasonable hours;

(*b*) require the production of, inspect and examine any thing that the officer reasonably suspects to be, or to contain, a GMO; and

(*c*) require the production of, inspect, examine and take copies of any document that is related to compliance with this Ordinance, or any document that relates to the nature or origin of the GMO.

(2) Subsection (1) does not empower an authorized officer to enter –

(*a*) any premises that are used wholly or principally for dwelling purposes; or

(*b*) any part of any premises that is used wholly or principally for dwelling purposes.

30. Powers to enter and search place or premises on issue of warrant

(1) A magistrate may issue a warrant authorizing an authorized officer to enter and search any place or premises if satisfied by information on oath that there are reasonable grounds to suspect that –

(*a*) an offence under this Ordinance has been, is being or is to be committed in or on the place or premises; or

(*b*) there is in or on the place or premises any thing that is or contains evidence of the commission of an offence under this Ordinance.

(2) Unless otherwise specified in it, a warrant continues in force until the purposes for which the entry is necessary have been satisfied.

(3) An authorized officer authorized by such a warrant to enter and search any place or premises –

(*a*) may at the time specified in the warrant or, if no time is specified, at any time enter and search the place or premises, using necessary force; and

(*b*) may remove any thing that obstructs the entry and search.

(4) An authorized officer may also detain any person found in or on the place or premises, for such period as is reasonably required to permit the search to be carried out, where the person might prejudice the purpose of the search if not so detained.

(5) An authorized officer entering any place or premises under a warrant may take with the officer such persons as may be necessary.

(6) This section does not prejudice any powers of entry and search conferred on police officers under any other law.

31. Powers to seize, remove and detain things

(1) An authorized officer may seize, remove and detain any thing that the officer reasonably suspects to be or to contain evidence of the commission of an offence under this Ordinance.

(2) An authorized officer does not incur any civil liability in respect of anything done or omitted to be done by the officer in good faith in the exercise or purported exercise of any power under this section.

32. Powers to take samples and carry out tests

(1) An authorized officer may, for the purpose of verifying compliance with this Ordinance or obtaining evidence of the commission of an offence under this Ordinance –

(*a*) take a sample of any thing that the officer reasonably suspects to be, or to contain, a GMO;

(*b*) require any person in control of such thing to provide a sample of it; and

(*c*) take any photographs of the thing.

(2) An authorized officer who takes a sample under subsection (1) must issue a receipt for the sample, but is not required –

(*a*) to pay for it; or

(*b*) to return it to the person from whom it was taken.

(3) An authorized officer may arrange to carry out any necessary test in respect of a sample taken under subsection (1) to ascertain –

(*a*) whether the sample is or contains a GMO;

(*b*) if the sample is or contains a GMO –

(i) the identity of the GMO; and

(ii) the quantity and percentage of the GMO in the sample.

(4) A certificate of analysis issued by an accredited laboratory on a sample taken under subsection (1) may be tendered in evidence in any proceedings under this Ordinance and is evidence of the facts stated in it unless the contrary is proved.

(5) In this section, "accredited laboratory" (獲認可實驗所) means a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme managed by the Commissioner for Innovation and Technology on behalf of the Government.

33. Power to require identification

(1) If an authorized officer reasonably suspects that a person has committed, is committing or is about to commit an offence under section 5, 7, 23, 24B or 40, the officer may without warrant stop the person or, where the person is in or on a vessel, vehicle, train or aircraft (other than a ship of war, military vehicle or military aircraft), stop and board the vessel, vehicle, train or aircraft for the purposes of requiring that person –

(*a*) to state the person's name and address; and

(*b*) to produce the person's proof of identity for inspection.

(2) In this section, "proof of identity" (身分證明文件) means proof of identity within the meaning of section 17B of the Immigration Ordinance (Cap. 115).

33A. Power to require production of documents during import and 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 that thing for inspection.

34. Director's power to dispose of certain things immediately after seizure

(1) If any of the things specified in subsection (2) has been seized under section 31, the Director may, after the seizure, dispose of the thing in any way (except by way of sale).

(2) The things are –

(*a*) any live animal –

(i) that, for any reason, it is not practicable for the Director to keep in captivity; or

(ii) that is likely to die or to be subject to unnecessary suffering if it is kept in captivity;

(*b*) any live plant that, for any reason, it is not practicable for the Director to keep; and

(*c*) any thing –

(i) that, for any reason, it is not practicable for the Director to keep; or

(ii) that is perishable.

35. Return and forfeiture of things seized in respect of offences under section 5, 7 or 23

(1) If a person is convicted of an offence under section 5, 7 or 23, any thing seized under section 31 in connection with the offence that is a GMO or contains a GMO is to be forfeited to the Government.

(2) If a person is convicted of an offence under section 5, 7 or 23, the court or magistrate may order any thing seized under section 31 in connection with the offence that is not a GMO or does not contain a GMO –

(*a*) to be returned to the person from whom it was seized or to its owner; or

(*b*) to be forfeited to the Government.

(3) If an offence is prosecuted under section 5, 7 or 23 and no defendant in the proceedings is convicted of the offence, the court or magistrate may order any thing seized under section 31 in respect of which the prosecution is brought –

(*a*) to be returned to the person from whom it was seized or to its owner; or

(*b*) to be forfeited to the Government.

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

36. Return and forfeiture of things seized in respect of offences under other sections

(1) If an offence is prosecuted under a provision of this Ordinance other than section 5, 7 or 23, the court or magistrate may, whether or not any defendant in the proceedings is convicted of the offence, order any thing seized under section 31 in respect of which the prosecution is brought –

(*a*) to be returned to the person from whom it was seized or to its owner; or

(*b*) to be forfeited to the Government.

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

37. Return and forfeiture of things seized if no prosecution for offences

(1) If a thing has been seized under section 31 but no prosecution has been brought in respect of that thing under this Ordinance, an authorized officer may apply to the court or magistrate for an order in respect of that thing.

(2) On an application under subsection (1), the court or magistrate may, subject to subsection (3), order the thing concerned –

(*a*) to be returned to the person from whom it was seized or to its owner; or

(*b*) to be forfeited to the Government.

(3) The court or magistrate must, if satisfied that the owner of the thing concerned is unknown or cannot be found, order the thing to be forfeited to the Government.

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

38. Director's powers to dispose of and to give directions on disposal of forfeited things

(1) The Director may dispose of in any way (except by way of sale), any thing that is forfeited to the Government under this Part in such manner as the Director thinks fit.

(2) If –

(*a*) a person has been convicted of an offence under section 5, 7 or 23; and

(*b*) a thing in connection with the offence has been forfeited to the Government under section 35(1) or (2),

the Director may, by written notice, direct the person to dispose of the thing through repatriation or destruction.

(3) A person given a direction under subsection (2) must, subject to section 39(4), carry out the direction at the person's cost within the period specified in the notice.

(4) A person who contravenes subsection (3) commits an offence and is liable to a fine at level 6.

38A. Compensaton 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, 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 it was seized;

(*c*) the agents of the person specified in paragraphs (a) and (b); and

(*d*) authorized officers, public officers and other persons concerned.

(4) No proceedings are maintainable in respect of any 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 delivered to its

owner by order of a court or magistrate or by any person having authority to deliver the thing to the owner, not later than 6 months after the delivery;

(*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 existence 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. Appeals

(1) If an applicant under a GMO approval application or variation request is aggrieved by a decision under section 10(1)(*a*), 11(5)(*a*), 12(1) or 16(3)(*a*), or a direction under section 12(7), the applicant may, within 28 days after receiving notice of the decision or direction, appeal to the Administrative Appeals Board against that decision or direction.

(1A) If a person who is directed under section 38(2) 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.

(2) After lodging an appeal under subsection (1), the applicant must, pending the Administrative Appeals Board's decision on the appeal, cause the GMO to which the appeal relates to be kept in a manner that effectively limits its contact with, and its impact on, the environment.

(3) Subsection (2) does not apply if the GMO has already been released into the environment.

(4) If an appeal is lodged against a direction referred to in subsection (1) or (1A), the applicant or person is not required to carry out the direction pending the Administrative Appeals Board's decision on the appeal.

42. Secretary's power to grant exemptions

(1) The Secretary may, by notice published in the Gazette, exempt any person, any group or description of persons, or any GMO from the application of section 5, 7 or 23.

(2) An exemption may take effect generally or for any purposes or by reference to any circumstances, and either conditionally or unconditionally.

(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. Expert group

(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.

(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.

46. Secretary's power to make regulations

(1) The Secretary may make regulations for all or any of the following purposes –

(*a*) to provide for the documents required to accompany GMOs falling within section 24B(1)(*a*), (*b*) or (*c*) when those GMOs are being imported or exported;

(*b*) to provide for the percentage referred to in section 24B(5)(*a*);

(*c*) to enable any part of a Protocol instrument to have the force of law in Hong Kong with or without modification;

(*d*) to provide generally for the better carrying out of the purposes of this Ordinance.

(2) A regulation under subsection (1) may –

(*a*) make different provisions for different circumstances and provide for a particular case or class of case;

(*b*) be made so as to apply only in specified circumstances; and

(*c*) contain such incidental, supplementary, consequential, transitional or saving provision as may be necessary or expedient in consequence of the regulation.

(3) A regulation under subsection (1) may provide –

(*a*) that it is an offence for a person to contravene a provision of the regulation; and

(*b*) that such an offence is punishable by a fine not exceeding level 6 and imprisonment for a term not exceeding 6 months.

50. Notification of or application for approval of released GMOs during transitional period

(1) 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

(*b*) submit a GMO approval application in accordance with section 8 in respect of the released GMO.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 1.

(3) On receiving a notice under subsection (1)(*a*), the Director may –

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

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

(4) Section 5 does not prohibit a person who has informed the Director of the maintenance of a released GMO under subsection (1)(*a*) from knowingly maintaining the life of the GMO that is in a state of being released into the environment, during the period from the date of the notice to the date when the GMO is disposed of.

(5) Section 5 does not prohibit a person who has submitted a GMO approval application under subsection (1)(*b*) from knowingly maintaining the life of the released GMO that is in a state of being released into the environment, during the period from the date of the application to the date when the decision on the application is entered in the register under section 18.

(6) A notice under subsection (1)(*a*) must contain the information set out in Schedule 6.