

CARICOM MODEL PLANT PROTECTION BILL

PLANT PROTECTION BILL
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[STATE]

PLANT PROTECTION BILL 20[]

An Act to prevent the introduction and to control the spread of plant pests; to protect plant resources; to facilitate trade in plants, plant products and other regulated articles and to regulate other matters connected thereto.

PART I PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Plant Protection Act, [*insert date*].
- (2) This Act shall come into force on [*insert date*].

Interpretation.

2. In this Act, unless the context otherwise requires—

“**affected**” means infected by or infested with a pest;

“**area**” means [*insert name of Country*] or part thereof identified by the Minister or the National Plant Protection Organisation, as the case may, for a purpose specified under this Act and includes a place or site of production;

“**area of low pest prevalence**” means an area so declared by the Minister under section 35 (b);

“**area under cultivation**” includes a field, plantation, nursery, garden, green house and laboratory;

“**beneficial organism**” means any organism (including fungi, bacteria, viruses, virus-like organisms and invertebrates, other animals or plants) which is declared by the Minister by order to be beneficial to flora or agricultural production;

“**buffer zone**” means an area surrounding or adjacent to an area officially delimited for phytosanitary purposes in order to minimize the probability of spread of the target pest into or out of the delimited area;

“**consignment**” means a quantity of plants, plant products or other regulated articles being moved from or to [*insert name of Country*] and covered, when required, by a single phytosanitary certificate;

“container” means a box, bag, wrapper, covering or other receptacle in which any plants, plant products or other regulated articles have been or are being transported;

“containment” means the application of phytosanitary measures in and around an affected area to prevent the spread of a pest;

“control” means the suppression, containment or eradication of a pest population;

“conveyance” means any vessel, aircraft, train, vehicle, cart, container, animal or other thing that can convey plants, plant products, pests, beneficial organisms or other regulated articles from one place to another;

“detention” means the keeping of a consignment in official custody or confinement, as a phytosanitary measure;

“Director” means the Director of the National Plant Protection Organisation so appointed by the Minister under section 6;

“emergency measures” means phytosanitary measures taken pursuant to section 29 (1) (a);

“endangered area” means an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;

“entry” in relation to –

- (a) a pest, means the movement of a pest into an area where it is not yet present, or present but not widely distributed and is being officially controlled;
- (b) a consignment, means the movement of the consignment through a point of entry into an area;

“eradicate” means to apply phytosanitary measures to eliminate a pest from an area, and **“eradication”** shall have a corresponding meaning;

“establishment” means the perpetuation, for the foreseeable future, of a pest within an area after entry;

“exporter” means any person who, whether as owner, consignor, consignee, agent or broker, is in possession of, or in any way entitled to the custody or control of plants, plant products or other regulated articles to be taken out of [*insert name of Country*];

“germplasm” means a plant intended for use in breeding or conservation programmes;

“import permit” means a permit granted under section 15 (2);

“importer” means any person who, whether as owner, consignor, consignee, agent, broker or otherwise, is entitled to or is otherwise in possession or custody of plants, plant products, pests,

beneficial organisms or other regulated articles landed or likely to be landed in [*insert name of Country*] from another country;

“incursion” means an isolated pest population recently detected in an area; not known to be established, but expected to survive for the immediate future;¹

“infestation” means the presence in a commodity of a living pest of the plants or plant products concerned and includes infection;

“inspection” means official visual examination of plants, plant products or other regulated articles to determine if pests are present or to determine compliance with phytosanitary regulations;

“inspector” means a phytosanitary inspector designated in accordance with section 7;

“introduction” means the entry of a pest resulting in its establishment in [*insert name of Country*];

“IPPC” means the new Revised Text of the International Plant Protection Convention;

“IPPC Secretariat” means the Secretariat of the Commission on Phytosanitary Measures established under the International Plant Protection Convention;

“Minister” means the Minister responsible for [*plant protection/agriculture*];

“Ministry” means the Ministry responsible for [*plant protection/agriculture*];

“national pest of concern” means a pest so declared under section 26 (1) (c);

“National Plant Protection Organisation” or **“NPPO”** means the Government unit, department or office so designated by the Minister under section 3;

“occupier”, in relation to any land or building, means a person in actual occupation thereof;

“official” means established, authorized or performed by the NPPO;

“official control” means the enforcement by the NPPO of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests;

“outbreak” means a recently detected pest population, including an incursion, or a sudden significant increase of an established pest population in an area;

“owner” includes any person having for the time being the possession, custody or control of something;

¹ This definition is taken from the International Standard for Phytosanitary Measures ISPM No. 5 Glossary of Phytosanitary Terms (2018).

“packaging” means any material used to pack, contain or keep plants, plant products or other regulated articles;

“pest” means any species, strain or biotype of any plant, animal or pathogenic agent injurious to plants or plant products;

“pest free area” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

“pest free place of production” means a place of production in which a specific pest is absent as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a defined period;

“pest free production site” means a defined portion of a place of production in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a definite period and that is managed as a separate unit in the same way as a pest free place of production;

“pest risk analysis” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

“phytosanitary action” means the conduct of an official procedure, such as inspection, testing, surveillance or treatment, or official control undertaken to implement any phytosanitary measure;

“phytosanitary certificate” means an official paper document or its official electronic equivalent, consistent with the model certificate of the IPPC attesting that a consignment meets phytosanitary import requirements;

“phytosanitary measure” means any legislation, regulation or official procedure having the purpose of preventing the introduction or spread of quarantine pests;

“plant” means any living plant and the parts thereof, including a seed or germplasm;

“plant products” means any un-manufactured material of plant origin (including grain) and a manufactured product which, by its nature or that of its processing, may create a risk for the introduction and spread of a pest;

“point of entry” means an airport, seaport or a land-border officially designated for the importation or exportation of consignments or the arrival of passengers;

“pre-clearance” means phytosanitary certification or clearance in the exporting country, performed by or under the supervision of the NPPO;

“premises” means any land, building or other structure or conveyance situated on land or any marine area;

“quarantine” means official confinement of plants, plant products or other regulated articles for surveillance and research or for further inspection, testing or treatment;

“quarantine area” means an area declared by the Minister to be an area where a quarantine pest is present and is being officially controlled;

“quarantine pest” means a pest so declared under section 26 (1) (a);

“quarantine station” means a plant quarantine station designated as such under section 20 (a);

“regular business hours” means the normal working hours of Government offices in [*insert name of Country*];

“regulated articles” means any plants, plant products, storage places, packaging, conveyances, containers, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved, and includes a beneficial organism;

“regulated non-quarantine pest” means pest so declared under section 26 (1) (b);

“regulated pest” means a quarantine pest or a regulated non-quarantine pest;

“sell” includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise, and “sold”, “selling” and “sale” shall have corresponding meanings;

“soil” means material wholly or partly derived from the upper layer of the earth’s crust which is capable of sustaining plant life and which contains solid organic substances such as parts of a plant, humus, peat or bark, but excluding any medium which is sterile, composed entirely of unused peat or otherwise incapable of harbouring or transmitting pests;

“suppression” means the application of phytosanitary measures in an affected area to reduce a pest population;

“surveillance” means an official process which collects and records data on pest occurrence or absence by surveying, monitoring or other procedures;

“treatment” means an officially authorized procedure for the killing or removal of pests or rendering pests infertile or for devitalization;

“vehicle” means any vessel, aircraft, train, conveyance, cart, container, animal or other thing that can transport plants, plant products or other regulated articles from one place to another.

PART II ADMINISTRATION

Establishment and designation of the NPPO.

3. (1) There is hereby established a National Plant Protection Organization which shall have primary responsibility for the administration of this Act.

(2) The Minister shall designate a Government unit, department or office to serve as the National Plant Protection Organisation of [*insert name of Country*], and shall transmit the name of that unit, department or office to the IPPC Secretariat.

Functions of the NPPO.

4. (1) The functions of the National Plant Protection Organisation shall include —
- (a) preventing and controlling the introduction of regulated pests and the spread of regulated pests and national pests of concern in [*insert name of Country*], including invasive alien species;
 - (b) issuing phytosanitary certificates for export or re-export and transit;
 - (c) carrying out surveillance of any growing plant, including areas under cultivation and wild flora, and of any plants and plant products in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and of controlling such pests;
 - (d) developing separate lists of quarantine pests, regulated non-quarantine pests, regulated articles and pests of national concern, respectively;
 - (e) inspecting and testing any consignment of plants and plant products and, where appropriate, inspecting any other regulated articles, for the purpose of preventing the introduction and spread of pests;
 - (f) requiring phytosanitary action as conditions or prohibitions of import of plants and plant products and other regulated articles;
 - (g) performing bilateral agreements between countries, including conducting pre-clearance inspections where requested by an exporting country;
 - (h) disinfecting consignments of plants, plant products and other regulated articles;

- (i) protecting endangered areas, and designating, maintaining and surveying pest free areas, and places of production and areas or places of production of low pest prevalence;
- (j) conducting pest risk analyses;
- (k) determining and designating various areas under this Act including quarantine areas, pest free areas, endangered areas and buffer zones;
- (l) developing pest diagnostics, investigative and analytical capabilities and establishing official laboratories for testing;
- (m) notifying phytosanitary measures to other countries in accordance with international obligations and providing information to other countries concerning phytosanitary measures applied, either through pest risk analysis or by reference to applicable international standards, and providing information regarding the phytosanitary status of an area or [*insert the name of Country*];
- (n) notifying trading partners of relevant instances of non-compliance with import requirements that may be prescribed;
- (o) ensuring the phytosanitary security of consignments after certification and before export;
- (p) establishing auditing and trace-back procedures for plants, plant products and other regulated articles for phytosanitary certification;
- (q) establishing minimum qualifications for and overseeing training and development of inspectors and other NPPO staff;
- (r) distributing information regarding regulated pests and the means of their prevention and control;
- (s) proposing, reviewing, preparing, approving and enforcing phytosanitary measures;
- (t) representing [*insert name of Country*] in bilateral, regional and international forums related to phytosanitary matters;
- (u) establishing and implementing certification programmes for planting material and plant products;
- (v) establishing procedures for the approval of any quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in the implementation phytosanitary functions;
- (w) making recommendations to the Minister regarding the designation of reference laboratories and official laboratories;

- (x) issuing import and export permits;
- (y) performing phytosanitary treatments; and
- (z) any other function that the Minister considers necessary for the purposes of this Act.

(2) NPPO shall have the power to carry out any act which is incidental to the execution of its functions.

Delegation of functions of the NPPO.

5. (1) Subject to subsection (2), the Director may, in writing and for a prescribed period, authorise any person or entity with the prescribed qualifications and experience to carry out any of the functions of the NPPO.

(2) The Director shall not issue an authorisation under subsection (1) in relation to –

- (a) the issuance of a phytosanitary certificate or any other official documentation;
- (b) official liaison duties with other Ministries or foreign authorities, or any notification responsibilities to other Ministries or foreign authorities;
- (c) the approval of phytosanitary measures or requirements; or
- (d) the issuance of import and export permits.

(3) An authorisation under subsection (1) shall set out -

- (a) the specific tasks covered by the authorisation;
- (b) the control, supervision and financing of the authorisation; and
- (c) the conditions for withdrawal of the authorisation.

Appointment and functions of the Director of the NPPO.

6. (1) The Minister shall appoint the Director of the NPPO on such terms and conditions as the Minister may determine.

(2) The Director shall be responsible for –

- (a) the day-to-day administration of the NPPO;
- (b) ensuring that the NPPO performs its function in accordance with the requirements of this Act; and

- (c) making recommendations to or advising the Minister, in accordance with the provisions of this Act.

Designation of inspectors.

7. (1) The Minister may designate any officer of the NPPO who possesses the prescribed qualifications as an inspector under this Act.

Designation of analysts.

8. (1) The NPPO shall designate any person who possesses the prescribed qualifications as an analyst under this Act.

(2) The NPPO shall publish, by notice in the Gazette, a list of analysts appointed under subsection (1).

(3) Analysts shall conduct inspections and tests for the purposes of this Act.

Designation of Official laboratories.

9. (1) The Minister may by order, on the recommendation of the NPPO, designate official laboratories for the purpose of conducting specified laboratory tests required to be done under this Act.

(2) An order under subsection (1) shall specify the tests or testing procedures which may be performed by an official laboratory under this Act.

(3) The Minister [may, on the recommendation of the NPPO,]² prescribe standards and criteria for the designation of official laboratories.

Designation of Reference laboratories.

10. (1) The Minister may, by order, on the recommendation of the NPPO, designate such number of reference laboratories as may be necessary for the purposes of this Act.

² Member States may determine, at the national level, whether to retain the words in square brackets.

(2) An order under subsection (1) shall specify the tests or testing procedures which may be performed by a reference laboratory under this Act.

(3) A reference laboratory shall —

- (a) be used for comparative testing in the case of conflicting results or in the case of contested results and shall ensure an appropriate follow-up of such comparative testing;
- (b) collaborate with official laboratories in their area of competence;
- (c) ensure the dissemination to official laboratories of information relating to testing procedures in relation to plant health;
- (d) provide scientific and technical assistance to the NPPO for the implementation of this Act; and
- (e) carry out such other duties as may be prescribed.

(4) Where a reference laboratory is located outside of [*insert name of Country*] the services of the reference laboratory may be procured by such contractual or other means as the Minister thinks fit.

(5) The Minister may prescribe additional standards and criteria for the designation and observance of a reference laboratory under this Act.

Plant protection coordination mechanisms.

11. The NPPO may, as necessary, establish ad-hoc or permanent committees for the purpose of providing advice to the NPPO in relation to phytosanitary matters and to address such other matters as the NPPO thinks fit.

Phytosanitary Emergency Fund.

12. (1) There is established, for the purpose of imposing area-wide controls in the event of a pest outbreak, a Phytosanitary Emergency Fund which shall be administered by the Minister.

(2) The financial resources of the fund shall consist of —

- (a) such resources as may from time to time be approved by the Parliament;
- (b) donations, grants, awards and endowments; and
- (c) any proceeds or fees collected under this Act.

(3) Subject to the provisions of this Act, the Minister shall, by Order, prescribe procedures for the management and use of the resources fund.

Approval and implementation of phytosanitary measures.

13. (1) In determining whether to approve of phytosanitary measures the NPPO shall take into consideration the following principles —

- (a) harmonization of the proposed measures with international standards;
- (b) risk analyses shall be science-based;
- (c) regionalization; and
- (c) the proposed measures shall be no more trade restrictive than necessary and shall be proportional to the risk.

(2) Phytosanitary measures issued by the NPPO shall be based on a pest risk analysis or otherwise be based on existing international standards.

(3) The NPPO may negotiate bilateral and multilateral agreements for the evaluation and possible acceptance of alternative phytosanitary measures proposed by an exporting country's national agency responsible for plant protection as being equivalent to the phytosanitary measures required under this Act.

PART III IMPORTS

Restrictions on importation.

14. (1) Subject to subsection (4), no person shall, either personally or indirectly through an employee or agent, knowingly or recklessly import plants, plant products or other regulated articles for which an import permit is required without an import permit.

(2) No person shall import plants, plant products or other regulated articles into [*insert name of Country*] except—

- (a) where such plants, plant products or other regulated articles are accompanied by-
 - (i) a phytosanitary certificate issued by the country of export; and

(ii) any other documentation that may be prescribed;

- (b) at a point of entry designated by the Minister (hereinafter referred to as a “designated point of entry”); and
- (c) where all prescribed requirements are satisfied.

(3) No person shall import any plants, plant products or other regulated articles into [*insert name of Country*] which do not comply with the phytosanitary measures established by the NPPO.

(4) The Minister, on the recommendation of the NPPO, shall prescribe the list of plants, plant products and other regulated articles for which no import permit is required.

(5) As conditions change or as new facts become available, the NPPO shall, without undue delay, modify or revoke phytosanitary measures.

(6) A person who contravenes subsection (1) commits an offence and is liable –

- (a) in the case of a first offence, on summary conviction, to a fine not less than [*to be specified at the national level*] but not more than [*to be specified at the national level*] or to imprisonment for a term not less than [*to be specified at the national level*] but not more than [*to be specified at the national level*] or to both fine and imprisonment; and
- (b) in the case of a second or a subsequent offence, to a fine not less than [*to be specified at the national level*] but not more than [*to be specified at the national level*] or to imprisonment for a term not less than [*to be specified at the national level*] but not more than [*to be specified at the national level*] or to both fine and imprisonment.

(7) A person contravenes subsection (2) or (3) commits an offence and shall be liable on summary conviction to a fine not exceeding [].

Import permit.

15. (1) Subject to section 14 (4), a person who is desirous of importing plants, plant products or other regulated articles into [*insert name of Country*] shall apply to the NPPO in the prescribed form.

(2) On receipt of an application under subsection (1), the NPPO shall, in accordance with such criteria as may be prescribed, assess the risk associated with the import of the plants, plant products or other regulated articles and shall grant the import permit if it is satisfied that the level of risk is acceptable or otherwise can be successfully managed or mitigated.

(3) The NPPO may review, modify or revoke an import permit at any time by written notice where –

- (a) the type or quantity of the plants, plant products or other regulated articles does not correspond with the description specified in the import permit;
- (b) there is a change in the pest status of the country of export;
- (c) the country of origin has changed; or
- (d) the period of validity of the import permit has been exceeded.

(4) The NPPO shall revoke an import permit where it is satisfied that the holder of the permit-

- (a) made a false declaration or statement or provided incorrect information in the application for the permit;
- (b) failed to comply with any of the terms of the permit; or
- (c) the level of risk associated with the importation is no longer acceptable.

Inspection of imports.

16. (1) Any person who imports plants, plant products or other regulated articles into [*insert name of Country*], shall, subject to the procedures set out in the Customs Act, produce the plants, plant products or other regulated articles for inspection by an inspector at the designated point of entry.

(2) Notwithstanding subsection (1), an inspector may inspect plants, plant products or other regulated articles at —

- (a) a quarantine station or other approved facility; or
- (b) its final destination —
 - (i) on application by an importer; and
 - (ii) if the container in which the plants, plant products or other regulated articles are contained is sealed and marked as prescribed.

(3) An inspection carried out under subsection (1) or (2) is subject to the payment of the prescribed fee.

(4) An inspection referred to in subsection (1) or (2) shall be carried out during regular business hours, except where the plants, plant products or other regulated articles are in transit or are extremely perishable or where their entry has otherwise been delayed, in which case, on application by the importer and on payment of the prescribed fee, the NPPO may agree to an inspection being carried out at any other time.

(5) The NPPO may establish specific modalities as agreed through bilateral or other agreements, to carry out pre-shipment inspections in the country of origin.

Phytosanitary actions on imports.

17. (1) Subject to subsection (3), if on an inspection under section 16, an inspector determines that the imported plants, plant products or other regulated articles are not accompanied by the prescribed documentation, or present a risk of introduction or spread of pests, the inspector shall detain the items and immediately serve written notice on the importer that part or all of the imported plants, plant products or other regulated articles may be subject, within the time period specified in the notice, to —

- (a) detention until the NPPO's receipt of relevant documentation within a [reasonable time]³;
- (b) testing;
- (c) phytosanitary treatment in order to remove the risk;
- (d) removal to a quarantine station or other approved facility;
- (e) sorting or re-configuring;
- (f) removal from the territory of [*insert name of Country*];
- (g) confiscation⁴; or
- (h) destruction.

(2) The grounds for rejecting a phytosanitary certificate or for requesting additional information shall be as prescribed.

³ Member States may make a determination, at the national level, as to the specific timeframe for submission of the relevant documentation.

⁴ Member States may determine, at the national level, the steps to be taken subsequent to confiscation.

(3) An inspector may forego advance notice and carry out any of the actions listed under subsection (1) where, in the inspector's opinion, destruction of the imported plants, plant products or other regulated articles is urgently required or the giving of notice is impracticable.

(4) The inspector shall provide written justification to the NPPO and to the importer for any action taken in the implementation of this section.

(5) The NPPO may, after a prescribed period, destroy any imported plants, plant products or other regulated articles which remain unclaimed after their entry into [*insert name of Country*] or treatment.

(6) The costs and responsibility for any action taken under subsection (1), (3) or (5) shall be borne by the importer.

(7) Where any action is taken under subsection (1), (3) or (5), the method used to calculate costs charged shall be in accordance with the prescribed procedure.

(8) The NPPO shall notify the exporting country and the IPPC Secretariat of instances of interception, emergency actions and non-compliance where required.

(9) The Government of [*insert name of Country*] shall not be liable for the confiscation, destruction or disposal of any plants, plant products or other regulated articles or any other phytosanitary action taken in accordance with this section.

Release of imports.

18. If, on an inspection that is carried out under section 16, the inspector determines that the imported plants, plant products or other regulated articles do not present any risk of importation or spread of pests, and otherwise comply with the requirements of this Act, the inspector may release the consignment for processing by [*the customs authority*] by written notice served on the importer.

Minister may restrict certain imports.

19. In order to protect plant resources, human and animal health or the environment, the Minister may, on the advice of the NPPO —

- (a) allow importation into [*insert name of Country*] of any plants, plant products or other regulated articles for scientific or experimental purposes after a pest risk analysis [or,

- in the case of a natural disaster for humanitarian purposes, subject to such terms and conditions as the Minister, on the advice of the NPPO, considers appropriate]⁵;
- (b) prohibit or restrict the entry of any plants, plant products or other regulated articles, where temporary measures are necessary;
 - (c) declare a phytosanitary emergency by [Order] [by publication in a newspaper of general circulation in [*insert name of Country*]]⁶; or
 - (d) take any other action necessary to prevent the introduction or spread of a quarantine pest or a regulated non-quarantine pest.

Designation of plant quarantine stations and other places and facilities.

20. The NPPO may –

- (a) designate places as plant quarantine stations where plants, plant products or other regulated articles may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction;
- (b) require that imported plants, plant products or other regulated articles be kept or cultivated at a plant quarantine station, or at any other location identified by the NPPO, and kept under the NPPO's supervision for such time as the NPPO considers necessary;
- (c) designate certain places for the purpose of inspection of plants, plant products and other regulated articles; or
- (d) approve facilities owned and operated by public or private third parties to be used for inspections under the supervision of the NPPO.

Duty to report and detain certain imports.

21. (1) An employee of the postal service or an official of the [*Customs authority*], [*Port Health*], [*Police Force*] or [*Defence Force*] or [other agency designated by the Director] who has knowledge of the arrival or importation of plants, plant products or other regulated articles into [*insert name of Country*], shall, in the absence of an inspector—

- (a) as soon as practicable, notify the arrival or importation to the NPPO;

⁵ Member States may determine, at the national level, whether to include the words in square brackets in their enacting legislation as the benefits and risks associated with importation under those circumstances will be enjoyed or borne, as the case may be, predominantly by Member States individually.

⁶ Member States may determine, at the national level, whether the Minister will use either or both methods to declare a phytosanitary emergency.

- (b) detain the plants, plant products or other regulated articles for inspection by an inspector; and
- (c) not [treat],⁷ release or dispose of the plants, plant products or other regulated articles unless so authorised by an inspector.

(2) A detention carried out under subsection (1) (b) shall be deemed to be an action taken by or on delegation from the NPPO.

(3) The NPPO shall take custody of any item detained under subsection (1) (b) within [3]⁸ days of being notified of such detention.

PART IV EXPORTS, RE-EXPORTS AND CONSIGNMENTS IN TRANSIT

Export.

22. (1) Where an importing country requires the issuance of a phytosanitary certificate, treatment or testing before authorising the importation of plants, plant products or other regulated articles from [*insert name of Country*], the exporter shall —

- (a) apply to the NPPO in the prescribed manner;
- (b) provide to the NPPO all prescribed documents;
- (c) make the consignment available for inspection; and
- (d) pay the prescribed fees.

(2) The NPPO shall, on receipt of an application by an exporter under subsection (1), inspect the consignment without undue delay and shall—

- (a) issue a phytosanitary certificate, in the prescribed form, if the consignment—
 - (i) meets the documentary and other phytosanitary import requirements of the importing country; and

⁷ Member States are to determine, at the national level, whether the persons listed in the chapeaux are to be allowed to administer treatment, with the authorization of a phytosanitary inspector.

⁸ Member States may, at the national level, decide upon on a shorter timeframe which better suits their individual national contexts.

(ii) satisfies any other requirements for exports specified by the NPPO or under any applicable law in [*insert name of Country*]; or

(b) deny the application where the consignment does not meet the requirements referred to in paragraph (a) and shall inform the applicant in writing of its decision and its reasons therefor.

(3) After the issuance of a phytosanitary certificate, the exporter shall export the consignment in compliance with instructions of the NPPO in order to maintain the phytosanitary security and physical integrity of the consignment.

(4) The NPPO shall certify all exports in accordance with the requirements of the importing country.

Re-export.

23. (1) Where a consignment of plants, plant products or other regulated articles is imported into [*insert name of Country*] and are to be exported to a third country of destination, the exporter shall —

- (a) apply to the NPPO for a re-export phytosanitary certificate;
- (b) submit all prescribed documents to the NPPO;
- (c) make the consignment available for phytosanitary inspection; and
- (d) pay the prescribed fee.

(2) The NPPO shall, immediately upon receipt of an application made by an exporter under subsection (1), carry out a phytosanitary inspection of the consignment and where the inspection reveals that the consignment is not infested and the documents submitted in support of the application comply with the phytosanitary requirements of the country of destination, the NPPO shall issue a re-export phytosanitary certificate in the prescribed form.

(3) All original documentation and phytosanitary certificates from the country of origin shall accompany a consignment that is to be re-exported under this section.

(4) Where a consignment for re-export has, in [*insert name of Country*], been —

- (a) exposed to infestation or contamination by a pest;
- (b) lost its phytosanitary security or integrity; or
- (c) processed to change its nature,

the NPPO shall, where it issues a phytosanitary certificate, include information which indicates the country of origin and includes the original documentation.

(5) After the issuance of a re-export phytosanitary certificate, the exporter shall re-export the consignment in compliance with instructions of the NPPO concerning maintenance of the phytosanitary security of a consignment after certification.

Transit.

24. (1) Any person wishing to transit a consignment of plants, plant products or other regulated articles through [*insert name of Country*] shall submit an application to the NPPO for transit authorisation in the prescribed form and manner together with the prescribed fee.

(2) On receipt of an application under subsection (1), the NPPO shall, in accordance with such criteria as may be prescribed, assess the risk associated with the re-export of the plants, plant products or other regulated articles and shall grant the transit authorisation if it is satisfied that the level of risk is acceptable or otherwise can be successfully managed or mitigated.

(3) No additional phytosanitary requirements shall be required for a consignment in transit through [*insert name of Country*] provided that the consignment —

- (a) has been packed so as not to permit any risk of the spread of regulated pests that may be present in the consignment;
- (b) together with the accompanying documents, comply with the phytosanitary requirements of the country of destination; and
- (c) is accompanied by the phytosanitary certificate of the country of origin.

PART V CONTROL OF PESTS

Phytosanitary control measures.

25. Subject to sections 38 to 40, where the NPPO is satisfied or reasonably suspects that an area (including any pest free area, area of low pest prevalence, buffer zone or premises) is infested by a regulated pest or a national pest of concern, the NPPO may carry out the following phytosanitary actions—

- (a) treatment or disposal of plants, plant products or other regulated articles, including the treatment of vehicles whether or not they have been found to be infested, in order to limit the spread of the quarantine pest, keep the area free from a specific pest or keep the level of a pest low, as the case may be;
- (b) mandatory pest control treatment;
- (c) prohibition or restriction of the movement of any plants, plant products or other regulated articles within, from or to the area;
- (d) prohibition of planting or replanting specific plants in a specified location; or
- (e) any other phytosanitary action which the NPPO considers necessary.

Declaration of quarantine pests, regulated non-quarantine pests and national pests of concern.

26. (1) The NPPO may declare a pest to be—

- (a) a quarantine pest, if the NPPO is satisfied that the pest is of potential economic importance to the area endangered thereby and is not yet present there, or is present but not widely distributed and is being officially controlled;
- (b) a regulated non-quarantine pest, if the NPPO is satisfied, based on pest risk analysis, that –
 - (i) the pest is not a quarantine pest; and
 - (ii) the presence of the pest in a plant for planting would affect the intended use of the plant with an economically unacceptable impact;
 or
- (c) a national pest of concern, if the NPPO is satisfied, based on surveillance, that–
 - (i) the pest has a significant economic impact; and
 - (ii) the pest’s epidemiological characteristics determine that its control in *[insert name of Country]* must be performed at more than a local level, requiring official intervention for its management within *[insert name of Country]*.

(2) The NPPO shall maintain and periodically review the lists of regulated pests and national pests of concern and shall communicate such lists and any amendments thereto to the

Minister for approval and publication [in the Gazette and an approved newspaper of general circulation in [*insert name of Country*]⁹ and also to the IPPC Secretariat.

(3) The NPPO shall, upon request by international or regional organisations or other national plant protection organisations, provide the list of regulated pests and pests of national concern in [*insert name of Country*].

Duty of occupier to notify NPPO.

27. (1) The occupier or owner of any premises who has knowledge of or suspects the presence of a regulated pest or a national pest of concern on his premises shall immediately notify the NPPO, the person in charge of the nearest police station or the person in charge of the nearest agricultural station.

(2) Where the person who receives a notice under subsection (1) is not a phytosanitary inspector or the NPPO, he or she shall immediately notify the NPPO.

Declaration of provisional quarantine.

28. Where an inspector reasonably believes that a quarantine pest may be present in any area or premises, he or she may —

- (a) enter into such area or premises in accordance with the provisions of section 38;
- (b) inspect any plants, plant products or other regulated articles;
- (c) take such samples as he or she considers necessary to verify the presence of the quarantine pest; or
- (d) declare such area or premises under provisional quarantine; and
- (e) in a written report notify the NPPO of the possible quarantine pest presence, the actions taken by the inspector and the declaration, if any.

Declaration of quarantine.

29. (1) Upon receipt of a report under section 28 (e), the NPPO —

- (a) may, subject to subsection (2), take emergency measures; and

⁹ Member States may determine, at the national level, whether to use either or both methods of publication to publish the lists of regulated pests and national pests of concern.

- (b) shall, within the prescribed period, conduct an investigation confirming —
 - (i) the presence of a quarantine pest and advise the Minister of the need to declare the area or premises that is under provisional quarantine, pursuant to section 28 (d), to be under quarantine; or
 - (ii) the absence of a quarantine pest in the area or premises declared to be under provisional quarantine and shall, by notice in writing, revoke the declaration of provisional quarantine.

(2) Emergency measures taken under subsection (1) in response to a new or unexpected phytosanitary situation may be provisional in nature.

(3) The Minister shall, upon receipt of advice from the NPPO under subsection (1) (b) (i) or section 30 (2) —

- (a) by [Order] [publication in a newspaper of general circulation in [*insert name of Country*]]¹⁰ declare any area or premises that is affected or is reasonably suspected of being affected by a quarantine pest to be under quarantine;
- (b) prescribe measures for the treatment or disposal of plants, plant products or other regulated articles, and the treatment of a conveyance whether or not it has been found to be affected, in order to limit the introduction of any quarantine pest;
- (c) prescribe the period of quarantine; and
- (d) set any conditions for subsequent renewals of a declaration made under paragraph (a).

Procedure where quarantine pest is on premises.

30. (1) Where the NPPO reasonably suspects that a quarantine pest is present on any premises, the NPPO may —

- (a) authorize an inspector to —
 - (i) subject to section 38 (4), enter the premises at any reasonable time;
 - (ii) inspect any plants, plant products or other regulated articles on the premises; and

¹⁰ Member States are to determine, at the national level, whether to make provision for either or both methods of publication.

(iii) take such sample as he or she considers necessary, in accordance with section 38(6);

(b) by notice in writing, require the owner or occupier of the premises, and where the NPPO deems it appropriate, the owner or occupier of any premises in the vicinity, to take, within a specified period, such measures on his or her premises that the NPPO considers appropriate to eradicate, contain or restrict the spread of the pest.

(2) Where, in circumstances other than those specified in sections 28 and 29 –

(a) the NPPO confirms the presence of a quarantine pest on a premises; and

(b) there is no quarantine in effect in relation to the premises at the time of the confirmation,

the NPPO shall advise the Minister to declare the premises to be under quarantine.

(3) Subject to section 38 (4), where an owner or occupier of premises fails to comply with any term of a notice issued under subsection (1), the NPPO may direct an inspector or other authorised person to enter the premises in question in order to carry out the requirements of the notice and, where necessary, destroy plants, plant products or other regulated articles in order to eradicate, contain or restrict the spread of the pest.

(4) Subject to subsection (5), the owner of plants, plant products or other regulated articles shall be liable to pay the costs for any action taken under subsection (3), except where in exceptional cases the NPPO determines that the Government of [*insert name of Country*] shall take responsibility for the associated costs on prescribed grounds including food security.

(5) The Government of [*insert name of Country*] may assume financial responsibility under subsection (4) without prejudice to its right to recover its costs from the owner as a civil debt.

(6) Where the NPPO takes any action under this section, the method used to calculate the costs shall be as prescribed.

(7) The Government of [*insert name of Country*] shall not be liable for the destruction or disposal of any plants, plant products or other regulated articles carried out in accordance with this section.

Service of notice in absence of occupier.

31. Subject to section 38 (4), if a person is not in actual occupation of any premises or if the occupier cannot be found, service of any notice under this Act may be made by affixing the same in a conspicuous place on the premises, and such affixing shall be deemed to be sufficient service or notice.

Duration of quarantine notice.

32. (1) Any notice issued under section 30 (1) (b) or section 31 shall remain in force until a certifying inspector issues any affected owner or occupier of the premises a certificate in writing certifying that the premises or area is free from quarantine pests.

(2) No person shall remove, or allow or cause to be removed any plants, plant products or other regulated articles from the premises or area under quarantine in the period that a notice issued under section 30 (1) (b) or section 31 is in force.

Declaration of phytosanitary emergency.

33. (1) Where, the NPPO reasonably believes, on the basis of –

- (a) risk analysis; or
- (b) evidence obtained from-
 - (i) an inspection carried out under this Act; or
 - (ii) an analysis of a sample taken under section 30 (1) (a) (iii),

that there is a grave threat to plant resources or food security, the NPPO shall advise the Minister of such threat.

(2) Where –

- (a) the NPPO issues advice to the Minister under subsection (1); and
- (b) the Minister is satisfied that there is a grave threat to plant resources or food security,

the Minister may by [Order] [publication in an approved newspaper of general circulation in [*insert name of Country*]]¹¹ declare a phytosanitary emergency.

¹¹ Member States are to determine, at the national level, whether to make provision for either or both methods of publication to be used by the Minister to declare a phytosanitary emergency.

(3) A declaration made under subsection (2) shall be time-bound and subject to periodic review and evaluation as prescribed by regulations and specified in the phytosanitary emergency plan.

Lifting of quarantine.

34. (1) The NPPO shall regularly assess quarantine areas to determine whether the relevant quarantine pest is no longer present, or that it is no longer appropriate for the declaration of quarantine to be maintained in respect of the whole or any part of that area.

(2) Where the NPPO determines that the relevant quarantine pest is no longer present, or that it is no longer appropriate for the declaration of quarantine to be maintained in respect of the whole or any part of that area it shall recommend that the Minister to revoke the declaration that an area or premises is under quarantine.

(3) The Minister shall, on the recommendation of the NPPO, revoke a declaration that an area or premises is under quarantine.

(4) Where the Minister revokes a declaration that an area or premises is under quarantine, the NPPO shall, without delay, serve written notice of the revocation on all owners or occupiers of premises within the quarantine area.

Declaration of pest free area or low pest prevalence area.

35. The Minister may, on the recommendation of the NPPO, by [Order] [publication in an approved newspaper of general circulation in [*insert name of Country*]]¹² declare an area to be —

- (a) pest free where the NPPO is satisfied that —
 - (i) no pests are present in the area;
 - (ii) phytosanitary measures have been implemented to keep the area, place or site free of the pest; and
 - (iii) a surveillance system has been instituted to verify that the area, place or site remains free of the pest; or

¹² Member States are to determine, at the national level, whether to make provision for either or both methods of publication to be used by the Minister to declare an area to be pest free or of low pest prevalence.

- (b) an area of low pest prevalence where the NPPO is satisfied that —
 - (i) a pest is present at low levels in the area;
 - (ii) phytosanitary measures have been implemented to keep the pest levels low; and
 - (iii) a surveillance system has been instituted to verify that the pest levels remain low.

Pest free places of production and pest free production sites.

36. The Minister may on the recommendation of the NPPO, by [Order] [publication in an approved newspaper of general circulation in [*insert name of Country*]]¹³ declare a place of production or production site to be pest free where the NPPO is satisfied that —

- (a) no pests are present in the area comprising the place of production or production site which is the subject of the declaration;
- (b) phytosanitary measures have been implemented to keep the area free of pests; and
- (c) a surveillance system has been instituted to verify that the area remains free of the pest.

Duty to report pests.

37. A person who observes the existence of a new pest or a regulated pest shall, as soon as may be practicable, report the existence of the pest to the NPPO.

**PART VI
ENFORCEMENT**

Powers of inspector.

38. (1) An inspector may inspect and examine any plants, plant products or other regulated articles.

¹³ Member States are to determine, at the national level, whether to make provision for either or both methods of publication to be used by the Minister to declare a place of production or a production site to be pest free.

(2) [Subject to subsection (4), except for a dwelling place, an inspector may, without a warrant and upon presentation of his or her identification]¹⁴ —

- (a) enter any area or premises in order to inspect plants, plant products and other regulated articles under cultivation, in storage or in transport in order to report the presence of quarantine pests, and for that purpose, may —
 - (i) request any information, including official documents, regarding plants, plant products and other regulated articles from the owner or person in charge of such area or premises;
 - (ii) subject to subsection (6), take samples of plants, plant products or other regulated articles or their package or container;
 - (iii) examine, make copies of or take extracts from books, statements or other documents found at the area or premises, and request from the owner or any person in charge an explanation of any information contained therein;
 - (iv) take phytosanitary action such as, but not limited to, treatment, disposal, [reshipment] [re-export], or confinement of plants, plant products or other regulated articles in such area or on such premises;
 - (v) take photographs;
 - (vi) seize plants, plant products, other regulated articles, objects, books, statements or documents which appear to provide proof of a contravention of this Act;
- [(b) stop and search any vehicle, on land or at sea, in which plants, plant products or other regulated articles are being or are reasonably suspected of being transported, packed, packaged, stored or sold;
- (c) stop and search any person, where the inspector has reasonable grounds to believe an offence under this Act is being committed;]¹⁵
- (d) inspect consignments of plants, plant products or other regulated articles destined for import into [*insert name of Country*] to determine whether they are infested by regulated pests, and, where necessary, verify the pest status of consignments by visual examination, the taking and testing of samples or otherwise;

¹⁴ Please see the footnote to subclause (4). If the Member State decides that subclause (4) applies to all premises, the chapeau of subclause (2) will have to be changed accordingly.

¹⁵ Member States may determine, at the national level, the appropriate entity to be empowered to perform the functions specified in paragraphs (b) and (c).

- (e) ensure that the treatment of plants, plant products or other regulated articles for import into [*insert name of Country*] is undertaken in accordance with phytosanitary import requirements;
- (f) inspect consignments of plants, plant products or other regulated articles destined for export and, where necessary, verify the pest status of consignments by visual examination, the taking and testing of samples or otherwise, for the purpose of compliance with other countries' import requirements;
- (g) issue phytosanitary certificates and re-export phytosanitary certificates on behalf of the NPPO to ensure compliance with other countries' import requirements, and where necessary, carry out any required treatment;
- (h) order the treatment, disposal, reshipment, or confinement in a quarantine station, of pests, or any plants, plant products or other regulated articles, imported into [*insert name of Country*] or in transit, whether or not covered by a phytosanitary import permit or a phytosanitary certificate, where he or she considers necessary for the prevention or the spread of any pest believed on reasonable grounds that is amongst such plants, plant products or other regulated articles;
- (i) stop the distribution, sale or use of, and seize, any plants, plant products or other regulated articles for a prescribed period, where the inspector reasonably believes that such plants, plant products or other regulated articles are being distributed sold or used in contravention of the provisions of this Act;
- (j) conduct inquiries and request information or documentation upon reasonable suspicion that the provisions of this Act have been or are being contravened;
- (k) make a notification; and
- (l) carry out any other necessary phytosanitary action.

(3) Where an inspector seizes any item, article, statement or document under subsection (2), the inspector shall provide a signed receipt in the prescribed form which shall be countersigned immediately by the owner or person in charge.

(4) An inspector may enter any [dwelling house] [premises]¹⁶ for the purpose of carrying out any of the functions specified in subsections (1) and (2) –

- (a) with the consent of the owner or occupier; or

¹⁶ Member States are to determine, at the national level, whether the powers of entry granted to an inspector should be constrained in the manner set out in subclause (4) in relation to his or her entry into any premises or only in relation to his or her entry into dwelling places.

- (b) without the consent of the owner or occupier, where the inspector is authorized to do so by warrant issued by a magistrate.

(5) Where, in the course of an inspection carried out under subsection (2), an inspector considers it necessary, he or she may seize, destroy, detain, treat or otherwise dispose of any plants, plant products or other regulated articles, or order that any such action be taken, at the expense of the owner.

(6) Where an inspector exercises powers conferred by subsection (2) (a) (ii), the inspector shall –

- (a) divide the sample into approximately three equal parts;
- (b) ensure that each sample is numbered and securely sealed in a manner that does not permit it to be opened without breaking the seal;
- (c) hand over one part thereof to the seller or person responsible for the plants, plant products or other regulated articles and the other two parts to be submitted to an official laboratory for tests; and
- (d) ensure, as far as practicable, that sampling is carried out in such a manner as to prevent cross-contamination of the sample.

(7) Where an inspector causes plants, plant products or other regulated articles to be seized, detained, treated, disposed of or destroyed in accordance with this Act the inspector shall immediately serve a written notice on the owner together with a description of the action taken and the reasons for so doing.

(8) An inspector exercising authority under this section may request the presence and assistance of a [*law enforcement*] officer.

(9) An inspector may carry out an inspection in the territory of an exporting country as a pre-clearance inspection, at the invitation of the exporting country.

(10) In carrying out any duty under this section, an inspector shall identify himself or herself as an inspector by showing his or her identification card or other proof of his or her appointment or designation as an inspector.

Storage or removal of affected items.

39. Where an inspector has seized and detained plants, plant products or other regulated articles under section 38 (2) (a) (vi), the inspector or any other person designated by the NPPO, may-

- (a) store, treat, quarantine or dispose of the plants, plant products or other regulated articles at the place where they were seized or move them to any other place for storage, treatment, quarantine or disposal; or
- (b) require the owner of the person in charge of the plants, plant products or other regulated articles to store, treat, dispose of, export or move them to any other place.

Confiscation and disposal of plants etc.

40. (1) An inspector may confiscate and dispose of —

- (a) any plants, plant products or other regulated articles that, after their entry into [*insert name of Country*] and treatment, remain unclaimed for a prescribed period of time;
- (b) any quarantine pest or regulated non-quarantine pest; or
- (c) anything that the inspector reasonably believes contains or harbours a quarantine pest or regulated non-quarantine pest.

(2) Where an inspector confiscates and disposes of plants, plant products or other regulated articles, quarantine pests or regulated non-quarantine pests, the inspector shall, as soon as is practicable, advise the owner or person in charge of the reason for their confiscation and disposal and issue a written notice of confiscation and disposal.

(3) Notwithstanding subsection (2), if —

- (a) the situation requires emergency action; or
- (b) it is impractical to give reasons for the confiscation and disposal,

the inspector may forego advising the owner of the reason, provided that the inspector provides notice of the confiscation and disposal to the owner or person in charge as soon as may be practicable after the confiscation and disposal has been carried out.

Offences.

41. (1) A person who either personally or indirectly through an employee or agent —

- (a) grows, sells, offers for sale, transports or distributes in any manner any plants, plant products or other regulated articles knowing that they are infested by a quarantine pest;

- (b) assaults, resists, intimidates, threatens, abuses in any manner whatsoever, or obstructs an inspector exercising lawful powers under this Act;
- (c) tampers with any sample taken pursuant to this Act;
- (d) intentionally permits, introduces or causes the introduction or spread of a quarantine pest;
- (e) fails to allow a search or inspection or the taking of any sample authorized under this Act;
- (f) removes, allows, or causes to be removed any plants, plant products or other regulated articles from a premise or area under quarantine, contrary to section 32 (2);
- (g) breaks the seal on a sealed container containing plants, plant products or other regulated articles except in the presence of an inspector;
- (h) knowingly or recklessly provides information which is false, for the purpose of obtaining any document under this Act;
- (i) knowingly or recklessly imports, plant products or other regulated articles otherwise than in accordance with an import permit issued under this Act;
- (k) alters, forges, defaces or destroys any document issued under this Act;
- (l) exports a consignment otherwise than in compliance with the instructions of the NPPO, contrary to section 22(3); or
- (m) re-exports a consignment otherwise than in compliance with the instructions of the NPPO, contrary to section 23(5),

commits an offence and is liable –

- (i) in the case of a first offence, on summary conviction, to a fine not less than *[to be specified at the national level]* but not more than *[to be specified at the national level]* or to imprisonment for a term not less than *[to be specified at the national level]* but not more than *[to be specified at the national level]* or to both fine and imprisonment; and
- (ii) in the case of a second or a subsequent offence, to a fine not less than *[to be specified at the national level]* but not more than *[to be specified at the national level]* or to imprisonment for a term not less than *[to be specified at the national level]* but not more than *[to be specified at the national level]* or to both fine and imprisonment.

(2) Subsection (1)(g) shall not apply to a customs officer who breaks the seal on a sealed container in accordance with the provisions of the [Customs Act].

(3) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any

neglect or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, such director, manager, secretary or other officer as well as the body corporate commits that offence.

Offences by NPPO staff.

- 42.** (1) An inspector, official analyst, officer or other NPPO member of staff who —
- (a) directly or indirectly asks for or accepts any personal payment or other reward in connection with any official duties;
 - (b) agrees to do, abstains from doing, permits, conceals or connives at any act or thing which is contrary to the proper execution of official duties under this Act, or is otherwise contrary to the laws of [*insert name of Country*];
 - (c) discloses any information acquired in the performance of his or her official duties relating to any person, firm or business, except when required by his or her supervisor in the course of official duties, or where ordered to do so by any court; or
 - (d) otherwise abuses his or her powers granted under this Act,

commits an offence and is liable, on summary conviction, to a fine of [] or to imprisonment for a term of [] or to both fine and imprisonment.

(2) Upon conviction for an offence under subsection (1) an inspector shall, without prejudice to the application of any sanction contained in the [General Orders of the Public Service] be liable to dismissal by the NPPO.

Procedure for offences.

43. (1) Where an inspector reasonably believes that a person has contravened any of the provisions of this Act, he shall provide such information to the Director.

(2) The Director shall determine whether the matter shall be forwarded to [*law enforcement/police*] or whether an administrative penalty is applicable.

(3) Where a matter has been forwarded to the [*law enforcement/police*], the [*law enforcement/police*] shall carry out an investigation and shall, where appropriate, issue a summons ordering the person accused of contravening the Act to appear before a magistrate.

Certain offences may be dealt with administratively.¹⁷

44. A person who commits an offence specified in sections [], [], [], [] and [] may, subject to this Act, elect to have that offence dealt with administratively in accordance with Sections 45 to 49.

[Prosecution avoidance notice.

45. (1) Subject to subsections (2) and (4), if the Director is satisfied that a person has committed an offence referred to in section 44, the Director may, in such form as may be prescribed, and subject to the approval of the Director of Public Prosecutions, notify the accused person of the particulars of the alleged offence and that the accused person may elect to have the offence dealt with administratively by the Director by the payment of a prosecution avoidance penalty in lieu of prosecution for the offence, in the amount and within the period specified in the notice.

(2) A prosecution avoidance notice shall—

- (a) be in the prescribed form;
- (b) set out the circumstances alleged to constitute the offence to which the notice relates; and
- (c) state—
 - (i) the amount of the prosecution avoidance penalty, which shall be twenty per cent of the maximum amount of the fine for the offence to which the prosecution avoidance notice relates;
 - (ii) the period for paying the prosecution avoidance penalty, which shall not exceed 21 days from the date of receipt of the prosecution avoidance notice;
 - (iii) the person to whom and the address at which the prosecution avoidance penalty may be paid and any correspondence relating to the prosecution avoidance notice may be sent;
 - (iv) the method or methods by which payment may be made; and
 - (v) the consequences of not making a payment within the period specified for the payment of the prosecution avoidance penalty.

¹⁷ Member States are likely to have differences with respect to which offences should be so treated. As a result, square brackets have been inserted into the provision.

(3) Notwithstanding subsection (2) (c) (ii), the Director may extend the period for payment of the prosecution avoidance penalty to no more than [45 days] from the date of receipt of the prosecution avoidance notice, in any particular case, if he considers it appropriate to do so by sending a written notice to the person to whom the prosecution avoidance notice was given.

(4) Subsection (1) and section 44 shall not apply to a person who has paid or has agreed to pay a prosecution avoidance penalty under this Act on two or more occasions within the period of two years immediately preceding the date of the commission of the act which would otherwise be the subject of a prosecution avoidance notice.

(5) In determining whether to grant approval for the Director to issue a prosecution avoidance notice under subsection (1) the Director of Public Prosecutions shall give consideration to whether the facts alleged to have been committed by the accused person are of such a serious nature that it would not, having regard to the amount of the prosecution avoidance penalty, be in the national interest to permit the offence to be dealt with administratively.]

Procedure for payment.

46. A person notified under section 45 (1) shall, within [7]¹⁸ days of the date of receipt of the notice, notify the Director, in the prescribed form, of whether he or she elects to pay the prosecution avoidance penalty or be prosecuted for the offence.

Effect of payment of prosecution avoidance penalty.

47. The payment of a prosecution avoidance penalty shall not constitute a conviction for any offence under this Act and shall indemnify the accused person from prosecution for the offence.

Outstanding prosecution avoidance penalty a debt to the state.

48. The amount of an outstanding prosecution avoidance penalty constitutes a debt due to the State and is recoverable by legal action at the suit of the Director on behalf of the State.

¹⁸ Member States may determine another period at the national level.

Procedure for challenging alleged breach.

49. (1) A person to whom a prosecution avoidance notice is addressed and who wishes to challenge the alleged breach may, instead of paying the amount specified in the notice, apply to the Director for a reconsideration of the matter.

(2) A person aggrieved by a decision of the Director made under subsection (1) may, within the prescribed time and in the prescribed manner, appeal to [*insert name of Court*].

Forfeiture.

50. (1) Where a person is convicted of an offence under this Act the court may, on its own motion or at the request of any party to the proceedings, in addition to any other penalty imposed, order that any plants, plant products, or other regulated articles in respect of which the offence has been committed or which were used in connection therewith or any proceeds realized from its disposition, be forfeited to the [*State/Crown*] or otherwise disposed of as the Court may direct.

(2) Where the owner or person in charge of plants, plant products, or other regulated articles is convicted of an offence under this Act and a fine is imposed, the plants, plant products, or other regulated articles may be —

- (a) detained until the fine is paid;
- (b) sold in satisfaction of the fine; or
- (c) destroyed at the expense of the owner or person in charge of thereof.

(3) Where the court does not order the forfeiture of any plants, plant products, or other regulated articles, the plants, plant products, or other regulated articles, or any proceeds realized from their disposition shall be returned to the owner or person in charge thereof at the time of seizure.

Limitation on liability.

51. (1) Subject to subsection (2), the [*State*] [*Crown*] shall bear no liability for loss resulting from the destruction or disposal of any plants, plant products or other regulated articles carried out in accordance with this Act, provided that at all times due care was taken and the owner, importer or exporter, as appropriate, was first, except in the case of an emergency, consulted or informed of such action.

(2) Subsection (1) shall not apply to section 30.

Good faith defence.

52. (1) No member of staff of the NPPO, official analyst or official or employee of an official laboratory or reference laboratory or any government entity shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of official functions under this Act.

(2) Subsection (1) shall not apply to civil or criminal liability for personal injury or death.

Compensation.

53. (1) The Minister may, on the recommendation of the NPPO out of money voted for that purpose by Parliament, order compensation to be paid in respect of—

- (a) the treatment required of premises for the purposes of this Act; or
- (b) the prohibition or restriction imposed under this Act on the use of premises.

(2) No compensation shall be payable to a person who commits an offence under this Act and claims compensation in respect of any premises or thing by means of or in relation to which the offence was committed.

Appeal.

54. (1) Any person aggrieved by an action or decision of an inspector or an official analyst under this Act may, within the prescribed time and in the prescribed manner, appeal to the Director.

(2) Any person still aggrieved by the decision of the Director made under subsection (1) may, within the prescribed time and in the prescribed manner appeal to the [*name of Court*].

(3) The decision of the [*name of Court*] is final.

PART VII MISCELLANEOUS

Documents.

55. (1) A document required to be furnished to the Minister, the NPPO or an inspector under this Act may be furnished in electronic form.

[(2) Where a document referred to in subsection (1) is furnished in electronic form, an original hard copy of the document shall be furnished to the Minister, the NPPO or an inspector within a reasonable period after the document is furnished in electronic form.]¹⁹

Duty to assist and cooperate.

56. Customs, port, airport, airline, postal, shipping, police, local authorities and other relevant authority shall assist inspectors in the performance of their functions and exercise of their powers under this Act by providing such facilities and assistance as the NPPO may request from time to time.

Presumptions.

57. (1) Subject to subsection (3), in any prosecution for an offence under this Act, a declaration, certificate, report or other document produced by the NPPO, an official analyst, inspector or police officer, purporting to have been signed on behalf of the NNPO, the official analyst, inspector or police officer is, in the absence of evidence to the contrary, proof of the matters asserted therein.

(2) In any prosecution for an offence under this Act, a copy of an extract from any record or other document that is made by the NPPO, an official analyst, inspector or police officer under this Act as a true copy or extract is admissible in evidence.

(3) In any proceedings under this Act, any laboratory tests purporting to be signed by the director or head of an official laboratory or by an official analyst shall be accepted as *prima facie* evidence of the facts stated therein, provided that —

- (a) the party against whom it is produced may require the attendance of the official analyst who performed the laboratory tests, for purpose of cross-examination; and
- (b) no such laboratory tests shall be admissible in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

¹⁹ Taking their national arrangements into consideration, Member States may determine, at the national level, whether to retain subclause (2).

Regulations.

58. (1) The Minister may, on the advice of the NPPO, make regulations and issue orders or notices which he or she considers appropriate to give effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations, orders or notices made under subsection (1) may provide for all or any of the following matters —

- (a) the list of regulated pests and pests of national concern;
- (b) procedures for implementation of phytosanitary measures and emergency phytosanitary measures, including procedures to be followed by an inspector in the exercise of his or her duties under this Act;
- (c) surveillance, inspection, sampling, testing, treatment, confinement at quarantine stations, transport, reshipment and destruction;
- (d) the declaration and implementation of provisional quarantine and quarantine;
- (e) the establishment, membership, mandate and operating procedures of any committees established under this Act;
- (f) implementation of certification programmes;
- (g) maintenance of a database of all plant-growing establishments, including nurseries, green houses, screen houses, hydroponic operations and farms;
- (h) the procedure by which an area of low pest prevalence, or a pest free area, place or site, may be declared;
- (i) the qualifications of inspectors;
- (j) tests, inspections and procedures to be carried out by analysts;
- (k) the level of fees and costs for inspection and analysis or any other official actions taken under this Act or the scales of fees and costs;²⁰
- (l) the forms to be used for the purposes of this Act, including applications, permits, certificates, written notices and receipts for articles seized;
- (m) the procedures for the consideration and approval of facilities owned and operated by public or private third parties to be used for inspections under the supervision of the NPPO;
- (n) the conditions for the import of plants, plant products or other regulated articles;

²⁰ During editorial proofreading of the model, it was found that there was an overlap between paragraph (k) and paragraph (gg) “determination or scale of fees to be charged”. Therefore, paragraph (k) was revised to include a reference to scales of fees and the previous paragraph (gg) was deleted.

- (o) the designation of the ports of entry that are appropriate for the import and export of any plants, plant products and other regulated articles;
- (p) the circumstances under which phytosanitary requirements for import may be modified based on pest risk analysis;
- (q) procedures and guidelines for pre-clearance inspections;
- (r) the manner and criteria for the issuance of permits and certificates under this Act;
- (s) the procedures by which an importer may apply for inspection to take place at any location other than the point of entry, or outside of regular business hours, and pay any applicable fees;
- (t) the manner in which containers are to be sealed, marked and transported if they are to be inspected at their final destination rather than at the point of entry;
- (u) the manner in which any plants, plant products and other regulated articles are to be stored or transported;
- (v) the procedures to be adopted for the treatment of any plants, plant products or other regulated articles;
- (w) the location, management and functioning of any plant quarantine station established under this Act;
- (x) the requirements for the control and care of any plants, plant products and other regulated articles kept or maintained at a plant quarantine station;
- (y) the manner in which an inspector shall arrange for the destruction, removal, uprooting or treatment of any plants, plant products or other regulated articles within an area or location declared to be under quarantine;
- (z) regulating goods in transit;
- (aa) regulating woods packaging materials;
- (bb) the period within, and conditions under which, it shall not be lawful to plant or re-plant anything in all or part of an area declared to be under quarantine;
- (cc) the manner in which any sample being transported or in storage must be taken, marked and retained under this Act;
- (dd) the operating procedures of any official laboratories designated under this Act;
- (ee) conditions and procedures for the export of any plants, plant products or other regulated articles;
- (ff) operating procedures for the inspection of any plants, plant products or other regulated articles, and any physical structure or premises containing such plants, plant products or other regulated articles for the purposes of export;
- (gg) guidelines, policy directives or protocols promoting cooperation between relevant departments relating to plant protection; and

- (hh) additional measures to be taken for the purpose of preventing the introduction or spread of a pest.

Repeal and savings.

59. (1) The [*Plant Protection Act*] [*Chapter*] is hereby repealed.

(2) The Minister may, by order, revoke or modify any permit or certificate granted by the authority of the enactment referred to in subsection (1).

(3) All regulations in effect on the coming into force of this Act shall continue in force as if they were issued under this Act, except where they conflict with, and until they are replaced by regulations made under this Act.