

2021-06-03

Government of Barbados

Draft Plant Protection Bill, 2021

OBJECTS AND REASONS

This Bill would provide for the protection of plant resources by preventing the introduction and controlling the spread of plant pests to facilitate trade in plants and plant products in accordance with the obligations under the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures, the International Plant Protection Convention and the International Standards on Phytosanitary Measures; and for related matters.

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BARBADOS

A Bill entitled

An Act to provide for the protection of plant resources by preventing the introduction and controlling the spread of plant pests to facilitate trade in plants and plant products in accordance with the obligations under the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures, the International Plant Protection Convention and the International Standards on Phytosanitary Measures; and for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Plant Protection Act, 2021*.

Interpretation

- 2.(1) In this Act,

“affected” means infected or infested with a pest;

“area” means an officially defined whole or part of Barbados and includes a place or site of production;

“area of low pest prevalence” means an area, whether all or part of Barbados or all or parts of several countries, as identified by the competent authorities, in which a specific pest is present at low levels and which is subject to effect surveillance or control measures;

“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 invertebrate or other animals) which is identified by a competent authority to be directly or indirectly advantageous to flora or agricultural production;

“consignment” means a quantity of plants, plant products or other regulated articles (which may be composed of one or more commodities or lots) being moved from one country to another and covered, when required, by a single phytosanitary certificate;

“consignment in transit” means a consignment which passes through a country without being imported, and may be subject to phytosanitary measures;

- “contain” means to apply phytosanitary measures in and around an affected area to prevent the spread of a pest;
- “container” means a box, bag, wrapper, covering or other receptacle in which any plant, plant products or other regulated articles that may carry pests has been or is being transported;
- “control” means the suppression, containment or eradication of a pest population;
- “conveyance” means any vessel, aircraft, vehicle, cart, container, animal or other thing that can convey a plant, plant product, pest, beneficial organism or other regulated article from one place to another;
- “detain” means to keep a consignment in official custody or confinement as a phytosanitary measure;
- “emergency measure” means a phytosanitary measure established as a matter of urgency in a new or unexpected phytosanitary situation and an emergency measure may or may not be a provisional measure;
- “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”
- (a) in relation to a pest, means the movement of a pest into an area where it is not yet present, or present but not widely distributed and being officially controlled;
 - (b) in relation to a consignment, means the movement of the consignment through a port of entry into an area;
- “eradicate” means to apply phytosanitary measures to eliminate a pest from an area;
- “establishment” means the perpetuation, for the foreseeable future, of a pest within an area after entry;

“export” means to send outside Barbados to another country any plant, plant product, pest, beneficial organism or other regulated article by means of a conveyance;

“exporter” means any person who, whether as owner, consignor, consignee, agent, broker or otherwise, is in possession of, or in any way is entitled to the custody or control of any plant, plant product, beneficial organism or other regulated article to be taken out of Barbados for arrival in another country;

“Fund” means the Phytosanitary Emergency Fund established by section 12;

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

“import” means to bring into Barbados from another country any plant, plant product, pest, beneficial organism or other regulated article by means of a conveyance;

“import permit” means an official document or its electronic equivalent authorizing the importation of a commodity in accordance with specified phytosanitary import requirements;

“importer” means a person who, whether as owner, consignor, consignee, agent, broker or otherwise, is in possession of or in any way is entitled to the custody or control of any plant, plant product, pest, beneficial organism or other regulated article landed or likely to be landed in Barbados from country outside Barbados;

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

“inspection” means official visual examination of a plant, plant product or other regulated article to determine if pests are present or to determine compliance with phytosanitary requirements;

“inspector” or “Plant Protection Inspector” means a person designated or appointed under section 8;

“introduction” means the entry of a pest resulting in its establishment in Barbados;

“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 Agriculture;

“Ministry” means the Ministry responsible for Agriculture;

“national pest of concern” means a non-regulated pest with a significant economic impact the biological and epidemiological characteristics of which determine that its control in Barbados must be performed beyond a local level and requires the official intervention of the National Plant Protection Organisation for its management within Barbados, for technical coordination or for enforcement;

“National Plant Protection Organisation” means the Government unit, department or office designated by the Minister under section 5;

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

“official control” means the active enforcement of mandatory phytosanitary requirements and the application of mandatory phytosanitary procedures with the objective of

(a) the eradication or containment of quarantine pests; or

(b) the management of regulated non-quarantine pests;

“Organisation” means the National Plant Protection Organisation;

“outbreak” means

(a) a recently detected pest population, including an incursion, in an area;
or

(b) a sudden significant increase of an established pest population in an area;

“owner” means any person having for the time being the possession, custody or control of a plant, plant product or other regulated article;

“packaging” means any material used in supporting, protecting or carrying a plant, plant product or other regulated article;

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

“pest free area” means an area in which a specific pest is absent as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

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

“phytosanitary action” means

(a) the conduct of an official procedure, including inspection, testing, surveillance or treatment; or

(b) official control undertaken to implement any phytosanitary measure;

“phytosanitary certificate” means an official paper document or its electronic equivalent that is consistent with the model certificate of the IPPC stating that a consignment meets phytosanitary import requirements and is issued under section 28;

“phytosanitary emergency” means an emergency declared under sections 24(c) and 41;

“phytosanitary measure” means any enactment, regulation or official procedure having the purpose of preventing the introduction or spread of quarantine pests, or limiting the economic impact of regulated non-quarantine pests;

- “plant” means any living plant and its parts and includes a seed or germplasm;
- “plant product” means any unmanufactured 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;
- “port of entry” means an airport or seaport;
- “port of exit” means an airport or seaport;
- “pre-shipment inspection” means an inspection conducted in the exporting country under the supervision of the National Plant Protection Organisation of the importing country, before a consignment is exported, to verify that the consignment complies with phytosanitary requirements of the importing country;
- “premises” includes any building or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land situated in Barbados;
- “processing” means the act of washing, peeling, scraping, mincing, scrubbing or any other method used on any plant, plant product or other regulated article;
- “quarantine” means official confinement of plants, plant products or other regulated articles for observation and research or for further inspection, testing or treatment;
- “quarantine area” means an area where a quarantine pest is present and is being officially controlled;
- “quarantine pest” means a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled and declared as such by regulations;
- “regular business hours” means the normal working hours of a Government office in Barbados;

- “regulated article” means any plant, plant product, storage place, packaging, conveyance, container, 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 any pest which is not a quarantine pest and whose presence in a plant for planting affects the intended use of the plant with an economically unaccepted impact and which is therefore regulated in Barbados and declared as such by regulations;
- “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 dispose of to any person in any manner whether for consideration or otherwise;
- “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;
- “SPS Agreement” means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, to which Barbados is a party;
- “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 presence or absence by surveying, monitoring or other procedure;
- “treatment” means an officially authorised procedure for the killing, inactivation or removal of pests or rendering pest infertile or devitalisation;
- “vehicle” means any vessel, aircraft, conveyance, cart, container, motor vehicle, animal or other thing that can transport plants, plant products or other regulated articles from one place to another;

“vessel” means any ship, aircraft or other means of travel by sea or air;

“WTO” means the World Trade Organisation established in 1995, of which Barbados is a member.

(2) This section shall be interpreted in accordance with the IPPC’s International Standard for Phytosanitary Measures No. 5 Glossary on Phytosanitary Terms, as may be amended from time to time.

PART II

ADMINISTRATION

Powers of the Minister

3. The Minister shall
- (a) designate the ports of entry and ports of exit for plants, plant products and other regulated articles subject to the provisions of any customs enactment;
 - (b) designate the ministry, department or unit that will serve as the National Plant Protection Organisation for Barbados;
 - (c) designate official and reference laboratories;
 - (d) designate quarantine stations; and
 - (e) declare a quarantine area and pest free area on the advice of the Chief Agricultural Officer.

Chief Agricultural Officer

- 4.(1) The Chief Agricultural Officer shall
- (a) be responsible for the general administration of this Act; and
 - (b) report to the Minister.

- (2) The functions of the Chief Agricultural Officer shall be as follows:
- (a) to provide technical and administrative direction to the Organisation;
 - (b) to make recommendations to the Minister regarding the declaration of emergencies and the establishment of pest free areas, areas of low pest prevalence, pest free places of production and pest-free production sites;
 - (c) to formulate proposals for the NPPO work programmes in collaboration with other government entities;
 - (d) to serve as the IPPC contact point; and
 - (e) to submit to the IPPC a description of the structure of the NPPO and of any changes to that structure.

Establishment of the National Plant Protection Organisation

5.(1) There is established an Organisation to be known as the National Plant Protection Organisation.

(2) In accordance with section 3, the Minister shall issue a Notice published in the *Official Gazette* identifying the ministry, department or unit that shall serve as the Organisation and shall transmit the name of that ministry, department or unit to the IPPC Secretariat.

(3) The Minister shall assign individuals from time to time to serve as members of the Organisation.

Functions of the Organisation

6.(1) The functions of the Organisation shall include

- (a) the implementation of the IPPC together with the following responsibilities:
 - (i) issuing phytosanitary certificates;

- (ii) carrying out surveillance of any ornamental and growing plant, including areas under cultivation and wild flora, and of any plant and plant product in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and of controlling those pests;
- (iii) inspecting any consignment of a plant and plant product and, where appropriate, inspecting any other regulated article, for the purpose of preventing the introduction and spread of pests;
- (iv) conducting pre-shipment inspections;
- (v) supervising the treatment and consignment of any plant, plant product and other regulated article;
- (vi) protecting endangered areas, and designating, maintaining and surveying pest free areas and areas of low pest prevalence;
- (vii) conducting pest risk analyses;
- (viii) providing information to other countries concerning phytosanitary measures applied, either through pest risk analysis or by reference to applicable international standards;
- (ix) notifying trading partners of relevant instances of non-compliance with import requirements that may be prescribed;
- (x) ensuring the phytosanitary security of consignments after certification and before export;
- (xi) establishing auditing and trace-back procedures for any plant, plant product and other regulated article for phytosanitary certification;
- (xii) establishing minimum qualifications for and overseeing the training and development of inspectors and other Organisation staff;

- (xiii) distributing information regarding regulated pests and the means of their prevention and control;
- (xiv) proposing, reviewing, preparing and enforcing phytosanitary measures and other necessary enactments;
- (xv) notifying phytosanitary measures to other countries in accordance with international obligations;
- (xvi) providing information regarding import and export regulations in force, and technical requirements for any plant, plant product and other regulated article, on the request of any interested international, regional or other national plant protection organisation;
- (xvii) conducting research and investigation in the field of plant protection;
- (xviii) preventing and controlling the introduction of regulated pests;
- (xix) restricting the movement and spread of regulated pests and national pests of concern;
- (xx) controlling all plant pests, including living modified organisms, biological control agents and invasive alien species;
- (xxi) developing a list of quarantine pests, regulated non-quarantine pests, regulated articles and pests of national concern and regularly updating and publishing those lists;
- (xxii) requiring phytosanitary action as conditions or prohibitions for the importation of plants and plant products and other regulated articles;
- (xxiii) establishing and implementing certification programmes for planting material and plant products;
- (xxiv) issuing import permits;
- (xxv) establishing internal operations manuals; and

- (xxvi) establishing and maintaining registers of operators, including importers, exporters, nurseries, farmers and phytosanitary service providers;
 - (b) the enforcement of this Act, as well as of any other enactment relating to plant protection as the Minister may direct;
 - (c) the development of pest diagnostic, investigative and analytical capabilities;
 - (d) the administration of laboratories, plant quarantine stations and other phytosanitary facilities;
 - (e) the establishment of procedures for the accreditation of any official laboratory, plant quarantine station, official analyst or any other institution or person from the public or private sector involved in phytosanitary matters;
 - (f) carrying out and supervising the treatment and consignment of any plant, plant product and other regulated article including disinfecting or disinfesting; and
 - (g) any other function that the Minister considers necessary for the purposes of this Act.
- (2) In order to carry out the functions under subsection (1), the Organisation shall
- (a) be staffed with plant protection inspectors with experience in pest diagnostics; and
 - (b) be equipped with
 - (i) inspection and testing facilities; and
 - (ii) tools and equipment
- for the detention, treatment and destruction of intercepted consignments.

Delegation of functions of Organisation

7.(1) The Chief Agricultural Officer may, by instrument in writing, and with the approval of the Minister, designate any person with the prescribed qualifications to perform the functions of the Organisation but shall not delegate the following functions:

- (a) official liaison duties with other ministries or foreign authorities or any notification responsibilities to other ministries or foreign authorities;
- (b) granting approval of phytosanitary measures or requirements.

(2) Notwithstanding subsection (1), the issuance of phytosanitary certificates shall not be delegated to a private person.

(3) The Chief Agricultural Officer may delegate any qualified public officer who is not a member of staff of the Organisation to issue phytosanitary certificates under the direct supervision of the Organisation.

(4) Where the Chief Agricultural Officer delegates functions of the Organisation, in accordance with subsection (1), to an individual or public or private entity, the instrument shall include the following:

- (a) the duration of the delegation;
- (b) the specific tasks to be covered by the delegation;
- (c) the control, supervision and financing of the delegation;
- (d) the competencies and skills required by the person or entity to whom the function has been delegated; and
- (e) the conditions of withdrawal of delegations.

Appointment of Plant Protection Inspectors

8.(1) The Minister may, on the advice of the Chief Agricultural Officer by instrument in writing, appoint an officer of the Organisation who meets the

prescribed qualifications, to be a Plant Protection Inspector for the purposes of this Act.

(2) Where an officer designated as a Plant Protection Inspector in accordance with subsection (1) has any actual or reasonably perceived interest in a matter or other action to be taken by the Organisation, whether that interest is direct or indirect, he shall communicate that interest to the Chief Agricultural Officer, and where that interest is in conflict with the impartiality and independence of an inspector, the Chief Agricultural Officer shall recommend to the Minister to withdraw the appointment of that officer as a Plant Protection Inspector.

Designation of official laboratory and official analyst

9.(1) For the purposes of this Act, the Minister shall on the recommendation of the Chief Agricultural Officer designate

- (a) a laboratory to be an official laboratory; and
- (b) an analyst to be an official analyst;

(2) An official laboratory or official analyst designated under subsection (1) shall be impartial and independent.

Advisory Working Group

10.(1) There is established an Advisory Working Group which shall advise the Minister and the Organisation on issues of plant protection and shall be responsible for

- (a) advising on phytosanitary policy;
- (b) making recommendations for the enactment of legislation;
- (c) assisting in the determination of criteria for the declaration of a phytosanitary emergency under sections 24(c) and 41;
- (d) serving as a mechanism through which emergencies can be co-ordinated under the technical leadership of the Chief Agricultural Officer; and

- (e) serving as a mechanism for the co-ordination and consultation among public entities or between public and private entities for the purposes of scientific advice on phytosanitary matters.
- (2) The Advisory Working Group shall consist of 15 members comprised as follows:
 - (a) three staff members of the Ministry, including the head of the Organisation; and
 - (b) one person from each of the following:
 - (i) the Ministry responsible for the environment;
 - (ii) the Ministry responsible for trade;
 - (iii) the Ministry responsible for legal affairs;
 - (iv) the Customs Department;
 - (v) the Royal Barbados Police Force;
 - (vi) the University of the West Indies or other tertiary institution;
 - (vii) the Barbados Chamber of Commerce; and
 - (viii) a farmers' organisation;
 - (c) two persons representing the interests of importers; and
 - (d) two persons representing the interest of exporters.
- (3) The members of the Advisory Working Group shall
 - (a) be remunerated as the Minister may determine from time to time; and
 - (b) serve for a period not exceeding 3 years and be eligible for re-appointment.
- (4) nine members of the Advisory Working Group shall constitute a quorum.
- (5) The Advisory Working Group shall meet at least 3 times each year.

- (6) The Advisory Working Group shall elect a Chairman at its first meeting, which shall take place within 3 months from the date of commencement of this Act.
- (7) The Advisory Working Group shall regulate its own procedure.

Resignation or removal of members of Advisory Working Group

11.(1) The Chairman or a member of the Advisory Working Group may at any time resign his office by instrument in writing addressed to the Minister and from the date of receipt of the instrument that person shall cease to be a member of the Advisory Working Group.

(2) The Minister may terminate the appointment of the Chairman or any other member of the Advisory Working Group.

Phytosanitary Emergency Fund.

12.(1) There shall continue to be a Phytosanitary Emergency Fund which shall be administered by the Ministry and into which funds, donations, grants, awards and endowments given to the Advisory Working Group shall be paid to facilitate the work of the Organisation.

(2) All monies collected or received in accordance with subsection (1) shall be paid into the general account of the Fund in a bank approved by the Minister of Finance and administered in accordance with the Financial Rules.

(3) The resources of the Fund shall be made available to the Organisation on the declaration of a phytosanitary emergency in accordance with sections 24(c) and 41.

Register

13. The Organisation shall establish a register of operators and shall keep records relating to imports, exports, domestic producers and nurseries of plants, plant products and other regulated articles.

Principles for the approval and implementation of phytosanitary measures

14.(1) In accordance with the principles contained in the SPS Agreement, the Organisation shall develop and implement phytosanitary measures for Barbados which shall be

- (a) harmonized with the international standards;
- (b) technically justified through pest risk analysis or risk assessment and science-based decisions;
- (c) least trade restrictive, necessary and proportional to the risk.

(2) The phytosanitary measures developed in accordance with subsection (1) shall be regularly reviewed, updated and published.

Duty to assist and co-operate

15.(1) The Organisation may submit a request to a ministry or department of Government, statutory body or private organisation for the use of its facilities and services to assist a Plant Protection Inspector in the performance of his functions and the exercise of his powers.

(2) Where a request is submitted in accordance with subsection (1), the ministry or department of Government, statutory body or private organisation, to whom the request is made, shall assist a Plant Protection Inspector in the performance of his functions and in the exercise of his powers.

Review and audit

16.(1) The Organisation shall arrange for its own performance to be subject to review, evaluation and audit by an external body or shall carry out a self-audit.

(2) The Organisation shall periodically review the effectiveness of phytosanitary measures issued under this Act.

- (3) The Organisation shall, with the support of the **Department for Co-ordination of Agricultural Health and Food Control**
- (a) monitor and evaluate the implementation of this Act; and
 - (b) set out the conclusions based on the monitoring and evaluations under paragraph (a), in a report.
- (4) The first report prepared under this section shall be published no later than 5 years after this Act comes into force and thereafter shall be published at intervals not exceeding 3 years.

PART III

IMPORTS

Restrictions on import

- 17.(1)** A plant, plant product and other regulated article shall be imported into Barbados only at a designated port of entry.
- (2) No person shall import a plant, plant product or other regulated article into Barbados except
- (a) by virtue of an import permit granted under section 18(2);
 - (b) where the plant, plant product or other regulated article is accompanied by
 - (i) an original phytosanitary certificate issued by the country of export, where required; and
 - (ii) any other documentation that may be prescribed; or
 - (c) where all the prescribed requirements under section 18(3) are satisfied.
- (3) A plant, plant product or other regulated article that does not comply with the requirements under subsection (2) shall be prohibited from entry into Barbados.

- (4) The Organisation shall issue phytosanitary import requirements and measures for plants, plant products and other regulated articles which shall
- (a) apply to regulated pests;
 - (b) be based on a pest risk analysis or existing international standards; and
 - (c) be subject to periodic review and modified, updated or revoked as conditions change or as new facts become available.
- (5) Where the Organisation has modified, updated or revoked a phytosanitary import requirement or measure, the Minister shall publish those changes by Notice published in the *Official Gazette* for the benefit of an importer.
- (6) The Organisation may negotiate bilateral and multilateral agreements for the evaluation and acceptance of alternative phytosanitary measures proposed by the national plant protection organisation of the exporting country as being equivalent to the phytosanitary measures required under this Act.
- (7) The Minister shall publish by Notice in the *Official Gazette*, the phytosanitary requirements, measures and prohibitions under this Act and a copy of the Notice shall be placed at the designated ports of entry.

Import permit

- 18.(1)** A person who intends to import a plant, plant product or other regulated article into Barbados shall require a plant import permit issued by the Organisation where that plant, plant product or other regulated article
- (a) is from a country of origin where there are confirmed or suspected quarantine pests;
 - (b) is subject to post-entry quarantine requirements;
 - (c) is for a prescribed end use or for research purposes;
 - (d) is required in response to a humanitarian crisis or natural disaster;
 - (e) is required to be traced over a period of time; or

- (f) is determined by the Organisation to require a plant import permit on the basis of a pest risk analysis.
- (2) Where an import permit is required under paragraph (a) of section 17(2), an importer shall apply to the Organisation in the prescribed manner and may be granted a permit on the payment of the prescribed fee.
- (3) In evaluating an application for an import permit, the Organisation shall consider existing international standards or conduct a pest risk analysis to determine the phytosanitary requirements that would apply.
- (4) The Organisation may review, modify or revoke an import permit for a plant, plant product or other regulated article issued under subsection (4) of section 17 at any time by written notice in circumstances where
- (a) the type or quantity of the plant, plant product or other regulated article has changed;
 - (b) there is a change in 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.

Duty to declare regulated articles brought in person

- 19.(1)** Every person who arrives in Barbados at a designated port of entry and has in his possession any plant, plant product or other regulated article, shall declare that plant, plant product or other regulated article to a Plant Protection Inspector and if there is no inspector present, the declaration shall be made to a customs officer.
- (2) The customs officer referred to in subsection (1) shall take custody of the regulated article until such time as a Plant Protection Inspector is available to inspect the regulated article.
- (3) The master of every vessel arriving in Barbados shall inform passengers that they have a duty to declare any plant, plant product, or other regulated article on arrival at a designated port of entry.

Inspection on importation

20.(1) A person who has imported a plant, plant product or other regulated article into Barbados, shall present it for inspection to a Plant Protection Inspector at a designated port of entry.

(2) Notwithstanding subsection (1) and where Barbados is not the final port of destination, a plant, plant product or other regulated article may be inspected by an inspector at its final port of destination:

- (a) on the application by an importer; and
- (b) if the container has been 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 plant, plant product or other regulated article

- (a) is in transit;
- (b) is extremely perishable;
- (c) is delayed in its arrival,

in which case, on application by the importer and on payment of the prescribed fee, the Organisation may grant permission for the inspection to be carried out at any other time.

(5) Every plant, plant product or other regulated article imported into Barbados shall be under the phytosanitary detention of the Organisation until it is officially released by the Organisation to the importer.

(6) The Organisation may enter into a bilateral or other agreement

- (a) for the arrangements relating to pre-shipment inspections in the country of origin; and

- (b) for the evaluation, and where feasible, the acceptance of alternative phytosanitary measures proposed by an exporting country's national plant protection office as being equivalent to the phytosanitary measures required by the Organisation.

Border inspection facility

21.(1) The Minister shall establish standards and requirements for border inspection facilities on the advice of the Chief Agricultural Officer.

(2) The responsible authority or owner or operator of a border inspection facility shall provide and maintain adequate areas and offices, including buildings, furnishings and fixtures, for the purpose of inspecting a plant, plant product or other regulated article or for any other purpose related to the administration of this Act, where required in writing by the Minister.

(3) The Minister may

- (a) cause to be made, improvements he considers desirable to any area, office, or other facility provided pursuant to subsection (1);
- (b) post, on or about the area, office, or other facility for as long as is required, a notice of the requirements of this Act.

(4) Where the owner or operator of a border inspection facility fails to comply with a request made under subsection (2), the Minister may cause the construction or repairs to be carried out and the owner or operator shall be liable for all reasonable costs incurred.

Detention or destruction of imports

22.(1) If, on an inspection carried out in accordance with section 20, the inspector determines that the imported plant, plant product or other regulated article

- (a) is not accompanied by the relevant documentation required under section 17(2); or

(b) presents any risk for the introduction or spread of pests, the inspector shall detain the item and immediately serve written notice on the importer that part or all of the imported plant, plant product or other regulated article may be subject, within the time period specified in the notice, to

- (i) detention until the receipt of the relevant documentation is presented within a reasonable time;
- (ii) appropriate treatment in order to remove the risk;
- (iii) re-exportation;
- (iv) confiscation; or
- (v) destruction.

(2) The inspector may forego notice and carry out any of the actions listed under subsection (1) where in his opinion the destruction of the imported plant, plant product or other regulated article is urgently required or the giving of notice is impracticable.

(3) Where, after its entry into Barbados or after treatment, any imported plant, plant product or other regulated article remains unclaimed for a period of time, as may be prescribed, the Organisation may take action to destroy the imported plant, plant product or other regulated article.

(4) The costs and responsibility for any action taken under subsection (1), (2) or (3) shall be borne by the importer, except where in exceptional cases the Organisation determines that the Crown should take responsibility for the associated costs.

(5) The Crown may assume financial responsibility under subsection (4) without prejudice to its right to recover costs from the importer as a debt.

(6) Where any action is taken under subsection (1), (2) or (3), the method used to calculate costs charged shall be in accordance with the **prescribed procedure**.

(7) The Crown shall not be liable for the confiscation, destruction or disposal of any plant, plant product or other regulated article carried out in accordance with this section.

(8) Where the Organisation intercepts a pest or where emergency action is required, the Organisation shall notify the exporting country of the action taken and the grounds for such action.

Release of imports

23. Where on an inspection carried out under section 20, the inspector determines that the imported plant, plant product or other regulated article does not present any risk for the importation and spread of pests, the inspector shall release the consignment to the importer.

Minister may restrict certain imports

24. The Minister, on the advice of the Chief Agricultural Officer and in order to protect plant resources, human health, animal health or the environment, may

- (a) permit the entry into Barbados of any plant, plant product or other regulated article for scientific or experimental purposes, subject to such terms and conditions that the Minister, considers appropriate;
- (b) prohibit or restrict the entry of any plant, plant product or other regulated article;
- (c) declare a phytosanitary emergency; or
- (d) take any other necessary action to prevent the introduction or spread of a quarantine pest and regulated non-quarantine pest.

Plant quarantine stations

25. The Organisation may

- (a) designate certain places as plant quarantine stations where a plant, plant product or other regulated article may be kept for phytosanitary

observation, research, inspection, testing, treatment, detention or destruction;

- (b) require that imported material be kept or cultivated at a plant quarantine station, or at any other location identified by the Organisation, and kept under the Organisation's supervision for such time as the Organisation considers necessary.

Duty to report and seize certain imports

26.(1) A postal officer, customs officer, a member of the Police Force, a member of the Defence Force, a postal courier or any other person who has knowledge of the arrival or importation of any plant, plant product or other regulated article into Barbados shall, in the absence of an inspector

- (a) detain the plant, plant product or other regulated article for inspection by an inspector;
- (b) as soon as practicable, notify the arrival or importation to the Organisation.

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

(3) The Organisation shall take custody of any item detained under subsection (1) within 3 days of its detention.

PART IV

EXPORTS AND CONSIGNMENTS IN TRANSIT

Restriction on exports

27.(1) A person shall not export a plant, plant product or other regulated article from Barbados unless that person

- (a) applies to the Organisation in the prescribed manner;

- (b) provides to the Organisation all documentations that are prescribed;
- (c) makes the consignment available for inspection under section 28;
- (d) pays the prescribed fees

and has been granted a phytosanitary certificate.

(2) Where a person intends to export a plant, plant product or other regulated article from Barbados, the Organisation shall

- (a) have the sole authority for the control, issuance and revocation of the phytosanitary certificate; and
- (b) be responsible for the phytosanitary security and integrity of a consignment after it has been certified.

(3) Where a phytosanitary certificate has been issued to an exporter, the exporter shall export the consignment in accordance with the instructions of the Organisation in order to maintain the phytosanitary security and physical integrity of the consignment.

Issuance of a phytosanitary certificate

28. The Organisation shall, on an application by an exporter under section 27 and on the payment of the prescribed fee, cause an inspection of the consignment to be carried out and

- (a) issue a phytosanitary certificate, in a form as may be prescribed, where the consignment
 - (i) meets the documentary and other requirements for import of the country to which the consignment is to be exported; and
 - (ii) satisfies any other requirement for export specified by the Organisation or under any applicable law in Barbados; or
- (b) deny the issue of a phytosanitary certificate where the requirement specified in paragraph (a) has not been met.

Re-export

29.(1) Where a consignment of plants, plant products or other regulated articles is imported into Barbados and thereafter exported to a third country of destination, the exporter shall

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

(2) Where an exporter makes an application in accordance with paragraph (a) of subsection (1), the Organisation shall, immediately on the receipt of the application, carry out a phytosanitary inspection of the consignment.

(3) Where the inspection reveals that

- (a) the consignment is not infested; and
- (b) the documents comply with the phytosanitary requirements of the country of destination,

the Organisation shall issue a re-export phytosanitary certificate in the prescribed form.

(4) The exporter shall re-export the consignment in accordance with any instructions or directives issued by the Organisation for maintaining the phytosanitary security of the consignment.

(5) A consignment for re-export shall be accompanied by the original documentation and phytosanitary certificates issued from the country of origin.

(6) Where a consignment for re-export has, while in Barbados,

- (a) been exposed to infestation or contamination by a pest;
- (b) lost its phytosanitary security or integrity; or

(c) been processed to change its nature,

the Organisation shall issue a phytosanitary certificate which indicates the country of origin and shall include the original documentation relating to the consignment.

(7) Where a re-export phytosanitary certificate has been issued to an exporter, the exporter shall re-export the consignment in compliance with instructions of the Organisation concerning the maintenance of the phytosanitary security of a consignment.

Transit

30.(1) A person who intends to transit a consignment of plants, plant products or other regulated articles through Barbados shall apply to the Organisation in the prescribed form and pay the prescribed fee for transit authorization.

(2) Where the Organization receives an application for transit authorization, the Organisation shall apply existing international standards and conduct a risk assessment to determine whether to grant authorization for the transit of a consignment of plants, plant products or other regulated articles through Barbados.

(3) The Organization shall

- (a) approve the application where it meets the prescribed requirements; or
- (b) deny the application where it fails to meet the prescribed requirements and inform the applicant in writing of the decision.

(4) Phytosanitary requirements shall not apply to a consignment in transit through Barbados where

- (a) the consignment has been packed so as not to permit any risk of the spread of regulated pests that might be present in the consignment;
- (b) the consignment as well as the accompanying documents comply with the phytosanitary requirements of the country of destination; and

- (c) the consignment is accompanied by the phytosanitary certificate of the country of origin.

Arrival notifications

31. A customs officer shall notify the Organisation of the arrival of a regulated article in Barbados and shall not release or dispose of that article unless authorized to do so by the Organisation.

PART V

CONTAINMENT AND ERADICATION OF PESTS

Phytosanitary control measures

32.(1) A pest free area, area of low pest prevalence, buffer zone or an area or premises infested or suspected of being infested by a regulated pest may be subject to the following phytosanitary control measures:

- (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;
- (b) mandatory pest control treatment;
- (c) prohibition or restriction of the movement of any plant, plant product or other regulated article within, from or to the area or zone;
- (d) prohibition of planting or replanting specific plants in a specified location; or
- (e) any other phytosanitary action which the Organisation thinks is necessary.

(2) The phytosanitary control measures specified in subsection (1) may be applied to other pests of national concern based on the economic impact of such pests and the potential intra-island or inter-island movement of such pests.

List of pests

- 33.(1)** The Organisation may declare a pest to be
- (a) a regulated pest based on a pest risk analysis; or
 - (b) a national pest of concern, based on surveillance and the potential local economic impact of the pest.
- (2) Where the Organisation has declared a pest under subsection (1), the Organisation shall
- (a) prepare a list of regulated pests and national pests of concern;
 - (b) maintain and periodically review the lists of regulated pests and national pests of concern;
 - (c) submit the lists of regulated pests and national pests of concern and any subsequent amendments to the same, to the Minister for approval;
 - (d) publish the lists of regulated pests and national pests of concern in the *Official Gazette*; and
 - (e) submit the lists of regulated pests and national pests of concern to the IPPC Secretariat.
- (3) The Organisation shall provide the list of regulated pests to an international or regional Organisation or other national plant protection organisation, where a request for the list is made from such a body.

Duty to notify Organisation

- 34.(1)** An occupier or owner of any premises who has knowledge of or reasonably suspects the presence of a quarantine pest on the premises shall immediately notify the Organisation.
- (2) Any person who has knowledge of or reasonably suspects the presence of a new pest or a regulated pest, shall immediately notify the Organisation.

Surveillance

35. The Organisation, through general and specific surveillance, shall gather the following data for regulated pests and pests of national concern:

- (a) the biology of the pest;
- (b) the distribution of the pest; and
- (c) the potential impact of the pest.

Declaration of provisional quarantine

36.(1) Where a Plant Protection Inspector believes that a quarantine pest may be present in any area or premises, he may

- (a) enter into such area or premises;
- (b) inspect any plants, plant products or other regulated articles; and
- (c) take such samples as he may consider necessary to verify the presence of the quarantine pest.

(2) Where an inspection under subsection (1) provides further grounds for the inspector to believe that a quarantine pest is present in the area or premises, he may declare that area or premises to be under provisional quarantine.

(3) Where an inspector has declared an area or premises to be under provisional quarantine he shall inform the Organisation in writing of the proposed measures to limit the spread of any quarantine pest and the justification for those measures.

(4) Where the Organisation has considered the proposed measures referred to in subsection (3), the Organisation may

- (a) take emergency measures to limit the spread of any quarantine pest; and

- (b) advise the Minister
 - (i) to declare the premises or area that is affected or is suspected of being affected with a quarantine pest to be under quarantine in accordance with section 37; or
 - (ii) to revoke the declaration of provisional quarantine made under subsection (2),
 within the prescribed period.

Declaration of quarantine

- 37.** The Minister may, on the advice of the Chief Agricultural Officer,
- (a) declare any premises or area that is affected or is suspected of being affected with any quarantine pest to be under quarantine;
 - (b) prescribe measures for the treatment or disposal of a plant, plant product or other regulated article, and the treatment of a conveyance whether or not it has been found to be affected, in order to limit the spread of any quarantine pest;
 - (c) prescribe the period of quarantine; and
 - (d) set any conditions for subsequent renewals of the declaration.

Procedure when quarantine pest on premises

- 38.(1)** When the Organisation believes that a quarantine pest is present on any premises, the Organisation may, subject to section 45(2),
- (a) authorise an inspector to
 - (i) enter the premises at any reasonable time,
 - (ii) inspect any plant, plant product or other regulated article on the premises;
 - (iii) take a sample as he may consider necessary; and

- (iv) destroy any plants that may not be affected but may have been exposed to the quarantine pest in buffer zones surrounding the affected plants; and
 - (b) require, by notice in writing, the owner or occupier of the premises, and where the Organisation deems it appropriate, the owner or occupier of any premises in the vicinity, to take within a specified period such measures on his premises as the Organisation considers appropriate to eradicate, contain or restrict the spread of the pest.
- (2) If any owner or occupier of premises fails to comply with any term of a notice issued under paragraph (b) of subsection (1), the Organisation 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 the plant, plant product or other regulated article in order to eradicate, contain or restrict the spread of the pest.
- (3) The owner shall be liable to pay the costs for any action taken under subsection (2), except where in exceptional cases the Organisation determines that the Crown should take responsibility for the associated costs.
- (4) The Crown may assume financial responsibility under subsection (3) without prejudice to its right to recover costs from the owner as a civil debt.
- (5) Where the Organisation takes any action under subsection (2), the method used to calculate the costs shall be as prescribed.
- (6) Without prejudice to subsections (3) and (4), the Crown shall not be liable for the destruction or disposal of any plant, plant product or other regulated article carried out in accordance with this section.

Service of quarantine notice in absence of occupier

39. Where 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 of notice.

Duration of quarantine notice

40.(1) Any notice issued under section 38 or 39 shall remain in force until an inspector gives any affected owner or occupier a certificate in writing that the premises or area is free from pests.

(2) A person shall not remove, or allow or cause to be removed, any plant, plant product or other regulated article from the premises or area under quarantine while a notice issued under section 38 or 39 is in force.

Declaration of phytosanitary emergency

41.(1) The Minister may declare a phytosanitary emergency on the recommendation of the Chief Agricultural Officer based on

- (a) an inspection carried out under this Act; or
- (b) an analysis of a sample taken under section 38(1)(a)(iii).

(2) A phytosanitary emergency declaration made under this section shall

- (a) enable the application of emergency measures and responses by the Organisation in the manner prescribed in a phytosanitary emergency plan;
- (b) be time-bound and subject to periodic review and evaluation as shall be prescribed by regulations and in the phytosanitary emergency plan;
- (c) trigger the Organisation to request assistance from the Advisory Working Group and other authorities or persons as may be required to carry out an effective response.

Lifting of quarantine

42. The Minister shall, on the advice of the Chief Agricultural Officer, serve written notice on all owners or occupiers of affected premises, lifting the quarantine where

- (a) the Minister determines that the relevant quarantine pest is no longer considered to be present; or
- (b) the Organisation determines that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the affected premises.

Declaration of pest free or low pest prevalence area

43. The Chief Agricultural Officer may, on the recommendation of the Organisation,

- (a) declare an area pest free where the Chief Agricultural Officer is satisfied that
 - (i) a pest is not present in the area;
 - (ii) phytosanitary measures have been implemented to keep the area free of the pest; and
 - (iii) a surveillance system has been instituted to verify that the area remains free of the pest;
- (b) declare an area of low pest prevalence where he 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

44.(1) The Organization may declare a place of production or production site pest free where the Organisation is satisfied that,

- (a) a pest is not present in the area;
- (b) phytosanitary measures have been implemented to keep the place of production or production site free of the pest; and
- (c) a surveillance system has been instituted to verify that the place of production or production site remains free of the pest.

(2) For the purpose of this section, a place of production or production site is pest free where a specific pest is absent as demonstrated by scientific evidence and in which, where appropriate, the condition is being officially maintained for a defined period.

PART VI**ENFORCEMENT****Powers of a Plant Protection Inspector**

45.(1) For the purpose of detecting a regulated pest or ensuring compliance with the provisions of this Act, an inspector may

- (a) stop and, without a warrant, search a person, vehicle, container or conveyance entering or moving within Barbados that the inspector believes on reasonable grounds is harbouring a regulated pest;
- (b) subject to subsections (2) and (3), at a reasonable time enter any premises to inspect plants, plant products and other regulated articles under cultivation, in storage or in transport in order to report the presence of regulated or regulated non-quarantine pests;

- (c) open any container, receptacle or other thing that the inspector believes on reasonable grounds contains anything in respect of which this Act applies;
- (d) examine any thing in respect of which this Act applies and take a sample of it;
- (e) request any information, including documents, regarding any plants, plant products and other regulated articles from the owner or person in charge of the area or premises;
- (f) examine, make copies of or take extracts from any book, statement or other document found at the area or premises, and request from the owner or any person in charge, an explanation relating to an entry found in any book, statement or other document;
- (g) take phytosanitary action such as but not limited to treatment, disposal, re-shipment, or confinement of plants, plant products or other regulated articles in such area or on such premises;
- (h) take any photographs;
- (i) seize any plant, plant product, other regulated article, object, book, statement or document which appears to provide proof of a contravention of any provision of this Act providing a signed receipt in the prescribed form which shall be countersigned immediately by the owner or person in charge;
- (j) ensure that the treatment of plants, plant products or other regulated articles for import into Barbados is undertaken in accordance with the phytosanitary import requirements;
- (k) issue phytosanitary certificates and re-export phytosanitary certificates on the behalf of the Organisation to ensure compliance with the import requirements of other countries, and where necessary, carry out any required treatment;

- (*l*) order the treatment, disposal, reshipment, or confinement in a quarantine station, of pests, any plant, plant product or other regulated article, imported into Barbados or in transit, whether or not covered by a phytosanitary import permit or a phytosanitary certificate;
 - (*m*) stop the distribution, sale or use of any plant, plant product or other regulated article for a prescribed period, where the inspector believes that a plant, plant product or other regulated article is being distributed, sold or used in contravention of the provisions of this Act;
 - (*n*) seize any plant, plant product or other regulated article where the inspector believes that a plant, plant product or other regulated article is being distributed, sold or used in contravention of the provisions of this Act;
 - (*o*) conduct inquiries and request information or documentation where the inspector suspects that the provisions of this Act have been or are being contravened; and
 - (*p*) carry out any other necessary phytosanitary action.
- (2) An inspector may not enter a dwelling except with the consent of the occupier or under the authority of a warrant issued by a Magistrate.
- (3) Subject to subsection (2), an inspector may enter and search any premises where there is reasonable cause to believe that an offence under this Act has taken place or is taking place.
- (4) Where the seal on a sealed container containing a plant, plant product or other regulated article is to be broken, an inspector shall be present.
- (5) An inspector may, in the performance of his duties under this section, be accompanied and assisted by a member of the Police Force.

- (6) In the course of an inspection carried out under subsections (1), (2) and (3), an inspector may, as he considers necessary,
- (a) seize, destroy, detain, treat or otherwise dispose of any plant, plant product or other regulated article, or order that any such action be taken, at the expense of the owner; and
 - (b) serve a written notice on the owner with a description of the action taken and the reasons for so doing.
- (7) An inspector may carry out an inspection on the territory of an exporting country, as a pre-shipment inspection, at the invitation of the exporting country.
- (8) An inspector shall, in the course of performance of his duties under this Act,
- (a) identify himself as an inspector by showing his identification card or other proof of his appointment or designation as an inspector;
 - (b) maintain and secure any proprietary or confidential information, received or uncovered during the execution of his function;
 - (c) be accompanied and assisted by one or more members of the Police Force or such other persons as may reasonably be required for the performance of that function; or
 - (d) use any aids, including any equipment or device, subject to compliance with any applicable enactment regarding the use of such aids.
- (9) Where no person is in actual occupation of a premises, or where the occupier or owner cannot be located, service of any notice under this Act shall be made by affixing the notice to a conspicuous place on the premises and such affixing shall be considered as good service of the notice.

Notice of seizure.

46. An inspector who seizes and detains a plant, plant production or other regulated article under this Act

- (a) shall immediately provide to the owner of the plant, plant product or other regulated article a detention certificate in the prescribed form and shall, as soon as practicable, advise the owner that part or all of the plant, plant product or other regulated article may be subject within a specified time to any action specified in section 48; or
- (b) may forego advising the owner of the plant, plant product of other regulated article of the reason for the seizure if, in the opinion of the inspector, it is urgently required to destroy the plant, plant product or other regulated article or the given reason for the seizure is impractical.

Storage or removal of affected items.

47. Where an inspector seized and detained a plant, plant product or other regulated article under this Act, the inspector or any other person designated by the Organisation, may

- (a) store, treat, quarantine or dispose of the plant, plant product or other regulated article at the place where it was seized or move it to any other place for storage, treatment, quarantine or disposal; or
- (b) require its owner to store, treat, dispose of, export or move it to any other place.

Confiscation and disposal of unclaimed items

48.(1) An inspector may confiscate and dispose of

- (a) any plant, plant product or other regulated article that, after treatment following its entry into Barbados, remains unclaimed for a prescribed time; or

- (b) anything that the inspector believes on reasonable grounds contains or harbours a quarantine pest or regulated non-quarantine pest.
- (2) An inspector who confiscates a plant, plant product or other regulated article or a quarantine pest or regulated non-quarantine pest
 - (a) shall, as soon as is practicable, advise the owner of the reason for its confiscation; or
 - (b) may forego advising the owner of the plant, plant product or other regulated article or pest of the reason for the confiscation if the giving of reason for the confiscation is impractical.

Appeals

- 49.(1)** Any person aggrieved by an action or decision of a Plant Protection Inspector or an official analyst may, within 7 days appeal in writing to the Chief Agricultural Officer.
- (2) The Chief Agricultural Officer shall give a final decision within 14 days of receiving the appeal, on technical matters but this technical decision shall not prejudice the right of an aggrieved party to appeal to a Judge in Chambers on a matter of law.
- (3) Notwithstanding subsection (1) and (2), the Organisation shall act in a timely manner in response to a regulated pest.

PART VII

OFFENCES AND PENALTIES

Offences.

- 50.(1)** A person who
- (a) grows, sells, offers for sale, transports or distributes in any manner any plant, plant product or other regulated article knowing that it is affected by a quarantine pest;
 - (b) assaults, resist, 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) fails to comply with any order or direction lawfully made or given under this Act;
 - (e) imports any plant, plant product or other regulated article at a port of entry that is not prescribed;
 - (f) imports any plant, plant product or other regulated article contrary to any other requirement that is prescribed;
 - (g) intentionally permits, introduces or caused the introduction or spread of a quarantine pest;
 - (h) exports any plant, plant product or other regulated article except in accordance with Part IV;
 - (i) fails to safeguard the phytosanitary security of a consignment after the issuance of a phytosanitary certificate under section 28(a);
 - (j) fails to allow a search or inspection of the taking of any sample authorised under this Act;

- (k) breaks the seal on a sealed container containing a plant, plant product or other regulated article except in the presence of an inspector;
- (l) knowingly or recklessly provides information which is false;
- (m) alters, forges, defaces or destroys any document issued under this Act;
- (n) submits any written material for publication referring to the occurrence of a quarantine pest in Barbados without prior or simultaneous communication of the existence of the pest to the Organisation; or
- (o) otherwise contravenes a provision of this Act,

is guilty of an offence.

(2) 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 is guilty of that offence.

Liability of officials.

51. An inspector, official analyst or other Organisation staff or the representative of the Organisation who

- (a) directly or indirectly asks for or takes 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 otherwise contrary to the laws of Barbados;
- (c) discloses any information acquired in the performance of his official duties relating to any person, firm or business, except when required by his supervisor in the course of official duties, or where ordered to do so by any court; or

(d) otherwise abuses his powers granted under this Act,
is guilty of an offence if and shall be liable to be dismissed by the Organisation or to such other penalty that may apply in accordance with the *Public Service Act*, Cap. 29.

Procedure for offences

52.(1) Where a Plant Protection Inspector reasonably believes that a person has contravened any of the provisions of this Act, he shall provide such information to the Chief Agricultural Officer.

(2) The Chief Agricultural Officer shall determine whether the matter shall be subject

- (a) to criminal prosecution;
- (b) to an administrative penalty; or
- (c) to both criminal prosecution and administrative penalty.

Evidence

53. In any prosecution for an offence under this Act

- (a) a declaration, certificate, report or other document of the Organisation or an official analyst, inspector or member of the Police Force, purporting to have been signed on behalf of the Organisation or the official analyst, inspector or member of the Police Force, is in the absence of evidence to the contrary, proof of the matters asserted in it;
- (b) a copy of an extract from any record or other document that is made by the Organisation, an official analyst, inspector or member of the Police Force, as a true copy or extract, is admissible in evidence.

Forfeiture

54.(1) Where a person is convicted of an offence under this Act the court may, in addition to any other penalty imposed, order that anything used in the perpetration of the offence be forfeited to the Crown.

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

- (a) detained until the fine is paid; or
- (b) sold in satisfaction of the fine.

(3) Where the court does not order the forfeiture of a regulated article, that regulated article, or any proceeds realized from its disposition shall be returned to the owner or person in charge at the time of its seizure.

(4) The Organisation shall determine the appropriate holding of a regulated article seized or forfeited under this Act, prior to its disposition by a magistrate

(5) Any plant, plant product, other regulated article or other thing ordered to be forfeited under this Act, at the expiry of the time limited for appeal and if no appeal is lodged, may be destroyed, sold, leased or donated to a charitable Organisation.

(6) The proceeds of any sale of an item forfeited in accordance with this section shall be paid into the Consolidated Fund.

Limitation on liability

55.(1) The costs of any action taken by an inspector under section 46 shall be borne by the owner, except where in exceptional cases the Organisation determines that the Crown shall bear the costs.

(2) Subject to section 61, the Crown is not liable for loss resulting from the destruction or disposal of any plant, plant product or other regulated article carried out under this Act.

Good faith defence

56.(1) No member of the Organisation, inspector, official analyst, official or reference laboratory or any other government entity with a role in phytosanitary matters shall be liable to prosecution in respect of anything done in good faith in the performance of their official functions under this Act.

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

Administrative penalty

57.(1) The Organisation may issue an administrative penalty notice in the prescribed form to any person where the Organisation is satisfied that that person has committed an act which does not warrant criminal prosecution.

(2) The Organisation may suspend or revoke any licence or other authorisation issued by the Organisation under this Act or issue a fine or issue any other administrative penalty.

(3) An administrative penalty notice shall specify the nature of the act constituting the contravention and the penalty to be paid and shall require the person to whom it is addressed to pay the administrative penalty within a period of 14 days from the date of the notice.

(4) A person who is in receipt of an administrative penalty notice issued under subsection (1) shall, in the manner prescribed, pay the amount of the administrative penalty and comply with any additional requirement contained in the notice on or before the date specified in the notice.

(5) A person to whom an administrative penalty notice is addressed and who wishes to challenge the alleged non-prosecutable breach, may instead of paying

the amount of the administrative penalty, follow the appeals process set out in section 49.

(6) In cases of serious or repeated violations of this Act, a licence or other authorisation issued by the Organisation, the Organisation shall recommend to the ministry responsible for industry and commerce, the revocation of the business operating license.

(7) On receipt of such recommendation to revoke the business license, the ministry responsible for industry and commerce shall suspend or revoke the business license within seven days of receipt of the recommendation.

Fixed penalty notice for prescribed offences

58.(1) This section applies to any offence as may be prescribed by regulation as a fixed penalty offence.

(2) For the purposes of this Act a fixed penalty offence is any offence for which the maximum penalty, excluding any additional fines if the offence is a continuing one, does not exceed _____.

(3) Where on any occasion an inspector finds a person who he has reason to believe is committing, or has committed, a fixed penalty offence, he may on the spot, issue that person a fixed penalty notice, and shall inform the person

- (a) to appear before the magistrate on the date specified; or
- (b) pay the fixed penalty, in lieu of appearance before a magistrate.

(4) Where a person is issued a fixed penalty notice in respect of a fixed penalty offence and he

- (a) pays the fine within the time prescribed in the fixed penalty notice, no proceedings shall be instituted for that offence and he shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence in respect of which the payment was made; or

- (b) does not pay the fine within the time prescribed in the fixed penalty notice, the Organisation shall decide whether to
 - (i) increase the fine to be paid through written notice, specifying a new time period for payment; or
 - (ii) take other action as established under this Act.
- (5) A fixed penalty notice shall
 - (a) be in the form set out in regulations;
 - (b) give such reasonable particulars of the circumstances alleged to constitute the offence to which the notice relates; and
 - (c) state
 - (i) the amount of the fixed penalty, which shall not exceed twenty per cent of the maximum amount of any fine or fines that are specified under this Act in respect of the offences to which the fixed penalty notice relates;
 - (ii) the period for paying the fixed penalty, which shall not exceed twenty-one days upon receipt of the fixed penalty notice; and
 - (iii) the person to whom, and the address at which
 - (A) the fixed penalty may be paid, and
 - (B) any correspondence relating to the fixed penalty notice maybe sent;
 - (C) the method or methods by which payment may be made; and
 - (D) the consequences of not making a payment within the period for paying the fixed penalty.
- (6) The Chief Agricultural Officer may extend the period for paying the fixed penalty in any particular case if he considers it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.

(7) The admission of guilt and the fixed penalty paid under this section shall be dealt with by the magistrate in the same manner as adjudication in Court of an offence punishable on summary conviction and for which no conviction is recorded.

Unpaid administrative fine or fixed penalty to constitute a debt to the Crown

59. The amount of an outstanding administrative penalty shall be a debt due to the Crown and is recoverable in accordance with the *Debtors Act*, Cap. 196.

Powers of the Chief Agricultural Officer in administrative proceedings

60. Where a matter is to be dealt with administratively by the Chief Agricultural Officer, the Chief Agricultural Officer may in writing

- (a) stay the proceedings for condemnation of anything forfeited under this Act;
- (b) restore anything seized under this Act, subject to conditions, if any;
- (c) impose, reinstate or revoke penalties or fines as the case may be, in respect of non-prosecutable breaches or offences dealt with administratively under this Act;
- (d) seize a regulated article; or
- (e) mitigate or remit any fine or penalty imposed; or
- (f) restore anything seized under this Act.

Compensation.

61.(1) The Minister may, on the recommendation of the Advisory Working Group, out of money voted for that purpose by Parliament, order compensation to be paid in respect of

- (a) the treatment required of affected premises;
- (b) the prohibition or restriction imposed under this Act on the use of premises;
- (c) owners affected by pest eradication procedures implemented by the Organisation.

(2) Compensation is not payable to a person who is guilty of an offence under this Act and claims compensation in respect of any premises or things by means of or in relation to which the offence was committed.

PART VII**MISCELLANEOUS****Control of waste from vessels**

62. The Organisation shall set the requirements for the handling and disposal of waste from any vessel.

Charging of fees

63.(1) The Organisation shall charge fees for the following services in accordance with the *Agricultural, Diagnostic & Other Services (Fees) Act*, Cap. 252A:

- (a) inspections;
- (b) the treatment of xxx;

- (c) sampling and analysis of;
- (d) the issuance of phytosanitary certificates;
- (e) the issuance of permits; and
- (f) any other services specified under this Act.

(2) The fees charged under this Act shall be based on the cost of the service only and shall be prescribed in regulations.

Documents

64.(1) A document required to be furnished to the Minister or an inspector under this Act or any regulation or order made thereunder 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 or an inspector, where required, within a reasonable period after the documents are furnished in electronic form.

Regulations

65.(1) The Minister may, on the advice of the Advisory Working Group and the Chief Agricultural Officer, make regulations to give effect to the provisions of this Act, to reflect phytosanitary developments within or outside the country.

(2) In particular and without prejudice to the generality of subsection (1), regulations made under subsection (1) may provide for all or any of the following matters:

- (a) procedures to be followed by an inspector in the exercise of his duties under this Act;
- (b) conditions for the import of any plant, plant product or other regulated article;

- (c) the designation of the ports of entry in Barbados that are appropriate for the import and export of any plant, plant product and other regulated article;
- (d) the circumstances under which phytosanitary requirements for import may be modified based on a pest risk analysis;
- (e) procedure and guidelines for pre-shipment inspections;
- (f) the manner in which permits and certificates shall be issued under this Act, and their form, content and language;
- (g) the procedure by which an importer may apply for inspection to take place at any location other than the port of entry, or outside of regular business hours, and pay any applicable fees;
- (h) the manner in which containers shall be sealed, marked and transported if they are to be inspected at their final destination rather than at the port of entry;
- (i) the way in which any plant, plant product and other regulated article shall be stored or transported in Barbados;
- (j) the procedures to be adopted for the treatment of any imported plant, plant product or other regulated article and the conveyance bringing it into Barbados;
- (k) the location, management and functioning of any plant quarantine station established under this Act;
- (l) the requirements for the control and care of any plant, plant product and other regulated article kept or maintained at a plant quarantine station;
- (m) the manner in which an inspection shall be arranged for the destruction, removal, uprooting or treatment of any plant, plant product or other regulated article within an area or location declared as under quarantine;

- (n) 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 as under quarantine;
- (o) the manner in which any sample being transported or in storage must be taken, marked and retained under this Act;
- (p) the operating procedures of any official laboratory designated under this Act;
- (q) the procedure by which an area may be declared pest-free or an area of low pest prevalence;
- (r) the conditions for the export of any plant, plant product or other regulated article;
- (s) the operating procedures for the inspection of any plant, plant product or other regulated article, and any physical structure or premises containing such a product or article, for the purposes of export;
- (t) the offences subject to the fixed penalty procedure outlined in section 38;
- (u) the criteria for the declaration of a phytosanitary emergency under sections 24(c) and 41;
- (v) with the approval of the Ministry of Finance, the determination or scale of fees to be charged;
- (w) the guidelines, policy directives or protocols promoting co-operation between relevant departments relating to plant protection;
- (x) any additional measures to be taken for the purpose of preventing the introduction or spread of a pest.

Repeal.

66. The following Acts are repealed:

- (a) the *Plant Pest and Disease (Eradication) Act*, Cap. 266A; and

(b) the *Plant Protection Act*, Cap. 268.

Act binds Crown.

67. This Act binds the Crown.

Commencement

68. This Act shall come into force...