PLANT PROTECTION ACT, 2007 – 53

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BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General
20th December, 2007.

2007 – 53

An Act to prevent the introduction and to control the spread of plant pests; to protect plant resources; to facilitate trade in plants and plant products; and to regulate other matters connected thereto. It also seeks to repeal the Plant Pest and Disease (Import Control) Act, Cap. 266.

(December 20, 2007). Commencement.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

1. This Act may be cited as the *Plant Protection Act, 2007*. Short title.

Interpretation.

2. In this Act,

"affected" means infected or infested with a pest;

"area" includes a place or site of production;

"area of low pest prevalence" means an area, identified by the competent authority, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

"area under cultivation" includes a field, plantation, nursery, garden, green house and laboratory;

"beneficial organism" means any organism (including fungi, Billeria, viruses, virus-like organisms and invertebrate or other animals) which is identified by 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, train, 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;

"council" means the Advisory Council established under section 9;

"detain" means to keep a consignment in official custody or confinement for phytosanitary reasons;

"endangered area" means an area where ecological Billors 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;

"Fund" means the Phytosanitary Emergency Fund established under section 13;

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

"import permit" under section 15(1) means an official document authorizing the importation of a commodity in accordance with specified phytosanitary requirements;

"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;

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

"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 regulations;

"inspector" means a person designated or appointed under section 6;

"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 Plant Protection Organisation" or "the Organisation" means the Government unit, department or office designated by the Minister under section 4;

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

"Official control" means the active enforcement 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" a recently detected pest population, including an incursion, or a sudden significant increase of an established pest population;

"owner" in relation to any thing, includes any person having for the time being the possession, custody or control thereof;

"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 does not occur 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 a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

"phytosanitary certificate" means a certificate patterned after the model certificate of the IPPC and issued under section 23;

"phytosanitary emergency" means an emergency declared under sections 19*(c)* and 29;

"phytosanitary measure" means any legislation, 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 product" 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;

"plant" includes a seed, germplasm and part of a plant;

"port of entry" means an airport or seaport;

"pre-clearance" means phytosanitary certification and/or clearance in the exporting country, performed by or under the supervision of the Organisation;

"premises" means any land, building or other structure or conveyance situated within the territorial boundaries of Barbados;

"prescribed" means prescribed by Regulations made under this Act;

"processing" means the act of washing, peeling, scraping, mincing, scrubbing or any other method used on any plant, plant product or regulated article;

"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;

"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 occurrence or absence by survey, monitoring or other procedure;

"treatment" means an officially authorised procedure for the killing, inactivation or removal of pests or rendering pest infertile or devitalisation;

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

PART II

ADMINISTRATION

Powers of the Minister.

3. (1) The Chief Agricultural Officer shall have primary responsibility for the administration of this Act.

(2) Notwithstanding subsection (1), the Minister may, in writing delegate specific powers under this Act to the National Plant Protection Organisation or other Government official or agency as he considers appropriate.

Designation of Organisation.

4. (1) The Minister shall in consultation with the Chief Agricultural Officer designate a Government unit, a department or office in Barbados to serve as the Organisation of Barbados and shall transmit the name of that department, to the IPPC Secretariat.

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

Functions of the Organisation.

5. The functions of the Organisation shall include:

(a) the implementation of the IPPC and the SPS Agreements, 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-clearance inspections;

(v) supervision of 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 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 legislation;

(xv) notifying phytosanitary measures to other countries in accordance with international obligations; and

(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;

(b) the enforcement of this Act, as well as of any other legislation relating to plant protection as the Minister may direct;

(c) the representation of this Act, as well as of any other legislation relating to plant protection as the Minister may direct;

(d) the development of pest diagnostic, investigative and analytical capabilities as well as the establishment of laboratories, plant quarantine stations and other phytosanitary facilities;

(e) the establishment of procedures for accreditation of any plant quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in phytosanitary matters; and

(f) any other function that the Minister considers necessary for the purposes of this Act.

Appointment of inspectors.

6. The Minister may on the advice of the Chief Agricultural Officer by instrument in writing designate officers of the Organisation to be inspectors for the purposes of this Act.

Duties of an inspector.

7. (1) The duties of an inspector shall include:

(a) inspecting any plant, plant product or other regulated article under cultivation, in storage or in transit, in order to report the existence, outbreak and spread of quarantine pests and regulated non-quarantined pests;

(b) inspecting the consignment of any plant, plant product or other regulated article destined for import into or export from Barbados to determine whether it is affected, and where necessary verifying the pest status of consignments by the taking of samples or otherwise;

(c) ensuring the treatment of the consignment of any plant, plant product or other regulated article destined for import into or export from Barbados as well as its container, packaging, storage place and transport facility;

(d) ensuring that no threat to plant resources in Barbados is caused by waste disposed from –

(i) an aircraft, ship, pleasure craft or any vessel or by any other means arriving in Barbados; and

(ii) premises where the processing of any plant, plant product or other regulated article occurs;

(e) inspecting and certifying exports of any plant, plant product and other regulated article from Barbados;

(f) issuing phytosanitary certificates on behalf of the Organisation;

(g) carrying out detection activities and maintaining up-to-date information on the pest status of Barbados;

(h) conducting surveillance and monitoring exercises in any land, premises or area as required under this Act;

(i) instituting inquiries and requesting information or documentation on reasonable suspicion that the provisions of this Act are being violated; and

(j) attending to such other matter as the Organisation may from time to time direct.

(2) An inspector may carry out an inspection under subsection (1)*(b)* on territory of an exporting country as a pre-clearance inspection, in accordance with the phytosanitary measures as established between the parties as outlined in the import permit with respect to specific commodites.

(3) In carrying out any duty under subsection (1) or (2), an inspector shall, identify himself as an inspector by showing his identification card or other proof of his appointment or designation as an inspector.

Designation of laboratory and analyst.

8. The Organisation shall designate:

(a) a laboratory to be an official laboratory; and

(b) an analyst to be an official analyst;

for the purposes of this Act.

Establishment of Advisory Council.

9. (1) The Minister shall appoint an Advisory Council for the purposes of exercising and performing the functions under sections 5 and 12.

(2) The Council shall consist of eleven members selected as follows:

(a) three staff members of the Ministry, including the head of the Organisation; and

(b) one nominee 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 the University College of Barbados;

(vii) the Barbados Chamber of Commerce;

(viii) a farmers' organisation.

(3) The members of the Council 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 reappointment.

(4) Seven members of the Council shall constitute a quorum.

(5) The Council shall meet at least three times each year.

(6) The Council shall elect a Chairman at its first meeting, which shall take place within 3 months from the date of commencement of this Act.

(7) Except as provided in subsections (1) to (5) and sections 12 and 13, the Council shall regulate its own procedure.

Resignation or removal of members of Council.

10. (1) The Chairman or a member of the Council, 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 Council.

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

Role of Council.

11. The Council shall act in an advisory capacity to the Minister and the Organisation on issues of plant protection and shall be responsible for

(a) recommending changes to relevant legislation and recommending regulations, schedules, notices, orders to be made or amended under this Act; and

(b) assisting in the determination of criteria for the declaration of a phytosanitary emergency under sections 19*(c)* and 29.

Sub-committees of council.

12. The Council may appoint such sub-committees as it considers necessary, to provide advice and technical support to the Council.

Phytosanitary Emergency Fund.

13. (1) There is established a Phytosanitary Emergency Fund which shall be administered by the Ministry and into which funds, donations, grants, awards and endowments given to the Council 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 declaration of a phytosanitary emergency under sections 19*(c)* and 29.

PART III

IMPORTS

Restrictions on import.

14. (1) A plant, plant product and other regulated article may be imported into Barbados only at a prescribed 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 15(1);

(b) where the plant is accompanied by

(i) an original phytosanitary certificate issued by the country of export that is dated not more than 30 days before the entry of the plant, plant product or other regulated article into Barbados; and

(ii) any other documentation that may be prescribed; or

(c) where all the prescribed requirements under section 15(2) are satisfied.

Import permit.

15. (1) Where an import permit is required under section 14(2)*(a)*, an importer shall apply to the Organisation in the prescribed manner and may be granted a permit on payment of the prescribed fee.

(2) In evaluating an application for an import permit, the Organisation shall apply existing international standards or conduct pest risk analysis, to determine the applicable phytosanitary requirements.

Inspection on importation.

16. (1) A person who has imported a plant, plant product or any other regulated article into Barbados, shall present it for inspection by an inspector at the prescribed port of entry.

(2) Notwithstanding subsection (1), a plant, plant product or any other regulated article transported therein, may be inspected by an inspector at its final 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 is in transit or extremely perishable or where its entry has otherwise been delayed, in which case, on application by the importer and on payment of the prescribed fee, the Organisation may agree to an inspection being carried out at any other time.

Detention or destruction of imports.

17. (1) If, on an inspection that is carried out in accordance with section 16, the inspector determines that the imported plant, plant product or other regulated article

(a) is not accompanied by the relevant documentation required by section 14(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 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 forgo notice and carry out any of the actions listed under subsection (1) where in his opinion 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.

Release of imports.

18. Where on an inspection that is carried out under section 16 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.

19. The Minister may, on the advice of the Council and in order to protect plant resource, human and animal health or the environment,

(a) permit the entry into Barbados of any plant, plant product or 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.

20. 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 detain certain imports.

21. (1) A Postal Officer, Customs Officer, Police Officer or a member of the Defence Force 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

Restriction on exports.

22. 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 23;

(d) pays the prescribed fees

has been granted a phytosanitary certificate.

Inspection of exports.

23. The Organisation shall, on application by an exporter under section 22, cause an inspection of the consignment to be carried out and

(a) issue a phytosanitary certificate, in a form as may 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.

PART V

CONTAINMENT AND ERADICATION OF PESTS

Duty of occupier to notify organisation.

24. An occupier or owner of any premises, who has knowledge of or reasonably suspects the presence of a quarantine pest thereon, shall immediately notify the Organisation.

Declaration of quarantine.

25. (1) The Minister may, on the advice of the Council,

(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.

(2) For the purpose of subsection (1), "quarantine" includes

(a) the prohibition of the movement of a person, conveyance, plant, plant product or other regulated article from or to a specified location;

(b) the prohibition of the planting or replanting of a specified location; or

(c) the taking of any other measure that the Minister, acting on the advice of the Council, considers necessary under the circumstances.

Procedure when quarantine pest is on premises.

26. (1) When the Organisation believes that a quarantine pest is present on any premises, the Organisation may, subject to section 32(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; and

(iii) take a sample as he may consider necessary; 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 that 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 subsection (1)*(b)*, 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 may be prescribed.

(6) The State shall 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.

27. 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.

28. (1) Any notice issued under section 26*(b)* or 27 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 pest.

(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 26 or 27 is in force.

Declaration of phytosanitary emergency.

29. The Minister may declare a phytosanitary emergency based on

(a) an inspection carried out under this Act; or

(b) an analysis of a sample taken under section 26(1)*(a)*(iii).

Lifting of quarantine.

30. 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.

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

(a) declare an area pest free where the 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.

PART VI

ENFORCEMENT

Entry and search by an inspector.

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

(a) stop and without a warrant, search a person, container or conveyance, entering or moving within Barbados that the inspector believes on reasonable grounds is harbouring such pest;

(b) subject to subsections (2) and (3), at a reasonable time, enter and inspect any premises;

(c) open any container, receptacle or other thing that the inspector believes on reasonable grounds contains anything in respect of which this Act applies; or

(d) examine any thing in respect of which this Act applies and take a sample of it.

(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) An inspector may, with a warrant issued by a Magistrate, enter and search any premises, where there is reasonable cause to believe that an offence against 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 police officer.

(6) In the course of an inspection carried out under subsections (1), (2) and (3), an inspector may, as he considers necessary, 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.

Seizure and notice of seizure.

33. (1) In the course of an inspection carried out under this Act, if an inspector believes on reasonable grounds that a provision of this Act has been or is being contravened, or any plant, presents a plant product or other regulated article risk of the introduction or spread of a pest, the inspector may seize the plant, plant product or other regulated article

(a) by means of or in relation to which he believes on reasonable grounds that the contravention has been or is being committed;

(b) that he believes on reasonable grounds will afford evidence in respect of the contravention of the provision of this Act.

(2) 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 34; or

(b) may forego advising the owner of the plant, plant product or 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 of the reason for the seizure is impractical.

Storage or removal of affected items.

34. 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;

(b) require its owner to store, treat, dispose of, export or move it to any other place.

Confiscation and disposal of unclaimed items.

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

(a) any plant, plant product or other regulated article that, after its entry into Barbados after treatment, 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.

Offences.

36. A person is guilty of an offence 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 23*(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, for the purpose of obtaining any document under this Act;

(m) alters, forges, defaces or destroys any document issued under this Act;

(n) submits any written material for publication referring to the occurrence of 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.

Liability of officials.

37. An inspector, official analyst or other Organisation staff is guilty of an offence if he

(a) direct or indirectly asks for or takes any personal payment or other reward in connection with any official duties;

(b) agrees to do, abstain 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; or

(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.

Penalty.

38. A person who is guilty of an offence under this Act is liable

(a) in the case of a first offence, on summary conviction, to a fine of $1 500, or to imprisonment for a term of one year, or to both;

(b) in the case of a second or a subsequent offence, to a fine of $5 000, or to imprisonment for a term of 2 years, or both.

Forfeiture.

39. 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.

Limitation on liability.

40. (1) The costs of any action taken by an inspector under section 33 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 41, 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.

Compensation.

41. (1) The Minister may, on the recommendation of the Council, 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.

(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

Documents.

42. (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 must be furnished to the Minister or an inspector within a reasonable period after the documents are furnished in electronic form.

Regulations.

43. (1) The Minister may, on the advice of the Council, make Regulations to give effect to the provisions of this Act.

(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 pest risk analysis;

(e) procedure and guidelines for pre-clearance 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, and/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) conditions for the export of any plant, plant product or other regulated article;

(s) operating procedures for the inspection of any plant, plan product or other regulated article, and any physical structure or premises containing such a product or article, for purposes of export;

(t) the offences subject to the fixed penalty procedure outlined in section 38;

(u) criteria for the declaration of a phytosanitary emergency under sections 19*(c)* and 29;

(v) with the approval of the Ministry of Finance; determination or scale of fees to be charged;

(w) guidelines, policy directives or protocols promoting cooperation 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 and savings. Cap. 266.

44. The *Plant Pest and Disease (Import Control) Act* is hereby repealed.

Act to bind Crown.

45. This Act binds the Crown.