

CAYMAN ISLANDS



PLANT PROTECTION BILL, 2023

Supplement No. 1 published with Legislation Gazette No. 22 dated 7th August, 2023.

A BILL FOR AN ACT TO PREVENT THE INTRODUCTION OF PLANT PESTS; TO CONTROL THE SPREAD OF PLANT PESTS; TO PROTECT PLANT RESOURCES; TO FACILITATE TRADE IN PLANTS, PLANT PRODUCTS AND OTHER REGULATED ARTICLES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Planning, Agriculture, Housing and Infrastructure (PAHI)



Memorandum of OBJECTS AND REASONS

This Bill repeals and replaces the *Plants (Importation and Exportation) Act (1997 Revision)* to provide a comprehensive regime for preventing the introduction and spread of plant pests, protecting plant resources and facilitating trade in plants, plant products and other regulated articles. The Bill does this by establishing a system of permits for imports, exports and transits of plants, plant products and other regulated articles, creating powers that can be exercised in the event of pest outbreaks and other phytosanitary emergencies, and establishing an administrative and enforcement structure.

The Bill is divided into seven Parts and contains fifty-three clauses.

PART 1 – PRELIMINARY MATTERS

Part 1 contains clauses 1 to 3 and provides for preliminary matters.

Clause 1 provides the short title and commencement of the legislation.

Clause 2 provides for the interpretation of terms used in the legislation.

Clause 3 defines the term “regulated article”.

PART 2 – ADMINISTRATION OF THIS ACT

Part 2 contains clauses 4 to 14 and provides for the administrative structure underpinning the Act.

Clause 4 establishes the National Plant Protection Organisation (the “NPPO”), as required by Article IV of the International Plant Protection Convention. The Department of Agriculture is responsible for exercising the powers and performing the functions of the NPPO.

Clause 5 specifies that the NPPO is responsible for the general administration of the Act and has the powers and functions specified throughout the Act and in any other law.

Clause 6 specifies that the Director of the Department of Agriculture is the Director of the NPPO and may exercise the powers and functions of the NPPO.

Clause 7 provides for the Director to delegate the powers and functions of the NPPO, and further specifies that the powers to issue a phytosanitary certificate, import or export permit may only be delegated to an inspector.

Clause 8 provides for the Director to authorise NPPO officers to be phytosanitary inspectors. Inspectors have various powers and functions relating to enforcement of the Act.



Clause 9 provides for the Director to authorise a laboratory to be an official laboratory for the purpose of conducting tests required under the Act. An official laboratory may be within or outside the Cayman Islands.

Clause 10 provides for the Director to designate a laboratory as a reference laboratory for the purpose of conducting comparative testing and providing scientific and technical assistance to the NPPO. A reference laboratory may be within or outside the Cayman Islands.

Clause 11 provides for the NPPO to establish committees to advise it.

Clause 12 sets out the principles for phytosanitary measures that govern the way the NPPO exercises its powers. The provision specifies that phytosanitary measures should be harmonised with international standards, risk analysis must be based on science, and measures must be proportionate to the risk they are intended to address.

Clause 13 empowers the NPPO to designate plant quarantine stations.

Clause 14 provides for the Director to approve forms for use under the Act, such as application forms for permits.

PART 3 – IMPORTS

Part 3 contains clauses 15 to 21 and provides for the control of imports of plants, plant products and regulated articles.

Clause 15 prohibits a person from importing a plant, plant product or regulated article without an import permit and a phytosanitary certificate issued by the country of export. The provision includes a corresponding offence.

Clause 16 provides for the Director to exempt specified plants, plant products and regulated articles from the requirement for an import permit or phytosanitary certificate, and also provides for the Director to prohibit certain imports altogether.

Clause 17 sets out the process for applying for, granting, varying and revoking import permits.

Clause 18 requires the importer of a plant, plant product or regulated article to produce it for inspection at the point of entry, and creates an offence for failing to do so.

Clause 19 provides for an inspector to detain a plant, plant product or regulated article and carry out a range of phytosanitary actions if the item has not been imported in accordance with the requirements of the Act or otherwise poses a phytosanitary risk. The importer is required to pay the costs of phytosanitary actions such as testing and treating the item.

Clause 20 requires an inspector to release an imported plant, plant product or regulated article if it does not pose a phytosanitary risk on import, or no longer poses such a risk following phytosanitary action.

Clause 21 provides for the Cabinet to designate points of entry for importing plants, plant products and regulated articles.



PART 4 – EXPORTS, RE-EXPORTS AND TRANSITS

Part 4 contains clauses 22 to 26 and provides for the control of exports, re-exports and transits of plants, plant products and regulated articles.

Clause 22 requires a permit to export a prescribed plant, plant product or regulated article, and creates a corresponding offence.

Clause 23 sets out the process for applying for and revoking export permits.

Clause 24 provides for the issue of phytosanitary certificates for export, which may be required by a country to which a plant, plant product or regulated article is being exported.

Clause 25 provides for the issue of phytosanitary certificates for re-export. Re-export occurs when a consignment is imported and then, for example, broken into smaller consignments and re-exported without being processed in a way that changes its nature. A re-export phytosanitary certificate will only be issued if the consignment has not been exposed to infestation or contamination by a pest since import.

Clause 26 requires a transit authorisation to transit a plant, plant product or regulated article through the Cayman Islands without importing it.

PART 5 – CONTROL OF PESTS

Part 5 contains clauses 27 to 38 and provides for the control of pests through various forms of declaration.

Clause 27 provides for the declaration of quarantine pests, regulated non-quarantine pests and national pests of concern.

Clause 28 provides for the NPPO to declare an area to be a pest free area or a low pest prevalence area. The NPPO may also prohibit or restrict entry into the area to preserve its pest free or low pest prevalence status.

Clause 29 provides for the NPPO to declare a place of production or a production site to be pest free in relation to a specific pest. The NPPO may also prohibit or restrict entry into the area to preserve its pest free status.

Clause 30 provides for an inspector who reasonably believes that a quarantine pest may be present in an area to enter the area, inspect any plant, plant product or regulated article in the area and take samples. The inspector is then required to report back to the Director.

Clause 31 provides for the NPPO, having received a report under clause 30, to declare the area to be a provisional quarantine area. The declaration specifies the phytosanitary measures to be taken and remains in force for 7 days. Clause 31 also contains an associated offence for breaching the declaration.

Clause 32 provides for the Minister to declare a quarantine area on the advice of the NPPO. The declaration specifies the phytosanitary measures to be taken, and clause 32 also contains an associated offence for breaching the declaration.

Clause 33 provides for the Minister to declare a phytosanitary emergency if there is a grave threat to plant resources or food security as a result of a pest. The declaration specifies the phytosanitary measures to be taken, and clause 33 also contains an associated offence for breaching the declaration.

Clause 34 specifies that any phytosanitary measures may be imposed under a declaration of a provisional quarantine area, a quarantine area or a phytosanitary emergency, and lists examples of the types of measures that may be taken.

Clause 35 provides for the revocation or amendment of a quarantine or emergency declaration, following regular assessments of the situation by the NPPO.

Clause 36 requires the owner or occupier of a place who knows or suspects that a regulated pest or pest of national concern is present at the place to notify the NPPO.

Clause 37 prohibits a person from recklessly or intentionally introducing or spreading a regulated pest or pest of national concern.

Clause 38 prohibits a person from growing, propagating, selling, transporting or distributing a plant that the person knows or reasonably suspects is infested by a regulated pest or pest of national concern.

PART 6 – ENFORCEMENT

Part 6 contains clauses 39 to 48 and provides for the enforcement of the Act.

Clause 39 specifies the general powers of inspectors, such as powers of entry, inspection, testing and seizure. The provision specifies that these powers may only be exercised for the control of a pest, monitoring compliance with the Act and in order to exercise a power or perform a function of the inspector.

Clause 40 specifies the restrictions on an inspector's power of entry, including the requirement to either obtain consent of the occupier or a warrant before entering residential premises.

Clause 41 requires an inspector to carry and produce on demand an identity card.

Clause 42 requires an inspector to provide a receipt when seizing an item, and provides that the Director has control of seized items. The provision also provides for the Director to destroy or treat a seized item that poses a phytosanitary risk.

Clause 43 requires an inspector to report to the Director on the exercise of powers and performance of functions.

Clause 44 provides for an inspector to be assisted by a customs and border control officer or a police officer in the exercise of powers and performance of functions.

Clause 45 creates an offence for obstructing an inspector.

Clause 46 creates an offence for providing false or misleading information to the NPPO or an inspector.

Clause 47 provides for the regulations to provide for the payment of an administrative penalty as an alternative to prosecution for an offence against the Act.



Clause 48 provides for the court to order the forfeiture of any plant, plant product or regulated article in relation to which an offence is committed.

PART 7 – ADMINISTRATIVE MATTERS

Part 7 contains clauses 49 to 53 and provides for various administrative matters.

Clause 49 provides for the protection from liability of the Director, an inspector and anyone assisting the Director or an inspector.

Clause 50 provides for evidentiary certificates to be issued by the Director.

Clause 51 provides for the Director to review a decision of an inspector on application by a person affected by the decision.

Clause 52 provides for the Cabinet to make regulations under the Act.

Clause 53 repeals the *Plants (Importation and Exportation) Act (1997 Revision)*. It also provides that permits and certificates issued under that Act continue to have effect, as do the *Plants (Importation and Exportation) (Fees) Regulations, 2009*, until repealed and replaced.

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A BILL FOR AN ACT TO PREVENT THE INTRODUCTION OF PLANT PESTS; TO CONTROL THE SPREAD OF PLANT PESTS; TO PROTECT PLANT RESOURCES; TO FACILITATE TRADE IN PLANTS, PLANT PRODUCTS AND OTHER REGULATED ARTICLES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 – PRELIMINARY**Short title and commencement**

1. (1) This Act may be cited as the Plant Protection Act, 2023.
- (2) This Act comes into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

Interpretation

2. In this Act —

“**approved form**” means a form approved by the Director under section 14;

“**area**” includes premises;

“**consignment**” means a consignment of one or more plants, plant products or other regulated articles;

“**corresponding authority**” means the national plant protection authority of another country established by a corresponding law of the country;

“**designated point of entry**” means an air or sea port designated under section 21;

“**Director**” means the Director of the NPPO mentioned in section 6;

“**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;

“**import**” means import into the Cayman Islands;

“**import permit**” means a permit issued under section 17;

“**inspector**” means a person authorised to be a phytosanitary inspector under section 8;

“**international standards**” means international standards adopted under Article X of the International Plant Protection Convention, done at Rome on 3rd April, 1952, as in force from time to time;

“**National Conservation Council**” means the National Conservation Council established by section 3 of the *National Conservation Act, 2013*;

“**national pest of concern**” means a pest declared to be a national pest of concern under section 27(1)(c);

“**NPPO**” means the National Plant Protection Organisation established by section 4;

“**official laboratory**” means a laboratory authorised to be an official laboratory under section 9;

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

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

“**pest status**”, of a place, means the status of the place in relation to the presence or absence in the place of a pest, and the distribution of that pest;

“**phytosanitary certificate**” means a certificate that —

- (a) attests that a consignment meets the phytosanitary requirements for import into a country; and
- (b) is issued by —
 - (i) the NPPO under section 24 or 25; or
 - (ii) a corresponding authority;



“**phytosanitary emergency**” means a phytosanitary emergency declared under section 33;

“**phytosanitary emergency measure**” means a phytosanitary measure imposed under a declaration of a provisional quarantine area, a quarantine area or a phytosanitary emergency, as mentioned in section 34;

“**phytosanitary measure**” means a measure imposed, including by way of legislation, procedure or policy, to —

- (a) prevent the introduction into the Cayman Islands of a quarantine pest;
- (b) prevent the spread of a quarantine pest in the Cayman Islands; or
- (c) limit the economic impact of a regulated non-quarantine pest;

“**phytosanitary risk**” means a likelihood of the introduction or spread of a pest;

“**place**” includes premises;

“**place of production**” means any place or collection of places operated as a single production or farming unit;

“**plant**” means a living plant or part of a living plant, including seeds and germplasm;

“**plant product**” means —

- (a) unmanufactured material of plant origin, including grain; or
- (b) a manufactured product that, by its nature or the nature of its processing, may create a risk of the introduction or spread of a pest;

“**production site**” means a defined part of a place of production that is managed as a separate unit for phytosanitary purposes;

“**provisional quarantine area**” means an area declared to be a provisional quarantine area under section 31;

“**quarantine area**” means an area declared to be a quarantine area under section 32;

“**quarantine pest**”, in relation to an endangered area, means a pest declared to be a quarantine pest under section 27(1)(a);

“**regulated article**” has the meaning given in section 3;

“**regulated non-quarantine pest**” means a pest declared to be a regulated non-quarantine pest under section 27(1)(b);

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

“**surveillance**” means an official process of collecting and recording data on pest presence or absence by survey, monitoring or other procedures;

“**transit authorisation**” means a transit authorisation issued under section 26.

Meaning of "regulated article"

3. (1) A “regulated article” is a plant, plant product, storage place, packaging, conveyance, container, soil or any other organism, object or material, including a beneficial organism, that is —
- (a) capable of harbouring or spreading pests; and
 - (b) prescribed by regulation to be a regulated article.
- (2) The Minister, acting on the advice of the NPPO, may declare an organism to be a beneficial organism for subsection (1) if the organism is beneficial to flora or agricultural production.

PART 2 – ADMINISTRATION OF THIS ACT**Establishment of NPPO**

4. (1) The National Plant Protection Organisation is established.
- (2) The department responsible for agriculture is responsible for exercising the powers and performing the functions of the NPPO.

Powers and functions of NPPO

5. (1) The NPPO is responsible for the general administration of this Act.
- (2) Without limiting subsection (1), the NPPO has the functions and powers conferred on it by this Act or another law.
- (3) The NPPO may do anything necessary or convenient to enable it to exercise its powers and perform its functions.

Director of NPPO

6. (1) The Director of the department responsible for agriculture is the Director of the NPPO.
- (2) The Director —
- (a) is responsible for the day-to-day management of the NPPO;
 - (b) unless a contrary intention appears, may exercise the powers and perform the functions of the NPPO; and
 - (c) is responsible for ensuring the powers and functions of the NPPO are exercised and performed in accordance with this Act.

Delegation of powers and functions of NPPO

7. (1) Subject to subsection (2), the Director may, in writing, delegate any of the powers or functions of the NPPO to an individual or body with appropriate qualifications or expertise.



- (2) The Director may only delegate the following powers or functions to an inspector —
 - (a) the power to issue a phytosanitary certificate; and
 - (b) the power to issue an import or export permit.
- (3) A written delegation under this section shall specify —
 - (a) the period that the delegation remains in force; and
 - (b) the conditions of the delegation, including conditions about supervision of the delegate in the exercise of the delegated powers or the performance of the delegated functions.

Phytosanitary inspectors

8. (1) The Director may, in writing, authorise an officer of the NPPO with appropriate qualifications to be a phytosanitary inspector.
- (2) An inspector has the functions and powers conferred on an inspector by this Act or another law, subject to any restrictions specified in the inspector's instrument of authorisation.
- (3) In exercising powers or performing functions under this Act, an inspector shall comply with the directions of the Director.
- (4) The Director may exercise the powers and perform the functions of an inspector.

Official laboratories

9. (1) The Director may, in writing, authorise a laboratory to be an official laboratory for the purpose of conducting tests required to be done under this Act.
- (2) The authorisation shall specify the tests or testing procedures that may be performed by the laboratory.
- (3) An official laboratory may be located within or outside the Cayman Islands.

Reference laboratories

10. (1) The Director may, in writing, designate a laboratory to be a reference laboratory for the purpose of —
 - (a) conducting comparative testing in the case of conflicting or contested results received from an official laboratory; and
 - (b) providing scientific and technical assistance and advice to the NPPO, including advice relating to testing procedures.
- (2) The designation shall specify the tests or testing procedures that may be performed by the laboratory.
- (3) A reference laboratory may be located within or outside the Cayman Islands.

NPPO Committees

11. The NPPO may establish ad hoc or permanent committees to provide advice to the NPPO in relation to phytosanitary matters or other matters related to the functions of the NPPO or the administration of this Act.

Principles for phytosanitary measures

12. (1) In the approval and implementation of phytosanitary measures under this Act, the NPPO shall take into consideration the following principles —
- (a) phytosanitary measures should be harmonised with international standards;
 - (b) risk analysis shall be based on science; and
 - (c) phytosanitary measures shall be proportionate to the risk they are intended to address and shall not unjustifiably restrict international trade.
- (2) Phytosanitary measures shall be based on —
- (a) pest risk analysis conducted by the NPPO; or
 - (b) if no pest risk analysis has been conducted, existing regional or international standards.
- (3) The NPPO may negotiate bilateral or multilateral agreements for the evaluation and possible acceptance of alternative phytosanitary measures proposed by an exporting country's corresponding authority as being equivalent to the phytosanitary measures required under this Act.

Designation of quarantine stations and other places

13. The NPPO may —
- (a) designate places as plant quarantine stations where plants, plant products or other regulated articles may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction; and
 - (b) require that imported plants, plant products or other regulated articles be kept at a plant quarantine station or other designated place.

Approved forms

14. The Director may approve forms for use under this Act.

PART 3 – IMPORTS

Requirements for import

15. (1) A person shall not import a plant, plant product or regulated article except —
- (a) subject to section 16 —



- (i) in accordance with an import permit; and
 - (ii) if accompanied by a phytosanitary certificate issued by the country of export;
 - (b) in compliance with all applicable phytosanitary measures established by the NPPO;
 - (c) at a designated point of entry; and
 - (d) in accordance with any other prescribed requirements.
- (2) A person who imports a plant, plant product or regulated article in contravention of subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Exempt and prohibited imports

- 16.** (1) The Director may —
- (a) exempt specified plants, plant products and other regulated articles from the requirement for an import permit, a phytosanitary certificate, or both; and
 - (b) prohibit or restrict the import of specified plants, plant products and other regulated articles.
- (2) An exemption, prohibition or restriction may be —
- (a) ongoing or temporary in nature; and
 - (b) subject to conditions.

Import permits

- 17.** (1) A person may apply to the NPPO for an import permit to import a plant, plant product or other regulated article.
- (2) The application shall be —
- (a) made in the approved form; and
 - (b) accompanied by the prescribed fee and prescribed documents.
- (3) The NPPO shall assess the phytosanitary risk associated with the importation and either —
- (a) issue the permit if satisfied that the level of risk is acceptable or can be successfully managed or mitigated; or
 - (b) refuse the application and give the applicant written notice of the refusal, including the reasons for it.
- (4) In addition, if the application is for a permit to import a live or viable specimen of an alien or genetically altered plant, the NPPO shall consult the National Conservation Council before granting the permit.

- (5) The permit is subject to any prescribed conditions and any additional conditions specified in the permit.
- (6) The NPPO may vary or revoke an import permit by written notice to the holder of the permit if —
 - (a) the type or quantity of the items imported does not correspond with the description specified in the permit;
 - (b) the pest status of the country of export changes; or
 - (c) the country of origin of the items to be imported changes.
- (7) In addition, the NPPO shall revoke an import permit by written notice to the holder of the permit if satisfied that —
 - (a) the holder of the permit contravened section 46 when applying for the permit; or
 - (b) the holder of the permit has failed to comply with a condition of the permit; or
 - (c) the level of phytosanitary risk associated with the importation is no longer acceptable.

Inspection of imports

- 18.** (1) The importer of a plant, plant product or other regulated article shall produce it for inspection by an inspector —
- (a) at its designated point of entry;
 - (b) at a quarantine station; or
 - (c) at a place approved by the Director under subsection (2).
- (2) The Director may, on application by the importer, approve the inspection being conducted at a place other than the designated point of entry if the imported item is transported and kept at all times before the inspection in a sealed container.
- (3) The importer shall pay the prescribed fee for the inspection.
- (4) An importer who fails to produce an item for inspection as required under subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Phytosanitary actions on imports

- 19.** (1) This section applies if, on an inspection conducted under section 18, an inspector determines that an imported plant, plant product or regulated article —
- (a) has not been imported in accordance with the requirements of this Act; or
 - (b) poses a phytosanitary risk.



- (2) The inspector may detain the imported item and —
- (a) if the inspector considers that the item does not pose an immediate phytosanitary risk, give written notice to the importer requiring the importer to produce a specified document or take other specified action within a specified time; or
 - (b) if the inspector considers that the item poses an immediate phytosanitary risk, do any of the following —
 - (i) test the item;
 - (ii) treat the item;
 - (iii) confiscate and destroy the item;
 - (iv) return the item to its country of origin; or
 - (v) move the item to a quarantine station for further observation and analysis to determine the final course of action.
- (3) The inspector shall give the importer written reasons for any action taken under subsection (2)(b).
- (4) The importer is liable for the cost of any action taken under subsection (2)(b).

Release of imports

- 20.** An inspector may release an imported plant, plant product or regulated article to the importer or the authority responsible for customs in the following circumstances —
- (a) if, on an inspection conducted under section 18, the inspector determines that the item —
 - (i) has been imported in accordance with the requirements of this Act; and
 - (ii) does not pose a phytosanitary risk;
 - (b) if, having been given a notice under section 19(2)(a), the importer has complied with the notice; or
 - (c) if the inspector has taken action under section 19(2)(b) —
 - (i) the item no longer poses a phytosanitary risk; and
 - (ii) the importer has paid the cost of the action.

Designated points of entry

- 21.** The Cabinet may designate points of entry at which plants, plant products and other regulated articles may be imported into the Cayman Islands.

PART 4 – EXPORTS, RE-EXPORTS AND TRANSITS

Requirements for export of certain plants

22. (1) A person shall not export a prescribed plant, plant product or regulated article except in accordance with an export permit.
- (2) A person who exports a prescribed plant, plant product or regulated article in contravention of subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Export permits

23. (1) A person may apply to the NPPO for an export permit to export a prescribed plant, plant product or other regulated article.
- (2) The application shall be —
- (a) made in the approved form; and
 - (b) accompanied by the prescribed fee and prescribed documents.
- (3) An export permit is subject to any prescribed conditions and any additional conditions specified in the permit.
- (4) The NPPO shall revoke an export permit by written notice to the holder of the permit if satisfied that —
- (a) the holder of the permit contravened section 46 when applying for the permit; or
 - (b) the holder of the permit has failed to comply with a condition of the permit.

Export phytosanitary certificate

24. (1) This section applies if a country requires a phytosanitary certificate to accompany a plant, plant product or other regulated article being exported to the country from the Cayman Islands.
- (2) The exporter may apply to the NPPO for the phytosanitary certificate for export.
- (3) The application shall be —
- (a) made in the approved form; and
 - (b) accompanied by the prescribed fee and the documents required by the country to which the plant, plant product or other regulated article will be exported.
- (4) The exporter shall make the plant, plant product or other regulated article available for inspection by the NPPO.
- (5) Following the inspection, the NPPO shall —



- (a) issue the certificate if the consignment —
 - (i) meets the documentary and other phytosanitary requirements of the country to which it will be exported; and
 - (ii) meets any phytosanitary requirements for export from the Cayman Islands imposed by the NPPO; and
 - (iii) meets any other requirements for export from the Cayman Islands imposed under any other law; or
 - (b) otherwise – refuse the application and give the applicant written notice of the refusal, including the reasons for it.
- (6) A phytosanitary certificate for export is valid only if the exporter exports the consignment in compliance with the instructions of the NPPO to maintain the phytosanitary security and integrity of the consignment.

Re-export phytosanitary certificate

25. (1) This section applies if —

- (a) a plant, plant product or other regulated article is imported to the Cayman Islands;
 - (b) since being imported, the plant, plant product or other regulated article has not been grown or processed in a way that changes its nature;
 - (c) the plant, plant product or other regulated article is to be re-exported to another country; and
 - (d) the other country requires a phytosanitary certificate to accompany the plant, plant product or other regulated article.
- (2) The re-exporter may apply to the NPPO for a phytosanitary certificate for re-export.
- (3) The application shall be —
- (a) made in the approved form; and
 - (b) accompanied by the prescribed fee and the prescribed documents.
- (4) The re-exporter shall make the plant, plant product or other regulated article available for inspection by the NPPO.
- (5) Following the inspection, the NPPO shall either —
- (a) issue the certificate if the consignment —
 - (i) meets the documentary and other phytosanitary requirements of the country to which it will be re-exported;
 - (ii) has not been exposed to infestation or contamination by a pest; and
 - (iii) is not infested or contaminated by a pest; or
 - (b) refuse the application and give the applicant written notice of the refusal, including the reasons for it.

- (6) The NPPO may issue the certificate even if the consignment has been re-packed, stored, split or combined with another consignment.
- (7) A phytosanitary certificate for re-export is valid only if the re-exporter re-exports the consignment in compliance with the instructions of the NPPO to maintain the phytosanitary security and integrity of the consignment.

Transit authorisation

- 26.** (1) A person shall not transit a plant, plant product or regulated article through the Cayman Islands except in accordance with a transit authorisation.
- (2) The person may apply to the NPPO for the transit authorisation.
- (3) The application shall be —
- (a) made in the approved form; and
 - (b) accompanied by the prescribed fee and the prescribed documents.
- (4) The NPPO shall assess the phytosanitary risk associated with the transit and —
- (a) issue the authorisation if satisfied that the level of risk is acceptable or can be successfully managed or mitigated; or
 - (b) otherwise, refuse the application and give the applicant written notice of the refusal, including the reasons for it.
- (5) No additional phytosanitary requirements may be imposed by the NPPO if the consignment —
- (a) has been packed in such a way that there is no risk of the spread of any regulated pest that may be present in the consignment;
 - (b) meets the documentary and other phytosanitary requirements of the country of destination; and
 - (c) is accompanied by the phytosanitary certificate issued by the country of origin.
- (6) A person who imports a plant, plant product or regulated article in contravention of subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.
- (7) For the purposes of this section, a person transits an item through the Cayman Islands if the person moves the item through the Islands without importing it.



PART 5 – CONTROL OF PESTS

Division 1 – Pest declarations

Declaration of pests

- 27.** (1) The NPPO may declare a pest to be —
- (a) a quarantine pest in relation to an endangered area, if the NPPO is satisfied that the pest is —
 - (i) of potential economic importance to the area; and
 - (ii) not yet present in the area, or is present but not widely distributed and being officially controlled;
 - (b) a regulated non-quarantine pest, if the NPPO is satisfied, based on pest risk analysis, that —
 - (i) the pest is not a quarantine pest; and
 - (ii) the presence of the pest in a plant intended to be planted, remain planted or be replanted would affect the intended use of the plant with an economically unacceptable impact; or
 - (c) a national pest of concern, if the NPPO is satisfied, based on surveillance, that —
 - (i) the pest has a significant economic impact; and
 - (ii) the epidemiological characteristics of the pest necessitate the management of the pest by the NPPO.
- (2) The NPPO shall ensure that —
- (a) an up-to-date list of regulated pests and national pests of concern is published on its website; and
 - (b) the list is provided on request to any corresponding authority.

Declaration of pest free or low pest prevalence area

- 28.** (1) The NPPO may declare an area to be —
- (a) a pest free area in relation to a specific pest, if the NPPO is satisfied that —
 - (i) the 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; or
 - (b) a low pest prevalence area in relation to a specific pest, if the NPPO is satisfied that —

- (i) the pest is present in 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.
- (2) The declaration may prohibit, restrict or impose requirements on entry into the area by anyone or anything.
- (3) The NPPO shall ensure that an up-to-date list of pest free areas and low pest prevalence areas is published on its website.

Declaration of pest free place of production or production site

- 29.** (1) The NPPO may declare a place of production or a production site to be pest free in relation to a specific pest if the NPPO is satisfied that —
- (a) the pest is not present in the place or site;
 - (b) phytosanitary measures have been implemented to keep the place or site free of the pest; and
 - (c) a surveillance system has been instituted to verify that the place or site remains free of the pest.
- (2) The declaration may prohibit, restrict or impose requirements on entry into the place or site by anyone or anything.
- (3) The NPPO shall ensure that an up-to-date list of pest free places of production and production sites is published on its website.

Division 2 – Quarantine and emergency declarations

Notification by inspector

- 30.** (1) If an inspector reasonably believes that a quarantine pest may be present in an area, the inspector may —
- (a) enter the area, subject to the requirements of section 40;
 - (b) inspect any plant, plant product or other regulated article in the area; and
 - (c) take any samples the inspector considers necessary to verify whether the pest is present in the area.
- (2) The inspector shall, as soon as reasonably practicable, notify the Director in writing of —
- (a) the possible presence of the quarantine pest; and
 - (b) the actions taken by the inspector to verify the presence of the pest.



Declaration of provisional quarantine area

- 31.** (1) After receiving a written report under section 30, the NPPO —
- (a) may declare the area to be a provisional quarantine area; and
 - (b) shall, whether or not the area is declared to be a provisional quarantine area, conduct an investigation to verify whether a quarantine pest is present in the area.
- (2) A declaration of a provisional quarantine area —
- (a) shall be made by written notice —
 - (i) given to each owner and occupier of the area or part of the area (if known);
 - (ii) displayed in a prominent position at or near each entrance to the area; and
 - (iii) published in the *Gazette* and in news media of general circulation in the Islands;
 - (b) shall specify the quarantine pest and the boundaries of the provisional quarantine area;
 - (c) shall specify the phytosanitary emergency measures that apply in relation to the provisional quarantine area; and
 - (d) expires seven days after the date of the notice unless it is revoked before that time by the NPPO.
- (3) A person who contravenes the declaration commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Declaration of quarantine area

- 32.** (1) If the NPPO determines that a quarantine pest is present in an area, whether or not the area has been declared to be a provisional quarantine area, the NPPO shall advise the Minister to declare the area to be a quarantine area.
- (2) After receiving the advice of the NPPO, the Minister shall declare the area to be a quarantine area.
- (3) The declaration shall —
- (a) be made by written notice —
 - (i) given to each owner and occupier of the area or part of the area (if known);
 - (ii) displayed in a prominent position at or near each entrance to the area; and
 - (iii) published in the *Gazette* and in news media of general circulation in the Islands;

- (b) specify the quarantine pest and the boundaries of the quarantine area;
 - (c) specify the phytosanitary emergency measures that apply in relation to the quarantine area; and
 - (d) specify the period that the declaration remains in force.
- (4) The declaration may be renewed more than once on the advice of the NPPO if the quarantine pest remains present in the area on the expiry of the declaration.
- (5) A person who contravenes the declaration commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Declaration of phytosanitary emergency

- 33.** (1) This section applies if the NPPO reasonably believes, on the basis of pest risk analysis or evidence obtained from an inspection, sample or analysis conducted under this Act, that there is a grave threat to plant resources or food security in the Islands.
- (2) The NPPO shall advise the Minister of the belief, the basis for the belief and the recommended measures to respond to the threat.
- (3) The Minister may, if satisfied that the threat exists, declare a phytosanitary emergency in relation to all or a specified area of the Islands.
- (4) The declaration may be made whether or not a quarantine area has been declared for the area of the phytosanitary emergency declaration.
- (5) The declaration shall —
- (a) be made by written notice published in the Gazette and in news media of general circulation in the Islands;
 - (b) be given to anyone required to take any specified action under the declaration;
 - (c) specify the reasons for making the declaration and the area to which it applies;
 - (d) specify the phytosanitary emergency measures that apply under the declaration; and
 - (e) specify the period the declaration remains in force.
- (6) The declaration may be renewed more than once on the advice of the NPPO if the grave threat remains on the expiry of the declaration.
- (7) A person who contravenes the declaration commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.



Phyosanitary emergency measures

- 34.** (1) A declaration of provisional quarantine area, a quarantine area or a phytosanitary emergency may impose any phytosanitary emergency measures that the NPPO considers necessary in the circumstances.
- (2) Without limiting subsection (1), a declaration may do any of the following —
- (a) authorise the NPPO to inspect, treat or dispose of any plant, plant product or other regulated article;
 - (b) require the owner or occupier of an area subject to the declaration to treat or dispose of any plant, plant product or other regulated article in the area;
 - (c) prohibit, restrict or impose requirements in relation to any of the following —
 - (i) entry into an area subject to the declaration by anyone or anything;
 - (ii) the movement of anyone or anything within the area;
 - (iii) the departure from the area of anyone or anything; or
 - (iv) the cultivation of plants or the carrying out of any other activity in the area.
- (3) If the declaration requires a person to treat or dispose of a plant, plant product or other regulated article and the person fails to do so, the NPPO may —
- (a) direct an inspector to treat, or dispose of the plant, plant product or other regulated article; and
 - (b) recover the expenses for the treatment or disposal from the person.

Revocation or amendment of quarantine or emergency declaration

- 35.** (1) During the period a declaration of a quarantine area or phytosanitary emergency remains in force, the NPPO shall —
- (a) conduct regular assessments to determine if the declaration continues to be necessary or if it requires amendment; and
 - (b) if the NPPO considers it appropriate to revoke or amend the declaration, advise the Minister to do so.
- (2) The Minister, acting on the advice of the NPPO, may revoke or amend the declaration.
- (3) The revocation or amendment shall be made, published and distributed in the same way as the original declaration.

Division 3 – Offences relating to control of pests

Notification of pest

- 36.** (1) The owner or occupier of a place who knows or suspects that a regulated pest or a pest of national concern is present in the place shall notify the NPPO as soon as practicable.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Prevention of infestation and spread

- 37.** (1) A person shall not recklessly or intentionally —
- (a) introduce or allow the introduction of a regulated pest or a pest of national concern to the Islands; or
- (b) spread or allow the spread of a regulated pest or a pest of national concern to the Islands.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

Requirements for dealing with infested plant, product or article

- 38.** (1) A person shall not —
- (a) propagate or grow a plant that the person knows or reasonably suspects is infested by a regulated pest or a pest of national concern; or
- (b) sell, offer for sale, transport or distribute a plant, plant product or other regulated article that the person knows or reasonably suspects is infested by a regulated pest or a pest of national concern.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of fifty thousand dollars or imprisonment for two years, or both.

PART 6 – ENFORCEMENT

Division 1 – Power and procedures of inspectors

Powers of inspectors

- 39.** (1) An inspector may exercise any of the powers mentioned in subsections (2) and (3) if the inspector reasonably believes it is necessary to do so for —



- (a) the control of a pest;
 - (b) monitoring compliance with this Act; or
 - (c) the exercise of a power or the performance of a function of an inspector under this Act.
- (2) Subject to section 40, the inspector may do any of the following in relation to a place —
- (a) enter, inspect and search the place;
 - (b) require a person at the place to give the inspector specified information (including documents) about specified plants, plant products or other regulated articles;
 - (c) inspect, take samples of, or seize, any plant, plant product or other regulated article found in the place for a specified examination or treatment;
 - (d) apply, or require a person having the control of the place to apply, a specified treatment to the place;
 - (e) install, inspect and retrieve a device at the place for controlling or monitoring a pest;
 - (f) if required under a declaration of a provisional quarantine area, a quarantine area or a phytosanitary emergency, prohibit entry to, departure from or movement within the place; and
 - (g) make a record in relation to an exercise of a power for this subsection (including, for example, by making a copy of a document, taking a photograph or making a video recording).
- (3) In addition, the inspector may do any of the following —
- (a) require a person in control of a plant, plant product or other regulated article or to do any of the following —
 - (i) apply a specified treatment to the plant, plant product or other regulated article;
 - (ii) surrender the plant, plant product or other regulated article for a specified examination or treatment; or
 - (iii) dispose of the plant or material as specified by the inspector;
 - (b) stop and search a vehicle, on land or at sea;
 - (c) inspect a consignment being imported or exported; and
 - (d) inspect passenger luggage being imported or exported.

Restrictions on power of entry

- 40.** (1) This section applies if an inspector intends to enter a place under section 39(2).

- (2) If the place is not a residence, the inspector shall, as far as practicable, give notice to the owner of the place of the inspector's intention to enter the place before doing so.
- (3) If the place is a residence, the inspector shall not enter the place unless —
 - (a) the inspector has given written notice to the owner of the place of the inspector's intention to enter the place; and
 - (b) the inspector —
 - (i) is permitted by the owner (whether orally or in writing) to enter the place; or
 - (ii) is authorised to enter the place under a warrant issued by a Magistrate.
- (4) A Magistrate may issue the warrant only if satisfied the warrant is reasonably required in the circumstances.

Identity card

41. (1) In exercising a power or performing a function under this Act, an inspector shall carry an identity card provided by the Director.
- (2) If an inspector purports to exercise a power under this Act without producing the inspector's identity card when requested to do so —
 - (a) the inspector is not authorised to exercise the power; and
 - (b) a person is not required to comply with a requirement made by the inspector.

Dealing with seized items

42. (1) An inspector shall give a receipt to a person for anything the inspector seizes or receives from the person under this Act.
- (2) The Director has the control of anything seized or surrendered under this Act.
- (3) If the Director considers a plant, plant product or other regulated article seized or surrendered poses a phytosanitary risk, the Director shall destroy or treat it.
- (4) The Director may retain anything seized or surrendered under this Act that is relevant to the prosecution of an offence under this Act until the proceedings for the offence have ended.

Report to Director

43. (1) An inspector shall give a report to the Director about the exercise of a power, or the performance of a function, by the inspector under this Act.
- (2) The inspector shall do so as soon as practicable after the exercise of the power or performance of the function.
- (3) This section has effect subject to any direction of the Director.



Inspector may be assisted

44. An inspector exercising a power or performing a function under this Act may be assisted by —
- (a) a customs and border control officer appointed under the *Customs and Border Control Act (2022 Revision)*; or
 - (b) a constable.

Division 2 – General offences**Obstruction and failing to comply with requirement of inspector**

45. (1) A person who obstructs an inspector, or another person assisting an inspector, who is exercising a power or performing a function under this Act commits an offence and is liable on conviction to a fine of ten thousand dollars or imprisonment for six months, or both.
- (2) A person who fails to comply with a requirement given to the person by an inspector, or another person assisting an inspector, who is exercising a power or performing a function under this Act commits an offence and is liable on conviction to a fine of ten thousand dollars or imprisonment for six months, or both.

False or misleading information

46. (1) A person who gives false or misleading information to the NPPO or an inspector who is exercising a power or performing a function under this Act commits an offence and is liable on conviction to a fine of ten thousand dollars or imprisonment for six months, or both.
- (2) Subsection (1) does not apply if the person —
- (a) gives the false or misleading information in a document; and
 - (b) when giving the document, the person —
 - (i) draws the misleading aspect of the document to the attention of the person receiving it; and
 - (ii) to the extent to which the person can reasonably do so, gives the information necessary to correct the document.
- (3) For the purposes of this section, information is false or misleading if it is false or misleading in a material particular because it does not include relevant information or includes misinformation.

Division 3 – Proceedings for offences

Administrative penalties

47. The Regulations may provide for the payment of an administrative penalty instead of a penalty that could otherwise be imposed for an offence against this Act, including by prescribing the following —
- (a) the offences for which an administrative penalty may be imposed;
 - (b) the amount of the administrative penalty;
 - (c) the procedure for imposing an administrative penalty; and
 - (d) the procedure for disputing the imposition of the administrative penalty.

Forfeiture of items and proceeds

48. If a person is convicted of an offence under this Act, the court may, in addition to any other penalty imposed, order that any plant, plant product or other regulated article in relation to which the offence was committed be —
- (a) forfeited to the Crown;
 - (b) detained until any fine imposed for the offence is paid;
 - (c) sold and the proceeds of the sale up to the amount of any fine imposed forfeited to the Crown; or
 - (d) destroyed at the expense of the person.

PART 7 – ADMINISTRATIVE MATTERS

Protection from liability

49. A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following —
- (a) the Director;
 - (b) an inspector; or
 - (c) someone assisting the Director or an inspector in exercising a power or performing a function under this Act.

Evidentiary certificate

50. In a proceeding for an offence against this Act, a certificate signed by the Director stating any of the following matters is evidence of the matter in the absence of proof to the contrary —
- (a) a specified person was an inspector having specified powers under this Act at a specified time;



- (b) a specified notice or other document was made or given at a specified time;
- (c) a specified thing has been identified as stated in the certificate; or
- (d) a specified thing has been affected by a specified pest as stated in the certificate.

Review of decision of inspector

- 51.** (1) A person whose interests are or might be affected by a decision of an inspector under this Act may apply to the Director for review of the decision.
- (2) The application shall be made within twenty-eight days after the person receives notice of the decision.
- (3) The Director shall, within twenty-eight days after receiving the application, review the decision.
- (4) The application does not affect the operation or implementation of the decision.
- (5) However, the Director may make another decision staying or otherwise affecting the operation or implementation of so much of the decision as the Director considers appropriate to effectively decide the application.
- (6) The Director shall give a written notice of the decision on review to the applicant, specifying the reasons for the decision.

Regulations

- 52.** The Cabinet may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary to be prescribed for giving effect to the purposes of this Act.

Repeal, savings and transitional provisions

- 53.** (1) The *Plants (Importation and Exportation) Act (1997 Revision)* is repealed.
- (2) A permit or certificate issued under the repealed Act and in force immediately before the commencement of this Act continues in force as if it had been issued under this Act.

- (3) The *Plants (Importation and Exportation) (Fees) Regulations, 2009* continue in force as if they had been made under this Act until repealed and replaced by regulations made under this Act.

Passed by the Parliament the day of , 2023

Speaker

Clerk of the Parliament

