

This act is currently under review (07/2014)

PLANT PROTECTION

ARRANGEMENT OF SECTIONS

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PLANT PROTECTION

11 of 1969

An Act to provide for the eradication of pests and diseases destructive to plants to prevent the introduction and spread of pests and diseases destructive to plants, and for matters connected therewith and incidental thereto

*Short title and
Commencement*

1. This Act may be cited as the Plant Protection Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires---

“board of inquiry” means a board of inquiry appointed under section 7;

“container” means any case, package, pot, sack or other thing used as a container and includes any covering, wrapping or packing material;

“disease” means any abnormal condition of a plant, communicable or believed to be communicable by the transfer of a causative agent or by the propagation of an affected plant;

“growing medium” means a medium, including soil, capable of being used for the propagation or culture of plants;

“host plant” means a plant capable of being the host of a pest;

“infested area” means any area or place in which a pest exists;

“injurious organism” means any organism or like agent including a virus which is -----

(a) inimical to the growth or existence of living plants;

(b) injurious to plants or plant products; or

(c) capable of producing a disease;

“inspector” means a person authorized in writing by the Minister to exercise the powers or perform the duties of an inspector under this Act;

“invertebrate” means a living invertebrate animal organism in whatever stage of development it may be;

“nursery” means land or premises where nursery stock is grown or cultivated;

“nurseryman” means the owner or other person responsible for the management of a nursery;

“nursery stock” means woody perennial plants grown or cultivated for the purpose of trade;

“owner” in relation to land or premises includes a joint owner, part owner, lessee or occupier, or the agent of such owner, joint owner, part owner, lessee or occupier;

“pest” means an injurious organism which has been declared to be a pest under subsection (2);

“phytosanitary certificate” means a certificate issued by an officer of the plant protection service of Malawi, or of any other country concerned, as to the health of a plant or a growing medium;

“plant” means any member of the vegetable kingdom, whether living or dead, and includes any part of a plant, or the fruit or flowers thereof, whether severed therefrom or not, and any unmanufactured plant product;

“quarantine area” means an area declared to be a quarantine area under this Act;

“vehicle” includes an aircraft or a railway train.

2. For the purposes of this Act, the Minister may, by notice, declare any injurious organism to be a pest either generally or in respect of a particular type of plant and either with a view to its control or the prevention of its introduction or spread, or for some other purpose.

Inspectors

3. (1) The Minister may, in writing, authorize any person to exercise the powers or perform the duties of an inspector under this Act, or such of them as shall be specified in such written authorization.

(2) Every inspector shall, in the exercise of his powers or the performance of his duties under this Act, comply with any directions or instructions which the Minister may from time to time issue for the purposes of this Act.

Duties of owners of land

4. (1) An owner of land or premises shall take all measures prescribed or required by or under this Act, and such additional or alternative measures as are reasonably necessary for the eradication, reduction or prevention of the spread of a pest or disease which an inspector may, in accordance with the provisions of this Act, in writing order him to take.

(2) If an owner of land or premises fails or neglects to take all or any of the measures which he is required to take in accordance with this section, an inspector may –

1. on giving the owner not less than seven days' notice in writing of his intention so to do, cause the measures to be taken;
2. if he is satisfied that the measures must be taken without delay, cause the measures to be taken immediately without giving the notice referred to in paragraph (a)

(3) An owner of land or premises shall, without prejudice to any other penalty incurred by reason of his failure or neglect to take the measures which he is required to take in accordance with subsection (1), be liable to pay the costs incurred by the inspector in respect of the measures he causes to be taken in accordance with subsection (2), which shall be recoverable as a debt due to the Government.

Powers of inspectors

5. (1) An inspector may, in the performance of his functions under this Act, and upon production of his written authorization by the Minister, if demanded –

1. at all reasonable times enter upon and inspect any land, premises, buildings, vehicles or vessels on or in which growing media or plants may be found, or on or in which he reasonably suspects that a pest may be found;
2. inspect any growing media, and plants, and for the purpose of detecting pests, expose the roots of any plant, remove bark or cut any plant or open any container which he believes to contain growing media or plants liable to harbor a pest;
3. order the taking of measures which are prescribed or are reasonably necessary for the eradication or prevention of a pest;

4. declare any plants, growing media or containers to be infested with a pest;
5. order the destruction at any time of any host plants or any plants declared by him to be infested with a pest, or any plant which is growing on land or in any growing media contrary to the provisions of this Act or any regulations made thereunder;
6. if he reasonably suspects the presence of a pest on land, premises or in a building, declare the area in which the land, premises or building is situated to be an infested area, and in writing prohibit for a period not exceeding fourteen days, the removal from the land, premises or building of growing media, plants, containers or other things whatsoever capable of spreading a pest;
7. subject to the provisions of subsection (2), order the seizure, detention and destruction without compensation of any imported growing medium or plant or injurious organism or invertebrate, together with the container thereof-
 - (i) which is imported in contravention of the provisions of this Act or any regulations made thereunder;
 - (ii) which is imported otherwise than in accordance with the conditions of a permit to import issued under this Act or any regulations made thereunder;
 - (iii) which is not at the time of importation accompanied by such a certificate of origin, phytosanitary certificate, or other document as may be prescribed or which is accompanied by such a certificate or other document which is incorrect in a material particular.

(2) Where an importer or owner of a growing medium or plant or other thing which has been the subject of an order of destruction under this section, other than a growing medium or plant which has been declared by an inspector to be infested with a pest, gives notice of his intention to appeal in accordance with section 7 the order of destruction shall not take effect unless and until the period specified for lodging notice of appeal is dismissed, withdrawn or abandoned.

Owners to provide access and facilities to inspectors

6. An owner of land, premises, a building, vehicle or vessel, or of a growing medium or plant, and the agent of such owner, shall afford an inspector access thereto and shall give such information and provide such labor and facilities as the inspector may require for the purposes of carrying out an inspection under this Act.

Appeals

7. (1) Subject to the provisions of subsection (2), the importer or owner of a growing medium or plant or other thing, the destruction of which

has been ordered in accordance with the provisions of this Act may, within seven days of the date of the order, lodge with the Minister a notice of appeal against the order: -

Provided that there shall be no right of appeal in respect of –

1. an order for the destruction of a growing medium or plant declared by an inspector to be infested with a pest; or
2. an order of destruction made under Section 5 (1) (e).

(2) A notice of appeal shall be in writing and shall specify the grounds of the appeal.

(3) The Minister may, after such inquiries as he considers necessary thereupon determine the appeal himself or may if he considers it desirable refer the appeal to a board of inquiry appointed by him in accordance with the provisions of this section.

(4) A board of inquiry for the purposes of this section shall consist of three members appointed by the Minister of whom –

1. one member, who shall be the chairman, shall be a legal practitioner; and
2. not less than two members shall be persons who are not public officers.

(5) The powers, rights and privileges of a board of inquiry shall be the same as those conferred upon commissioners by the Commissions of Inquiry Act and the provisions of section 9 to 13 of that Act shall *mutatis mutandis* apply in relation to the proceedings of a board of inquiry appointed under this section and to a person summoned to give evidence or giving evidence before a board of inquiry.

(6) The board of inquiry shall as soon as possible report its findings and make recommendations in writing to the Minister who shall thereupon determine the appeal giving due consideration to the findings and recommendations of the board of inquiry.

(7) If a board of inquiry recommends that an appeal be dismissed it may also recommend that the appellant pay to the Government the costs incurred by the Government in connection with the appeal or may make such other recommendations as it considers appropriate, and the Minister in determining the appeal may give effect to such recommendations.

(8) Any determination by the Minister shall be final and shall not be questioned in any court and any order by the Minister that the appellant shall pay any of the costs of the Government in connection with the appeal shall constitute a debt owing by the appellant to the Government which may be used for in any court.

(9) Members of a board of inquiry who are not public officers shall be paid, out of moneys appropriated for the purpose by Parliament, such remuneration as the Minister may prescribe.

(10) All members of a board of inquiry shall be paid, out of moneys appropriated for the purpose by Parliament, such allowances to meet the reasonable expenses incurred by them in connection with an appeal as the Minister may prescribe.

*Sale by
nurserymen of
plants infested
with an
injurious
organism*

8. If within three days of the delivery to him of plants sold by a nurseryman, the purchaser of the plants finds that they are infested with an injurious organism he may return the plants to and at the expense of the nurseryman and shall thereupon be freed from the liability to pay for them, or if he has paid for them he may recover the purchase price.

Compensation

9. (1) Subject to the provisions of this Act, the Minister may, out of moneys appropriated for the purpose by Parliament, pay compensation to the owner of a growing medium or plant destroyed under the powers conferred by this Act.

(2) If the owner of the growing medium or plant so requires, the Minister may appoint two assessors, one of whom shall be nominated by the owner, to assist him in assessing the amount of compensation payable.

*Limitation of
action against
Government*

10. No claim shall lie against the Government, the Minister, the Permanent Secretary, an inspector or any other servant or agent of the Government for anything done in good faith under the powers conferred by this Act.

Offences

11. (1) A person who –

1. wilfully resists, obstructs, impedes or hinders an inspector in the exercise of his powers or the performance of his duties under this Act or any regulations made thereunder;
2. contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder or of any order or direction made or given under this Act, or of any regulations made thereunder, with which it is his duty to comply; or
3. without reasonable cause contravenes or fails to comply with any of the conditions of a permit or other document issued in accordance with this Act or of any regulations made thereunder; or
4. maliciously introduces a pest on to land or premises in Malawi;

or

5. on being required to do so fails or refuses to produce to an inspector a permit, certificate or other documents which he is required to have in accordance with this Act, or any regulations made thereunder; or
6. fails or refuses without reasonable cause to give information to an inspector when required to do so in accordance with this Act or knowingly gives false or incomplete information; or
7. for the purpose of obtaining, whether for himself or any other person, the issue of a permit, certificate or other document makes a declaration or statement which he knows to be false in any particular or does not know or believe to be true or knowingly makes use of a declaration, statement or document containing the same;

shall be guilty of an offence and liable –

- (i) for an offence under paragraph (d), to a fine of four hundred pounds and to imprisonment for four years
- (ii) for any other offence, to a fine of one hundred pounds and to imprisonment for six months.

(2) An inspector may seize and detain, and may order the destruction without compensation of, a growing medium, plant or other thing whatsoever which is removed from an infested or quarantine area in contravention of the provisions of this Act or an order made in accordance with the provision of this Act.

(3) The confiscation or destruction of a growing medium, plant or other thing in accordance with subsection (2) shall not free the person responsible for its illegal removal from liability to prosecution.

Regulations

12. (1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may provide for –

1. the form of and the fees payable in respect of any permits or certificates or other documents required under this Act, and the manner of applications to be made in respect thereof;
2. the issue of, the duration of, the cancellation, surrender or amendment of, and the conditions which may be attached to, any permit, certificate or other document required under this Act;
3. the regulation, prohibition, restriction or control of the import or

export of any plant, or class of plant or any growing medium, invertebrate, pest or other injurious organism;

4. the disinfection, treatment, destruction or disposal of pests, or plants infested or appearing to be infested with a pest, or anything whatever, whether similar in nature to a plant or not, which is liable to infest a plant with a pest;
5. the prohibition, restriction and regulation of the removal, transport or export of pests, growing media or plants;
6. the control and destruction of any plant infested with a pest;
7. the prohibition, restriction and regulation of the cultivation and harvesting of plants if a pest cannot otherwise be readily or adequately controlled or eradicated;
8. the control and destruction of host plants not under cultivation for the current season's crop;
9. the reporting of the occurrence of a pest and the collection and transmission of specimens of a pest;
10. the methods of planting, cleaning, cultivating and harvesting to be adopted and the precautions and measures, including the destruction of plants, to be taken by an owner of land for the purpose of eradicating a pest or of preventing or controlling attacks by or the spread of a pest;
11. the destruction after harvest of a particular kind of plant by a specified date;
12. the disinfection, fumigation or other treatment of any land, building, vehicle or vessel used for the storage or conveyance of any plant, agricultural produce or anything else whatever likely to infest a plant with a pest;
13. the declaration of areas infested with a pest as infested areas and of areas around infested areas as quarantine areas;
14. the registration and inspection of nurseries, the regulation of the sale or removal of plants from nurseries and the regulation of the sale of nursery stock;
15. the payment and recovery of fees for any services carried out by an inspector under this Act;
16. the detention and inspection before importation and exportation of growing media and plants and their containers, and the grant of phytosanitary certificates in accordance with such inspection;

17. the disinfection, fumigation or treatment of imported growing media and plants and their containers;
18. the immediate destruction, without compensation, of imported growing media and plants which, on inspection, appear to be infested with a pest or an injurious organism;
19. the immediate destruction, without compensation, of an imported invertebrate if, in the opinion of an inspector, the invertebrate might be a potential danger to agriculture;
20. the prohibition of the importation of growing media, invertebrates and plants except by specified ports or places of entry and routes and by specified methods of transport;
21. the detention of imported growing media, invertebrates and plants for observation and the precautions to be taken during detention;
22. the imposition and recovery of fees for sorting, disinfecting, fumigating or treating growing media and plants on importation;
23. the disposal of imported growing media and plants in respect of which prescribed fees are not paid and of the proceeds, if any, resulting from their disposal;
24. the issue of permits as a pre-requisite to the importation of growing media, injurious organisms, invertebrates and plants;
25. the production of phytosanitary certificates signed by responsible persons or authorities in the country or territory of origin relating generally or specifically to –
 - (i) the freedom of imported growing media, invertebrates and plants, or the area in which they were produced or grown, from injurious organisms; and
 - (ii) the treatment of imported growing media and plants before dispatch from their place of origin;
26. the production of certificates of origin of imported growing media, injurious organisms, invertebrates and plants and for the furnishing by the importer of particulars relating to imported growing media, injurious organisms, invertebrates and plants.