



TURKS AND CAICOS ISLANDS

## **CHAPTER 10.04**

# **PLANT HEALTH ORDINANCE**

**Revised Edition**  
showing the law as at 31 December 2014

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

**PLANT HEALTH ORDINANCE**

Ordinance 39 of 2012 .. in force 1 November 2012 (L.N. 59/2012)

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3

No Subsidiary Legislation has been made under this Ordinance



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**CHAPTER 10.04**  
**PLANT HEALTH ORDINANCE**  
**ARRANGEMENT OF SECTIONS**

**PART I**

**PRELIMINARY**

SECTION

1. Short title
2. Interpretation
3. Scope and status of the Ordinance

**PART II**

**ADMINISTRATION**

4. Turks and Caicos Islands Plant Protection Service
5. Functions of the Service
6. Plant inspectors
7. Powers of entry, search and seizure
8. Other powers
9. Taking of samples
10. Directions by an inspector
11. Enforcement notices
12. Limitation on powers
13. Powers in relation to people
14. Powers of arrest
15. Rights and duties of plant inspectors
16. Offences relating to inspection, etc.
17. Authorised laboratories and analysts

**PART III**

**PLANT PEST CONTROL**

18. Quarantine plant pests
19. Early detection system
20. Declaration of plant pest emergency
21. Plant pest emergency: Supplementary
22. Designation of plant pest zone
23. Plant pest zones: Supplementary
24. Designation of other zones
25. Destruction of plants for plant pest control purposes
26. Compensation
27. Control of movement of plants

28. Movement permits
29. Offences relating to infested plants

#### PART IV

##### PLANT QUARANTINE

30. Plant quarantine orders
31. Plant quarantine stations and areas
32. Management of quarantine stations and areas
33. Quarantine offences

#### PART V

##### PLANT IMPORTS AND EXPORTS

34. Importation of regulated articles
35. Plant import permits
36. Plant import conditions
37. International phytosanitary certificates
38. Prohibited plant imports
39. Arrival notification
40. Inspection of plant imports
41. Plant exports
42. Passengers and crew members
43. Obligations of captains and owners of vessels and aircraft
44. International transportation facilities

#### PART VI

##### PROSECUTION OF OFFENCES

45. Procedure for offences
46. Cancellation of licence, etc.
47. Offences by corporations and employees
48. Fixed penalties
49. Forfeiture
50. Presumptions
51. Documentary evidence
52. Seizure and detention of plants, etc.

PART VII

MISCELLANEOUS PROVISIONS

53. Plant audit and trace-back system
54. Duty to assist and cooperate
55. Right of appeal
56. Good faith defence
57. Publication and service of notices, etc.
58. Keeping of records
59. Regulations
60. Ordinance binds the Crown

- “country” includes a territory;
- “CPPO” means the Chief Plant Protection Officer;
- “decontaminate” means to reduce the pathogens on the surface of a plant, plant product or other item, whether by irradiation or any other means;
- “Department” means the Department of Agriculture;
- “detain” means to keep a consignment in official custody or confinement for phytosanitary reasons, and “detention” has a corresponding meaning;
- “Director” means the Director of Agriculture;
- “disinfestation” means the utilization of any approved substance or process designed to prevent, eliminate or reduce any pest or micro-organism with which an article or area may be infested;
- “disposal”, in relation to a regulated article, means destruction by burying or burning or any other means and “dispose of” includes “destroy”;
- “enforcement action” means action to enforce phytosanitary measures in order to contain a plant pest risk;
- “enforcement notice” means a notice issued by a plant inspector under section 11;
- “export” as a verb, means to send an item to another country by any means, and “exportation” and related terms have a corresponding meaning;
- “germplasm” means a plant intended for use in breeding or conservation;
- “health hazard” means a biological, chemical or physical agent in, or a condition of, a regulated article with the potential to cause an adverse health effect in plants or humans;
- “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 the Islands from another country;
- “infested”, in relation to an article or area, means that a plant pest is present in the article or area;
- “international phytosanitary certificate” has the meaning given that term by section 37;
- “IPPC” means the International Plant Protection Convention;
- “IPPC Secretariat” means the Secretariat of the Commission on Phytosanitary Measures established under the IPPC;
- “island” means any island comprising the Turks and Caicos Islands;
- “ISPM” means the International Sanitary and Phytosanitary Measures;
- “Minister” means the Minister responsible for the Department;
- “outbreak” means the occurrence of a plant pest, detected and expected to survive for the immediate future;



- “plant-related item” includes packaging, and any container, equipment, or other appliance used for or on plants, and any object or material capable of harboring or spreading plant pests;
- “port” means a port or airport prescribed or appointed under the Customs Ordinance;
- “premises” includes a building, tent or other structure, whether permanent or otherwise, the land on which it is situated and any adjoining land employed in connection with it;
- “quarantine plant pest” means a plant pest declared by order under section 18 to be a quarantine plant pest;
- “quarantine station or area” means a facility for the holding of regulated articles for phytosanitary observation, research, inspection, testing, treatment, detention or destruction;
- “regulated article” means—
- (a) any plant, plant product, storage equipment, packaging, vehicle, container or soil;
  - (b) any other organism, object or material capable of harbouring or spreading pests; and
  - (c) any other article that the Director by notice in the *Gazette*, on the advice of the CPPO, declares to be a regulated article for the purposes of this Ordinance;
- “sell” means offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or exchange or dispose of to any person in any manner whether for a consideration or otherwise, and “sold”, “selling” and “sale” have corresponding meanings;
- “serious plant pest” means the risk of introduction into or spread in the Islands of any quarantine plant pest that would constitute a serious threat to plant, animal, human or environmental health;
- “Service” means the Turks and Caicos Islands Plant Protection Service established by section 4(1);
- “surveillance” means an official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures;
- “surveillance zone” means a zone so designated under section 24;
- “vehicle” means any vessel, aircraft, conveyance, cart, container, animal or other thing on land or at sea or in the air that can convey a regulated article from one place to another;
- “vessel” includes any marine vehicle;
- “WTO SPS Agreement” means the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures;
- “zone” means a plant pest zone, a plant pest-free zone, a buffer zone or a surveillance zone.

### **Scope and status of the Ordinance**

3. (1) This Ordinance is intended to prevent the introduction and spread of plant pests, to protect and promote plant health, to control the movement of plants and products into, from and within the Islands, and to regulate related matters.

(2) This Ordinance provides for the issuance in accordance with international standards and obligations of phytosanitary certificates for all regulated articles for which a phytosanitary certificate is required.

(3) This Ordinance is in addition to and does not derogate from any enactment relating to food safety, human health, immigration, customs control or plant health and movements.

## **PART II**

### **ADMINISTRATION**

#### **Turks and Caicos Islands Plant Protection Service**

4. (1) There is established a Turks and Caicos Islands Plant Protection Service within the Department of Agriculture.

(2) The Service is to consist of the Chief Plant Protection Officer and such other plant protection officers and other staff as are assigned to it.

(3) The CPPO is to be the head of the Service and the National Plant Protection Officer for purposes of the international obligations of the Government in relation to plant protection matters.

(4) The CPPO may delegate any of his functions under this Ordinance to a plant inspector or plant protection officer, except for his power of delegation, and a reference to 'the Service' includes a plant inspector or plant protection officer performing a function of the Service on the authority of the CPPO.

(5) The CPPO is answerable to the Director for the performance of his functions and those of the Service under this Ordinance and for the efficient operation of the Service.

#### **Functions of the Service**

5. (1) The functions of the Service include, but are not limited to, the following—

- (a) implement the IPPC, ISPM and the WTO SPS Agreement;
- (b) carry out surveillance of any ornamental and growing plants, 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 quarantine pests, and of controlling those pests;
- (c) inspect any consignment of a plant and plant product and, if appropriate, inspecting any other regulated article, for the purpose of preventing the introduction and spread of quarantine pests;

- (d) disinfest consignments of any plant, plant product or other regulated article;
- (e) designate, maintain and survey pest-free areas;
- (f) conduct plant pest risk analyses as required;
- (g) decide on and publish the phytosanitary measures to be applied in the Islands, on the basis of plant pest risk assessment and by reference to applicable international standards;
- (h) provide information to other countries concerning the phytosanitary measures applied in the Islands, in accordance with international obligations;
- (i) ensure the phytosanitary security of consignments after certification and before export;
- (j) establish auditing and trace-back procedures for regulated articles for the purpose of phytosanitary certification;
- (k) publish information regarding quarantine pests and the means of their prevention and control;
- (l) review and enforce phytosanitary import conditions and other necessary legislation;
- (m) provide information regarding import and export regulations in force, and technical requirements for any regulated article, on the request of any interested international, regional or other national plant protection organisation;
- (n) set up an early detection system for plant pests and pathogen outbreaks as provided by section 19;
- (o) devise and publish a plant pest emergency plan in accordance with section 22;
- (p) designate plant quarantine stations and areas and manage such stations and areas in accordance with Part IV;
- (q) establish and publish phytosanitary requirements for the import, export and movement of regulated articles, on the basis of the IPPC standards and in consultation with other competent authorities;
- (r) administer the system of permits for the import of regulated articles in accordance with section 35;
- (s) issue phytosanitary certificates for the export of regulated articles in accordance with section 43;
- (t) represent the Islands in bilateral, regional and international fora relating to phytosanitary matters;
- (u) notify the IPPC of outbreaks of plant pests and fulfil other international reporting requirements in relation to plant pests;
- (v) carry out communication, training and public awareness campaigns on plant health matters;
- (w) issue permits required under this Ordinance;

- (x) collect fees as required under this Ordinance;
- (y) advise the Minister on the development of regulations needed to implement this Ordinance; and
- (z) perform other functions assigned to it by the Director for the purposes of this Ordinance.

(2) The Service must at least once a year, and more often if required in writing by the Director, give a written report to the Director on the performance of its functions under this Ordinance.

### **Plant inspectors**

6. (1) There may be assigned to the Service appropriately qualified officers in the public service to serve as plant inspectors for the purposes of this Ordinance.

(2) Every plant inspector must be issued with an identification document or badge.

(3) Plant inspectors are answerable to the CPPO while performing their functions under this Ordinance.

### **Powers of entry, search and seizure**

7. (1) A plant inspector, with or without the assistance of a police officer may—

- (a) enter any plant establishment, vehicle, port facilities or other premises (other than a dwelling place) where activities in relation to plants are being carried out, or are suspected of being carried out;
- (b) inspect or search any such premises, and examine any plant, or open and examine any regulated article, object or substance which is, or is suspected of being used in activities relating to plants;
- (c) require any person to present any plant or thing for inspection in a manner and under conditions the inspector considers necessary to carry out the inspection;
- (d) require the owner or person in charge of the premises to provide any information or documentation regarding the regulated article, object or substance;
- (e) secure or prohibit access to the premises for as long as is needed to ensure that there is nothing on or in the premises that might cause the spread of a quarantine plant pest.

(2) A plant inspector may, in relation to premises as mentioned in subsection (1)—

- (a) open any container on the premises that the inspector believes on reasonable grounds contains any plant or thing in respect of which this Ordinance or the regulations apply;
- (b) weigh, count, measure, mark and open any such container, take photographs of any thing, read any values of any instruments and

take samples in the prescribed manner of anything on the premises;

- (c) require any person on the premises to produce for inspection or copying, in whole or in part, any record or document that the inspector believes on reasonable grounds contains any information relevant to the administration of this Ordinance or the regulations;
- (d) examine, make copies of or take extracts from any book, statement or other document found at the premises that the inspector believes on reasonable grounds contains any information relevant to this Ordinance, and demand from the owner or any person in charge of the premises an explanation of any entry in it;
- (e) inspect any operation, process or system used or carried out on the premises;
- (f) seize any plant, appliance, product, material, object, substance, book or document on the premises which appears to provide proof of a contravention of any provision of this Ordinance.

(3) In carrying out an inspection at any place under this section, an inspector may—

- (a) use or cause to be used any data processing system at the place to examine any data contained in or available to the system;
- (b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and take the print-out or other output for examination or copying; and
- (c) use or cause to be used any copying equipment at the place to make copies of any record or other document.

(4) In carrying out an inspection at any place or in performing his functions under this Ordinance a plant inspector may—

- (a) in relation to any plant, make such examinations, apply such tests, take such samples, use of germplasm or any other genetic material and apply such marks as may be reasonably necessary, or as may be required or prescribed under this Ordinance;
- (b) enter any land or premises for the purpose of such examining, testing, sampling or marking;
- (c) require any person in charge of a plant, or the owner or occupier of or a person employed on land or premises so entered, to give assistance or to carry out instructions as reasonably necessary for the purpose of examining, testing, sampling or marking, or to give information as reasonably necessary in connection with the prevention or eradication of any quarantine plant pest or for the implementation of this Ordinance.

(5) A plant inspector may at any time—

- (a) with the consent of the owner, enter and search a dwelling house for purposes of this Ordinance;

(b) on a warrant issued under subsection (6), enter and search a dwelling house for plants or plant products that the inspector reasonably believes have been imported in contravention of this Ordinance or pose a serious plant pest risk.

(6) If a magistrate is satisfied on evidence on oath by a plant inspector or police officer that—

(a) there may be in a dwelling house regulated articles that have been imported in contravention of this Ordinance or that pose a serious plant pest risk; and

(b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the magistrate may issue a warrant authorising the inspector to enter and search the dwelling house for such regulated articles, and the preceding provisions of this section apply to such a search.

### **Other powers**

8. (1) A plant inspector may submit anything taken from premises under section 7 to an authorised laboratory for analysis.

(2) A plant inspector may issue an enforcement notice under section 10 ordering modifications to be made to a plant establishment if the structure or internal design or contents are likely to pose a health hazard or plant pest risk.

(3) A plant inspector may, in order to contain a plant pest risk, seize any regulated article, including food that is contaminated or contagious, and if necessary order the destruction of it.

(4) A plant inspector may order the destruction and removal of any infested plant that has died, wherever it may be found.

(5) A plant inspector may order the quarantining of any plant for the purpose of further testing and analysis.

(6) A plant inspector may decontaminate or disinfect, or order the decontamination or disinfection of any container, vehicle, premises or place.

(7) In relation to any regulated article, a plant inspector may make any examination, apply any test, take any sample, use of germplasm or plant genetic material and apply any mark that is reasonably necessary for the purposes of this Ordinance.

(8) A plant inspector may stop and search any vehicle or container upon entry into, movement within or exit from the Islands, if the inspector reasonably suspects that the vehicle or container is carrying a regulated article in contravention of this Ordinance and that a plant pest risk is created as a result.

### **Taking of samples**

9. (1) A plant inspector may, with the consent of the owner or person in charge of a regulated article, take samples from—

(a) any part of an incoming vessel or aircraft that has on board a regulated article;

(b) any warehouse containing a regulated article;

- (c) any consignment of regulated articles, wherever located;
- (d) any container, baggage or thing that the officer reasonably suspects to be or include a regulated article.

(2) If an owner or person in charge refuses consent under subsection (1), the inspector may require the person to provide appropriate samples.

(3) If an owner or person in charge refuses either to allow samples to be taken or to provide samples, when required to do so under this section—

- (a) the owner or person commits an offence;
- (b) an import permit for an incoming consignment must be refused or revoked.

Penalty: A fine of \$5,000.

(4) A plant inspector may, with the consent of the owner or person in charge of the article, take samples of any outgoing regulated article if the taking of a sample is necessary for the issue of a phytosanitary certificate.

(5) If the person in charge of a regulated article refuses consent under subsection (4), the inspector may require the person to provide a sample, failing which the phytosanitary certificate will not be issued.

(6) A plant inspector may request the owner or person in charge of a consignment to unpack it or break it up to facilitate sampling, at the risk and expense of the owner or person.

(7) When exercising powers under subsection (1) or (4), an inspector must give the owner or person in charge a written notice, identifying the quantity of the sample and the place where the sample is to be analysed.

(8) In other respects, the procedure for taking and analysing samples, recording the results and disposing of the samples is as approved by the Director.

(9) If, in the course of sampling, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the owner of the goods.

(10) The owner or person in charge of a regulated article from which samples are taken under subsection (1) or (4) must be notified in writing of the findings in respect of the samples as soon as reasonably practicable.

(11) The charges for taking and analysis of samples under this section are as prescribed.

### **Directions by an inspector**

**10.** (1) A plant inspector may, to contain a plant pest risk from any regulated article, direct or prohibit the movement of the article from, to or in any place.

(2) If a plant inspector is satisfied that there has been a failure on the part of the person in charge of a container or vehicle to comply with a requirement of this Ordinance or with a condition imposed pursuant to it, and that this poses a plant pest risk, the inspector may, with the assistance of a police officer —

- (a) detain the container or vehicle; or

(b) if the vehicle is a vessel, direct that the docking of the vessel or offloading of regulated articles be stopped until the plant pest risk is contained.

(3) A plant inspector may issue a direction to stop the distribution, sale or use of any regulated article which the inspector has reason to believe is infested with or may spread a plant pest, until the plant pest risk is contained.

(4) Written notice of a direction issued under subsection (1), (2) or (3) must be given to the CPPO, the Commissioner of Police and the Collector of Customs as soon as reasonably practicable.

(5) Upon receiving a notice under this section, the CPPO must, without delay, take the appropriate phytosanitary measures to contain any plant pest risk arising from movement or sale of the regulated article and the direction ceases to have effect once the CPPO has taken such action.

### Enforcement notices

11. (1) If a plant inspector has reasonable grounds for believing that an owner or person in charge of a regulated article has failed to comply with any directions under section 9 or any provision of this Ordinance, he may serve a notice on the owner or person—

- (a) stating the inspector's grounds for believing that the direction or any provision of this Ordinance is not being complied with;
- (b) specifying the phytosanitary or other measures which the inspector considers the owner or person must take in order to remedy the failures referred to in paragraph (a);
- (c) requiring the owner or person to implement those measures, or measures which are at least equivalent to them, within the time specified in the notice.

(2) If the person on whom an enforcement notice is served fails to take the measures specified—

- (a) the person commits an offence;
- (b) the plant inspector must notify the CPPO and take enforcement action as directed by the CPPO.

Penalty: A fine of \$10,000.

### Limitation on powers

12. (1) The powers in sections 7 to 11 may only be exercised—

- (a) on the basis of plant pest risk assessment, for the purpose of detecting and controlling plant pests; or
- (b) on reasonable grounds that there has been or is about to be a breach of this Ordinance or the regulations.

(2) The rights of entry conferred by section 7(1) to (4) may be exercised without a warrant, but the plant inspector must provide written justification to the owner or person in charge of any premises before exercising those rights.

(3) Upon taking action under section 11(1) or (2), a plant inspector must, without delay, give to the person in charge of the container or vehicle a written and signed notice of detention, giving reasons for it.

(4) A plant inspector must on request by any person produce his identification card for inspection when exercising powers under the foregoing sections.

(5) A plant inspector who seizes or detains a regulated article or other thing under this Ordinance must immediately issue a written and signed notice to the owner or person in charge of the plant, product or item, giving reasons for exercising the power.

### **Powers in relation to people**

**13.** (1) If a plant inspector is of the opinion that any person—

- (a) seeking to enter or leave the Islands;
- (b) employed at a port or in a quarantine station or area; or
- (c) engaged in importing or exporting regulated articles,

is in possession or control of an article that poses a plant pest risk to the Islands, the inspector may detain and question the person.

(2) If a plant inspector suspects that there may be upon a person seeking to enter the Islands an article the importation of which would constitute an offence under this Ordinance, the officer may cause the person and the person's baggage to be searched.

(3) If a plant inspector suspects that there may be upon a person seeking to leave the Islands an article the exportation of which would constitute an offence under this Ordinance, the inspector may cause the person and the person's baggage to be searched.

(4) A search of a person under this section must be carried out by an inspector of the same sex as the person searched.

(5) A person may be detained under this section only for as long as is required to question and search the person and the person's baggage and to arrange for phytosanitary measures to be taken in respect of it.

### **Powers of arrest**

**14.** (1) If a plant inspector suspects that an offence under this Ordinance is being committed by any person in relation to a regulated article, and that a plant pest risk is created as a result, the inspector may, without a warrant, direct the person to stop the activity and may detain the regulated article for a period specified in the direction.

(2) If a person as mentioned in subsection (1) refuses to comply with a direction or impedes or obstructs the inspector in the performance of his duties, the inspector may, with the assistance of the police, arrest the person.

(3) A person arrested under this section must be taken as soon as practicable, and in any event within 48 hours, before a magistrate and must not be detained without a warrant longer than is necessary.

**Rights and duties of plant inspectors**

15. (1) A plant inspector may require the owner or person in charge of any regulated article, or premises on which an article is found, to—

- (a) give any assistance or carry out any instructions reasonably necessary to facilitate the performance of the inspector's functions or to enforce the provisions of this Ordinance;
- (b) give all information reasonably necessary in connection with the eradication of any plant pest or the enforcement of this Ordinance.

(2) Plant inspectors have the right to request and receive the assistance of police officers in the execution of their duties.

(3) Every plant inspector following an inspection or issuing of an enforcement notice must prepare a written inspection report to the CPPO in a form approved by the Director.

(4) A plant inspector must not disclose any confidential information acquired in the performance of official duties relating to any person, firm, or business, except when required to do so by the CPPO or Director or by a court.

(5) A plant inspector who—

- (a) in connection with his functions, directly or indirectly asks for or takes any payment or other reward to which he is not entitled;
- (b) agrees to do, abstains from doing, permits, conceals; or
- (c) connives at any act or omission which is contrary to this Ordinance; or
- (d) knowingly discloses any information contrary to subsection (4),

commits an offence.

Penalty: A fine of \$20,000.

**Offences relating to inspection, etc.**

16. A person who—

- (a) fails to provide access, samples or information to a plant inspector upon request, gives false information to a plant inspector, or otherwise fails to comply with an order properly given under this Ordinance;
- (b) refuses to submit to the lawful inspection of a plant inspector any equipment used in connection with the importation or movement of a regulated article;
- (c) attempts to improperly influence a plant inspector in the performance of his functions under this Ordinance;
- (d) tampers with any sample taken under this Ordinance or breaks any seal or alters any marking made by a plant inspector without permission;
- (e) alters, forges, defaces, or destroys any document issued under this Ordinance or knowingly or recklessly provides information which

is false, for the purpose of obtaining any document under this Ordinance;

(f) assaults, resists, threatens, or willfully obstructs a plant inspector or other representative of the Service while performing lawful functions under this Ordinance; or

(g) poses as a plant protection officer or plant inspector,

commits an offence.

Penalty: A fine of \$10,000 or imprisonment for twelve months, or both.

### **Authorised laboratories and analysts**

17. (1) The Minister may, by order, specify a laboratory, in the Islands or elsewhere, as an authorised laboratory for purposes of this Ordinance.

(2) No person who has any actual or reasonably perceived interest in a matter or other action to be taken by the Service, whether such interest is direct or indirect, may act as a plant inspector of an authorised laboratory.

(3) A person as mentioned in subsection (2) who becomes aware that he or she has such an interest, must notify the Director in writing within 3 days of becoming so aware, and the Director must immediately assign another plant inspector.

(4) The Minister may, on the advice of the CPPO, by notice specify one or more appropriately qualified persons as authorised analysts to analyse samples for the purposes of this Ordinance.

(5) A person duly employed in an authorised laboratory as an analyst is deemed to be an authorised analyst for the purposes of this section.

(6) A laboratory that is not a Government laboratory, and an analyst who is not a public officer, may charge their usual fees for services provided under this Ordinance.

## PART III

### PLANT PEST CONTROL

#### **Quarantine plant pests**

18. (1) The Minister may, by order published in the *Gazette*, declare any plant pest to be a quarantine plant pest for the purposes of this Ordinance.

(2) A declaration of a quarantine plant pest must be on the basis of plant risk analysis and whether the plant is of potential economic importance to the Islands.

(3) Any person in the Islands who becomes aware that a plant in his possession or under his control is infested with a quarantine plant pest must as soon as practicable notify—

(a) the CPPO or any member of the Service; or

(b) any police officer, in person or by electronic means.

(4) A police officer who is notified of a quarantine plant pest under subsection (3) must inform the CPPO as soon as practicable.

(5) A person who fails to notify or inform as required by subsection (3) respectively commits an offence.

Penalty: A fine of \$5,000.

### **Early detection system**

19. (1) The Service must establish an early detection system designed to detect plant pest risks or health hazards from regulated articles.

(2) The system established under subsection (1) must include at least the following characteristics—

(a) the legal obligation of private agriculturists to report to the Service;

(b) a chain of command covering the whole of the Islands.

(3) The Minister may by regulations make provision—

(a) for causing or requiring notice to be given of the appearance of any quarantine plant pest among plants; and

(b) for enforcing an early detection system established under this section.

### **Declaration of plant pest emergency**

20. (1) If there are reasonable grounds to believe that there is in any area of the Islands an outbreak of a plant pest, or a high risk of such an outbreak, and that such an outbreak poses or would pose a serious plant pest risk, the Minister, on the advice of the Director acting through the responsible permanent secretary, must by order declare a plant pest emergency in that area.

(2) The advice of the Director given under subsection (1) must be based on—

(a) an inspection carried out; or

(b) the analysis of a sample taken, in accordance with this Ordinance.

(3) The Director, on the advice of the CPPO, may direct the imposition of provisional measures to verify and control the risk of an outbreak before a plant pest emergency is declared under subsection (1).

(4) The measures directed by the Director under subsection (3) must be limited by a time specified in the direction that is proportional to the risk, and upon the expiration of that time, if an emergency has not been declared under subsection (1), the direction lapses.

(5) On the declaration of a plant pest emergency, the Director may do or cause to be done any of the following—

(a) mark the boundaries of the emergency area;

(b) set up roadblocks at all exits from the area;

- (c) set up facilities for the cleansing and disinfection of all persons and vehicles entering or leaving the area and any other thing likely to spread a plant pest;
  - (d) disinfect all vehicles, containers, regulated articles or other items that are likely to carry plant pests and which are being sent out of the area;
  - (e) inspect and disinfect all persons and their possessions leaving the area so as to prevent any pathogen from leaving the area;
  - (f) for the purposes of this subsection, detain persons, regulated articles and vehicles for as long as is necessary to minimise or eliminate the plant pest risk presented by them;
  - (g) perform surveillance activities to ascertain the extent and status of the emergency.
- (6) A person who—
- (a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of the Director, a plant inspector or any police officer or other person performing duties under this section;
  - (b) knowingly enters or leaves a plant pest emergency area except with and in accordance with the permission of the Director or a plant inspector; or
  - (c) knowingly moves any regulated article out of or into an emergency area, or from one place within the area to another place within that area, except with and in accordance with the written permission of the Director or a plant inspector,

commits an offence.

Penalty: A fine of \$50,000 or two years imprisonment, or both.

### **Plant pest emergency: Supplementary**

**21.** (1) The Service must prepare a plant pest emergency plan, based on the powers set out in section 20(5). The plan must set out the phytosanitary measures that are to be imposed during and in the area of a plant pest emergency, including obtaining the assistance of the police, fire and rescue services.

(2) The declaration of a plant pest emergency triggers the implementation of the plant pest emergency plan.

- (3) Phytosanitary measures declared in a plant pest emergency must be—
- (a) based on plant pest risk assessment;
  - (b) proportionate to the threat;
  - (c) limited to the extent and duration necessary to minimize the threat; and
  - (d) published in the *Gazette*.

(4) The Minister must revoke the plant pest emergency declaration when the Director (acting through the responsible permanent secretary), on the advice of the CPPO, determines that the threat has ended.

### Designation of plant pest zone

22. (1) If a plant inspector suspects that a quarantine plant pest posing a serious plant pest risk exists in any area of the Islands, the inspector must—

- (a) without delay, sign a notice to that effect specifying the limits of the area and provisionally designating it a plant pest zone;
- (b) serve the notice on the owner or occupier of the area; and
- (c) provide a copy of the notice to the CPPO.

(2) The area designated as a plant pest zone is subject to confirmation within fourteen days by the CPPO following an investigation. If the designation is not confirmed in that period, or if the CPPO earlier decides not to confirm the designation, the area ceases to be a plant pest zone.

(3) If the CPPO confirms the finding of a plant pest zone, the CPPO may, by notice published in the *Gazette*, designate the plant pest zone and specify—

- (a) the relevant quarantine pest;
- (b) the limits of the plant pest zone;
- (c) the phytosanitary measures to be imposed in the zone; and
- (d) the resulting duties of persons in the zone and in relation to regulated articles in the zone.

(4) The CPPO may in a notice under subsection (3) also designate any other area containing, adjoining or surrounding the infested area as a plant pest zone.

(5) If the CPPO considers that a plant pest zone has ceased to be infested, he must by notice in the *Gazette* cancel the designation of the plant pest zone.

### Plant pest zones: Supplementary

23. (1) The Director must continuously review the plant health status of any plant pest zone to verify compliance with the designation and the CPPO must revise the designation as necessary.

(2) In a plant pest zone, the CPPO may in writing direct—

- (a) the treatment or disposal of infested plants and plant products;
- (b) the movement of regulated articles into, out of, or within the zone;
- (c) the movement of humans and vehicles into, out or within the zone;
- (d) the inspection and treatment of regulated articles in or entering or leaving the zone;
- (e) the destocking, cleaning, disinfecting or other treatment of land, premises and vehicles;

(f) any other phytosanitary measure the CPPO considers necessary to contain the sanitary risk.

(3) A regulated article that has been in a plant pest zone must not be exported until the CPPO is satisfied that it no longer presents a plant pest risk.

(4) The cost of treatment or destruction under this section is to be borne by the Ministry, and the owner of a plant or plant product is entitled to compensation in accordance with section 26.

(5) A person who—

(a) knowingly and without reasonable excuse fails to comply with a direction of the CPPO in a plant pest zone;

(b) knowingly enters or leaves a plant pest zone except with and in accordance with the permission of a plant inspector; or

(c) knowingly moves any regulated article out of or into a plant pest zone without the permission of a plant inspector,

commits an offence.

Penalty: A fine of \$5,000 or imprisonment for six months, or both.

### ***Designation of other zones***

**24.** (1) The CPPO may, by notice in the *Gazette*, designate any part of the Islands as a plant pest-free zone, a buffer zone or a surveillance zone for the purposes of this Ordinance.

(2) A plant pest-free zone is a zone in which—

(a) no quarantine plant pest is present in the area;

(b) phytosanitary measures have been implemented to keep the area free of such pests; and

(c) a surveillance system has been instituted to verify that the area remains free of quarantine plant pests.

(3) A buffer zone is a zone established to protect the health status of plants in a pest-free zone from those in a zone of a different plant health status. It must be established using measures such as vaccination, movement control and plant pest surveillance based on the epidemiology of the pest or pathogen under consideration, in order to prevent the spread of the causative pathogenic agent into a pest-free zone.

(4) A surveillance zone is established within, and along the border of, a pest-free zone separating the free zone from a plant pest zone.

(5) The CPPO must by notice specify the phytosanitary measures that may be imposed in order to contain a plant pest risk in a buffer or surveillance zone and to preserve the status of a plant pest-free zone.

### **Destruction of plants for plant pest control purposes**

**25.** (1) A plant inspector may cause any plant that has a quarantine plant pest, whether or not in a plant pest zone, to be destroyed in order to prevent the spread of any plant pest, and for that purpose the plant inspector may give all necessary directions.

(2) A plant inspector may require the owner or person in charge of a plant to destroy the plant if the plant has been in contact with, or in close proximity to, another regulated article or an item that was, or is suspected of being (or having been) infested by a quarantine plant pest.

(3) A plant inspector may, for the purpose of observation and treatment, take possession of and retain any plant liable to be destroyed under this section and take appropriate phytosanitary measures.

(4) A plant destroyed under the provisions of this Ordinance or which dies as the result of a quarantine pest, must be disposed of as soon as possible by the owner of the plant under the directions of a plant inspector and in accordance with guidelines published by the CPPO.

(5) Destruction for purposes of this section includes burning or burying.

(6) The provisions of this section apply to a plant product or plant-related item as they apply to plants, except for the reference to it dying.

### Compensation

26. (1) Owners may, at the discretion of the Department, be compensated for plant or plant product destroyed based on an assessment done to ascertain—

- (a) if compensation should be granted;
- (b) the fair market value of the plant or plant product immediately before it is destroyed.

(2) No compensation is payable in respect of a plant or plant product destroyed while in a quarantine station or area if, in the opinion of the CPPO, the plant or product was infested at the time of importation into the Islands.

(3) Compensation is not payable if the owner of the plant or plant product failed to give notice of the presence of a quarantine plant pest in accordance with section 18.

(4) No compensation is payable to a person who commits an offence under this Ordinance and claims compensation in respect of any plant or plant product by means of or in relation to which the offence was committed.

(5) No compensation is payable under this section for—

- (a) the detention of a regulated article or vehicle;
- (b) consequential loss arising from the destruction of a plant or plant product; or
- (c) the destruction of any other regulated article.

### Control of movement of plants

27. (1) The Director, on the advice of the CPPO, may in order to ensure control of quarantine pests and the proper handling of plants which are to be moved from or to or within the Islands, by notice prohibit—

- (a) the movement from or to or within the Islands of a specified plant; or
- (b) the movement from or to or within the Islands of any plant on a specified vessel or aircraft, for a period specified in the notice.

(2) No import permit and no phytosanitary certificate may be issued in relation to the import or export of a plant contrary to a prohibition notice under subsection (1).

(3) For the purposes of controlling or eradicating a quarantine pest and of preventing its introduction or spread, the Director, on the advice of the CPPO, may by notice—

- (a) control the movement of regulated articles within, into or out of a zone;
- (b) provide for the establishment of compartments within a zone and varying measures of control for each compartment;
- (c) authorise the disposal or treatment of regulated articles that are or have been in a zone; or
- (d) impose any other disinfection measure, eradication measure or official control and stamping-out program that is required, for a period specified in the notice.

(4) The period specified in a notice under subsection (1) or (2) must not exceed two months, but the notice is renewable if the conditions for making it are met.

(5) In this section—

“compartment” means a terrestrial plant sub-population containing one or more establishments under a common plant health management system and a plant sub-population with a distinct health status with respect to a specific plant pest for which required surveillance, control and plant health measures have been applied for the purpose of international trade;

“population” means a group of plants sharing a common defined characteristic.

### **Movement permits**

**28.** (1) Any movement of plants into, from or within a zone requires a movement permit issued by the Service.

(2) If a plant inspector has reasonable grounds to believe that any regulated article has been removed from or taken into a zone in contravention of subsection (1), the inspector may—

- (a) seize the item, if it creates a plant pest risk;
- (b) direct that the movement be postponed for a period specified in the direction; or
- (c) take other phytosanitary measures as necessary.

### **Offences relating to infested plants**

**29.** A person who, either personally or indirectly through an employee or agent—

- (a) possesses, sells, offers for sale, transports, imports or exports any regulated article knowing that it is infested or may transmit a quarantine plant pest;

- (b) intentionally or recklessly permits or causes the introduction or spread of any quarantine plant pest;
- (c) keeps or imports into the Islands a plant that the person knows or suspects is infested with a quarantine plant pest, without notifying the Service immediately upon his knowledge or suspicion of this circumstance;
- (d) sells or offers or exposes for sale or barter a plant which is infested with a quarantine plant pest or which he suspects on reasonable grounds to be so infested,

commits an offence.

Penalty: A fine of \$10,000 or imprisonment for six months, or both.

#### PART IV

#### PLANT QUARANTINE

##### **Plant quarantine orders**

**30.** (1) If a plant inspector suspects that a plant—

- (a) has a plant pest;
- (b) may have been in contact, during its transportation, with any plant which has or may have a plant pest or with any plant which is not exempted from the requirement of being placed in quarantine; or
- (c) has otherwise been exposed to the risk of infestation by a plant pest,

the inspector may order the plant to be placed under quarantine in a quarantine station.

(2) If it is a condition of import of a regulated article that it be placed in quarantine upon arrival in the Islands, the regulated article must be placed under quarantine in a quarantine station.

(3) The period for which a regulated article must remain in a quarantine station—

- (a) in the circumstances mentioned in subsection (2) – depends on the terms of the import permit;
- (b) in any other case – is to be determined by the CPPO, on the basis of a plant pest risk assessment.

(4) Any plant which develops a plant pest while in a quarantine station or, in the opinion of a plant inspector, presents a risk of the spread of any quarantine plant pest in the Islands may, with the approval of the CPPO, be destroyed without payment of compensation.

### **Plant quarantine stations and areas**

31. (1) The Minister may, on the advice of the CPPO, establish or designate buildings or areas at appropriate places on any public or private land in the Islands as a quarantine station or area for regulated articles for the purposes of this Ordinance.

(2) Quarantine stations or areas must be established at or near to all designated ports.

(3) A quarantine station or area must be provided with such buildings and facilities as are reasonably needed—

- (a) to hold quarantined articles in quarantine;
- (b) to prevent unauthorised persons from entering the station or area or removing items from the station or area;
- (c) to enable the CPPO or a plant inspector to perform tests, provide treatment and apply other phytosanitary measures as required under this Ordinance.

(4) A quarantine station or area may be established under this section for specific plants or for the surveillance of specific diseases, or may be established for emergency purposes only.

### **Management of quarantine stations and areas**

32. (1) A plant inspector must be assigned to each quarantine station or area to provide necessary attention at the station or area while any plant is kept there.

(2) The CPPO may issue written instructions as to the examination, treatment, disposal or destruction of plants or plant products while in a quarantine station or area or in transit to or from a quarantine station or area. Such instructions must conform to IPPC standards for the management of quarantine stations.

(3) The fees or charges payable for keeping articles in quarantine are as prescribed.

(4) The cost of keeping a regulated article in quarantine is to be borne by the importer or owner of the regulated article.

(5) No compensation is payable for any loss or destruction or consequential loss caused by a regulated article being detained in quarantine, unless negligence or malice is proved.

(6) Plants in a quarantine station or area must be kept in isolation, with no direct or indirect contact with other plants, to prevent the transmission of a plant pest or pathogen into the surrounding environment while the plant is undergoing observation and, if appropriate, testing and treatment.

(7) No person, other than the person in charge of the station or a plant inspector acting in the course of duty, may enter a quarantine station or area without the written permission of the CPPO or of the person in charge of the station or area.

(8) A regulated article must not be released from quarantine except upon the authority of a quarantine release certificate issued by a plant inspector.

(9) Before a regulated article can be released from quarantine—

- (a) any treatment required as a condition of importation of the regulated article must have been applied; and
- (b) all quarantine fees must have been paid.

(10) Once subsection (9) has been complied with, the regulated article must be released from quarantine as soon as practicable and a quarantine release certificate in an approved form issued.

### **Quarantine offences**

**33.** (1) A person who—

- (a) enters a quarantine station without permission being given under section 30(7); or
- (b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a quarantine station, or any quarantined regulated article in the station,

commits an offence.

Penalty: A fine of \$5,000.

(2) A person who—

- (a) fails to comply with directions for a plant to be or to remain in quarantine; or
- (b) releases a plant from quarantine without the written authority of a plant inspector,

commits an offence.

Penalty: A fine of \$10,000 and imprisonment for six months, or both.

## PART V

### PLANT IMPORTS AND EXPORTS

#### **Importation of regulated articles**

**34.** (1) A plant, plant product or other regulated article may be imported into the Islands only at a port.

(2) No regulated article may be imported into the Islands unless—

- (a) a plant import permit has been issued under this Part;
- (b) the regulated article meets the plant import conditions of the permit and of this Ordinance;
- (c) the regulated article is accompanied by any other documentation required under this Ordinance or any other written law to accompany imports.

(3) A person who imports, or attempts to import, a regulated article in contravention of this section commits an offence.

Penalty: A fine of \$50,000 and imprisonment for two years, or both.

(4) The Minister may make regulations—

- (a) providing for cleansing and disinfection and subjection to quarantine of vehicles used for the transportation of plants to the Islands;
- (b) regulating the examination, inspection, seizure and detention of any regulated article prior to its being landed in the Islands.

(5) The requirements of this Part are in addition to any other requirements relating to the import or export of regulated articles.

### **Plant import permits**

**35.** (1) A person who wishes to import any regulated article into the Islands must apply to the Service for a plant import permit in a form approved by the CPPO and must pay the prescribed fee.

(2) An application for a plant import permit must be submitted in writing to the Service before the importation and must include—

- (a) the proposed date of entry;
- (b) the port of entry;
- (c) the country of origin and any country of transit;
- (d) the name of the species or item to be imported and the quantity;
- (e) the means of transport;
- (f) proof of ownership or custodianship of plants;
- (g) the final destination in the Islands;
- (h) evidence that an international phytosanitary certificate has been issued in respect of the article in the exporting country; and
- (i) any other information prescribed or that the CPPO requires in writing in any particular case.

(3) On receipt of an application made in accordance with subsection (2), the Service may issue to the applicant a plant import permit in a form approved by the CPPO.

(4) Every plant import permit is issued subject to the plant import conditions and if those conditions are not met, the permit is deemed to be cancelled.

(5) A plant import permit may include a requirement that a regulated article be placed in quarantine for a period and subject to conditions specified in the permit.

### **Plant import conditions**

**36.** (1) The Director must, from time to time, publish the plant import conditions for the importation of regulated articles into the Islands.

(2) Plant import conditions are the phytosanitary requirements that must be met before a regulated article is imported and it is the duty of the importer to inform himself of the conditions and to comply with them.

(3) Plant import conditions may include a requirement for the tagging or other identification of plants that have been imported.

(4) Plant import conditions must be based on international standards and science-based plant pest risk assessment conducted in accordance with the IPPC standards and other established international standards and with other requirements of this Ordinance.

(5) The plant import conditions must be regularly updated and made public.

### **International phytosanitary certificates**

**37.** (1) The import conditions in relation to any regulated article may include a requirement that the article be certified by an international phytosanitary certificate.

(2) An international phytosanitary certificate is a phytosanitary certificate issued by the plant protection authority of the country from where a regulated article originated or was last exported, which must be a country specified under subsection (3).

(3) The Director, on the advice of the CPPO, must by notice specify the countries whose phytosanitary certificates will be accepted for the purposes of this Part.

(4) An international phytosanitary certificate must be in English or accompanied by an official English translation.

### **Prohibited plant imports**

**38.** (1) The Minister may, from time to time, on the advice of the Director acting through the responsible permanent secretary, and on the basis of plant pest risk assessment, by notice prohibit the importation into the Islands of—

(a) a specified regulated article or species of plant or type of product;  
or

(b) all regulated articles from a specified country, if such importation would result in a serious plant pest risk to the Islands.

(2) If a notice prohibiting the importation of a regulated article is issued under subsection (1), written reasons for the notice must be stated.

(3) A person who imports or attempts to import a regulated article the importation of which is prohibited under this section commits an offence.

Penalty: A fine of \$50,000 or imprisonment for two years, or both.

### **Arrival notification**

**39.** (1) A customs officer or police officer who becomes aware of the arrival in the Islands of a consignment of regulated articles must—

(a) notify a plant inspector as soon as practicable;

- (b) if so required by a plant inspector, assist in the inspection of the articles; and
- (c) detain the articles in a quarantine area until a plant inspector authorises their release.

(2) A postal worker or employee of the Civil Aviation Authority or the Ports Authority who becomes aware of the arrival in the Islands of a regulated article for which no import permit has been issued, must notify a plant inspector as soon as practicable.

(3) Subsections (1) and (2) do not apply to the importation of personal effects by a passenger or crew member, as provided by section 42.

(4) A person who fails to comply with an obligation imposed by subsection (1) or (2) commits an offence.

Penalty: A fine of \$10,000.

### **Inspection of plant imports**

**40.** (1) All regulated articles are, upon importation into the Islands, subject to inspection by a plant inspector at the port of entry.

(2) Inspections must be carried out during regular business hours, unless the articles to be inspected are goods in transit or are extremely perishable, in which case, on application by the importer and on payment of the prescribed fee, the inspection must be carried out at some other time agreed with the importer.

(3) Upon an inspection under this section, if the plant inspector determines that the imported item does not present any risk for the introduction and spread of a quarantine plant pest, and does not require quarantine, he may release the item to the importer.

(4) If upon such an inspection the inspector is satisfied that the import of the regulated article would result or is likely to result in a plant pest risk, or if the documentation accompanying the shipment fails to meet the requirements of this Part, the inspector must do one of the following—

- (a) take samples of the regulated article for submission to an authorised laboratory for analysis;
- (b) transfer the regulated article to a quarantine station or any other location specified by the Director for testing or disinfection;
- (c) return the regulated article to the country of origin;
- (d) arrange for the destruction of the regulated article.

(5) The inspector must inform the importer of the option that the inspector proposes to take and must give the importer the opportunity to appeal against the decision.

(6) The inspector must inform the CPPO in writing of his findings and of the action taken.

(7) Any decision taken under subsection (3) or (4) must be made based on plant pest risk assessment.

(8) If the imported articles lie unclaimed for a prescribed period after their entry into the Islands, or after treatment, the Director may take action to dispose of them.

(9) The cost of any action taken by the Director under subsection (4) or (8) must be borne by the importer.

### **Plant exports**

41. (1) No regulated article may be exported from the Islands except in accordance with this Ordinance.

(2) A regulated article may only be exported from a port.

(3) A person who intends to export a regulated article from the Islands must submit it for examination by a plant inspector.

(4) In submitting a regulated article for examination under subsection (3) the person must complete the approved form, pay the prescribed fee, and provide any other document or information reasonably needed to enable the examination to take place.

(5) If upon examination the inspector, taking into consideration the requirements of the importing country, is satisfied that the conditions for the issue of a phytosanitary certificate in relation to the regulated article have been met, the inspector must issue a certificate.

(6) The issue of a phytosanitary certificate is dependent upon the payment of the prescribed fee.

(7) If upon examination as aforesaid the inspector is not satisfied that the regulated article intended to be exported is free of any risk for the exportation and spread of a quarantine plant pest, or otherwise satisfies the requirements of this Ordinance, the inspector must—

- (a) subject the plant or product to appropriate treatment in order to remove the risk; or
- (b) refuse to issue a phytosanitary certificate.

(8) For the purpose of issuing phytosanitary certificates the Service may—

- (a) carry out biological tests or disinfestation procedures;
- (b) carry out inspection, approval and certification procedures of plants and plant establishments;
- (c) observe plants during transport to the place of shipment and at the point of departure; and
- (d) send advance notice to the importing country.

(9) Following the issue of a phytosanitary certificate, the Service must undertake the appropriate measures to maintain the plant health status of the regulated article until it leaves the Islands.

(10) A person who exports or attempts to export a regulated article in contravention of this section commits an offence.

Penalty: A fine of \$50,000 or imprisonment for two years, or both.

### Passengers and crew members

42. (1) Subject to subsections (2) and (3), every passenger or crew member who arrives in the Islands on board a vessel or aircraft must make to a plant inspector or customs officer a plant health declaration.

(2) The plant health declaration must be in, or to the effect of, a form approved by the Director and must contain all required particulars relating to the person and any baggage that accompanies the person.

(3) A passenger or crew member does not need to declare personal effects, that is to say—

- (a) articles of clothing worn on the body;
- (b) articles visibly attached or connected to the body or clothing; or
- (c) suitcases and other visible containers of personal baggage,

unless a plant inspector so requests because of the phytosanitary risk posed by the item, and in the absence of any such request, the article or container is deemed to have plant import clearance.

(4) A single declaration under subsection (1) may be made by a person in respect of the person and the person's spouse and any member of the family aged sixteen years or less travelling on the same vessel or aircraft.

(5) When a declaration is tendered under this section, a plant inspector may—

- (a) question the passenger or crew member;
- (b) inspect the baggage to which it relates;
- (c) if necessary, question a spouse or family member included on the declaration.

(6) After taking the steps in subsection (5), a plant inspector may either grant plant import clearance of the persons and baggage to which the declaration relates, or—

- (a) detain the passenger or crew member for further questioning and search; and
- (b) detain the baggage and other articles in the possession of the passenger or crew member for further inspection and application of other phytosanitary measures as the inspector considers appropriate;

(7) An arriving passenger or crew member who fails to—

- (a) make a declaration as required by subsection (1); or
- (b) submit baggage for inspection when so directed under subsection (5),

commits an offence.

Penalty: A fine of \$5,000.

(8) Every passenger or crew member departing from the Islands must—

- (a) submit for inspection on request by a plant inspector any regulated article on the person or in the person's baggage;
- (b) permit the inspector to search the person's baggage.

(9) A departing passenger or crew member who fails to comply with subsection (8) commits an offence.

Penalty: A fine of \$5,000.

(10) Section 14 applies to the questioning, detention and searching of persons and baggage under this section.

### **Obligations of captains and owners of vessels and aircraft**

43. (1) If there is on board a vessel or aircraft arriving in the Islands any regulated article, the captain or owner of the vessel or aircraft on or before coming into a port must declare to the Service, in an approved form, the presence of the regulated article on board the vessel or aircraft.

(2) If a plant inspector is satisfied that—

- (a) there has been a failure on the part of the captain or owner of a vessel or aircraft to comply with the requirement in subsection (1); or
- (b) there is on board the vessel or aircraft any regulated article that is being imported in contravention of this Part,

the inspector may cause the vessel or aircraft or the container where the regulated article is kept to be detained until the Director otherwise directs.

(3) The inspector must give the captain and owner written notice of the failure or contravention referred to in subsection (2).

(4) The captain of every incoming vessel must, while the vessel is in the Islands take all necessary steps to prevent any plant or plant product from being landed unless permitted by a plant inspector, and then only as directed by the inspector.

(5) A captain or owner who fails to comply with a requirement of this section commits an offence.

Penalty: A fine of \$20,000.

(6) If a regulated article is landed from any vessel or aircraft in contravention of this Ordinance, the captain of the vessel or aircraft or the owner of the article (depending on which has possession or custody of it) commits an offence.

Penalty: A fine of \$20,000 or imprisonment for twelve months, or both.

### **International transportation facilities**

44. (1) The owner or operator of an international transportation facility must, if required in writing by the Director, provide and maintain adequate areas, offices, laboratories and other facilities, including buildings, accommodation, equipment, furnishings and fixtures, for inspection or for any other purpose related to the administration of this Ordinance.

(2) The Director may—

- (a) require the making of any improvements he considers necessary to any area, office, laboratory or other facility to meet the obligation in subsection (1);
- (b) post, on or about the area, office, laboratory or other facility for as long as is required, a notice to this effect.

(3) If the owner or operator of a facility fails to comply with a requirement under subsection (2)(a), the Director may cause the construction or repairs to be carried out, whereupon the owner or operator becomes liable for all reasonable costs incurred as a debt due to the Crown.

(4) The Minister may make regulations for the operation of any international transportation facility, including the provision of food, water and ventilation and protection during loading and unloading necessary, for different categories of plants.

(5) In this section, “international transportation facility” means—

- (a) an airport that receives any aircraft operating on an international flight;
- (b) a port that receives any ship sailing on an international voyage; or
- (c) a warehouse or other facility that receives any international air or water traffic.

## PART VI

### PROSECUTION OF OFFENCES

#### **Procedure for offences**

**45.** (1) If the CPPO reasonably believes, of his own knowledge or on the information of a plant inspector, that a person has contravened any provision of this Ordinance, and that the person is not eligible for, or has not accepted, the fixed penalty procedure in section 48, the CPPO must notify the Police Force who may lay an information before a magistrate with a view to a summons being issued.

(2) The CPPO must inform the Director in writing of action taken under subsection (1) as soon as practicable after it is taken.

(3) All offences under this Ordinance are triable as summary offences in the Magistrate’s Court.

#### **Cancellation of licence, etc.**

**46.** If a person is convicted of an offence under this Ordinance and the offence results in the spread of a quarantine plant pest or poses a serious plant pest risk, the court may on conviction, and on an application by or on behalf of the CPPO, order—

- (a) that any plant establishment operated by the person be closed; and

- (b) that any licence the person holds to operate such an establishment be suspended for a period specified in the order, or cancelled.

### **Offences by corporations and employees**

47. (1) If a corporation commits an offence under this Ordinance, any officer, director or agent of the corporation who directed, authorised, assented to or acquiesced or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

(2) In any prosecution for an offence under this Ordinance, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the defendant, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the defendant establishes that—

- (a) the offence was committed without the knowledge or consent of the defendant; and
- (b) the defendant exercised all due diligence to prevent the commission of the offence.

### **Fixed penalties**

48. (1) If a plant inspector has reasonable grounds to believe that a person is committing or has committed an offence under this Ordinance or the regulations for which the maximum penalty does not include a term of imprisonment, the inspector may immediately serve a notice in writing on the person, charging him with the commission of the offence.

(2) The notice must inform the alleged offender that he must—

- (a) appear before a magistrate on the date specified; or
- (b) in accordance with the procedure in subsections (3) and (4) of this section, pay the fixed penalty, in lieu of appearance before a magistrate.

(3) An alleged offender who chooses to pay the fixed penalty referred to in subsection (2)(b) —

- (a) must within seven days of the date of the notice, sign the notice in acknowledgement of guilt and return it, together with the sum specified in the notice, to a Magistrate's Court;
- (b) is to be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence in respect of which payment was made.

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

(5) The fixed penalty is 1/10 of the maximum fine for the offence.

## Forfeiture

49. (1) Upon the conviction of any person for an offence under this Ordinance, the court may, in addition to any other sentence imposed, order any regulated article in respect of which the offence was committed, and any object used in connection with the offence, to be forfeited to the Crown.

(2) An item declared forfeit under subsection (1) must be disposed of as the court directs, on the advice of the CPPO, and if sold, the proceeds of sale must be dealt with in accordance with section 42 of the Interpretation Ordinance.

(3) If the court does not order the forfeiture of an item, it or any proceeds realized from its disposal must be returned to the owner of the item or the person having the possession, care or control of it when it was seized.

(4) If the owner of an item or the person having possession, care or control of it at the time of its seizure is convicted of an offence under this Ordinance and a fine is imposed—

(a) the item may be detained until the fine is paid;

(b) the item may be sold under execution in satisfaction of the fine.

## Presumptions

50. (1) If the owner or person in charge of a plant is charged with an offence under this Ordinance relative to a plant pest, he is presumed to have known of the existence of the pest unless he shows to the satisfaction of the court that he had no knowledge of it and could not with reasonable diligence have obtained that knowledge.

(2) If a person is charged with an offence under this Ordinance for not having duly cleansed or disinfested any place, vehicle or thing belonging to him or in his charge, the burden of proving the due cleansing and disinfection lies on the person.

## Documentary evidence

51. (1) In a prosecution for an offence under this Ordinance, a declaration, certificate, report or other document of the Director or CPPO or of an authorised analyst, plant inspector or police officer, made for the purposes of this Ordinance and purporting to have been signed on behalf of the Director or CPPO or of the analyst, inspector or police officer, is admissible in evidence without proof of the signature or office of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.

(2) In a prosecution for an offence under this Ordinance, a copy of or an extract from any record or other document that is made by the Director or CPPO or by an analyst, inspector or police officer under this Ordinance and that appears to have been certified under the signature of the Director, CPPO, analyst, inspector or police officer as a true copy or extract is admissible in evidence.

(3) A document referred to in subsection (1) or (2) is, in the absence of evidence to the contrary, deemed to have been issued on the date shown on it.

(4) The certificate of a qualified plant expert to the effect that any plant is or was infested with a plant pest specified in the certificate is for the purposes of this Ordinance *prima facie* evidence in a court of the matter certified.

### **Seizure and detention of plants, etc.**

52. (1) Without affecting any other provision of this Ordinance about seizure and disposal of regulated articles, a plant inspector or police officer may seize and dispose of any regulated article, or require its owner or any person having the possession, care or control of it to dispose of it, if the plant or product—

- (a) is, or is suspected of being, infested by a quarantine plant pest;
- (b) has been in contact with or in close proximity to another regulated article that was, or is suspected of having been, infested by a quarantine plant pest at the time of contact or close proximity; or
- (c) is, or is suspected of being the causative agent of a quarantine plant pest.

(2) A plant inspector or police officer who seizes and detains a regulated article under this Ordinance may—

- (a) arrange for it to be stored at the place where it was seized or removed to some other place for storage; or
- (b) require the owner or the person having the possession, care or control of it when it was seized to remove it to any place and to store it.

(3) A person who fails to comply with a requirement under subsection (2)(b) commits an offence and is liable on summary conviction—

- (a) to a fine of \$5,000;
- (b) to pay the Government the cost of recapturing and confining or if necessary destroying the regulated article.

(4) A person who fails to comply with a requirement under subsection (2)(b) is not entitled to any compensation for loss of or damage to the regulated article occasioned by its being recaptured and confined or if necessary destroyed in accordance with this Ordinance.

(5) A person who, except with the written authority of a plant inspector, removes, alters or interferes in any way with a regulated article seized under any provision of this Ordinance commits an offence.

Penalty: A fine of \$5,000.

(6) A plant or thing seized and detained under this Ordinance must not be detained after—

- (a) a determination by an inspector that the plant or thing is in conformity with the provisions of this Ordinance; or
- (b) the expiration of 180 days after the day of seizure, unless before that time proceedings are instituted in relation to the plant or thing, in which case it, or the proceeds from its disposal, may be detained until the proceedings are finally concluded.

(7) Any document or other article seized and detained as evidence of an offence under this Ordinance must, at the conclusion of any proceedings for the offence, or as soon as reasonably practicable after it is decided not to bring proceedings for the offence, be returned to the owner of the document or other article unless it is ordered to be forfeited under section 49.

## PART VII

### MISCELLANEOUS PROVISIONS

#### **Plant audit and trace-back system**

**53.** (1) The Service must establish a system for the audit of plants and trace-back of plant products.

(2) The system must enable the Service—

- (a) to trace quarantine plant pest outbreaks;
- (b) to recall plant-based food if necessary;
- (c) to follow the movement of a plant through all stages of the production chain.

(3) The Minister may make regulations—

- (a) providing for the establishment and functioning of a plant identification and tracing system; and
- (b) regulating the packaging and labelling of plant products for trace-back to the country of origin.

(4) A system established under this section must be published in accordance with section 57(1).

#### **Duty to assist and cooperate**

**54.** (1) All customs, port, airport, airline, postal, shipping, police and local authorities must assist plant inspectors in the performance of their functions under this Ordinance by providing such facilities and assistance as the Director may reasonably request from time to time.

(2) The Service must collaborate with all relevant ministries and departments, including the authorities responsible for food safety and environmental health, and must establish mechanisms for cooperation in this regard.

#### **Right of appeal**

**55.** (1) A person aggrieved by an action or decision of a plant inspector under this Ordinance may appeal to the CPPO in writing within seven days of the action or decision becoming known to the person aggrieved.

(2) A person aggrieved by an action or decision of the CPPO under this Ordinance, including a decision on an appeal under subsection (1), may appeal in writing to the Director received within fourteen days of the action or decision becoming known to the person aggrieved.

(3) The decision of the Director is final on technical matters but does not prejudice the right of any aggrieved party to seek recourse in the courts on matters of law.

(4) The CPPO or Director, when considering an appeal under this section, must give the plant inspector or the CPPO, as the case may be, an opportunity to make representations in writing on the subject of the appeal.

### **Good faith defence**

**56.** (1) Neither the Director, the CPPO nor any plant inspector, plant protection officer or other representative of the Service is liable to be sued or to prosecution in respect of anything done or omitted, or any decision given, if the act, omission or decision was in good faith and in the performance of official functions under this Ordinance.

(2) Neither the Government, the Director, the CPPO nor any other public officer has any liability for actions taken in good faith for the destruction or disposal of regulated articles in accordance with the requirements of this Ordinance.

### **Publication and service of notices, etc.**

**57.** (1) Any notice, approval, list or guidelines to be published under this Ordinance must be published in the *Gazette*.

(2) Service of documents required to be served under this Ordinance may be effected by personal service, or by electronic service in accordance with the Electronic Transactions Ordinance.

(3) If no person is in actual occupation of any premises, or if the occupier or owner cannot be located, service of any notice under this Ordinance relating to the premises must be made by affixing the notice to a conspicuous place on the premises, and such affixing is good service of the notice.

### **Keeping of records**

**58.** (1) The CPPO must maintain the plant protection records needed for the administration of this Ordinance and the performance of the functions of the Service.

(2) Without limiting the matters to be recorded details of the following must be included—

- (a) quarantine plant pests;
- (b) prohibited plant imports;
- (c) designated ports of entry and exit;
- (d) international transport facilities in the Islands;
- (e) plant quarantine stations and areas;
- (f) the plant import conditions for each type of regulated article, including the phytosanitary measures appropriate to each type;
- (g) plant import permits issued and refused under Part V;
- (h) a list of exporting countries approved under section 37(3);

- (i) plant pest zones and other zones designated under Part III;
  - (j) occurrences of quarantine plant pests notified under this Ordinance;
  - (k) forms approved for the purposes of this Ordinance;
  - (l) any other matter that the Director in writing requires the Service to record in the register.
- (3) The CPPO must maintain records relating to the functions of the Service, including, but not limited to—
- (a) financial management records, with budgets and records of expenditure;
  - (b) personnel records including the identities, duty statements and terms and conditions of employment of all plant inspectors;
  - (c) operational statistics relating to the Service.
- (4) Subject to any other written law, the plant protection register and other records kept under this section must only be used for the purposes of this Ordinance.
- (5) A copy of an entry in the plant protection records certified by the Director to be an accurate copy may be produced in court as *prima facie* evidence of the entry.
- (6) The plant protection records kept under this section may be in electronic format, provided the information is readily retrievable and is protected against unintended loss and unauthorised alteration.
- (7) The Director may by notice, on the advice of the CPPO, determine the period for which entries in the plant protection records under this section must be kept, consistent with any other written law relating to public records.

## Regulations

**59.** (1) The Minister, on the advice of the Director, may make regulations for the purpose of carrying out this Ordinance.

- (2) In particular, the regulations may provide for—
- (a) additional requirements and procedures for permits to be issued under this Ordinance and the information about them that is to be kept in the records;
  - (b) the taking and analysis of samples;
  - (c) the procedures to be followed by an authorised laboratory or analyst in performing functions under this Ordinance;
  - (d) additional rules and procedures for the implementation of phytosanitary measures;
  - (e) the mode of cleaning and disinfestation in a port area of any item including the hands or feet, the clothing or articles in the possession of any person arriving in the Islands on a vessel used to transport plants from a country in which there is an outbreak of a quarantine pest;

- (f) providing for the application to plants imported into the Islands of any test for a quarantine pest or of any treatment for such a pest;
- (g) prohibiting or regulating the importation of any equipment which has been used in connection with regulated articles or refuse, and which is capable of transmitting a quarantine pest;
- (h) regulating the imposition of emergency quarantine actions due to new hazards;
- (i) the fees payable for services provided by or on behalf of the Service under this Ordinance, including the cost of inspections and analysis and the services of an authorised laboratory;
- (j) any other matter which by this Ordinance is to be prescribed, or which is necessary to implement this Ordinance.

(2) Regulations made under this section must be harmonized with the IPPC standards.

(3) Regulations under this or any other section may create offences and may prescribe a maximum penalty for such offences not exceeding a fine of \$10,000.

(4) The Director must ensure appropriate consultation with the relevant public and private entities relevant to the agricultural sector before advising the Minister on the making of regulations under this section.

#### **Ordinance binds the Crown**

**60.** This Ordinance binds the Crown.

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