

PLANT PROTECTION BILL, 2022

EXPLANATORY MEMORANDUM

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

PART I PRELIMINARY

- Clause 1:** Clause 1 of the Bill provides for the title of the Bill.
- Clause 2:** Clause 2 of the Bill provides for the definitions of various terms appearing in the Bill and are consistent with the most recent version of International Standard for Phytosanitary Measures No. 5 Glossary on Phytosanitary Terms. Provision is made in subclause (2) for the terms defined in the Bill to be interpreted in accordance with the International Standard for Phytosanitary Measures No. 5 Glossary on Phytosanitary Terms notwithstanding any amendments to the Glossary.

PART II ADMINISTRATION

- Clause 3:** Clause 3 of the Bill seeks to incorporate Article IV of the International Plant Protection Convention; it establishes a National Plant Protection Organization for Barbados. In this clause, the Minister is required to inform the IPPC Secretariat

of the establishment of the National Plant Protection Organization to serve as the Organization of for Barbados.

- Clause 4:** Clause 4 of the Bill seeks to further incorporate Article IV of the International Plant Protection Convention. Sub-clause (1) provides for the functions of the National Plant Protection Organization. Included in the list of functions are: developing lists of regulated pests and preventing and controlling the introduction of regulated pests.
- Clause 5:** Clause 5 of the Bill provides for the role of the Chief Plant Health Officer. Sub-clause (3) provides that the Chief Plant Health Officer would be the officer responsible for the general administration of the National Plant Protection Organization and would report to the Chief Agricultural Officer. Sub-clause (4) lists the functions of the Chief Plant Health Officer. The functions include providing technical and administrative direction to the National Plant Protection Organization, liaising with other ministries and foreign authorities and serving as the contact point for the International Plant Protection Convention. Sub-clauses (5) and (6) make provision for the appointment of the staff of the National Plant Protection Organization in accordance with the *Public Service Act*, Cap. 29.
- Clause 6:** Clause 6 of the Bill lists the powers of the Minister responsible for Agriculture which include the designation of official laboratories and reference laboratories.
- Clause 7:** Clause 7 of the Bill seeks to make provision for the Minister to by order delegate the Chief Plant Health Officer any power or function conferred or imposed on him under this Act except the power to make subsidiary legislation. Provision is also made in sub-clause (2) for the Chief Agricultural Officer, on

the advice of the Chief Plant Health Officer to authorize any person or entity to perform the functions of the Organization except official liaison duties with other ministries or foreign authorities; any notification responsibilities with other ministries or foreign authorities; and the approval of phytosanitary measures or requirements. Sub-clause (3) allows the Chief Agricultural Officer on the advice of the Chief Plant Health Officer to authorize any qualified public officer who is not a member of staff of the Organization, to issue phytosanitary certificates under the direct supervision of the Organization. This provision allows for the designation of certain responsibilities to other public officials or to private parties. In certain situations e.g. in phytosanitary emergencies or where there is a temporary shortage of phytosanitary officers etc. the National Plant Protection Organization may require support by other administrative agencies on a temporary basis. In some other cases, co-ordination within other public bodies (e.g. extension or research services for the reporting of pest outbreaks) may be needed on a more regular basis. Sub-clause (4) lists the terms which must be included in any instrument authorising the performance of functions.

Clause 8: Clause 8 of the Bill seeks to provide for the appointment of plant protection inspectors. This clause provides that a plant protection inspector is to be impartial and free of improper or undue influence or conflict of interest. This clause provides that where a plant protection inspector has any interest in a matter or action of the National Plant Protection Organization, that interest is to be communicated to the Chief Agricultural Officer. Where it is found that the interest conflicts with the impartiality or independence of a plant protection inspector, the Chief Agriculture Officer may recommend that the appointment be withdrawn in accordance with the *Third*

Schedule to the Public Service Act, Cap. 29. Sub-clause (4) of the Bill defines “plant health”.

- Clause 9:** Clause 9 of the Bill seeks to make provision for the Minister of Agriculture on the recommendation of the National Plant Protection Organization to designate laboratories and analysts as official laboratories and official analysts respectively for the purposes of the Act. Sub-clause (2) establishes the standards under which the operation of official laboratories and the work of the official analysts is to be conducted: impartially and independently. Sub-clause (3) establishes the purpose of reference laboratory.
- Clause 10:** Clause 10 of the Bill seeks to establish an Advisory Working Group to advise the Minister and Organization on plant protection issues. This clause makes provision for the membership of the Advisory Working Group; the terms of membership and sets the minimum times for assembling for meetings.
- Clause 11:** Clause 11 of the Bill in sub-clause (1) provides the circumstances under which a vacancy in the membership of the Advisory Working Group may be created.
- Clause 12:** Clause 12 of the Bill provides for the continuation of the Phytosanitary Emergency Fund to be used by the National Plant Protection Organization to facilitate the work of the Organization. Sub-clause (2) provides that all monies of the Fund are to be administered in accordance with the *Financial Management and Audit (Financial) Rules*, (S.I. 2011, No. 54) and sub-clause (3) provides that monies in the Phytosanitary Emergency Fund are to be made available to the Organization when a phytosanitary emergency is declared.

- Clause 13:** Clause 13 of the Bill provides for the National Plant Protection Organization to establish and maintain registers. The registers are to keep records relating to imports, exports, domestic producers and nurseries of plants, plant products and other regulated articles to facilitate the management of the import and export systems.
- Clause 14:** Clause 14 of the Bill seeks to incorporate Articles 2.2, 3 and 5 of the SPS Agreement, International Standard for Phytosanitary Measures 1 (Phytosanitary Principles for the Protection of Plants and the Application of Phytosanitary Measures in International Trade) and Article VII.2.g of the International Plant Protection Convention to establish the basis on which phytosanitary measures are developed and implemented in Barbados. Sub-clause (1) lists: that measures are to be in harmony with international standards, technically based on pest risk analysis or risk assessment and science-based decisions; be favourable to the development of regionalization and trade and proportionate to the risk. These principles must directly inform and shape the measures that are implemented under the Bill. Sub-clause (2) places the obligation on the National Plant Protection Organization to keep the measures under review every 3 years to ensure that they are current in light of frequently evolving international standards.
- Clause 15:** Clause 15 of the Bill seeks to incorporate International Standard for Phytosanitary Measures 15 section 6 and International Standard for Phytosanitary Measures 20 sections 2 and 5.1. to provide for co-operation from a broad range of actors who may have a role in assisting enforcement. This clause specifically recognizes the importance of collaboration for effective co-operation.

Clause 16: Clause 16 of the Bill makes provision for the National Plant Protection Organization to be assessed both externally and internally. This is an important mechanism by which the National Plant Protection Organization can periodically gauge its performance in the implementation of the Act and in the effectiveness of the measures adopted. In sub-clause (3), the Bill provides for collaboration between the Veterinary Authority and the entity responsible for agricultural health and food control to monitor and evaluate the implementation of the provisions of the Bill and based on the findings, to prepare a report which is to be published in the first instance, five years after the Act comes into force thereafter every three years.

PART III IMPORTS

Clause 17: Clause 17 of the Bill creates the obligation of persons entering the country to declare any plants, plant products or other regulated articles in their possession as this is a pathway for the entry of pests and diseases that should be controlled. Sub-clause (2) provides that where a plant protection inspector is not available to inspect an item that a customs officer is to have custody of the item until a plant protection inspector is available. Sub-clause (3) places an obligation on the master of every vessel entering Barbados to inform passengers that they must declare on arrival any plant, plant product or other regulated article in their custody.

Clause 18: Clause 18 of the Bill identifies designated ports of entry as the only points at which a plant, plant product or other regulated article is to enter Barbados. Sub-clause (2) sets out the documents that must accompany a consignment, namely, an import permit, original phytosanitary certificate issued from

the country of export and any other document that may be prescribed. Sub-clause (3) provides that non-compliant goods shall be prohibited from entry; and in recognition of the principle of equivalence, that Barbados will recognize alternative phytosanitary measures proposed by exporting contracting parties as equivalent when those measures are demonstrated to achieve the appropriate level of protection for Barbados. Also, very important is the specification that phytosanitary measures should not be applied for non-regulated pests. This clause also states that the Organization, in considering whether the requirements have been satisfied for the issue of an import permit, shall have regard to international standards or conduct a pest risk analysis. This clause also provides the penalty for contravention; summary conviction to a fine of \$50 000 dollars or to imprisonment for a term of one year or to both.

Clause 19: Clause 19 of the Bill sets out the grounds for which an import permit is required and the grounds on which an import permit may be reviewed, modified or revoked. This clause is important for the purposes of transparency for compliance with the SPS Agreement – i.e. the grounds for which a permit can be issued, revoked or modified, section 4.2 of International Standard for Phytosanitary Measures No. 20 (Guidelines for a Phytosanitary Import Regulatory System and also International Standard for Phytosanitary Measures No. 23 (Guidelines for Inspection).

Clause 20: Clause 20 of the Bill seeks to foster the collaboration of the customs department to ensure that all arrivals of regulated articles are brought to the attention of the National Plant Protection Organization in advance of their arrival.

Clause 21: Clause 21 of the Bill provides for the mandatory inspection, on the payment of a fee, of all consignments imported to Barbados at designated ports of entry except where Barbados is not the final port of destination and the importer has applied for the inspection to be done at the port of final destination or the container has been sealed and marked. Sub-clause (5) makes provision for inspections to be conducted during regular business hours but in circumstances where the consignment is in transit, extremely perishable or delayed, an inspection may be conducted outside of regular business hours. However, for an inspection to be conducted outside of regular business hours, the importer must have applied to the National Plant Protection Organization and paid the prescribed fee. Sub-clause (6) is included to confirm the authority of the National Plant Protection Organization in relation to regulated articles until they are cleared for entry. Sub-clause (7) empowers the National Plant Protection Organization to conduct inspections in the country of origin. This clause is aligned with section 5 of International Standard for Phytosanitary Measures No. 20, which outlines the operation of an import system.

Clause 22: Clause 22 of the Bill provides that there are to be established standards for the facilities to accommodate inspections of consignment at the ports of entry. Through this provision, whether the owner of a facility is public or private, the required space and furnishings must be provided to enable the Organization to carry out its functions. Sub-clause (3) allows for the Minister to serve a notice to the owner or operator of an inspection facility of desired improvements to an inspection facility where that facility does not comply with the established standards and requirements. An exception is made where the inspection is conducted at a private residence.

In that case the Minister has no jurisdiction to cause any improvements to be made.

Clause 23:

Clause 23 of the Bill provides for the circumstances which may cause a plant protection inspector to detain and eventually destroy a consignment and the actions which may be taken against a consignment which is detained whether with or without issuing written notice to the importer. Sub-clause (1) identifies two circumstances which may cause the detention of a consignment: where the consignment is not accompanied by the relevant documents or where the consignment presents a risk of the introduction or spread of pests. Sub-clause (2) sets out the phytosanitary actions which may be applied to a consignment which is not accompanied by the relevant documents or where the consignment presents a risk of the introduction or spread of pests. The clause provides that written notice may not be given if it is impractical to do so. With respect to the cost of any emergency action, sub-clause (5) provides that that cost is to be borne by the importer except where the case is an exceptional one, the National Plant Protection Organization determines that the cost is to be borne by the State. In sub-clause (6), provision that in circumstances where the State assumes the financial responsibility for the destruction of an imported article, the State can notwithstanding recover the amount paid as a debt owed to the State. Sub-clause (8) excludes the State from any liability where an article any action is taken against an article in accordance with this clause. Sub-clause (9) requires the National Plant Protection Organization to notify an exporting country in circumstances where there was cause to intercept a pest or take emergency action in respect of a consignment originating from that country.

- Clause 24:** Clause 24 of the Bill sets out the conditions on which a consignment will be released to the importer after it has been inspected i.e. where there is no risk for the importation and spread of pests in Barbados.
- Clause 25:** Clause 25 of the Bill relates to import regulatory matters and provides that such a decision is made by the Minister on the advice of the Organization as the Minister should not make final decisions on import regulatory matters; this is the role of the National Plant Protection Organization and ultimately the Chief Plant Health Officer.
- Clause 26:** Clause 26 of the Bill seeks to provide for plant quarantine stations. In this clause, the National Plant Protection Organization may designate places as plant quarantine stations the purpose of which is to hold consignments for observation, research, inspection, testing, treatment, detention or destruction or for imported materials be kept or cultivated under the supervision of the National Plant Protection Organization for as long as the National Plant Protection Organization considers necessary.
- Clause 27:** Clause 27 of the Bill sets out a list of persons who are required to report the arrival or importation of a consignment to the National Plant Protection Organization and to detain that consignment on its arrival in the absence of an inspector. According to sub-clause (2), a consignment detained by any of the persons listed in sub-clause (1) is to be treated as an action on the authorization of the National Plant Protection Organization. Sub-clause (3) provides that the article detained is to be submitted to the National Plant Protection Organization within 3 days of it being detained.

PART IV
EXPORTS AND CONSIGNMENTS IN TRANSIT

- Clause 28:** Clause 28 of the Bill prohibits the export of a plant, plant product or other regulated article without a phytosanitary certificate. Sub-clause (1) sets out the requirements for the grant of a phytosanitary certificate. It is important to note that the National Plant Protection Organization has the sole authority with respect to the issue, control and revocation of phytosanitary certificates and for the security and integrity of consignments after they are certified as it is important to ensure that the phytosanitary security of a consignment is maintained after certification.
- Clause 29:** Clause 29 of the Bill provides for the National Plant Protection Organization to inspect a consignment, provided the exporter pays the fee, to determine whether a consignment meets the requirements for the issue of a phytosanitary certificate.
- Clause 30:** Clause 30 of the Bill provides the requirements for the issue of a re-export certificate. The requirements for the issue of re-export certificate differ from regular export requirements and should be distinguished accordingly. According to International Standard for Phytosanitary Measures No. 12, when a consignment is imported into a country and then re-exported to another, the National Plant Protection Organization should issue a phytosanitary certificate for re-export in conformity with the International Plant Protection Convention model certificate for re-export. A re-export certificate is still valid even where the consignment has been stored, split up, combined with other consignments or re-packaged, provided that it has not been exposed to infestation or contamination by pests. It is important to note that a consignment that is intended to be re-exported is to be sent

with the original documents and phytosanitary certificate issued by the country of origin. However, if a consignment is exposed to infestation or contamination by a pest; loses its phytosanitary security or integrity; or has been processed to change its nature, the National Plant Protection Organization shall issue a phytosanitary certificate and not a re-export phytosanitary certificate; the country of origin is to be included in the certificate and the original documentation is to accompany the consignment. Sub-clause (7) establishes that an exporter is bound to comply with the instructions contained in a reexport phytosanitary certificate.

Clause 31: Clause 31 of the Bill makes provision for the issue of a transit authorization and seeks to incorporate the provisions of Article VII.4 of the International Plant Protection Convention which requires parties to apply measures to transit consignments only where technically justified and necessary to prevent the introduction and or spread of pests. This clause also reflects the provisions of International Standard for Phytosanitary Measures No. 12 (in particular section 3.3) under which the National Plant Protection Organization is not required to issue a phytosanitary certificate where a consignment is in transit and is not exposed to infestation or contamination by pests. Conversely where it has been contaminated, or if the consignment is combined, repackaged or split up, a re-export phytosanitary certificate is required.

PART V CONTAINMENT AND ERADICATION OF PESTS

Clause 32: Clause 32 of the Bill provides for the control measures that may be applied to a pest free area, area of low pest prevalence, buffer zone or an area or premises that is infested or suspected

of being infested by a regulated pest. This provision is useful to further transparency and accountability by specifying the different control options that are available to inspectors when a pest is detected. This section is aligned with Article VI of the International Plant Protection Convention and International Standard for Phytosanitary Measures No. 9 (Guidelines for Pest Eradication Programmes) sections 3.2 and 3.3. Subclause (2) provides that the control measures provided in sub-clause (1) may also be applied to other pests of national concern based on the economic impact of those pests and the potential intra-island or inter-island movement of those pests.

Clause 33: Clause 33 of the Bill provides for the National Plant Protection Organization to declare a pest to be a regulated pest, based on a pest risk analysis or a national pest of concern based on surveillance and the potential local impact of the pest. Sub-clause (2) relates to the development and treatment of pest lists. The development of pest lists is a key function of the National Plant Protection Organization. According to International Standard for Phytosanitary Measures No. 19 (Guidelines on Lists of Regulated Pests), lists of regulated pests may also be useful as the basis for harmonization of phytosanitary measures where several contracting parties with similar and shared phytosanitary concerns agree on pests that should be regulated by a group of countries or a region.

Clause 34: Clause 34 of the Bill makes provision for persons who have knowledge of or reasonably suspect the presence of a quarantine pest to report the appearance of that pest to the National Plant Protection Organization.

Clause 35: Clause 35 of the Bill provides for surveillance which is a key function of the National Plant Protection Organization.

According to this provision surveillance shall be concerned with the biology, distribution and potential impact of a pest.

- Clause 36:** Clause 36 of the Bill provides for a plant protection inspector to declare an area or premises to be under provisional quarantine. The current Act does not provide for a declaration of provisional quarantine. The provisional declaration mechanism enables the National Plant Protection Organization to take swift and rapid action while benefitting from a prescribed period to carry out the necessary tests and procedures to confirm findings. This mechanism allows for the taking of specific measures while laboratory results and other analyses are pending.
- Clause 37:** Clause 37 of the Bill provides for an area or premises to be declared under quarantine. The Chief Plant Health Officer is the technical head of the National Plant Protection Organization and thus should have the authority to decide when a declaration of a quarantine area is needed. While the Chief Agriculture Officer may consult with the Advisory Working Group on various matters, the decision rests with the Chief Agriculture Officer. Paragraph (a) to (d) sets out the various measures that are available to the National Plant Protection Organization where an area or premises is declared under quarantine.
- Clause 38:** Clause 38 of the Bill provides for the procedures to be followed when a quarantine pest is suspected to be on the premises. Authority was previously granted in the current Act for the destruction of regulated articles affected by a quarantine pest infestation but this provision extends the scope of action to buffer zones and any regulated article that may have been even exposed to the quarantine pest.

- Clause 39:** Clause 39 of the Bill provides for the method in which a notice may be served where a person is not in actual occupation of the premises. According to this clause, affixing the notice in a conspicuous place on the premises is to be regarded as sufficient service.
- Clause 40:** Clause 40 of the Bill prohibits the removal of a plant, plant product or other regulated article from an area or premises for which a quarantine notice is in force. According to sub-clause (1), a quarantine notice is to remain in force until an owner or occupier receives a certificate in writing that the area or premises is free from pests. Sub-clause (2) prohibits a person from removing or allowing or causing the removal of any plant, plant product or other regulated article from the premises or area under quarantine while a quarantine notice is in force
- Clause 41:** Clause 41 of the Bill provides for the declaration of a phytosanitary emergency on the recommendation of the Organization. Sub-clause (2), enables the National Plant Protection Organization to apply emergency measures, require the co-operation and assistance of other actors, and ensure that any emergency action or measure is limited in time and subject to review (to avoid the abuse of this provision that grants authorities wide powers).
- Clause 42:** Clause 42 of the Bill seeks to set out the conditions under which a quarantine notice is to be lifted from an area or premises affected by pests. Those conditions are: that the pest is no longer present; or that the National Plant Protection Organization determines that the declaration of quarantine is no longer appropriate. Sub-clause (2) further provides for the revocation of the declaration order where it is determined that the relevant quarantine pest is no longer considered to be

present or that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the affected area or premises. Sub-clause (3) provides that the written notice must be served on all owners or occupiers of premises that were subject to quarantine.

Clause 43: Clause 43 of the Bill provides for the conditions which would cause the Chief Agricultural Officer to declare an area pest free or one of low pest prevalence. For example, that a pest is not present in the area or a pest is present at low levels in the area.

Clause 44: Clause 44 of the Bill makes provision for the conditions which would satisfy the National Plant Protection Organization to declare that a place of production or a production site is pest free based on scientific evidence and where the absence of pests is maintained for a specific period of time.

PART VI ENFORCEMENT

Clause 45: Clause 45 of the Bill is an extensive and important provision which seeks to provide robust powers to plant protection inspectors in accordance with International Standard for Phytosanitary Measures No. 20 section 4.6 (Legal powers of NPPO officers) and International Standard for Phytosanitary Measures No. 23 section 1.3 (NPPO responsibility for inspections). It is to be borne in mind that the robust powers granted to a plant protection inspector are for the purpose of detecting a regulated pest or ensuring that persons to whom the Bill applies, comply with its provisions. Sub-clause (2) clearly provides for the conditions under which a plant protection inspector is permitted to enter a dwelling equipped with an identification card or other proof of appointment or

designation as an inspector, i.e. the occupier must grant consent to the inspector, or the inspector must be in possession of a warrant issued by a Magistrate. By extension, provided the conditions in sub-clause (2) are satisfied, a plant protection inspector is authorised to search any premises where there is reasonable belief that an offence under the Bill has been committed. Recognizing the risks that may be associated with entering and searching premises, provision is made in sub-clause (5) for a member of the Police Service to accompany an inspector in the execution of his duties. Sub-clause (6) sets out the course of action which a plant protection inspector may take if the circumstances warrant action. The clause provides that an inspector may *inter alia* seize, destroy or treat a plant, plant product or other regulated article and serve a written notice on the owner describing the action taken with reasons for the action. In sub-clause (7), provision is made for inspectors to conduct pre-shipment inspections at the invitation of an exporting country, in that country. Finally, sub-clause (9) makes provision for what constitutes good notice where a premises is unoccupied. In those circumstances, affixing the notice to a conspicuous place on the premises is considered to be good service

Clause 46:

Clause 46 of the Bill makes provision for a plant protection inspector to issue a detention certificate where a plant, plant product or other regulated article is seized and detained. This clause provides that a plant protection inspector may exercise his discretion whether to advise the owner of the article of the possible actions that the article may be subject. The conditions that may determine whether an owner is not advised are: if in the opinion of the inspector, the article must be destroyed or it is impractical to do so. Sub-clause (2) provides that where an inspector does not give notice of a seizure that he shall

provide notice of the seizure to the owner or person in charge of the plant, plant product or other regulated article as soon as may be practicable after the seizure has been carried out.

- Clause 47:** Clause 47 of the Bill seeks to make provision that a plant, plant product or other regulated article which is seized and detained by an inspector must be stored at the place where it was seized or removed from the place that it was seized.
- Clause 48:** Clause 48 of the Bill seeks to make provision for two circumstances where an inspector may confiscate and dispose of any plant, plant product or other regulated article. In the first instance, where a plant, plant product or regulated item is imported to Barbados, is treated and after treatment is unclaimed; and secondly where an inspector believes that a quarantine pest or regulated pest is being harboured. Sub-clause (2) places a duty on the inspector to provide the owner with reasons where there has been a confiscation but only where it is practical to do so.
- Clause 49:** Clause 49 of the Bill makes provision for a two-tier system of review where any person is aggrieved by a decision or action taken by a plant protection inspector or an official analyst. In the first instance an aggrieved person may appeal in writing to the Chief Plant Health Officer within 10 days of any decision or action taken. Sub-clause (2) provides that the Chief Plant Health Officer is required to give a decision within 28 days after receiving the appeal. Sub-clause (3) provides that an appeal from a decision of the Chief Plant Health Officer shall lie to the Chief Agricultural Officer within 10 days of the decision of the Chief Plant Health Officer. According to sub-clause (4), where an appeal is made to the Chief Agricultural Officer, the Chief Agricultural Officer is required to give a decision within 14 days of receiving the

appeal. In addition, sub-clause (5) provides that an aggrieved person may appeal to a Judge in Chambers from a decision given by the Chief Veterinary Officer or the Minister, on a matter of law. Sub-clause (6) requires that the Organization acts in a timely manner in responding to an appeal involving a regulated pest or a perishable item.

PART VII OFFENCES AND PENALTIES

- Clause 50:** Clause 50 of the Bill seeks to list the specific actions that are to be treated as criminal offences.
- Clause 51:** Clause 51 of the Bill lists the categories of behaviour that are to be treated as offences under the Bill for an inspector, official analyst or other official of the National Plant Protection Organization, where that behaviour is outside of their authority. These behaviours include a failure to take action, as well as more specifically, abuse of power, taking bribes, failing to disclose a financial interest etc. and any other abuse of power granted under the Bill. This clause provides the penalties to which an inspector, official analyst or other official of the National Plant Protection Organization is subject: dismissal or any other disciplinary action under the *Public Service Act*, Cap. 29.
- Clause 52:** Clause 52 of the Bill makes provision for how contraventions of the provisions of the Bill are to be treated. Under this clause, a plant protection inspector is under an obligation to inform the Chief Plant Health Officer where he reasonably believes that there has been a contravention. Sub-clause (2) provides that the Chief Agricultural Officer on the advice of the Chief Plant Health Officer may determine whether the

contravention warrants criminal prosecution, an administrative penalty or both.

Clause 53: Clause 53 of the Bill seeks to provide for the National Plant Protection Organization to issue administrative penalty notices in circumstances where it is satisfied that the act which a person has committed does not warrant criminal prosecution. An administrative penalty provides an enforcement mechanism, which can be more cost-effective, timely and practical than criminal penalties. Sub-clause (2) provides the following forms of penalties: fine; suspension or revocation of a licence or other authorization; or any other administrative penalty. In sub-clause (3), provision is made for the content of the notice and the time-frame within which the penalty is to be paid is 14 days. Sub-clause (5) makes provision for a person to whom an administrative notice has been issued to appeal the notice in accordance with clause 49. Sub-clauses (6) and (7) seek to make provision for the revocation of a business licence in cases of repeated violations.

Clause 54: Clause 54 of the Bill sets out the matters that the Chief Agricultural Officer may settle administratively and includes the seizure of regulated articles, staying the proceedings for condemnation of anything forfeited under this Act and the restoration of anything seized under the Bill.

Clause 55: Clause 55 of the Bill provides for the issue of fixed penalty notices for offences to be prescribed in regulations as fixed penalty offences. Sub-clause (2) provides the maximum penalty for a fixed penalty offence. Sub-clause (3) sets out the procedure for the issue of a fixed penalty notice. Sub-clause (4) describes the consequences where a person to whom a notice is issued, pays the fine or fails to pay the fine. Sub-

clause (5) describes the form of and particulars to be contained in a fixed penalty notice. Sub-clause (6) makes provision for the Chief Agriculture Officer on the advice of the Chief Plant Health Officer to extend the period for the payment of the fixed penalty notice. Sub-clause (7) makes provides that fixed penalty notices are to be treated in the same way as an offence for summary conviction for which no conviction is recorded.

Clause 56: Clause 56 of the Bill provides that in any prosecution for an offence under the Bill, matters that are certified by the National Plant Protection Organization or other public official, shall be taken as *prima facie* evidence of the matters stated therein unless there is evidence or grounds to believe that such matters are inaccurate or false and are inadmissible in evidence.

Clause 57: Clause 57 of the Bill provides that unless the State determines otherwise, the owner is responsible for the cost where an inspector seizes a plant, plant product or other regulated article. Sub-clause (2) seeks to protect the State from actions that are taken in good faith, and on a scientific basis for the purposes of preventing the introduction or spread of disease in the country.

Clause 58: Clause 58 of the Bill provides that a member of staff of the National Plant Protection Organization, inspector, official laboratory or any other entity involved in phytosanitary matters is not liable to a civil suit or to prosecution for anything done in good faith while performing their functions set out in the Bill.

Clause 59: Clause 59 of the Bill provides that unpaid administrative fines or penalties will be treated as a debt due to the State and may

be recovered as a debt due to the State in civil proceedings before a magistrate for District “A”.

Clause 60: Clause 60 of the Bill provides that a plant protection inspector may conduct a prosecution for an offence under the Bill irrespective of not being an attorney-at-law.

Clause 61: Clause 61 of the Bill makes provision for the Minister on the recommendation of the Advisory Working Group to order compensation to be paid in circumstances where: the National Plant Protection Organization requires treatment of premises; the use of a premises is prohibited; or premises are affected by measures implemented by the National Plant Protection Organization

Clause 62: Clause 62 of the Bill seeks to provide that where a person is convicted of an offence, any item used in the perpetration of that offence may be forfeited. Sub-clause (2) provides that where a fine is imposed, the plant, plant product or other regulated article may be detained until the fine is paid or sold in satisfaction of the fine. Sub-clause (3) provides that where forfeiture is not ordered that the plant, plant product or other regulated article is to be returned to the owner and where it has been disposed, the proceeds realised from the disposition are to be transferred to the owner or person in charge of the plant, plant product or other regulated article. Sub-clause (4) provides that the National Plant Protection Organization is responsible for determining the conditions under which a plant, plant product or other regulated article is to be held prior to the Magistrate’s ruling. This is an important provision to ensure that any goods that may carry pests, are treated in a manner that does not increase the risk of spread of such pests. Sub-clause (5) provides for the sale, lease or donation to a charitable organization of any good that is ordered to be

forfeited, provided that the time period for appeal has expired. Sub-clause (6) provides that the proceeds of any sale are to be paid into the Consolidated Fund.

PART VIII
MISCELLANEOUS

- Clause 63:** Clause 63 of the Bill provides that it is the responsibility of the National Plant Protection Organization to determine the manner in which waste is disposed.
- Clause 64:** Clause 64 of the Bill seeks to provide that where any notice is required in writing or a document is required to be submitted that it may be submitted in an electronic format.
- Clause 65:** Clause 65 of the Bill provides for the Minister on the advice of the Advisory Working Group and the Chief Agricultural Officer to make regulations to give effect to the provisions of the Bill.
- Clause 66:** Clause 66 of the Bill repeals the *Plant Pest and Disease (Eradication) Act, Cap. 266A* and the *Plant Protection Act, Cap. 268*.
- Clause 67:** Clause 67 of the Bill provides that the provisions of this Bill shall apply to the State.
- Clause 68:** Clause 68 of the Bill provides that the Bill shall come into force on a date to be fixed by Proclamation.