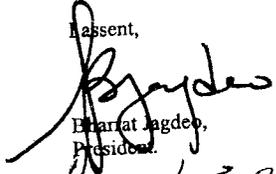




GUYANA

ACT NO. 9 OF 2011

PLANT PROTECTION ACT 2011

Assent,

Bharat Jagdeo,
President.
August 3, 2011

ARRANGEMENT OF SECTIONS

SECTION

PART I PRELIMINARY

1. Short title and commencement.
2. Interpretation.

PART II ADMINISTRATION

3. Responsibility for administration.
4. Functions of Institute.
5. Power of appointment and designation.
6. Powers of authorised officers.

PRICE: \$1,820.00 – To be purchased from Parliament Office, Georgetown, Guyana.

PRINTED BY GUYANA NATIONAL PRINTERS LIMITED.

**PART III
IMPORTS**

7. Regulation of imports.
8. Import requirements.
9. Import.
10. Duty to declare arrival of regulated articles.
11. Inspections and written notices.
12. Quarantine stations.

**PART IV
EXPORT, RE-EXPORT AND TRANSIT**

13. Export.
14. Re-export.
15. Transit.

**PART V
CONTROL OF PESTS**

16. Declaration of regulated pests.
17. Notification of presence of listed pests.
18. Provisional declaration of quarantine area.
19. Declaration of quarantine areas.
20. Declaration of pest free area.
21. Declaration of area of low pest prevalence.
22. Phytosanitary measures.

**PART VI
OFFENCES AND PENALTIES**

23. Offences.
24. Offences by authorised officers.
25. Offences by customs officers.
26. Offences by body corporate.
27. Penalties.
28. Fixed penalties.

PART VII
MISCELLANEOUS AND GENERAL PROVISIONS

29. Duty to assist and cooperate.
30. Right to appeal.
31. Good faith defence.
32. Presumptions.
33. Powers of the Minister to make regulations.
34. Savings and repeal.

An Act to regulate the importation and exportation of plants, planting material and objects derived from them, to protect from the introduction of exotic pests and diseases to Guyana and to control and eradicate diseases and pests within the country.

A.D. 2011

Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Plant Protection Act 2011.

(2) This Act shall come into force on a date to be appointed by the Minister by order published in the *Gazette*.

Interpretation.

2. In this Act -

(a) “additional declaration” means a statement that is required by an importing country to be entered on a phytosanitary certificate and which provides specific additional information on a consignment in relation to regulated pests;

(b) “area” means an officially defined area, place or site of production in Guyana;

(c) “authorised officer” means a person appointed or designated and qualified to act as such under section 5(l)(a);

(d) “biological control agent” means a natural enemy, antagonist, competitor or other organism used for pest control;

(e) “buffer zone” means an area in which a specific pest does not occur or occurs at a low level and is officially controlled, that either encloses or is adjacent to an infested area, an area of low pest prevalence or a pest free area and in which phytosanitary measures are taken to prevent the spread of the pest;

(f) “consignment” means a quantity of plants, plant products or other regulated articles being moved from or to Guyana and covered, when required, by a single phytosanitary certificate;

- (g) "container" means any box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper, or other thing in which any plants, plant products or regulated articles are placed or packed;
- (h) "control" means the suppression, containment or eradication of a pest population;
- (i) "detention" means to keep a consignment in official custody or confinement as a phytosanitary measure;
- (j) "emergency measure" means a phytosanitary measure established as a matter of urgency in a new or unexpected phytosanitary situation, and which may or may not be a provisional measure;
- (k) "endangered area" means an area where ecological factors favour the establishment of a pest whose presence there will result in significant economic loss;
- (l) "export" means to export from Guyana by any means, and "exportation" has a corresponding meaning;
- (m) "exporter" means any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any plant, plant product or regulated article to be exported from Guyana;
- (n) "import" means to import into Guyana by any means, and "importation" has a corresponding meaning;
- (o) "importer" means any person who, whether as owner, consignor, consignee, agent or broker is in possession of or in any way entitled to the custody or control of any plant, plant product or regulated article imported into Guyana;
- (p) "import permit" means an official document authorising importation of plants, plant products or other regulated articles in accordance with phytosanitary requirements;

No. 31 of 2010

- (q) “incursion” means an isolated pest population of a pest recently detected in an area, not known to be established but expected to survive for the immediate future;
- (r) “inspection” means the official visual examination of plants, plant products or regulated articles to determine if pests are present or to determine compliance with phytosanitary requirements;
- (s) “Institute” means the National Agricultural Research and Extension Institute established under section 16 of the National Agricultural Research and Extension Institute Act 2010;
- (t) “IPPC” means the International Plant Protection Convention;
- (u) “memorandum of understanding” means a written agreement between the Institute and any other public or private entity under section 4(x);
- (v) “Ministry” means the Ministry responsible for agriculture, and “Minister” shall be interpreted accordingly;
- (w) “national pest of concern” means a non-regulated pest with a significant economic impact whose biological and epidemiological characteristics determine that its control in Guyana must be performed at more than a local level, requiring the official intervention of the Institute for its management, for technical coordination or for enforcement;
- (x) “official analyst” means a person authorised and qualified to act as such under section 5(1)(b);
- (y) “official laboratory” means a laboratory designated as such under section 5(4);
- (z) “outbreak” means a recently detected pest population, including an incursion, or a sudden significant increase in an established pest population of an area;

- (aa) “owner” or “person in charge”, in relation to anything or business, includes any person having for the time being the possession, custody or control of that thing or business;
- (bb) “package” means anything in which plants, plant products or regulated articles are wholly or partially placed or wrapped and includes any basket, container, pail, tray or receptacle of any kind whether open or closed;
- (cc) “person” means a natural person or a body corporate;
- (dd) “pest” means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;
- (ee) “pest risk analysis” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;
- (ff) “phytosanitary action” means an official operation, such as inspection, testing, surveillance or treatment, undertaken to implement any phytosanitary measure;
- (gg) “phytosanitary certificate” means a certificate prescribed in conformity with the model phytosanitary certificate of the IPPC;
- (hh) “phytosanitary measure” means any official measure having the purpose of preventing the introduction or spread of quarantine pests or limiting the economic impact of regulated non- quarantine pests in Guyana;
- (ii) “phytosanitary requirement” means any condition to be met on import by a consignment of plants, plant products or other regulated articles from a particular origin, having as its purpose the prevention of the introduction or spread of quarantine pests or the limitation of the economic impact of regulated non-quarantine pests;

- (jj) “plant” means any living plant and the parts thereof, including seeds and germplasm;
- (kk) “plant product” means any unmanufactured material of plant origin and those manufactured products which, by the nature or that of their processing, may create a risk for the introduction into or the spread of pests in Guyana;
- (ll) “point of entry” means an airport, seaport or land border point designated by the Institute for the importation of consignments, or the entrance of passengers in possession of plants, plant products or regulated articles;
- (mm) “premises” includes any building, tent or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land employed in connection with such use, used for the harvesting, packing, packaging, transport, storage or sale of any plant, plant product or regulated article;
- (nn) “provisional measure” means a phytosanitary measure established without technical justification owing to a concurrent lack of adequate information;
- (oo) “quarantine” means official confinement of plants, plant products or other regulated articles for surveillance and research or for further inspection, testing or treatment;
- (pp) “quarantine area” means an area where a quarantine pest is present and is being officially controlled;
- (qq) “quarantine pest” means a pest of potential economic importance to the area endangered by it and not yet present there or present but not widely distributed and being officially controlled;
- (rr) “re-export phytosanitary certificate” means a certificate prescribed in conformity with the model phytosanitary certificate for re-export of the IPPC;

- (ss) “regulated article” means any plant, plant product, packaging, container, soil or other organism, object or material capable of harbouring or spreading pests;
- (tt) “regulated non-quarantine pest” means a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact;
- (uu) “regulated pest” means a quarantine pest or regulated non-quarantine pest;
- (vv) “sell” means includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise, and “sold”, “selling” and “sale” shall have corresponding meanings;
- (ww) “soil” means the loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material;
- (xx) “surveillance” means an official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures;
- (yy) “technically justified” means justified on the basis of conclusions reached by using pest risk analysis or, where applicable, another comparable examination, as well as the evaluation of available scientific information, and “technical justification” has a corresponding meaning;
- (zz) “test” means an official examination, other than visual, to determine if pests are present or to identify pests;
- (aaa) “treatment” means an officially authorised procedure for the killing, inactivation or removal of pests, for rendering pests infertile or for devitalisation; and

- (bbb) “vehicle” means any vessel, aircraft, train, conveyance, cart, container, animal or other thing that can transport plants, plant products or regulated articles from one place to another.

PART II ADMINISTRATION

Responsibility
for
administration.

3. The primary responsibility for the administration of this Act lies with the National Agricultural Research and Extension Institute.

Functions of
Institute.

4. The Institute shall perform the following functions -

- (a) carrying out pest risk analysis;
- (b) developing and publishing lists of regulated pests and national pests of concern;
- (c) preventing and controlling the introduction of regulated pests and the spread of regulated pests and national pests of concern in Guyana;
- (d) undertaking emergency action for regulated pests and national pests of concern;
- (e) issuing phytosanitary certificates or re-export phytosanitary certificates for consignments intended for export;
- (f) carrying out surveillance of growing plants, including areas under cultivation and wild flora, and of plants and plant products in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests and of controlling those pests;
- (g) inspecting and testing consignments of plants and plant products and, where appropriate, other regulated articles, for the purpose of preventing the introduction and spread of regulated pests;
- (h) ordering the treatment of consignments of plants, plant products and other regulated articles moving in international traffic, to meet phytosanitary requirements;

- (i) establishing and implementing certification programmes for planting material and plant products;
- (j) registering nurseries;
- (k) registering fertilisers;
- (l) protecting endangered areas, and designating, maintaining and surveying pest free areas and areas of low pest prevalence;
- (m) ensuring the phytosanitary security of consignments after certification and prior to export;
- (n) regulating the movement of biological control agents within, from or into Guyana;
- (o) carrying out training and development of authorised officers and other Institute staff;
- (p) distributing information regarding regulated pests and the means of their prevention and control;
- (q) providing justification to other countries concerning phytosanitary measures applied, either by reference to applicable international standards or technical justification;
- (r) notifying trading partners of relevant instances of non-compliance with import requirements;
- (s) notifying other countries of phytosanitary regulations, phytosanitary requirements and phytosanitary measures in accordance with international obligations;
- (t) providing the list of regulated pests to international or regional organisations of which Guyana is a member, or to other institutes;
- (u) representing Guyana in bilateral, regional and international forums related to phytosanitary matters;

- (v) developing pest diagnostic, investigative and analytical capabilities and establishing official laboratories for testing;
- (w) establishing committees of experts to provide advice and recommendations regarding specific issues arising under this Act, such as organic production or citrus certification;
- (x) entering into memoranda of understanding for the implementation of activities under this section;
- (y) performing any other function set out in this Act or necessary for its implementation.

Powers of
appointment
and designation.

5. (1) The Institute may from time to time appoint or designate, with the concurrence of the Minister or other public institute as may be necessary, any person with the prescribed qualifications as -

- (a) an authorised officer to carry out all or any of the functions assigned to such officers under this Act;
- (b) an official analyst for purposes of enforcement of this Act.

(2) The Institute may carry out an appointment or designation under subsection (1) based on any memorandum of understanding.

(3) Any authorised officer or official analyst appointed pursuant to subsection (1) shall perform such functions as may be specified in writing in the instrument of appointment.

(4) The Minister may from time to time designate any laboratory as an official laboratory for purposes of enforcement of this Act.

Powers of
authorised
officers.

6. (1) Except for a dwelling place, an authorised officer may, without a warrant -

- (a) enter any area or premises in order to inspect plants, plant products and regulated articles under cultivation, in storage or in transport in order to report the existence, outbreak and spread of pests, and for that purpose, may -

- (i) demand any information regarding any plants, plant products and regulated articles from the owner or person in charge of such area or premises;
 - (ii) take samples in the prescribed manner of any plant, plant product or regulated article or its package or container and submit it to an official laboratory for analysis by an official analyst;
 - (iii) examine, make copies of or take extracts from any book, statement or other document found at such area or premises, and demand from the owner or any person in charge an explanation of any entry in it;
 - (iv) inspect any operation or process carried out in such area or on such premises, and demand any information regarding such operation or process from the owner or person in charge or from any person carrying out such operation or process;
 - (v) take any photographs;
 - (vi) seize any plant, plant product, regulated article, object, book, statement or document which appears to provide proof of a contravention of any provision of this Act, providing a signed receipt in the prescribed form which shall be countersigned immediately by the owner or person in charge.
- (b) stop and search any vehicle, on land or at sea, in which plants, plant products or regulated articles are being or are suspected of being transported, packed, packaged, stored or sold;
- (c) stop, search or detain any person who is suspected of committing an offence under this Act;
- (d) inspect consignments of plants, plant products or other regulated articles destined for import into Guyana to determine whether they are infested by regulated pests, and, where necessary, verify the pest status of consignments by visual examination, the taking and testing of samples or otherwise;

- (e) ensure that the treatment of plants, plant products or other regulated articles destined for import into Guyana is undertaken in accordance with phytosanitary requirements;
- (f) inspect consignments of plants, plant products or other regulated articles destined for export and, where necessary, verify the pest status of consignments by visual examination, the taking and testing of samples or otherwise, to ensure compliance with other countries' import requirements;
- (g) issue phytosanitary certificates and re-export phytosanitary certificates on behalf of the Institute to ensure compliance with other countries' import requirements, and where necessary carry out any required treatment;
- (h) institute inquiries and request information or documentation upon suspicion that the provisions of this Act have been or are being violated;
- (i) carry out any other necessary phytosanitary action.

(2) An authorised officer shall exhibit the officer's official identification card on demand by any person affected by the exercise or performance of any power, duty or function of any authorised officer under this Act.

(3) An authorised officer exercising power under this section may request the presence and assistance of any law enforcement personnel as the officer considers necessary.

(4) In the course of an inspection carried out under subsection (1), an authorised officer may, as the officer considers necessary, seize, destroy, detain, treat or otherwise dispose of any plants, plant products or other regulated articles, or order that any such action be taken, at the expense of the owner.

(5) Any authorised officer who causes anything to be seized, detained, treated, disposed of or destroyed in accordance with this Act shall immediately serve a written notice on the owner with a description of the action taken and the reasons for it.

PART III
IMPORTS

Regulation of
imports.

7. (1) In order to prevent the introduction and spread of a regulated pest the Institute may -

- (a) establish phytosanitary requirements and require phytosanitary measures as conditions for the import of plants, plant products and other regulated articles;
- (b) prohibit the import of plants, plant products and other regulated articles;
- (c) take phytosanitary action in relation to imports;
- (d) implement emergency and provisional measures in relation to imports.

(2) Phytosanitary requirements and phytosanitary measures under subsection (1)(a) as well as prohibitions under subsection (1)(b) shall be based on existing international standards or otherwise be technically justified based on pest risk analysis.

(3) As conditions change or new facts become available, the Institute shall, without undue delay, modify or revoke phytosanitary requirements and phytosanitary measures as well as prohibitions.

(4) The Institute may negotiate bilateral and multilateral agreements for the evaluation and possible acceptance of alternative phytosanitary measures proposed by an exporting country's Institute or equivalent institution as being equivalent to the phytosanitary measures required under subsection (1) (a).

(5) The Institute shall communicate phytosanitary requirements established under subsection (1) (a) as well as prohibitions established under subsection (1) (b) and any modifications to the same under subsection (3) to the Minister for publication.

Import
requirements

8. (1) Consignments shall be imported into Guyana only -

- (a) by the issue of an import permit granted by the Institute upon application by an importer in the prescribed form;
- (b) where accompanied by an original phytosanitary certificate including an additional declaration if so required by phytosanitary requirements established under section 7(1)(a);
- (c) at the official points of entry as prescribed.

(2) Phytosanitary certificates under subsection (1) (b) shall be issued by the competent institute of the exporting country and dated no more than fourteen days before the entry of the consignment into Guyana.

(3) The Institute may exempt specified plants, plant products or other regulated articles from an import permit based on pest risk analysis.

(4) In the case of a decision by the Institute prohibiting the import of plants, plant products or other regulated articles, the Institute shall not issue an import permit and shall promptly notify the applicant that the permit has been refused.

(5) The Institute may review, modify or revoke an import permit at any time by written notice.

(6) Any import permit issued under this section is subject to the payment of any prescribed fee.

Import.

9. (1) All consignments for import are subject to inspection by an authorised officer at the point of entry.

(2) Upon application by the importer and where the consignment has been sealed or marked as prescribed, certain plants, plant products or other regulated articles may be inspected by an authorised officer at their final destination.

(3) All inspections carried out under subsection (1) or (2) shall be carried out during regular business hours, except where the plants, plant products or other regulated articles are extremely perishable or where their entry has otherwise been delayed, in which case upon application by the importer the Institute may agree to an inspection at any other time;

(4) Any inspection carried out under this section is subject to the payment of any prescribed fee.

Duty to declare arrival of regulated articles.

10. (1) Importers shall report the arrival of any consignment and apply for inspection to the authorised officer in charge of the point of entry.

(2) Customs officers shall -

- (a) notify the Institute promptly upon the arrival of any plant, plant product or other regulated article in Guyana;
- (b) not release or dispose of the plant, plant product or other regulated article unless so authorised by any authorised officer.

Inspections and written notice.

11. (1) If, upon inspection carried out in accordance with section 9, the authorised officer determines that the consignment is accompanied by all relevant documentation required by section 8 (1) (a) and (b) and does not present any risk of the introduction or spread of quarantine pests, or any risk of unacceptable economic impact by regulated non-quarantine pests, the officer shall clear the consignment for delivery to customs, by written notice served on the importer.

(2) Customs officers shall only clear a consignment for delivery upon presentation of the written notice referred to in subsection (1).

(3) If, upon inspection carried out in accordance with section 9, the authorised officer determines that the consignment is not accompanied by all relevant documentation required by section 8 (1) (a) and (b), or presents any risk of the introduction or spread of quarantine pests, or of unacceptable economic impact of regulated non-quarantine pests, the officer shall serve a written notice on the importer that a part of or the whole consignment is subject within a prescribed period of time to one or more of the following actions -

- (a) detention until the collection of additional information or the completion of sampling and testing;
- (b) removal, including for treatment, to a quarantine station or any other location identified by the Institute;
- (c) reshipment;
- (d) destruction.

(4) The costs and responsibility for any action taken under subsection (3) shall be borne by the importer.

(5) The Government shall bear no liability for the destruction of plants, plant products or other regulated articles in the course of or as a result of any action taken under subsection (3).

Quarantine
stations

12. The institute may -

- (a) designate certain places as quarantine stations where plants, plant products or other regulated articles may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction;
- (b) require that imported plants or plant products be kept or cultivated at a quarantine station under the institute's supervision for such time as the institute deems necessary.

PART IV

EXPORT, RE-EXPORT AND TRANSIT

Export.

13. (1) In cases where an importing country requires the issuance of a phytosanitary certificate, treatment or testing before authorising the import of plants, plant products or other regulated articles from Guyana, the exporter shall -

- (a) apply in the prescribed form to the Institute for a phytosanitary certificate including an additional declaration if so required by the importing country;
- (b) provide all documentation prescribed;
- (c) make the consignment available for inspection.

(2) The Institute shall, upon application by an exporter under subsection (1) (a), inspect the consignment without undue delay.

(3) Any inspection under subsection (2) is subject to the payment of any applicable fee.

(4) Upon inspection under subsection (2) the Institute shall -

- (a) where the consignment meets the importing country's phytosanitary requirements, issue a phytosanitary certificate including an additional declaration if so required;
- (b) deny certification where the requirements under subsection (1) have not been met.

(5) Upon issuance of a phytosanitary certificate under subsection (4)(a), the exporter shall pay any prescribed fee.

(6) After the issuance of a phytosanitary certificate, the exporter shall export the consignment in compliance with instructions of the Institute concerning maintenance of the phytosanitary security of a consignment after certification.

Re-export.

14. (1) When a consignment is imported into Guyana for further export to another country, the exporter shall -

- (a) apply in the prescribed form to the Institute for a re-export phytosanitary certificate;
- (b) provide all documentation required;
- (c) make the consignment available for inspection.

(2) The Institute shall inspect the consignment without undue delay.

(3) Any inspection is subject to the payment of any prescribed fee.

(4) Upon inspection, the institute shall issue a re-export phytosanitary certificate where the institute has reasonable grounds to determine that -

- (a) the consignment has not been subject to the risk of infestation;
- (b) the consignment as well as the accompanying documents comply with the phytosanitary requirements of the importing country.

(5) Upon issuance of a re-export phytosanitary certificate the exporter shall pay any prescribed fee.

(6) After the issuance of a re-export phytosanitary certificate, the exporter shall re-export the consignment in compliance with instructions of the Institute concerning maintenance of the phytosanitary security of a consignment after certification.

(7) The original phytosanitary certificate shall accompany any consignment re-exported.

(8) In cases where any of the requirements of subsection (4) are not met, the Institute shall issue a phytosanitary certificate in accordance with section 13 (4) (a).

(9) Any phytosanitary certificate issued under subsection (8) shall indicate the country of origin of the consignment.

Transit.

15. (1) Transit of consignments through Guyana shall be permitted only upon written permission by the Institute granted after application by the importer in the prescribed form and payment of any prescribed fee.

(2) Phytosanitary requirements shall not apply to a consignment in transit through Guyana provided that -

- (a) the consignment has been packed so as not to permit any risk of the spread of regulated pests that might be present in the consignment;
- (b) the consignment as well as the accompanying documents comply with the phytosanitary requirements of the country of destination;
- (c) the consignment is accompanied by the phytosanitary certificate of the country of origin.

PART V CONTROL OF PESTS

Declaration of regulated pests.

16. (1) The institute may declare a pest to be -

- (a) a quarantine pest or a regulated non-quarantine pest, based on pest risk analysis;
- (b) a national pest of concern, based on surveillance and the potential local economic impact of the pest.

(2) The institute shall communicate the lists of regulated pests and national pests of concern, and any subsequent amendments to the same, to the Minister for approval and publication.

Notification of presence of listed pests.

17. (1) The owner or occupier of any area or premises on which a regulated pest or a national pest of concern is present or is suspected to be present shall immediately notify the Institute or the person in charge of the nearest police station.

(2) The person to whom notice under subsection (1) is given, if not an authorised officer, shall immediately convey the information to an authorised officer of the Institute.

Provisional declaration of quarantine area.

18. (1) If an authorised officer believes that a quarantine pest may be present in any area or premises, the officer may -

- (a) enter into such area or premises in accordance with the provisions of section 6(1)(a);
- (b) inspect any plants, plant products or other regulated articles;
- (c) take such samples as the officer may consider necessary to verify the presence of the quarantine pest;
- (d) declare such area or premises a provisional quarantine area.

(2) Upon a declaration under subsection (1) (d) the Institute may take emergency measures.

(3) Where a provisional quarantine area has been declared, the Institute shall within four weeks either -

- (a) declare the area or premises that is infested or is suspected of being infested with any quarantine pest to be a quarantine area under section 19 (1); or
- (b) revoke the declaration of provisional quarantine.

Declaration of quarantine areas.

19. (1) Where the Institute determines that an area or premises is infested or suspected of being infested with any quarantine pest, it may declare it a quarantine area.

(2) The Institute shall publish the declaration of quarantine in a written instrument establishing the period of quarantine and conditions for subsequent renewals of the declaration.

(3) The Institute shall regularly review the situation in respect of any quarantine area and as soon as either -

(a) the relevant quarantine pest is considered no longer to be present; or

(b) the institute determines that it is no longer appropriate for the quarantine to be maintained in respect of part or all of the area, it shall, by written notice served on all owners or occupiers of the quarantine area, revoke the quarantine.

Declaration of pest free area.

20. Where the Institute -

(a) is satisfied through surveillance that a specific pest is not present in an area;

(b) adopts phytosanitary measures under section 22 to keep the area free of the pest;

(c) institutes a monitoring system to verify that this condition is maintained,

it may declare it a pest free area.

Declaration of area of low pest prevalence.

21. Where the Institute -

(a) is satisfied that a regulated pest occurs at low levels in an area;

(b) adopts phytosanitary measures under section 22 to keep the pest levels low;

(c) institutes a surveillance system to verify that the pest levels remain low,

it may declare it an area of low pest prevalence.

Phytosanitary measures.

22. (1) Any area that is infested or suspected to be infested by a regulated pest, as well as any pest free area, area of low pest prevalence or buffer zone may be subject to any of the following phytosanitary measures -

(a) treatment or disposal of plants, plant products and other regulated articles, including the treatment of vehicles whether or not they have been found to be infested, in order to limit the spread of the quarantine pest, keep the area free from a specific pest or keep the level of a pest low, as the case may be;

- (b) mandatory treatment;
- (c) prohibition or restriction of the movement of any plant, plant product or other regulated article within, from or to the area or zone;
- (d) prohibition of planting or replanting specific plants in a specified location;
- (e) any other phytosanitary action which the institute deems necessary.

(2) The institute may instruct, by order, an owner of any area to carry out specific phytosanitary measures within a specified period of time.

(3) If an owner fails to comply with any order under subsection (2), the Institute may authorise an authorised officer to enter upon the area or premises in question in order to carry out the required phytosanitary measures or, where circumstances so require, destroy plants, plant products or other regulated articles.

(4) The costs and responsibility for any action taken under subsection (3) shall be borne by the owner.

(5) The Government shall bear no liability for the destruction of plants, plant products or other regulated articles in the course of or as a result of any action taken under this section.

PART VI OFFENCES AND PENALTIES

23. A person commits an offence if the person -

Offences.

- (a) grows, possesses, sells, offers for sale, transports or distributes in any manner any plants, plant products or other regulated articles knowing that they are infested by a quarantine pest;
- (b) imports any plants, plant products or other regulated articles at a point of entry not prescribed as a point of entry;
- (c) imports any plants, plant products or other regulated articles contrary to any other prescribed requirement;
- (d) intentionally permits or causes the introduction or spread of any regulated pest;

- (e) exports any plants, plant products or regulated articles except in accordance with this Act;
- (f) fails to safeguard the phytosanitary security of a consignment after issuance of a phytosanitary certificate under section 13(4)(a) or 14(8) or a re-export phytosanitary certificate under section 14(4);
- (g) fails to provide access, samples or information to an authorised officer upon request, or otherwise fails to comply with an order properly given under this Act;
- (h) tampers with any samples taken under this Act;
- (i) breaks any seal or alters any markings made by an authorised officer without permission;
- (j) gives false information to an authorised officer;
- (k) attempts to improperly influence an authorised officer in the exercise of official functions under this Act;
- (l) assaults, resists, intimidates, threatens or obstructs any authorised officer exercising lawful powers under this Act;
- (m) poses as an authorised officer; or
- (n) alters, forges, defaces or destroys any document issued under this Act.

Offences by
authorised
officers.

24. Any authorised officer commits an offence if the officer -
- (a) seizes anything for any reason other than those prescribed in this Act;
 - (b) discloses any information acquired in the course of exercising official functions under this Act except where required to do so by the supervisor of the officer or by any court; or
 - (c) accepts any monetary or other benefit from a person affected by the exercise of official powers under this Act.

Offences by
customs
officers.

25. Any customs officer commits an offence if the officer -
- (a) fails to notify the Institute promptly upon the arrival of any plant, plant product or regulated article in Guyana; and
 - (b) releases or disposes of the item unless so authorised by any authorised officer.

Offences by
body corporate.

26. Where an offence under this Act which has been committed by a body corporate is proven to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director, manager or other similar officer of the body corporate;
- (b) any person who was purporting to act in the capacity of a director, manager similar officer;

that person as well as the body corporate shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Penalties.

27. (1) Any person who commits an offence under this Act is liable on summary conviction -

- (a) in the case of a first offence, to a fine not less than twenty thousand dollars nor more than sixty thousand dollars and to imprisonment for a term not exceeding five years;
- (b) in the case of a subsequent offence, to a fine not less than forty thousand dollars nor more than eighty thousand dollars and to imprisonment for a term not exceeding ten years;
- (c) where the offence is a continuing offence, to an additional fine of not less than five thousand dollars and to imprisonment for five days for each day on which the offence continues.

(2) Upon the conviction of any person for any offence under this Act, the court may, in addition to any other sentence imposed, declare any plant, plant product or other object in respect of which the offence has been committed, or which was used in connection with the offence, forfeited and disposed of as the court may direct.

Fixed penalties.

28. (1) Notwithstanding anything to the contrary in this Act or any other applicable law, where an authorised officer has reason to believe that any person (hereafter referred to as the "alleged offender") is committing or has committed an offence prescribed by regulations, the authorised officer may then and there serve notice in writing upon the alleged offender charging the offender with the commission of the offence.

(2) The authorised officer shall at the time of the service of notice referred to in subsection (1) inform the alleged offender that the offender must -

- (a) appear before the magistrate on the date specified; or
- (b) in accordance with procedures set out in subsections (3) and (4), pay the fixed penalty prescribed by regulations, in lieu of appearance before the magistrate.

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

- (a) within seven days of the date of the notice, sign the notice in acknowledgement of guilt and return it, together with the sum cited therein, to the clerk of the magistrate's court;
- (b) 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 shall be dealt with by the magistrate in the same manner as adjudication in court of an offence punishable on summary conviction and for which no conviction is recorded.

PART VII MISCELLANEOUS AND GENERAL PROVISIONS

Duty to assist
and cooperate.

29. Customs, port, airport, airline, postal, shipping, police, provincial and local authorities shall assist authorised officers in the performance of their functions and exercise of their powers under this Act by providing such facilities and assistance as the Institute may request from time to time.

Right of appeal.

30. (1) Any person aggrieved by an action or decision of an authorized officer or an official analyst under this Act may appeal to the Institute within the prescribed time period and in the manner prescribed by regulations.
- (2) The decision of the Institute on any appeal lodged under subsection (1) shall not prejudice the right of any aggrieved party to seek recourse in the courts.

Good faith
defence.

31. No authorised officer, official analyst or other representative of the Institute shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of official functions under this Act.

Presumptions.

32. In any proceedings under this Act, a certificate of analysis purporting to be signed by the director or head of an official laboratory or by an official analyst shall be accepted as prima facie evidence of the facts stated therein, provided that-

- (a) the party against whom it is produced may require the attendance of the official analyst who performed the analysis, for purpose of cross-examination;
- (b) no such certificate shall be admissible in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

Powers of the
Minister to
make
regulations.

33. (1) The Minister may, on the advice of the Institute, make regulations for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations providing for any of the following -

- (a) the lists of regulated pests and national pests of concern;
- (b) the procedures for implementation of phytosanitary measures and emergency phytosanitary measures;
- (c) the procedures for surveillance, inspection, sampling, testing, treatment, confinement at quarantine stations, transport, reshipment and destruction;
- (d) the declaration and implementation of provisional quarantine and quarantine;
- (e) the establishment, membership, mandate and operating procedures of any committees set up under this Act;
- (f) implementation of certification programmes;
- (g) nursery registration;
- (h) fertilizer registration;
- (i) the designation of official points of entry;
- (j) phytosanitary requirements for the import of plants, plant products and other regulated articles;

- (k) the procedure by which an area may be declared pest free or of low pest prevalence;
- (l) the procedures to be followed by authorised officers, official analysts and official laboratories in the exercise of their functions under this Act;
- (m) the level of fees and costs for inspection and analysis or any other official actions taken under this Act;
- (n) the forms to be used for the purposes of this Act, including applications, permits, certificates and receipts for articles seized, as well as the relevant application procedures;
- (o) the offences that will be subject to a fixed penalty as set out in section 28, as well as the applicable procedures;
- (p) the appeal procedures applicable under this Act;
- (q) any other matters deemed necessary to achieve the purposes of this Act.

Savings and
repeal.

34. (1) The Plant Protection Act is repealed.

Cap. 68:03

(2) All applicable subsidiary legislation made under the repealed Act, not inconsistent with this Act, shall continue to apply as if they were made under this Act unless or until revoked or amended under this Act.

Passed by the National Assembly on 19th May, 2011.

S.E. Isaacs,
Clerk of the National Assembly.

(BILL No. 6/2011)