

MALAWI GOVERNMENT

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Act

No. 19 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
20th August, 2018

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An Act to provide for the protection of plants, the establishment of the Plant Protection Unit; for the eradication of pests and diseases destructive to plants; for the prevention of the introduction and spread of pests and diseases destructive to plants and plant products; for the promotion of appropriate measures for their control; for the repeal of the Plant Protection Act (Cap 64:01); and for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and
commence-
ment

1. This Act may be cited as the Plant Protection Act, 2018, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“area of low pest prevalence” means an area within Malawi, as identified by the Unit in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

“board of inquiry” means a board of inquiry appointed for the purposes of appeals under section 26;

“consignment” means a quantity of plant material or other regulated articles being moved within, or and from Malawi, and covered when required, by a single phytosanitary certificate;

“container” means any box, bag, case, package, pot, sack or other receptacle in which plant material or other regulated articles have been or are being transported, and includes any covering, wrapping or packing material;

“conveyance” means any vessel, aircraft, train, vehicle, cart, container, animal or any other thing that can convey plants, plant products, pest, soil or other regulated articles from one place to another;

“disease” means malfunctioning of the physiological and morphological characteristics of a plant, transmissible or believed to be transmissible by a causal agent or by the propagation of an infected plant;

“endangered area” means an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;

“FAO” means the Food and Agricultural Organization;

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

“harmful organisms” means any species, strain or biotype belonging to the animal kingdom or plant kingdom or pathogenic, infectious agent—

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

(b) injurious to plants or plant products; or

(c) capable of producing a disease;

“host plant” means a plant that supplies food resources and substrate for a pest;

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

“import permit” means an official document authorizing importation of a plant, plant product or regulated article;

“importation” means the introduction of plants, plant products or any regulated articles into Malawi, however acquired, and for whatever purposes;

“inspection” means the examination of any aspect in relation to plant health in order to verify that such aspect complies with the

plant protection requirements under this Act;

“interception” means the refusal or controlled entry of an imported consignment due to failure to comply with phytosanitary rules;

“international standards” means standards developed under the IPPC and FAO;

“introduction” means the entry of a pest resulting in its establishment;

“invertebrate” means a living animal species without a backbone in whatever stage of development it may be;

“IPPC” means the International Plant Protection Convention;

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

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

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

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

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

“pest free area” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

“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;

“phytosanitary certificate” means an official document related to phytosanitary state of plant or plant products issued by an officer of the Unit or a national plant protection organization of any other country;

“phytosanitary control” means the exercise of the state control in the field of plant protection and quarantine, use of pesticides, biological substances and other plant protection;

“plant” means living plants and parts thereof, including seeds and germplasm;

“plant health inspector” means a person appointed pursuant to section 5;

“plant products” means unmanufactured material of plant origin including grain and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;

“plant protection” means the implementation of complex measures with a view to protect plant and plant products against pests;

“plant pathogen” means an organism that causes a disease on a plant;

“plant quarantine” means a regime of measures directed to prevent the entry into Malawi and spread thereof, of pests to which quarantine is applied, in plants and plant products;

remises” means any building or other structure situated on land;

“quarantine area” means an area declared as such under this Act;

“quarantine pest” means a pest of potential economic importance to the area endangered and not yet present there, or present but not widely distributed and being officially controlled in Malawi;

“regional standards” means the phytosanitary standards established by the Inter-African Phytosanitary Council;

“regulated article” means any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;

“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 and which is therefore regulated within the territory of the importing contracting party;

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

“Unit” means the Plant Protection Unit designated under section 4.

PART II—PRINCIPLES OF PLANT PROTECTION

Principles of
plant
protection
and
phytosanitary
control

3. —(1) Plant protection and phytosanitary control in Malawi shall be organized in accordance with international and regional agreements to which Malawi is a party, accepted international and regional standards, regulations and recommendations in the field of plant protection and quarantine, and based on the following principles—

(a) coordination, meaning that phytosanitary control measures directed to protection of plant and plant products against quarantine pests shall be prepared and applied within the framework of international collaboration and based on uniform principles;

(b) equivalence, meaning that foreign states shall be provided with reliable information on phytosanitary situation existing in the country during international trade in plant and plant products; and equality of legal force of phytosanitary measures carried out within such countries shall be accepted;

(c) transparency, meaning that the international organizations shall be informed on legal acts in the field of plant protection enacted in Malawi, as well as changes and amendments made thereto; providing exchange of data related to implemented phytosanitary measures;

(d) risk assessment, presuming that phytosanitary control measures implemented within Malawi shall be scientifically justified; techniques of risk assessment, methods of production, processing, control, expert examination and testing elaborated by relevant international organizations shall be taken into account; risk of entry into the country territory and spread of quarantine pests and their going out of the state border shall be reduced to a minimum; safety of human beings, environment and economy of an area shall be provided;

(e) determination of the level of phytosanitary protection, in accordance with this principle for the purpose of ensuring the protection of plant and plant products against pests, a conception of the phytosanitary protection level is defined by this Act and shall be applied in a regular, stable and sequential order and in compliance with international standards; and

(f) adaptation to the regional conditions, meaning that when evaluating the phytosanitary conditions and characteristics of a region, geographical position of countries of importation and exportation of plant and plant products, ecosystems, epidemiological control factors, as well as efficiency of the

phytosanitary control measures, existence of plant diseases and pests that are typical to the area, the level of spread, destruction and control programs shall be taken into account, conceptions determining the phytosanitary protection level shall be recognized.

(2) Subject to any law in Malawi, other principles of plant protection established by international or regional agreements to which Malawi is a party, shall be applicable.

(3) A plant health inspector

PART III—ADMINISTRATION

4. —(1) The Minister shall establish a Unit within the Department of Agricultural Research Services in the Ministry of Agriculture, to be called the Plant Protection Unit, to be responsible for the protection of agricultural plant resources in Malawi and to administer and enforce this Act.

The Plant
Protection
Unit

(2) The Unit shall carry out the following functions in order to enforce this Act—

(a) propose, review and formulate the phytosanitary measures and other necessary regulations under this Act and matters arising from the application of any such measures and regulations;

(b) conduct surveillance and inspection of growing plants, including areas under cultivation and wild flora, and of plant material in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and for the purpose of preventing the introduction or spread of pests;

(c) protect endangered areas, as well as designate, maintain and keep under surveillance pest free areas and areas of low pest prevalence;

(d) promote integrated pest management and control in Malawi;

(e) declare any pest as a quarantine pest or a regulated non-quarantine pest under this Act;

(f) conduct the periodic updating and dissemination of lists of plant material and other regulated articles, the importation of which into Malawi is prohibited or restricted based on pest risk analysis or applicable international standards;

(g) provide clear justification to other countries concerning phytosanitary measures applied, either through pest risk analysis or by reference to applicable international standards, and notify the relevant international and regional organizations as well as

trading partners of adopting new measures or modification of the existing measures, or relevant instances of non-compliance with import requirements;

(*h*) establish auditing and trace-back procedures for plants, plant material and other regulated articles for phytosanitary certification;

(*i*) organize the exercise of pre-clearance inspections where requested by importing countries;

(*j*) ensure the preservation of the phytosanitary security of consignments after certification and before export;

(*k*) organize disinfestations or disinfections of consignments of plants, plant material or other regulated articles;

(*l*) organize and control the issuance of phytosanitary certificates and import permits by plant health inspectors;

(*m*) promote public awareness relating to regulated pests and the distribution of information regarding the means of their prevention and control;

(*n*) establish minimum qualifications and the oversight of training and development of plant health inspectors, and other staff;

(*o*) develop pest diagnostic, investigative and analytical capabilities as well as the establishment of laboratories and quarantine stations at such places as may be deemed necessary;

(*p*) establish the procedures for accreditation of any quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in phytosanitary matters;

(*q*) liaise with competent authorities in neighboring countries on plant protection matters;

(*r*) carry out international cooperation in the field of plant protection and to participate in relevant sub-regional, regional and international organizations, and provide information regarding import and export regulations in force, and technical requirements for plant material and other regulated articles, on request of any interested international, regional or a similar organization in another country;

(*s*) charge and collect fees in respect of Phytosanitary certificates or permit applications made by applicants and for other services provided by the Unit; and

(*t*) perform any other functions the Minister thinks necessary to achieve the objectives of this Act.

(3) The Unit may, with the consent from the Minister responsible for Finance, use the funds collected as fees in accordance with section 4 (2) (s) to run its operations, in addition to the money received from the Government.

5. —(1) The Minister may, in writing, appoint plant health inspectors, or may authorize any qualified employees of the Unit, to exercise the powers or perform the duties of a plant inspector under this Act.

Plant health
inspectors

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

6. —(1) A plant health inspector with appropriate identification may, in the performance of his functions under this Act, and upon production of his written authorization by the Minister, if demanded—

Powers of
plant health
inspectors

(a) at all reasonable times, enter upon and inspect any land, premises, buildings as well as any other objects of legal entities and natural persons dealing with production, processing, procurement, storage and sale of plant and plant products, including roads, air ports, railway stations, post offices, elevators, warehouses, vehicles or vessels in which growing media or plants may be found, in which he or she reasonably suspects that a pest may be found;

(b) inspect any growing media, and plants, and for the purpose of detecting pests, expose the roots of any plant, remove bark or cut any plant or open any container which he or she believes to contain growing media or plants, liable to harbour a pest;

(c) inspect consignments of plant material and where appropriate, verify the pest status of such consignments by taking samples or otherwise;

(d) inspect and supervise, storage and transport facilities of plant material and regulated articles, particularly with the objective of preventing the introduction of pests across the national borders;

(e) examine materials, conduct phytosanitary inspection of materials under the quarantine control, imported into and exported from Malawi, including plants and plant products brought in luggage, postal parcels and hand luggage;

(f) conduct inquiries and request information or documentation upon suspicion that provisions of this Act are being violated;

- (g) issue phytosanitary certificates on behalf of the Unit; and
- (h) take appropriate measures against violations of this Act.

(2) While exercising their powers, plant health inspectors shall make decisions on the following issues within their competence—

(a) order the taking of measures which are prescribed or are reasonably necessary for the eradication or prevention of a pest, such as neutralization, withdrawal or liquidation of plants and plant products, the danger of which was proved by the results of their phytosanitary expertise or laboratory examination;

(b) declare any plants, plant products, growing media or containers to be infested with a pest;

(c) order the destruction at any time of any host plants or any plants declared by him or her to be infested with a pest, or any plant which is growing on land or in any growing media contrary to the provisions of this Act; and

(d) if he or she reasonably suspects the presence of a pest on land, premises or in a building, declare the area in which the land, premises or building is situated to be an infested area, and in writing prohibit for a period not exceeding fourteen days, the removal from the land, premises or building of growing media, plants, containers or other things whatsoever capable of spreading a pest.

Duties of
plant health
inspectors

7. —(1) Plant health inspectors shall carry out their activities in accordance with this Act.

(2) While exercising any of the powers and duties under this Act, a plant health inspector shall upon request produce an identification card. who orders anything to be seized, detained or destroyed shall, as soon as practicable, notify the owner of that thing of the steps taken and the reasons therefor; and shall upon request, provide a receipt for anything seized.

(4) Where a seizure under this Act is not made in the presence of the owner, a plant health inspector shall within 3 days notify the owner about the seizure of the thing.

(5) A plant health inspector shall always be present whenever the seal on any sealed container with plants or plant material or other regulated articles is being broken.

(6) A plant health inspector shall perform the neutralization of materials under quarantine control only within the appointed places and within indicated time period.

8. —(1) A person owning land, premises, a building, company or a growing medium or plant, or the agent thereof shall—

Responsibilities and obligations of persons in relation to plant protection

(a) afford a plant health inspector access thereto and give information and provide labour and facilities as the plant health inspector may require for the purposes of carrying out an inspection under this Act;

(b) if necessary, create the due conditions in their territories and objects, upon the request of the relevant executive authority for the purpose of conducting a phytosanitary control and inspection and introduction of the quarantine objects or plant protection being under the phytosanitary control;

(c) comply with the orders of plant inspectors given in accordance with this Act and in relation to storage, transportation, use and neutralization of plant products and prevent the pollution of environment with poisonous substances;

(d) ensure the carrying out of plant protection measures for the prevention or restriction of the spread of pests subjected to quarantine in accordance with this Act;

(e) comply with decisions and instructions taken by the plant inspectors for the purposes of the implementation of phytosanitary measures;

(f) inform a plant inspector or the Unit in time about existence of pests subjected to quarantine in territories where they work and other places;

(g) not permit the neutralization of materials being under the quarantine control outside the appointed places and to assist the plant inspector in such activities as neutralization and cleaning of quarantine objects being under the phytosanitary control, if required; and

(h) perform other duties and obligations in the field of plant protection as established by this Act or requested by a plant inspector in the exercise of his or her duties.

(2) Where an owner of land or premises fails or neglects to take all or any of the measures which are required to be taken in accordance with this section, a plant inspector shall—

(a) on giving the owner not less than seven days' notice in writing of his intention so to do, cause the measures to be taken; and

(b) if satisfied that the measures must be taken without delay, cause the measures to be taken immediately without giving the notice referred to in paragraph (a).

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

(4) All persons are encouraged to establish purposeful funds at their own expense to assist in the implementation of the plant protection measures.

PART IV—IMPORT AND EXPORT

Importation

9. —(1) For the purposes of preventing the entry of pests from foreign countries and their spread in Malawi, plant protection control points shall be set up in a manner provided by this Act and their placement and activities shall be coordinated by the Unit.

(2) A person shall not import into Malawi any plant or plant material or other regulated article except in accordance with this Act.

(3) A plant, plant material or other regulated article shall not be imported into Malawi unless it is—

(a) brought into the country via a designated point of entry;

(b) declared and offered for inspection on arrival; and

(c) accompanied by an import permit granted by the Unit and an original phytosanitary certificate issued by a similar organization in the exporting country.

(4) A person in charge of a transporting or storing facility of anything required to be declared under this Act for phytosanitary inspection at the border shall make the consignment and its contents available for inspection by a plant inspector, immediately upon arrival into Malawi.

(5) A person engaged in transportation and related services shall notify the Unit or any of its plant health inspectors of the arrival of any plants, plant material or regulated articles in Malawi and shall keep such consignment until a plant health inspector takes custody of them.

(6) Notwithstanding subsection (5), the Unit may exempt a plant, plant product or regulated article from the requirements of obtaining an import permit or phytosanitary certificate upon written approval.

10.—(1) An importer shall report to a plant health inspector in charge of a point of entry about the arrival of any consignment of plant, plant product or regulated article and shall apply for phytosanitary inspection to that plant health inspector.

Declaration
of arrival of
plants and
plant products
for inspection

(2) Any person arriving in Malawi with plant, plant product or regulated article whether as accompanied or checked-in baggage, shall declare such items to a plant health inspector at the point of entry.

(3) A person in charge of a Customs Department, a Maritime Port, a Post Office, an airline operating in Malawi, an airport, a railway station, a Police Station and a local authority who has knowledge of the arrival of any plant, plant product or regulated article in Malawi, shall promptly report such arrival to a plant health inspector, and shall retain custody of the plant, plant product or regulated article, until a plant health inspector approves its release.

11.—(1) A plant health inspector shall inspect plants, plant products, or regulated articles at the point of entry and shall verify the accompanying documentation to ensure that the consignment complies with the import phytosanitary requirements.

Inspection

(2) Upon application by the importer and payment of the prescribed fees, in cases where and where the container has been sealed and labeled, the Unit may require an inspection to be carried out by a plant health inspector at the final destination.

(3) Inspections under paragraphs (1) and (2) shall be carried out during regular business hours, except upon the request of the importer and upon payment of the prescribed fee, inspections may be carried out at any other time.

(4) Based on the import requirements and the nature of the imported material, a plant health inspector shall inspect the consignment and may—

(a) take samples for laboratory tests; and

(b) undertake follow up inspection during active growth stages.

12. No consignment of plants plan products or regulated articles imported to Malawi shall be released unless—

Import
clearance

(a) an importer has presented to a plant health inspector all permits, certificates and any other documentation; and

(b) the plant, plant product or regulated article is, or has been presented to and released by a plant health inspector in accordance with this Act.

Notification
of
interceptions

13.— (1) Where a consignment does not meet all the phytosanitary requirements provided by this Act, that consignment shall be intercepted and the Unit shall notify the consignee, and the exporting country's plant protection authority in writing.

(2) Intercepted consignment shall be seized, detained, treated, disposed or destroyed at the expense of the consignee in accordance with this Act.

(3) A plant health inspector who causes a consignment or items of plant, plant product or regulated article to be seized, detained, treated, disposed of or destroyed shall, as soon as practicable but not exceeding 14 days, notify in writing the consignee through an interception notice.

(4) Subject to the provisions of subsection (2), a plant health inspector may order the seizure, detention and destruction without compensation of any imported growing medium or plant or injurious organism or invertebrate, together with the container thereof which is—

(a) imported in contravention of the provisions of this Act;

(b) imported otherwise than in accordance with the conditions of a permit to import issued under this Act; or

(c) not at the time of importation accompanied by such a certificate of origin, phytosanitary certificate, or other document as may be prescribed or which is accompanied by such a certificate or other document which is incorrect in any material particular.

(5) Where an importer or owner of a growing medium or plant or other thing which has been the subject of an order of destruction under this section, other than a growing medium or plant which has been declared by a plant health inspector to be infested with a pest, gives notice of his intention to appeal in accordance with section 26, the order of destruction shall not take effect until the period specified for lodging notice of appeal elapses or the appeal lodged is dismissed, withdrawn or abandoned.

Import
procedures

14.—(1) Where risks associated with the importation of a plant, plant product or regulated article are unknown, the Unit shall undertake a pest risk analysis prior to allowing importation.

(2) The Unit shall request for pest risk analysis information from the plant protection authority of the exporting country.

(3) The plant protection authority of the exporting country shall be responsible for the provision the pest risk analysis information to the Unit.

(4) Upon conducting a pest risk analysis, where risks associated with importation of a plant, plant product or regulated article are—

(a) minimal, the Unit may grant an importation permit;

(b) substantially high, the Unit may grant permit for importation under plant quarantine procedures;

(c) very high, the Unit shall prohibit importation except for the purpose of restricted essential—

(i) scientific research; or

(ii) experiment or education.

(5) The importation allowed in sub-section (4) (c) above, shall be restricted in those that will contribute significantly to a rise in agricultural production or the protection of the natural environment in Malawi and shall be subjected to the quarantine procedures specified in this section.

(6) For the purposes of undertaking quarantine procedures the Unit may designate any of its sub-stations as a quarantine station; or specific area or facility as a provisional quarantine.

(7) Where a provisional quarantine facility has been designated within the property of the importer for the plant, plant product or regulated article, the property owner shall ensure that such product is not taken from the quarantine facility without approval of Unit.

(8) The Unit shall regularly review the situation of any quarantine area or facility and may lift the quarantine, by written notice served on all affected owners or occupiers of any area or premises where—

(a) the relevant quarantine pest has been eradicated; or

(b) the Unit is of the opinion that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the affected area.

15. —(1) Where a consignment imported for re-export is re-packed or split up, and its phytosanitary integrity is not lost, the Unit shall issue a phytosanitary certificate for re-export.

Consignment
for re-export

(2) Where a consignment imported for re-export, loses its integrity in the course of being processed or otherwise exposed to infection or infestation by a pest, it shall be considered a consignment to be exported from Malawi.

(3) Re-export consignments shall be accompanied by their original phytosanitary certificates or a certified copy in addition to the re-export phytosanitary certificate.

Consignment
in transit

16.—(1) Where a consignment is not imported, but is in transit through Malawi without being exposed to infestation or contamination by pests, a phytosanitary certificate or a re-export phytosanitary certificate shall not be required.

(2) In cases where the consignment in transit has been handled in a manner that it loses its integrity or it is otherwise exposed to infection or infestation by a pest, it shall be considered a consignment to be exported and require the issuance of a phytosanitary certificate.

Export

17. A person shall not export any plant or plant product or regulated article from Malawi unless export is done in accordance with the Plant Protection (Export) Regulations made under this Act.

PART V—PEST CONTROL

Quarantine
objects under
phytosanitary
control

18. Quarantine objects under phytosanitary control in Malawi include the following—

(a) all types of plants, plant products, the list of which may be set out by the Unit as provided under this Act;

(b) collections of live fungi, bacteria, viruses, nematodes, ticks, insects and plant pathogens, samples of plants damaged by them, as well as plant herbaria and collections;

(c) agricultural machines and tools, transportation means, containers, all types of tares and packaging materials, industrial consumer goods and products made from plant and plant materials, peat, compost, other organic fertilizers, soil and soil monoliths and samples, that may be carriers of pests; and

(d) places of production, processing, procurement, storage, and sale of plant and plant growing products, agricultural lands and woodlands, courtyards and gardens and non-agricultural lands.

Declaration
of quarantine
pests

19.—(1) In accordance with the IPPC, the Unit shall declare any pest as a quarantine pest or a regulated non-quarantine pest under this Act and regularly update the established list of quarantine pests and regulated non-quarantine pests in Malawi.

(2) On the advice from Unit, the Minister may, by regulation, prohibit or restrict the import, sale, cultivation, propagation or movement of any plant, plant material or regulated article or any other thing capable of harboring or spreading a pest based on pest risk analysis or any applicable international standard.

Declaration
of quarantine
in an area

20.—(1) Where the existence of quarantine pests in Malawi has been confirmed, the Unit shall, for the purpose of pest control, make a proposal to the Minister to declare a quarantine in that area.

(2) Boundaries of the area, where the quarantine regime is applied, shall be determined by the Unit depending on the level of spread of the pest.

(3) Notice about the declaration of a quarantine regime in an area under this section shall be published immediately in the *Gazette* and the press, and notification shall also be made to legal entities and populations located in that area.

(4) The decision of the Minister relating to declaration of the quarantine in the area shall include, at least the following information—

(a) reasons for the declaration of the quarantine;

(b) location and boundaries of the area where the quarantine is declared; and

(c) list of quarantine restrictions and phytosanitary measures taken.

21. —(1) The following restrictions and phytosanitary measures shall be applied in the quarantine declared areas—

Restrictions
and
phytosanitary
measures
applied in the
quarantine
declared areas

(a) taking the plant protection measures specified by the Unit against the pests;

(b) imposing restrictions on the transportation of plant and plant products from or into, as well as within the area, where the quarantine is declared; and

(c) prohibition of replanting the plants susceptible to quarantine pests in that area.

(2) An official from the Unit or a plant inspector, where he or she considers it appropriate, shall give to the owner of the land or plot, located in the area adjacent to the quarantine declared area, an official notification to take phytosanitary measures in the area thereof within the designated period of time and shall raise demands on the owner of the place as provided for in this Act.

(3) If an owner of the land or plot fails to comply with such demands, the Unit official or plant inspector for the purpose of carrying out the phytosanitary measures required by the notification shall make a decision relating to destruction of plants, plant products and pests in that area.

(4) Costs of imposing restrictions and taking phytosanitary measures in quarantine declared areas shall be reimbursed at the expense of the State in cases provided for by this Act, and in all other case, they are to be carried out at the expense of the owner of the land or plot.

Declaration
of areas of
low pest
prevalence

22. —(1) The Unit shall declare an area of low pest prevalence, where it has determined a low prevalence of pests in the area and shall order the taking of appropriate phytosanitary measures and applying necessary control systems in order to retain the prevalence of pests at a low level.

(2) A person shall not be allowed to transport the plants and plant products from the area of low pest prevalence.

Declaration
of pest free
areas

23. —(1) The Unit shall regularly investigate the quarantine declared area and constantly keep under control the existence of pests subjected to quarantine in the area.

(2) Upon the completion of phytosanitary measures, the Unit shall put forward a proposal to the Minister to lift the quarantine regime in the pest infected area or part thereof.

(3) The Minister shall declare the quarantine declared area, including a place and site of product manufacture as a pest free area where—

(a) it is sure that quarantine pests are not present in the area;

(b) the phytosanitary measures, designed for the eradication of the quarantine pest from the area, are fully taken; and

(c) the surveillances are conducted to verify that the pest free area status is maintained.

(4) Transportation of plants and plant products from the quarantine declared areas shall be permitted only after it has been declared a pest free area in accordance with this section.

Compensation

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

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

Sale by
nurserymen
of plants
infested with
an injurious
organism

25. In cases where delivery from a nurseryman to a purchaser takes more than 3 days; and within seven days the purchaser of the plants finds that they are infested with an injurious organism he may return the plants to the nurseryman, and at the expense of that nurseryman and shall thereupon be freed from the liability to pay for them, or if he has paid for them he may recover the purchase price.

26. —(1) Subject to the provisions of section 13, the importer or owner of a growing medium or plant or other thing, the destruction of which has been ordered in accordance with the provisions of this Act may, within seven days of the date of the order, lodge with the Minister a notice of appeal against the order.

(2) Notwithstanding subsection (1), there shall be no right of appeal to the Minister in respect of—

(a) an order for the destruction of a growing medium or plant declared by a plant inspector to be infested with a pest; or

(b) an order of destruction made under section 14 (2) (c).

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

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

(5) A board of inquiry, for the purposes of this section shall consist of three members appointed by the Minister of whom —

(a) one member, who shall be the chairperson, shall be a legal practitioner; and

(b) not less than two other members who shall be persons not employed in the public service.

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

Cap. 18:01

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

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

(9) Any determination by the Minister or the board of inquiry under this section shall be final, but the High Court shall have jurisdiction to entertain applications for judicial review on the exercise of the powers and functions herein; and any such order by the Minister that the appellant shall pay any of the costs of the Government in connection with the appeal shall constitute a debt owing by the appellant to the Government.

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

PART VI—MISCELLANEOUS

Limitation of
actions
against
Government

27. A claim shall not lie against the Government, the Minister, the Principal Secretary, an official from Unit, a plant health inspector or any other servant or agent of the Government for anything done in good faith under the powers conferred by this Act.

Offences and
penalties

28.—(1) A person who—

(a) willfully resists, obstructs, impedes or hinders a plant health inspector in the exercise of his powers or the performance of his duties under this Act or any regulations made thereunder commits an offence and shall, upon conviction, be liable to a fine not exceeding three million Kwacha (K3,000,000) and to imprisonment for a period not exceeding two years;

(b) contravenes or fails to comply with any of the provisions of this Act or of any order or direction made or given under this Act, or of any regulations made thereunder, with which it is his duty to comply commits an offence and shall, upon conviction, be liable to a fine not exceeding three million Kwacha (K3,000,000) and to imprisonment for a period not exceeding two years;

(c) without reasonable cause, contravenes or fails to comply with any of the conditions of a permit or other document issued in accordance with this Act commits an offence and shall, upon conviction, be liable to a fine not exceeding three million Kwacha (K3,000,000) and to imprisonment for a period not exceeding two years;

(d) maliciously introduces a pest on to land or premises in Malawi commits an offence, and shall upon conviction be liable to a fine of five million Kwacha (K5,000,000) and to imprisonment for a period not exceeding three years;

(e) on being required to do so fails or refuses to produce to a plant inspector a permit, certificate or other documents which he

is required to have in accordance with this Act commits an offence and shall, upon conviction, be liable to a fine not exceeding three million Kwacha (K3,000,000) and to imprisonment for a period not exceeding two years;

(f) fails or refuses without reasonable cause to give information to a plant inspector when required to do so in accordance with this Act or knowingly gives false or incomplete information commits an offence and shall, upon conviction, be liable to a fine not exceeding three million Kwacha (K3,000,000) and to imprisonment for a period not exceeding two years; or

(g) for the purpose of obtaining, whether for himself or any other person, the issue of a permit, certificate or other document, makes a declaration or statement which he knows to be false in any material particular or does not know or believe to be true or knowingly makes use of a declaration, statement or document containing the same commits an offence and shall, upon conviction, be liable to a fine not exceeding three million Kwacha (K3,000,000) and to imprisonment for a period not exceeding two years.

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

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

29. —(1) The Minister may, on recommendations from Unit, make regulations for implementation and better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing such regulations may provide for—

Regulations

(a) the forms and the fees payable in respect of any permits or certificates or other documents required under this Act, and the manner of applications to be made in respect thereof;

(b) the issuance, duration, cancellation, surrender or amendment of, any permit, certificate or other document required under this Act; and the conditions which may be attached thereto;

(c) the regulation, prohibition, restriction or control of the importation or exportation of any plant, or class of plant or any growing medium, invertebrate, pest or other injurious organism; and

(d) the disinfection, treatment, destruction or disposal of pests, or plants infested or appearing to be infested with a pest, or anything whatsoever, whether similar in nature to a plant or not, which is liable to infest a plant with a pest.

(e) the prohibition, restriction and regulation of the removal, transport or export of pests, growing media or plants;

(f) the control and destruction of any plant infested with a pest;

(g) the prohibition, restriction and regulation of the cultivation and harvesting of plants if a pest cannot otherwise be readily or adequately controlled or eradicated;

(h) the control and destruction of host plants not under cultivation for the current season's crop;

(i) the reporting of the occurrence of a pest and the collection and transmission of specimens of a pest;

(j) the methods of planting, cleaning, cultivating and harvesting to be adopted and the precautions and measures, including the destruction of plants, to be taken by an owner of land for the purpose of eradicating a pest or of preventing or controlling attacks by or the spread of a pest;

(k) the destruction after harvest of a particular kind of plant by a specified date;

(l) the disinfection, fumigation or other treatment of any land, building, conveyance used for the storage or conveyance of any plant, agricultural produce or anything else whatever likely to infest a plant with a pest;

(m) the declaration of areas infested with a pest as infested areas and of areas around infested areas as quarantine areas;

(n) the registration and inspection of nurseries, the regulation of the sale or removal of plants from nurseries and the regulation of the sale of nursery stock;

(o) the payment and recovery of fees for any services carried out by an inspector under this Act;

(p) the detention and inspection before importation and exportation of growing media and plants and their containers, and the grant of phytosanitary certificates in accordance with such inspection;

(q) the disinfection, fumigation or treatment of imported growing media and plants and their containers;

(*r*) the immediate destruction, without compensation, of imported growing media and plants which, on inspection, appear to be infested with a pest or an injurious organism;

(*s*) the immediate destruction, without compensation, of an imported invertebrate if, in the opinion of an inspector, the invertebrate might be a potential danger to agriculture;

(*t*) the prohibition of the importation of growing media, invertebrates and plants except by specified ports or places of entry and routes and by specified methods of transport;

(*u*) the detention of imported growing media, invertebrates and plants for observation and the precautions to be taken during detention;

(*v*) the imposition and recovery of fees for sorting, disinfecting, fumigating or treating growing media and plants on importation;

(*w*) the disposal of imported growing media and plants in respect of which prescribed fees are not paid and of the proceeds, if any, resulting from their disposal;

(*x*) the issue of permits as a pre-requisite to the importation of growing media, injurious organisms, invertebrates and plants;

(*y*) the production of phytosanitary certificates signed by responsible persons or authorities in the country or territory of origin relating generally or specifically to—

(*i*) the freedom of imported growing media, invertebrates and plants, or the area in which they were produced or grown, from injurious organisms; and

(*ii*) the treatment of imported growing media and plants before dispatch from their place of origin;

(*z*) the production of certificates of origin of imported growing media, injurious organisms, invertebrates and plants and for the furnishing by the importer of particulars relating to imported growing media, injurious organisms, invertebrates and plants.

(2) Notwithstanding section 21(*e*) of the General Interpretation Act, the regulations made pursuant to this section may create offences in respect of any contravention to the regulations, and may for any such contravention, prescribe penalties for up to two million Kwacha and to imprisonment for a period of up to two years. Cap. 1:01

30. —(1) The Plant Protection Act is hereby repealed.

Repeal and
savings

(2) Any act done, power exercised or right acquired under the Plant Protection Act shall not be invalid by virtue of the repeal of the said Act. Cap. 64:01
Cap. 64:01

(3) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended, or repealed by subsidiary legislation made under this Act.

Passed in Parliament this twenty-sixth day of May, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament