CHAPTER 433

PLANT QUARANTINE ACT

To prevent the introduction into Malta of plant pests and diseases, to control and check the spread thereof and to provide for other matters incidental and ancillary thereto.

1st September, 2001

Act XVIII of 2001, as amended by Act III of 2004 and Legal Notice 426 of 2007.

PART I

Preliminary

1. The short title of this Act is Plant Quarantine Act. Short title.

2. (1) In this Act and in any regulations made thereunder, unless the context otherwise requires - Interpretation. *Amended by: III. 2004.54.*

"authorised officer" means an officer of the Police force, Customs Department, Postal Services or Plant Health Service or any other person authorised by the Director in writing to enforce or implement any provision of this Act;

"beneficial organism" means any organism, including fungi, bacteria, viruses, virus-like organisms, invertebrate or other animals, which is declared in writing by the Minister, after consultation with the Minister responsible for the protection of the environment, to be beneficial to Maltese flora or agricultural production;

"certification scheme" means a method of growing, monitoring and testing of plants to ensure that they are free from particular pests and diseases;

"Convention" means the International Plant Protection Convention, signed in Rome on the 6th December 1951 as amended or with any other convention prescribed by the Minister from time to time;

"conveyance" means any vessel, aircraft, hovercraft, train, vehicle, cart, container, animal or other thing which can convey plant material, plant pests, beneficial organisms or soil from one place to another;

"Department" means the Department responsible for plant health;

"designated point of entry" means a port, airport, post office or other place designated by the Minister as a place where the importation of plant material is permitted, and includes a freeport as defined in the Malta Freeports Act; Cap. 334.

"Director" means the Director responsible for the Department and includes, to the extent of the authority given, any officer authorised by him, in writing, to act in that behalf for any of the purposes of this Act;

"importer" includes anyone who, whether as owner, consignor, consignee, agent, broker or otherwise, is in possession of or in any way entitled to the custody of any plant material, plant pest, beneficial organism, soil or packaging landed or likely to be landed in Malta from another country;

"inspector" means any inspector appointed under article 26 and any other officer of the Plant Health Service or other person designated as such in writing by the Director from time to time;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"Minister" means the Minister responsible for Agriculture, and includes, to the extent of the authority given, any officer authorised by him, in writing, to act in that behalf for any of the purposes of this Act;

"packing material" means any material used to pack, contain or keep plant material, beneficial organisms, soils or plant pests;

"phytosanitary certificate" means a certificate relating to the phytosanitary condition and origin of a consignment of plants and, or, plant products prepared and issued in accordance with the Convention;

"plant material" includes any plant, plant part, propagative material, or plant product which can be affected by, or harbour, a plant pest;

"plant pest" means any form of plant or animal life or any pathogenic agent, other than a beneficial organism, capable of directly or indirectly injuring any plant material or beneficial organism, and includes genetically modified plant pests and weeds;

"plant product" means any unmanufactured material of plant origin and those manufactured products which, by their nature or that of their processing, may create a risk of plant pests spreading;

"planting" means any operation whereby plants are placed in such a way as to ensure their growth, reproduction or propagation;

"plants" means living plants and living parts thereof, including seeds, fruits and vegetables (except frozen), underground parts of plants, cut flowers, branches, trees with foliage and tissue cultures;

"propagative material" means any living plant or part of a living plant, used or intended for propagation, including a seed, corm, cutting, bud, rhizome or plant tissue culture;

"quarantine station" means an official station designated by the Minister as a place where plant material may be confined for phytosanitary inspection, observation, testing or research;

"soil" means any medium capable of sustaining plant life including earth, water, compost or clay but excluding any medium which is sterile or incapable of harbouring or transmitting plant pests;

"treatment" means any appropriate process, including the use of chemicals, heat or low pressure, for ensuring the removal, sterilisation or killing of a plant pest.

(2) For the purposes of this Act the terms "import" and "export" shall not include the introduction of a thing into Malta or the taking out of a thing from Malta, from or to respectively, a member state of the European Union, or to such extent as may be prescribed from or to such state as the Minister may prescribed, being a state forming part of the European Economic Area or a state having similar arrangements with the European Union.

PART II

Administration

Plant Health Service.

3. (1) The Director shall be responsible for the Plant Health Service and to administer and enforce the provisions of this Act.

(2) The Plant Health Service shall -

(*a*) inspect growing plants, areas under cultivation, and plants and plant products in storage or locally in transit, in order to report the existence, outbreak and spread of plant pests and to control plant pests;

(*b*) in respect of consignments of plant materials moving in international traffic -

(i) inspect the said consignments and, where appropriate, inspect consignments of other articles and commodities moving in international traffic under conditions where they may act incidentally as carriers of plant pests;

(ii) inspect and supervise storage and transport facilities of any kind, particularly with the object of preventing the dissemination of plant pests across national boundaries;

(iii) disinfest or disinfect consignments of plants and plant products, as well as their containers, packaging, storage places or transport facilities;

(*c*) determine the percentage of inspection checks to be carried out;

(*d*) issue phytosanitary certificates or plant passports;

(*e*) authorise nurseries to issue plant passports in accordance with regulations prescribed under this Act;

(*f*) periodically update and disseminate lists of plant material, plant pests and beneficial organisms the importation of which into Malta is prohibited or restricted;

(*g*) distribute information within Malta about pests of plants and plant products and how to prevent and control them;

(*h*) promote integrated pest management and control in Malta;

(*i*) conduct research and surveys in the field of plant protection;

(*j*) administer and enforce the provisions of this Act; and

(*k*) attend to such matters as the Director may prescribe.

Plant Protection Board.

4. (1) The Plant Protection Board shall consist of:

(*a*) a Chairman to be appointed by the Minister;

(*b*) four members, to be appointed by the Minister, at least one of whom shall be a farmer's representative;

(*c*) the Director, or his representative; and

(*d*) a representative from the educational sector, and a representative from the Public Health Department, the Department of Environment, the Malta Standards Authority, the Occupational Health and Safety Authority and the Water Services Corporation.

(2) The Board shall regularly review the state of plant quarantine in Malta on the formulation of policies in this regard, and advise the Minister on any matters with which this Act is concerned, particularly with respect to:

(*a*) the promulgation of regulations under this Act and matters arising from the application of any such regulations;

(*b*) the declaration of any plant pest as a notifiable plant pest pursuant to article 20;

(*c*) the phytosanitary implications of importing any plant material, plant products, pests, beneficial organisms or soil;

(*d*) the management, operation and requirements of the Plant Health Service; and

(*e*) the diagnosis, detection and identification of particular pests and diseases.

Plant Certification Schemes.

5. The Director may establish Plant Certification Schemes which shall follow international standards and shall be administered and updated by the Plant Health Service on the advice of the Board.

PART III

Importation

Prohibition to import.

6. No person shall import into Malta any plant material, plant pest, beneficial organism, soil or packaging material except in accordance with this Act.

Permits and certificates.

7. (1) Subject to the provisions of subarticle (2), any plant material, plant pest, beneficial organism, soil or packaging material shall only be imported into Malta through a designated point of entry and upon importation shall be declared and submitted together with the prescribed permits and certificates for examination by an inspector.

(2) The Minister may, after consultation with the Board, by regulation or notice published in the Gazette exempt certain classes of plant material from the requirement to be declared on importation.

(3) The Director may, after consultation with the Board, by

notice issued in the Gazette establish the details of the conditions under which and, or, treatments that any plant material, originating from such countries and, or, zones, as may be specified in the notice, has to be subjected to prior to importation.

Inspection.

8. The person in charge of any conveyance transporting or storing anything required to be declared under article 7(1) shall make the conveyance and its contents available for inspection and treatment by an authorised officer in accordance with this Act as soon as reasonably possible after arrival in Malta or at any other time reasonably directed by an inspector; who shall determine the place of inspection.

Notification to inspector.

9. Any person in Malta who receives any plant material, plant pest, beneficial organism or soil from outside Malta whether or not that person consented to it being dispatched, shall, on receipt, immediately notify an inspector and carry out the inspector's instructions regarding its destruction, disposal or treatment to the satisfaction of the inspector.

Seizure of plant harbouring a plant pest.

10. Anything imported into Malta, in transit through Malta or moved from one part of Malta to another, in contravention of this Act, together with any container used to transport it or other thing reasonably suspected of harbouring any plant pest, may be seized by the Police and may be destroyed, disposed of, treated or otherwise dealt with as an inspector or authorised person thinks fit, subject to the provisions of this Act.

Import permit.

11. (1) The Director may, by notice published in the Gazette, require that any class of plant material, plant pest, beneficial organism, soil or packaging shall not be imported into Malta from such countries or zones, as may be specified in the notice, except with an import permit and in strict compliance with the terms of the permit.

(2) The Director may -

(*a*) issue, refuse to issue or cancel an import permit; or

(*b*) prescribe in any import permit such terms and conditions as the Director deems appropriate and at any time, whether before or after importation, vary or add to the terms or conditions.

Phytosanitary certificate or plant passport.

12. The Director may, by notice published in the Gazette, require that any class of plant material, as shall be specified in the notice, shall not be imported except with a phytosanitary certificate issued or a plant passport recognised by the plant protection organisation of the exporting country in accordance with the Convention and which conforms in all material respects with either the model phytosanitary certificate for export or for re-export, as the case may be, in the annex to the Convention.

Prohibition or restriction.

13. (1) Notwithstanding anything contained in this Act, the Director may, after consultation with the Board, by notice in the Gazette, prohibit or restrict the introduction, sale, cultivation, propagation or movement of any plant material, plant pest, beneficial organism, soil, packaging or any other thing capable of harbouring or spreading a plant pest.

(2) Any notice given under subarticle (1) shall expire six

months after the date of publication in the Gazette, unless it is renewed.

Making of rules.

14. The Minister may, acting on the advice of the Board, make regulations establishing rules for the marketing of vegetative propagating and planting material and may by such regulations establish the conditions for the grant of permits for the importation and transport of any plant material, plant pest or other organisms for the purposes of scientific research or otherwise, subject to such terms and conditions as may be established in or referred to in the regulations to safeguard public health, agriculture and, or, the environment.

Assistance.

Cap. 37.
Cap. 254.

15. (1) All officers of Customs and of the Post Office shall assist the Department in preventing the importation into Malta of anything contrary to this Act and in so doing may exercise all the powers conferred upon them by or under the Customs Ordinance and the Post Office Act or any law replacing the same.

(2) Any officer of Customs or of the Post Office who becomes aware of the importation of any plant material, plant pest, beneficial organism, soil, packaging or other thing regulated by this Act, other than things which are not required to be declared pursuant to article 7(2), shall immediately notify an inspector or other designated officer of the Plant Health Service.

Moving or handling of any container.

16. (1) Subject to the provisions of subarticle (2), no plant material, plant pest, soil or packing materials under examination or liable to be examined by an inspector shall be moved or handled in any way, nor shall any container be opened, except in accordance with the directions of an inspector.

(2) An officer of Customs or of the Post Office may move and handle a thing referred to in subsection (1) to the extent necessary for the proper performance of that officer's duties provided that the enforcement and attainment of the objects of this Act are not prejudiced.

Registration with the Plant Health Service.

17. The Director may require any person involved in propagating, storing, importing, exporting, producing or otherwise trading in plant material to register with the Plant Health Service and comply with such requirements as the Director may reasonably require from time to time.

Examination and sampling.

18. Any person who has imported any plant material, plant pest, beneficial organism, soil or packaging shall, on demand by an inspector, allow the imported things to be examined and samples to be taken by an inspector at any reasonable time to enable the inspector to determine whether or not this Act and any permit issued under it, has been complied with and whether or not further steps should be taken.

PART IV

Export Control

Pre-export examination.

19. (1) Any person intending to export a consignment of plants or plant products to another country shall submit the consignment to the Plant Health Service for pre-export examination.

(2) Each consignment submitted shall be examined by an inspector within fourteen days of the date of export in accordance with the requirements of the country of destination and if the inspector is satisfied that the requirements for the issue of a phytosanitary certificate or plant passport have been met, the inspector shall issue a phytosanitary certificate or plant passport in accordance with this Act.

PART V

Containment and Eradication of Plant Pests

Declaration regarding notifiable plant pest.

20. (1) The Director may, by notice published in the Gazette, declare any plant pest to be a notifiable plant pest if it presents, or is likely to present, a threat to the production of or trade in plant materials or to the natural environment and if it is either not known to be established in Malta or is established in Malta but is the subject of measures for its eradication or containment.

(2) The occupier or owner of any land or premises on which a plant pest is found which is identified as, or is suspected to be, a notifiable plant pest shall immediately notify an officer of the Plant Health Service.

Declaration regarding infested areas.

21. The Director may, by notice published in the Gazette -

(*a*) declare any island or area in Malta which is infested or is suspected of being infested with any plant pest, to be an infested area;

(*b*) declare any land or premises which is infested or is suspected of being infested with any plant pest, to be under quarantine;

(*c*) prescribe any measures for the treatment or disposal of plant material, plant pests, soil or packaging, and the treatment of conveyances, whether or not they have been found to be infested, in order to limit the spread of the plant pest;

(*d*) prescribe the period within which it shall be unlawful to plant or replant the whole or part of any infested place or area under quarantine.

Written notice.

22. If the Director is satisfied that a notifiable plant pest is present at any place, the Director may cause a written notice to be served on the owner or occupier of such place and if he deems it appropriate for the purposes of this Act, on the owner or occupier of any land or premises in the vicinity, ordering each of them, within a period specified in the notice, to take whatever measures on their land the Director considers appropriate to eradicate, contain or restrict the spreading of the notifiable plant pest.

Non-compliance.

23. If an owner or occupier either cannot comply with any term of a notice issued under articles 17 or 18 or is unable to comply within the stipulated period and in either case advises the Director accordingly, the Director may authorise the Plant Health Service to enter upon the land or premises in question and to take whatever measures may be appropriate to carry out the requirements of the notice.

Regular reviews.

24. The Director shall regularly review the situation in respect

of any land placed under quarantine and, when he is satisfied that either the relevant plant pest has been eradicated or that after consideration of all relevant circumstances it would be inappropriate to continue to maintain the quarantine restrictions in respect of part or all of the land under quarantine, the Director shall, by notice published in the Gazette and by notice served on all affected owners or occupiers of the land, declare that from a specified date any land identified in the notice shall no longer be under quarantine.

Compensation.

25. (1) Subject to the provisions of subarticle (2), where any plant material or other thing is destroyed or harmed by any measures taken to eradicate, contain or limit the spread of a notifiable plant pest, the Minister may compensate the owner of the plant material or item destroyed or harmed from monies voted for that purpose by the House of Representatives.

(2) The Minister shall not be obliged to compensate any person who has suffered loss as a result of action authorised under this Act if the action was taken to remedy a situation caused wholly or partially by that person's negligence, failure to comply with lawful instructions or contravention of this Act.

(3) The Minister shall, on the advice of the Board, determine the amount of compensation payable in the circumstances of the case and may, by notice published in the Gazette, prescribe the procedures to be followed to claim compensation.

(4) Any person claiming compensation for any seizure or destruction under this Act of anything which was not infested with plant pests or otherwise injurious to plants or beneficial organisms who is aggrieved by a decision of the Minister under subarticle (3) may, make application to the Civil Court of competent jurisdiction, request a determination of the claimant's interest in or right over the property, the amount of compensation payable and to obtain payment and shall have the right to appeal to the Court of Appeal against any such determination.

PART VI

Enforcement

Appointment of inspectors.

26. (1) The Prime Minister shall appoint inspectors to enforce the provisions of this Act and the Minister shall ensure that they receive adequate technical training to enable them to properly perform their duties.

(2) The Minister may, on the advice of the Director, designate public officers in the Department to be temporary inspectors to enforce the provisions of this Act, together with the inspectors appointed under subarticle (1), and shall ensure that they receive adequate technical training to enable them to properly perform their duties.

Powers of entry, search and seizure.

27. In pursuance of their powers of entry, search and seizure according to law with respect to offences contrary to the provisions of this Act, the Police shall have the right to be accompanied and assisted by inspectors appointed under the provisions of article 26 or by other authorised persons, and the provisions of article 10

shall apply to anything seized in the execution of such powers.

Seizure.

28. Any inspector or authorised officer who causes anything to be seized, detained, treated, disposed of or destroyed shall, as soon as practicable, notify the owner or person having possession, care or control of the thing, of the steps taken and the reasons for them. If, in exceptional circumstances, the seizure is not made in the presence of such person, they shall be notified in writing in such manner as the Minister may from time to time prescribe.

PART VII

Offences, Penalties and Proceedings

Offences.

29. Any person who, either personally or through an employee or agent -

(*a*) grows, possesses, sells, offers for sale, transports or distributes in any manner -

(i) any plant material, plant pest, soil, beneficial organism or packaging in the knowledge that it has been imported into Malta contrary to the provisions of this Act; or

(ii) anything infested with a plant pest controlled under this Act or subject to a notice issued under articles 17 or 18;

(*b*) assaults, resists, threatens or wilfully obstructs any inspector or authorised officer in the execution of his functions under this Act;

(*c*) refuses or neglects to comply with any order or direction lawfully made or given under this Act;

(*d*) without reasonable excuse fails to answer any question asked by an inspector or authorised officer or to produce anything required to be produced;

(*e*) fails to allow a search or inspection authorised under this Act;

(*f*) prevents or attempts to prevent another person from complying with orders or directions, from answering questions, from producing any thing or from allowing searches or inspections under this Act;

(*g*) knowingly or recklessly provides information which is false in a material particular, for the purpose of obtaining any permit or certificate or for the purported compliance with any requirements of this Act;

(*h*) alters, forges, counterfeits, defaces or destroys any document presented to or issued by the Director under this Act; or

(*i*) contravenes any of the provisions of this Act or of any regulation made thereunder,

shall be guilty of an offence under this Act.

Penalties.
Amended by: L.N. 426 of 2007.

30. (1) Any person guilty of an offence under this Act shall, without prejudice to any other liability under any other law, on a

first conviction, be liable to a fine (*multa*) not exceeding four hundred and sixty-five euro and eighty-seven cents (465.87), and on a second or subsequent conviction to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) Where a person is convicted of an offence under this Act the court may, in addition to any other penalty that it may impose -

(*a*) order that all income and profits from the sale of such offending article be seized;

(*b*) impose an additional fine equivalent to the estimated economic benefit which the convicted person derived from the commission of the offence or would have derived had the offence remained undetected; and, or

(*c*) revoke any permit granted under this Act and debar the person convicted from holding another such permit for a period not exceeding three years.

Scheduled offences.

Cap. 291.

31. The Minister responsible for Justice may by regulations prescribe that certain offences under this Act shall be scheduled offences for the purposes of the Commissioners for Justice Act and may be tried by a Commissioner for Justice as an infringement.

PART VIII

Miscellaneous

Power to make regulations.

32. (1) The Minister may make regulations generally to give effect to any of the provisions of this Act, and, in particular, may make regulations for all or any of the following purposes:

(*a*) prohibiting or restricting the introduction into Malta of any plant material likely to introduce any plant pest into Malta, whether or not already present in Malta, or as having noxious or undesirable characteristics, or as being of an undesirable strain;

(*b*) prohibiting or restricting the introduction into Malta of any -

(i) soil, packaging or other thing specified in the regulations as being likely to introduce any plant pest into Malta, whether or not already present in Malta; or

(ii) plant pest or organism which is or is alleged to be a beneficial organism;

(*c*) designating points of entry and quarantine stations;

(*d*) prescribing procedures to be followed by any inspector or other person in the exercise of powers or the performance of obligations under this Act;

(*e*) prescribing procedures to be adopted for the treatment of imported materials regulated by this Act and of the conveyances bringing them to Malta to prevent or control the introduction of plant pests into Malta;

(*f*) providing for the control and care of plant material

kept or grown in isolation or in quarantine conditions whether in quarantine stations or elsewhere;

(*g*) requiring the provision and maintenance of such facilities as may reasonably be prescribed;

(*h*) providing for the inspection of domestic plant material, soil or packaging for export and the issue of appropriate phytosanitary certificates or plant passports;

(*i*) promoting co-ordination and co-operation among government departments and third parties in implementing and enforcing the provisions of this Act;

(*j*) inspecting growing plants, lands or other premises and plant material, including plant material in storage or being transported, to ascertain the presence or absence of plant pests;

(*k*) imposing and determining fees and other payments in relation to any permit or certificate required under this Act;

(*l*) prescribing forms to be used for the purposes of this Act;

(*m*) for the issuing, suspension and revocation of permits and certificates provided for under this Act;

(*n*) for carrying out, co-ordinating and encouraging research in the field of plant protection;

(*o*) for promoting public awareness of plant pests and their prevention, eradication and control including the use of beneficial organisms;

(*p*) liaising with competent authorities in other countries in plant protection matters;

(*q*) for the carrying out of the responsibilities of the Government under the Convention and any other international conventions relating to plant protection;

(*r*) prescribing punishments for offences under this Act;

(*s*) establishing rules for the setting up of protected zones and rules for the movement of certain plants, plant products or other objects through a protected zone, and for movements of such items originating in and moving within such protected zones; and

(*t*) recognising countries and, or, zones as being free from or exposed to particular pests and diseases.

(2) Any regulations and orders made under any of the provisions of this Act may be made in the English language only.

Non-compliance with this Act.

33. (1) Any person found guilty of an offence under this Act shall, upon an application by the Director after the sentence, be ordered by the Court to reimburse the Director for any expenses incurred by the Director, or by an inspector or other authorised officer, on account of that person having acted contrary to any order or instruction lawfully made or given under this Act.

(2) No appeal shall lie from a decision of the Court under subarticle (1). Any sum awarded by way of reimbursement by such a decision shall be recoverable as a civil debt, and that decision shall be an executive title in like manner as if it were included among the executive titles contained in article 253 of the Code of Organization and Civil Procedure.

Cap. 12.

(3) Without prejudice to the provisions of subarticles (1) and (2), the owner and importer of any plant material, plant pest, beneficial organism, soil or packaging which is disposed of or treated by the Plant Health Service or any other authorised person under this Act shall be jointly and severally liable to reimburse the Government for the costs of such disposal or treatment, which costs shall be recoverable in the manner provided in articles 466 and 467 of the Code of Organization and Civil Procedure.

Cap. 12.

Savings.
Cap. 195.

34. The Plant Protection (Fees) Regulations, 1998 made under the Agriculture (Plant Protection) Act, repealed by this Act, shall continue in force as if made under the provisions of this Act, and may be amended and revoked accordingly.