

THE PLANT PROTECTION BILL, 2022

Arrangement of Clauses

Clause

PART I—PRELIMINARY

1. —Short title.
2. —Interpretation.
3. — Application.
4. —Objects and purpose of the Act.

PART II—DEVELOPMENT, MANAGEMENT AND REGULATION OF PLANT PROTECTION MATTERS

5. — Role of National Government.
6. — Role of County Governments.
7. — Role of the Service.
8. — Designation of the National Plant Protection Organization.
9. — Contact point for the Convention

PART III— PART III—MANAGEMENT OF PLANT, PLANT PRODUCTS AND OTHER REGULATED ARTICLES

10. — The Kenya Technical Committee on Biological Articles and Control Agents
11. — Membership of the Technical Committee.
12. — Conduct of business and affairs of the Technical Committee.
13. — Secretariat of the Technical Committee.
14. — Restriction on importation.
15. — Importation through designated points.
16. — Plant import permit.
17. — Biological import permit.
18. — Register of importers.
19. — Plant import requirements register.
20. — Declaration on arrival of a consignment.
21. — Register of exporters.
22. — Phytosanitary certification and phytosanitary certificates.
23. — Non- compliance.

PART IV— MANAGEMENT OF PLANT PESTS

- 24. — Prohibition on introduction of pests.
- 25. — Pest risk analysis.
- 26. — Phytosanitary risk assessment.
- 27. — Plant quarantine station of Kenya.
- 28. — Designation of quarantine stations.
- 29. — Post entry quarantine facilities.
- 30. — Declaration of a new pest or pest of concern.
- 31. — Publication of occurrence of a new pest.
- 32. — Duty to report an unknown pest.
- 33. — Pest management measures.
- 34. — Pest management by an occupier or owner of land.
- 35. — Pest free areas.
- 36. — Containment measures.

PART V— SURVEILLANCE, CONTROL AND MONITORING

- 37. — Surveillance.
- 38. — Inspection of consignments.
- 39. — Access to conveyance.
- 40. — Monitoring during transshipment.
- 41. — Phytosanitary decontamination of used vehicles, machinery and equipment.

PART VI – EMERGENCY RESPONSE MEASURES

- 42. — Emergency measures.
- 43. — National Plant Health Emergency Response Committee.
- 44. — County Plant Health Emergency Response Committee.
- 45. — Conduct of business and affairs.
- 46. — Surveillance and early warning.

**PART VII — SUPPRESSION OF NOXIOUS AND INVASIVE
WEEDS OR PLANTS**

- 47. — Declaration of a plant as a noxious and invasive weed or plant.
- 48. — Duty of responsible persons to report declared noxious and
invasive weed or plant
- 49. — Power to order persons to clear land.

**PART VIII – MANAGEMENT OF TRANSBOUNDARY AND
MIGRATORY PESTS**

- 50. — Early warning systems for migratory pests.
- 51. — Reporting of migratory pests.
- 52. — Requirements for management of migratory pests.

PART VIII– CONTROL OF WOOD PACKAGING MATERIAL

- 53. — Control of wood packaging material.

PART IX –HEALTH AND SAFETY ASSURANCE

- 54. — Establishment of laboratories service.
- 55. — Phytosanitary measures.
- 56. — Control of regulated pests under research.
- 57. — Certification of nursery and tissue culture facilities.
- 58. — Certification of plants and plant products as organically produced.
- 59. — Registration and production of formulated products of biological articles.
- 60. — Monitoring of pesticide residues and heavy metal contaminants.

PART X— INSPECTORS AND LABORATORY ANALYSTS

- 61. — Plant health inspectors.
- 62. — County plant health inspectors.
- 63. — Powers of inspectors.
- 64. — Obstruction of inspectors.
- 65. — Laboratory analysts.

PART XI - PLANT HEALTH PROTECTION FUND

- 66. — The National Plant Health Protection fund.
- 67. — Establishment of County Plant Health Protection fund.

PART XII - MISCELLANEOUS PROVISIONS

- 68. — Fees and charges.
- 69. — General penalty.
- 70. — Dispute resolution.
- 71. — Personal liability.
- 72. — Phytosanitary investigation.
- 73. — Use of registered pest control products.

- 74. — Regulations.
- 75. — Repeals and transitional provision.

A Bill for

AN ACT of Parliament to provide for the prevention of introduction, establishment and spread of plant pests; management of plant pests; facilitate safe trade in plants, plant products and other regulated articles; and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title. **1.** This Act may be cited as the Plant Protection Act, 2022.

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

“Cabinet Secretary” means the member of Cabinet responsible for matters relating to plant protection;

“consignment” means any quantity of plants, plant products or other regulated articles being moved from one country to another and covered, when required, by a single phytosanitary certificate;

“conveyance” includes—

- (a) railway coaches , wagons and railway rolling stock;
- (b) watercrafts; and
- (c) any other means of transport not prescribed by this Act;

“County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to plant protection within each county;

“County Response Committee” means the County Plant

Health Emergency Response Committee constituted under section 33;

“disinfection” means the process of freeing a plant, plant product or other regulated articles from pathogens;

“disinfestation” means freeing a plant, plant product or other regulated articles from vertebrate and invertebrate pests;

“National Response Committee” means the National Plant Health Emergency Response Committee constituted under section 32;

“emergency response” means a prompt phytosanitary action undertaken to prevent, eradicate or contain an imminent, new or unexpected phytosanitary situation;

“infected area” means any area or place in which a pathogen occurs;

“infestation” means the presence of vertebrate and invertebrate pests in an area, plant, plant products or other regulated articles;

“intercept” means to refuse, or control entry or movement of a consignment due to failure to comply with phytosanitary regulations;

“noxious weed” means any weed considered to be harmful to the environment or animals, in accordance with this Act;

“other regulated articles” means any storage place, packaging, conveyance, used vehicles, machinery, equipment, container, soil and any other organism, object or material capable of harboring or spreading pest deemed to require phytosanitary measures;

“pathogen” means a microorganism causing disease in plants and plant products;

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

“pest of concern” means pest of economic importance as determined by a specific county;

“phytosanitary certificate for re-export” means a phytosanitary certificate issued for a consignment that has been imported into a country from which it is then exported;

“phytosanitary certificate” means an official document attesting that a consignment meets the phytosanitary import requirements;

“phytosanitary measure” means any legislation or official procedure to prevent the introduction and spread of regulated pests;

“plant import requirements register” means the plant import requirements register maintained by the Service under section 19;

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

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

“quarantine” means confinement of plant, plant products, other regulated articles, pests or beneficial organism for official inspection, testing, treatment, observation or research;

“regulated pest” means a pest of potential economic importance to the country or part of the country and absent or if present, not widely distributed and is controlled by the

Service;

No. 54 of 2012. “Service” means the Kenya Plant Health Inspectorate Service established under the Kenya Plant Health Inspectorate Service Act;

“Technical Committee” means the Kenya Technical Committee on Biological Articles and Control Agents established under section 10; and

“wood packaging material” means wood or wood products excluding paper products used in protecting or covering a commodity and includes a pallet or dunnage.

Application. **3.** These Regulations shall apply to the prevention and management of —

- (a) plant pests; and
- (b) plants, plant products and other regulated articles.

Objects and purposes of the Act.

4. The objects and purposes of the Act is to—

- (a) give effect to the International Plant Protection Convention by designating the National Plant Protection Organization;
- (b) put in place measures to prevent the introduction, establishment and spread of pests through plants, plant products and other regulated articles being stored, moved, propagated, researched, cultivated or growing in for commercial, imports or other purposes;
- (c) guide the trade and movement of plants, plant products and other regulated articles; and
- (d) provide for the management of pests including transboundary and migratory pests.

**PART II – DEVELOPMENT, MANAGEMENT AND REGULATION
OF PLANT PROTECTION MATTERS**

Role of National
Government.

5. (1) The National Government shall have the following functions under this Act—

- (a) providing policy direction on matter related to prevention and spread of plant pests;
- (b) establishing mechanisms for and coordination of management of transboundary, migratory pest and new pest incursions; and
- (c) capacity building for counties and other stakeholders to prevent the establishment and spread of plant pests.

Role of County
Governments.

6. The County Governments shall have the following functions under this Act—

- (a) receiving, verifying and analyzing pest reports from land occupiers or land owners at county level;
- (b) advising land occupiers or land owners on pest management practices at county level;
- (c) notifying the national government and the Service of the pest management status at the county;
- (d) undertaking pest surveillance at the county level;
- (e) undertaking pest management at the county level;
- (f) enforcing pest management measures prescribed by the Service;

- (g) establishing and operating plant clinics; and
- (h) building capacity of the producers and other county stakeholders on pest management.

Role of the
Service.
No. 54 of 2012.

7. Pursuant to section 5(a) of the Kenya Plant Health Inspectorate Act, the functions of the Service under this Act shall include the following—

- (a) advising the Cabinet Secretary on all matters relating to plant protection;
- (b) advising county governments on matters relating to plant health within the respective county;
- (c) providing mechanisms for early warning systems and rapid response on matters relating to plant health;
- (d) prescribing and enforcing phytosanitary measures for the prevention of establishment, spread and control of plant pests;
- (e) registering bio-fertilizers, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers and any related products and articles except biopesticides regulated under the in the Pest Control Products Act;
- (f) monitoring plant protection product residues and heavy metals in agricultural produce to support compliance to sanitary requirements;
- (g) supporting county governments and other stakeholders on matters relating to plant protection; and
- (h) advising the National Government, County Government and other stakeholders on emerging areas related to plant protection.

Cap 346.

Designation of
the National Plant
Protection
Organization.

8. (1) The Kenya Plant Health Inspectorate Service is designated as the National Plant Protection Organization for Kenya for purposes of the International Plant Protection Convention.

(2) The functions of the Service as the National Plant Protection Organization shall be to—

- (a) issue of phytosanitary certificates for exports and import permits for plants, plant products and other regulated articles;
- (b) grow plants to establish and report the occurrence, outbreak and spread of pests;
- (c) prescribe the phytosanitary measures to prevent the outbreak, and spread of pests;
- (d) inspect consignments of plants, plant products and other regulated articles to prevent the introduction or spread of pests;
- (e) provide for disinfestation or disinfection of plants, plant products and other regulated articles to meet phytosanitary requirements;
- (f) inspect plants during active growth, facilities handling plant products and other regulated articles to prevent the introduction or spread of pests;
- (g) provide for the designation, maintenance and surveillance of pest free areas and areas of low pest prevalence;
- (h) conduct pest risk analysis to establish import conditions and for market access; and
- (i) perform any other function for the furtherance of the objects of the functions of the Service as National Plant Protection Organization.

Contact point for
the Convention.

9. (1) The Service shall be the International Plant Protection Convention contact point.

(2) The Service shall serve as the National Enquiry Point on plant protection and plant health matter.

PART III—MANAGEMENT OF PLANT, PLANT PRODUCTS AND OTHER REGULATED ARTICLES

Kenya Technical Committee on Biological Articles and Control Agents

The Kenya
Technical
Committee on
Biological
Articles and
Control Agents.

10. (1) There shall be a committee to be known as the Kenya Technical Committee on Biological Articles and Control Agents which shall facilitate risk assessment for importation, exportation, local production and use of biological articles and control agents.

(2) Without prejudice to subsection (1), the functions of the Technical Committee shall be to—

- (a) evaluate through risk assessment, bio-fertilizers, biopesticides, biological control agents, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers and any related products and articles;
- (b) consider the efficacy trial reports for imported or locally produced bio-fertilizers, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers and any related products and articles except biopesticides and make recommendations to the Service for registration.

Membership of
the Technical
Committee.

11. (1) The Technical Committee shall consist of—

- (a) the director of the directorate responsible for matter relating to crop development in the Ministry responsible for matters relating to agriculture who shall be the chairperson ;

- (b) the Managing Director of the Kenya Plant Health Inspectorate Service or their representative;
- (c) the Director-General of the Kenya Agricultural and Livestock Research Organization or their representative;
- (d) the Chief Executive Officer of the Pest Control Products Board or their representative;
- (e) the director of the directorate responsible for matter relating veterinary services or their representative;
- (f) the Director General of the National Environment Management Authority or their representative;
- (g) the director of the directorate responsible for matter relating public health and sanitation or their representative;
- (h) the Managing Director of the Kenya Bureau of Standards or their representative;
- (i) one person representing the Council of Governors;
- (j) one person, with relevant technical expertise, representing institutions of higher learning; and
- (k) two persons, with relevant technical expertise, nominated by the relevant private sector associations or umbrella body or institution.

(2) The Technical Committee may co-opt any person with requisite knowledge and expertise to assist in the performance of its functions:

Provided that the co-opted members shall not:

- (a) vote on any matter for which a vote of the Technical Committee is required;

(b) count in determining the quorum of the Technical Committee.

Conduct of business and affairs of the Technical Committee.

12. (1) Unless otherwise provided, the Technical Committee shall undertake its business and affairs in the prescribed manner.

(2) The Technical Committee may constitute such sub-committees as may be necessary for the efficient performance of its functions.

Secretariat of the Technical Committee.

13. The Service shall provide Secretariat services to the Technical Committee.

Import of plant, plant products or other regulated articles

Restriction on importation.

14. (1) No person shall import a plant, plant product or other regulated article except in the manner provided for under this Act.

(2) Without prejudice to subsection (1), no person shall import an organism for research without approval by the Service.

(3) Any person who contravenes subsection (1) or (2) commits an offence.

(4) The Service shall put in place statutory and administrative measures to control the importation of any plants, plant products and other regulated articles likely to pose a phytosanitary risk.

Importation through designated points.

15. Any plants, plant products and other regulated articles shall be imported through points of entry designated by the Ministry responsible for matters relating to immigration.

Plant import permit.

16. (1) No person shall import plants, plant product and other regulated articles without a valid plant import

permit issued by the Service in the prescribed manner.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or twenty percent of the value of the imported consignment, whichever is higher, or to imprisonment for a term not exceeding one year, or to both.

Biological import
permit.

17. No person shall import bio-fertilizers, biological control agents, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers, biopesticides and any related products and articles without a valid biological import permit issued by the Service in the prescribed manner.

Register of
importers.

18. The Service shall maintain a register of all persons who import plants, plant products and other regulated articles for traceability and risk management.

Plant import
requirements
register.

19. The Service shall maintain a register of requirements for the importation of plants, plant products and other regulated articles.

Declaration on
arrival of a
consignment.

20. (1) A person, including a courier service operator, shall declare any plants, plant products and other regulated articles at designated points of entry to an inspector.

(2) A person in charge of a point of entry shall notify the Service of the arrival of a consignment of a plant, plant product or other regulated article in the prescribed manner.

(3) Where a person contravenes subsection (1) or (2),—

(a) the Service may intercept the plants, plant products and other regulated articles in the prescribed manner;

(b) the person shall be liable on conviction, to a fine

not exceeding two million shillings or to a imprisonment for a term not exceeding one year or both.

Export of plant, plant products or other regulated articles

Register of
exporters.

21. (1) The Service shall maintain a register and keep records of persons who export plants, plant products and other regulated articles for traceability and compliance.

(2) Registration by other competent authorities related to plants, plant products and other regulated articles may be a prerequisite for registration by the Service.

Phytosanitary
certification and
phytosanitary
certificates.

22. (1) Any plant, plant products and other regulated articles intended for export shall be subject to inspection and where necessary, testing by the Service to ensure compliance with the plant health and other requirements set by the importing country.

(2) A person who intends to export plants, plant product and other regulated articles shall apply for a phytosanitary certificate from the Service.

(3) The Service shall issue a phytosanitary certificate of plants, plant products and other regulated articles that have been inspected and found to meet phytosanitary requirements set by the importing country.

(4) The Service shall issue a phytosanitary certificate for re-export of a consignment of plants, plant products and other regulated articles imported are repackaged or split but the integrity therein is not lost.

(5) The Cabinet Secretary shall, in consultation with the Service, make regulations, providing for the form, validity, conditions for issuance and the cancellation of phytosanitary certificates.

(6) A person who forges, alters or falsifies, any certificate under this Act, or any writing or signature

required by or provided in this section commits an offence.

(7) A person who obtains a phytosanitary certificate, through false pretence from the Service or falsely represents the phytosanitary certificate commits an offence.

Non- compliance.

23. Where the plants, plant product and other regulated articles intended for export fail to meet the plant health requirements or requirements of plant protection product residues and heavy metal contaminants of the importing country, the Service shall restrict exportation and may detain or require destruction of the plant, plant product and other regulated articles intended for export at the exporters cost.

PART IV— MANAGEMENT OF PLANT PESTS

Introduction of pests

Prohibition
introduction
of
pests.

24. (1) A person shall not introduce a pest, noxious weed or invasive weed into the Kenyan territory.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding one year, or to both.

Risk analysis

Pest risk analysis.

25. (1) The Service shall conduct pest risk analysis to determine requirements for the importation of plants, plant products and other regulated articles.

(2) Without prejudice to subsection (1), the Service shall periodically conduct risk assessment to determine the noxiousness or invasiveness of plants or weeds.

(3) The Service shall maintain and publish a list of regulated pests, noxious weeds and invasive species that are prohibited or restricted from entering Kenya.

Phytosanitary risk assessment.

26. (1) The Service shall conduct phytosanitary risk assessment of biological articles and control agents to determine safety and import conditions prior to consideration by relevant agencies.

(2) The import conditions determined under this section shall be maintained by the Service in the plant import requirements register.

Plant quarantine stations

Plant quarantine station of Kenya.

27. The Kenya Plant Health Inspectorate Service Plant Quarantine and Biosecurity Station is designated as the plant quarantine station of Kenya.

Designation of quarantine stations.

28. Without prejudice to section 24, the Service may, by notice in the Kenya *Gazette*, designate any other substations as plant quarantine station.

Post entry quarantine facilities.

29. (1) The Service may, upon inspection, designate a post entry quarantine facility for holding imported consignments of plants, plant products and other regulated materials to verify if they are infested with quarantine pests.

(2) The Service may approve offshore third country quarantine facility for screening of plant pests on behalf of the Service prior to importation of plants, plant products and other regulated articles.

(3) The Cabinet Secretary may make regulations to give effect to this provision.

New pests, unknown pests and pests of concern

Declaration of a new pest or pest of concern.

30. (1) Where there is an emergence of a new pest or a pest of concern in the Kenya, the Service shall declare the pest as a new pest or pest of concern in the prescribed manner and classify the pests for purposes of this Act.

(2) Without prejudice to subsection (1), where there is

an emergence of a new pest or pest of concern within a county, the County Executive Committee Member may, in consultation with the County Response Committee, declare a pest to be of concern to the county for the purposes of this Act.

(3) The Service shall maintain a record of pests declared under this section.

Publication of occurrence of a new pest.

31. (1) The Service shall, from time to time issue reports and information on the occurrence or outbreak of pests, regulation of pests and the measures for their prevention and control.

(2) Any person who gives, publishes, makes false or misleading information on occurrence of a new pest commits an offence and shall, on conviction, be liable to a fine not exceeding two million Kenya shillings or to a term of imprisonment not exceeding one year or both.

Duty to report an unknown pest.

32. (1) Any occupier or owner of land who suspects that their plants or land is infected or infested with an unknown pest shall—

- (a) notify authorised officer on the pest presence or possible occurrence of the pest at the earliest time possible for identification and confirmation of its status;
- (b) contain the plants, plant products and other regulated articles or pest where applicable; and
- (c) take all reasonable steps to prevent the spread of the pest.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months, or to both.

Pest management measures

Pest management measures.

33. (1) The Service or the County Executive Committee Member, as the case may be, shall identify and prescribe pest management measures for eradication, containment and management of the pests.

Pest management by an occupier or owner of land.

34. (1) Without prejudice to subsection 32 (1), an authorised officer may require an occupier or owner of land to put in place any pest management measures to treat any plants, reduce or prevent the spread of any pest treat or destroy plants whether infected:

Provided that where there are two or more joint occupiers or joint owners, each owner or occupier shall be deemed an occupier or owner for the purpose of this Act.

(2) The Cabinet Secretary may, in consultation with the Service and county governments, make regulations to give effect to this provision.

Pest free areas.

35. (1) The Cabinet Secretary may, in consultation with the Service and county governments, put in place measures to establish and maintain a pest free area.

(2) The measures envisaged under subsection (1) shall include—

- (a) pest surveillance;
- (b) delineation of an area;
- (c) pest management; and
- (d) monitoring of pests of concern.

Containment measures.

36. (1) The Service or the County Executive Committee Member, as the case may be, may impose containment measures to prevent spread of regulated pests or pest of concern in a county or any part of Kenya.

(2) Where a pest or pests of concern has spread to

more than one county, the Service may, in consultation with County Executive Committee Member of the affected county, impose containment measures in the affected county.

(3) The Cabinet Secretary may by regulations make further provisions for the better carrying into effect to this section.

PART V— SURVEILLANCE, CONTROL AND MONITORING

Surveillance. **37.** The Service shall periodically conduct border surveillance to monitor unauthorised and illegal movement of plants and plant products and other regulated articles.

Inspection of consignments. **38.** (1) All plants, plant products and other regulated articles shall be inspected by the Service in the prescribed manner at designated points of entry upon payment of prescribed fee.

(2) All plants, plant products and other regulated articles inspected by the Service shall be accompanied by —

(a) a phytosanitary certificate from the country of origin;

(b) plant import permit from the Service and other relevant documents.

(3) Every importer of plants, plant products and other regulated articles shall ensure that such plants, plant products and other regulated articles are inspected in accordance with this Act.

(4) When undertaking an inspection under this section, necessary samples may be drawn by the Service for testing, to ascertain compliance with this Act and other import requirements.

(5) Where the consignment inspected under section meets the prescribed requirements, the Service shall release

the consignment to the importer:

Provided that, where the consignment was imported under quarantine, the consignment shall be released to the designated quarantine station or an approved post entry quarantine facility.

(6) Where the consignment inspected under this section fails to meet the prescribed requirements, the Service may order, at the importer's cost,—

- (a) the treatment and release of the consignment;
- (b) the destruction of the consignment; or
- (c) the consignment be shipped back to the exporting country; or
- (d) the detention of the consignment, for a period not exceeding six months, pending investigation and decision making.

(7) The Service may notify the exporting country of the non-compliance in subsection (6).

(8) Any person who tampers or removes a consignment detained by the Service under subsection (6) commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or imprisonment for a term not exceeding one year, or to both.

Access
conveyance.

to **39.** (1) An inspector shall have access to all conveyances for the purpose of carrying out phytosanitary inspection.

(2) A person in-charge of a point of entry shall facilitate the inspector's access to any conveyance for purposes of phytosanitary inspection including inspection of associated waste.

Monitoring
during
transshipment.

40. (1) The Service shall monitor phytosanitary risks associated with consignments on transit and transshipment.

(2) Where phytosanitary risks have been identified in (1) the Service shall prescribe mitigation measures for the containment of those risks.

Phytosanitary
decontamination
of used vehicles,
machinery and
equipment.

41. (1) Any used vehicle, machinery or equipment, imported into or transiting through Kenya, whether whole, disassembled or parts shall undergo phytosanitary decontamination at the importer's cost and in the prescribed manner prior to shipment to Kenya.

(2) Where the used vehicles, machinery or equipment are imported from countries where phytosanitary decontamination cannot be undertaken, the vehicles, machinery or equipment shall be decontaminated upon arrival and inspection carried out at the importer's cost.

(3) Where a used vehicle, machinery or equipment destined for export from Kenya is required to undergo phytosanitary decontamination by the importing country, the vehicle, machinery or equipment shall be decontaminated, by an authorized person, according to the importing country requirements at the exporter's cost.

(4) A person who contravenes this section commits an offence.

PART VI – EMERGENCY RESPONSE MEASURES

Emergency
measures.

42. (1) The Service may impose emergency measures where a new or unexpected phytosanitary risk is identified and for such a period as the Service may deem necessary.

(2) The Service shall notify all affected persons of any emergency measures imposed under this Part.

(3) The Service shall review the basis of the emergency measures imposed through pest risk analysis.

(4) Where the emergency measure is maintained after the review under subsection (3), the Service shall periodically evaluate the risk.

National Health
Emergency
Response
Committee.

Plant

43. (1) There shall be a National Plant Health Emergency Response Committee which shall be responsible for national contingency planning and management of plant health emergencies.

(2) Without prejudice to subsection (1), the National Response Committee shall be responsible for—

- (a) developing a national plant health emergency response plan;
- (b) coordinating implementation of the national plant health emergency response plan;
- (c) mobilising resource for addressing emergencies;
- (d) coordinating post emergency recovery processes; and
- (e) advising the Cabinet Secretary on emergency measures for the eradication and prevention of spread of pests including containment measures.

County Health
Emergency
Response
Committee.

Plant

44. A county government may, in consultation with the Service, establish a County Plant Health Emergency Response Committee for contingency planning and management of plant health emergencies within that county.

(2) Without prejudice to subsection (1), a County Response Committee shall be responsible for—

- (a) determining pests of concern to the county and develop county plant health response plans;

- (b) advising the respective County Government on plant health emergency response strategies outlined at the county level;
- (c) advising the respective County Government on early warning and rapid response strategies for pest incursions and outbreaks including containment measures;
- (d) mobilising resources for addressing emergencies; and
- (e) providing periodic reports to the National government on the status of implementation on emergency measures.

Conduct
business
affairs.

of
and

45. The Cabinet Secretary may, in consultation with the Service and county governments, make regulations on the membership and the conduct of business and affairs of the National Response Committee and the County Response Committee.

Surveillance and
early warning.

46. (1) The Service shall conduct regular surveillance so as to determine pest status and inform appropriate phytosanitary action.

(2) The county governments shall carry out surveillance in their respective counties to determine pest status for pest management.

(3) Without prejudice to subsection (1) and (2), other relevant stakeholders may carry out surveillance in accordance with their respective mandates.

(4) The findings of surveillance conducted under this section may be shared to the Service, stakeholders and other the County Governments.

(5) The Service may, in consultation with a respective county government and other stakeholders, develop and implement early warning systems for effective emergency

response within a county.

**PART VII — SUPPRESSION OF NOXIOUS AND INVASIVE
WEEDS OR PLANTS**

Declaration of a
plant as a
noxious and
invasive weed or
plant.

47. The Cabinet Secretary shall, by notice in the Gazette declare a plant or weed to be noxious or invasive.

Duty of
responsible
persons to report
declared noxious
and invasive
weed or plant

48. (1) For the purpose of this section, a "responsible person" means—

- (a) the occupier of land, or, in the case of unoccupied land, the registered owner thereof;
- (b) in the case of a mining location, the holder of that location;
- (c) in the case of government or community lands over which grazing or other rights have been granted the holder of those rights; and
- (d) in the case of land under the control of, or vested in, a county government, the county government concerned.

(2) A responsible person who knows or suspects that a declared noxious and invasive weed or plant occurs in their land shall—

- (a) report to county director or the Service, the presence of any noxious and invasive weed or plant; and
- (b) clear the noxious and invasive weed or plant, or cause it to be cleared from that land.

(3) A person who fails to comply with the provisions of this section commits an offence.

Power to order persons to clear land.

49. (1) Where an authorised officer finds on any land a plant declared to be a noxious and invasive weed or plant, the officer may, by notice in writing, require an owner or occupier of land to clear the land of the noxious and invasive weed or plant in the prescribed manner.

(2) A person who fails to comply with the notice under subsection (1) commits an offence.

(3) Where an owner or occupier fails to comply with a notice under subsection (1), the authorised officer may enter the land and eradicate the noxious and invasive weed or plant on the land at the owner's or occupier's cost or undertake any other appropriate measures.

(5) The Service shall, in consultation with relevant agencies, provide technical advice for the eradication of noxious and invasive weeds or plants under this section.

(6) A person who contravenes this section commits an offence.

PART VIII – MANAGEMENT OF TRANSBOUNDARY AND MIGRATORY PESTS

Early warning systems for migratory pests.

50. (1) The Cabinet Secretary shall, in consultation with the Service, put in place mechanisms for early warning systems for migratory pests that shall include —

- (a) monitoring and rapid detection of pest outbreaks;
- (b) data recording and transmission systems suitable for remote and difficult locations where monitoring is a challenge;
- (c) resource mobilisation and budgetary allocations;

- (d) capacity building in collection of data for forecasting;
- (e) development of incident command mechanisms for improved coordination amongst different stakeholders;
- (f) development of tools for vulnerable communities to establish systems to respond to emergencies: and
- (g) promoting knowledge exchange on pest management.

(2) The Service shall maintain an updated list of migratory pests reported in Kenya.

Reporting of
migratory pests.

51. An occupier or owner of a land which has been infested with any developmental stage egg, larvae or hoppers and adults of migratory pests shall report that occurrence to the county director or the Service in the prescribed manner.

Requirements for
management of
migratory pests.

52. (1) The management of migratory pests may be undertaken by the application of a broad-spectrum pesticide except—

- (a) over any public or private water;
- (b) over any visible standing water;
- (c) over any populated area; and
- (d) on land within the borders of an excluded area as declared by the respective county governments.

(2) A land owner or occupier on whose land migratory pests occur, shall use all measures that area approved to

control of the migratory pests.

(3) A person carrying out management of migratory pest shall report on each swarm, flock or infestation controlled to the county director or the Service.

PART VIII– CONTROL OF WOOD PACKAGING MATERIAL

Control of wood
packaging
material.

53. (1) Any wood packaging material imported into or exported from Kenya shall be treated and marked in the prescribed manner and at the importer's or exporters cost.

(2) A person who contravenes subsection (1) commits an offence

PART IX –HEALTH AND SAFETY ASSURANCE

Establishment of
laboratories
service.

54. (1) The Service may establish laboratories for the undertaking of its functions under this Act.

(2) The Service laboratories shall be the designated laboratories of Kenya to undertake analysis, testing, and diagnosis for the performance of its functions under this Act.

(3) A county government may establish laboratories for the performance of its functions under this Act.

(4) For the purposes of this Act, the Service may authorise persons to undertake diagnostic and analytical services on behalf of the Service.

(5) The person authorised in subsection (4) shall provide on request, relevant information related to authorised diagnostic activities.

(6) The Cabinet Secretary may, in consultation with the Service and county governments, make regulations for the qualification and procedure for authorization of persons.

Phytosanitary
measures.

55. (1) The Service may, for the purposes of this Act and at the owner's cost, carry out or authorize the carrying out of—

- (a) phytosanitary treatment;
- (b) phytosanitary decontamination; or
- (c) destruction of non-compliant consignments.

Control of
regulated pests
under research.

56. (1) No person shall carry out research on regulated pests or articles without the approval from the Service.

(2) The Service shall put in place measures to mitigate phytosanitary risks during the research under this section.

(3) The Service shall maintain a database of approved facilities handling regulated pests under research.

(4) A person who contravenes subsection (1) commits an offence, and shall be liable on conviction, to a fine not exceeding two million Kenya shillings or to imprisonment for a term not exceeding one year, or to both.

Certification of
nursery and tissue
culture facilities.

57. (1) No person shall propagate for sale plants under nursery or tissue culture facility without a valid plant health certification from the Service.

(2) A person who offers or exposes for sale any vegetative propagation material which has not undergone plant health certification by the Service commits an offence.

Certification of
plants and plant
products as
organically
produced.

58. (1) A person shall not certify their plant or plant products as organically produced unless they comply with the national or international organic certification requirements.

(2) The Service may authorise persons to be organic certification bodies for plants and plant products.

Registration and
production of
formulated
products of
biological
articles.

59. (1) No person shall locally produce, import or offer for sale formulated products of biological articles for commercialization unless the person is registered by the Service.

(2) A person who intends to produce locally biological articles for commercialization shall apply to the Service for approval of the production facility in the prescribed manner.

(3) No person shall distribute, stock, repack or store for sale formulated products of biological articles unless the product and their premises is registered by the Service.

(4) Without prejudice to subsection (1) and (3), any commercial biopesticides cleared by the Technical Committee shall be processed and registered in accordance with Pest Control Products Act.

(5) The Service shall maintain a database of approved products and facilities.

(6) A person who contravenes the provisions of subsections (1), (2) and (3), commits an offence, and shall be liable, on conviction, to a fine not exceeding one million Kenya shillings or to imprisonment for a term not exceeding six months, or to both.

Monitoring of
pesticide residues
and heavy metal
contaminants.

60. (1) The Service may continuously monitor the production, distribution, storage or sale of plants and plant products, whether locally produced, imported or for export, to—

(a) ensure compliance with national and international requirements;

(b) get information on the levels of plant protection products residues and heavy metals present in plants and plant products to inform enforcement measures by the

Service and various government agencies;

- (c) advise the government on the status of compliance of plants and plant products in relation to pesticide residues and heavy metals for policy intervention;
- (d) identify risk areas in the plants and plant products supply chain in relation to pesticide residues and heavy metals to improve systems of various value chains; and
- (e) notify importers and exporting countries of the non-compliance with requirements of pesticide residues and heavy metals.

PART X— INSPECTORS AND LABORATORY ANALYSTS

Plant health
inspectors.

61. (1) The Service shall appoint qualified persons to be plant health inspectors for the purposes of this Act.

(2), An inspector appointed under subsection (1) shall—

- (a) carry out phytosanitary certification of plants, plant products and other regulated articles for import or export;
- (b) conduct transboundary pest surveillance;
- (c) prescribe and enforce measures for establishment of pest free areas and areas of low pest prevalence;
- (d) phytosanitary certification of nursery facilities;
- (e) prescribe treatment of consignments of plants, plant products and other regulated articles;
- (f) monitor implementation of prescribed mitigation measures for phytosanitary risks in

plants, plant products and other regulated articles in research, on transit and transshipment;

- (g) receive and evaluate pest and migratory pest reports;
- (h) prescribe and enforce measures for management of noxious or invasive weeds and plants; and
- (i) evaluate status of noxious or invasive weed and plants.

County plant
health inspectors.

62. (1) A County Executive Committee Member shall appoint qualified persons to be county plant health inspectors for the purposes of this Act.

(2) An inspector appointed under subsection (1) shall—

- (a) receive and evaluate pest, noxious or invasive and migratory pest reports from farmers;
- (b) evaluate pest status of any plants, plant products or other regulated articles;
- (c) evaluate status of noxious weed or invasive weed;
- (d) undertake pest monitoring;
- (e) conduct awareness creation and capacity building of farmers in pest management;
- (f) implement measures for establishment of pest free areas in collaboration with the service; and
- (g) prescribe and enforce pest management, containment and eradication measures including in nursery facilities.

(3) Without prejudice to subsection (2) , a county plant health inspector shall not undertake roles relating to—

- (a) import and export of plants and plant products;
- (b) materials under research; and
- (c) activities under this Act that are outside the jurisdiction of their counties or at designated points of entry.

Powers
inspectors.

of

63. (1) An inspector appointed under this Part shall have power to—

- (a) enter any land, place or premises at which there is, or is suspected to be a plant, plant products or other regulated articles;
- (b) enter any land for the purpose of ascertaining whether any noxious or invasive weed or plant exists;
- (c) inspect and take samples of any plants, plant products or other regulated articles;
- (d) inspect any process or other operation which carried out in those premises in connection with the manufacture, production, processing or treatment of plant products and other regulated articles;
- (e) open any package found in any place or premises that the inspector has reason to believe contains plants, plant products and other regulated articles;
- (f) require a person to produce for inspection, examination or for the purpose of obtaining copies, documents relevant to the administration of this Act;

- (g) stop and search a person, baggage, packaging, conveyance that he has reason to believe contains plants, plant products and other regulated articles;
- (h) stop the distribution, sale or use of any plants, plant products or other regulated articles which he has reason to believe is harboring a regulated pest;
- (i) seize, destroy, detain, treat or otherwise dispose of any plants, plant products or other regulated articles, or order that such action be taken where he has reason to believe such plants, plant products or other regulated articles are harboring a regulated pest;
- (j) seal off any place, premises or conveyance containing infested or infected plants, plant products or other regulated articles; and
- (k) confine, seal and order immediate treatment of consignments of plants, plant products and other regulated articles to prevent the introduction or spread of pests.
- (l) take any other reasonable and necessary measures in the exercise of the powers outlined under this section.

Obstruction of
inspectors.

64. A person who—

- (a) gives false information to an inspector;
- (b) obstructs, hinders, interferes with, refuses to furnish information to the inspector;
- (c) fails to produce any document required by the inspector;

(d) fails to comply with any lawful order given by any inspector in execution of his powers or duties; or

(e) otherwise contravenes any other provisions in this Act;

commits an offence, and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six months, or to both.

Laboratory analysts.

65. (1) The Service shall appoint qualified persons to be Service laboratory analysts for purposes of this Act.

(2) A laboratory analyst appointed under subsection (1) shall—

- (a) collect samples for laboratory analysis for purposes of this Act;
- (b) analyse any sample and generate a report for purposes of this Act;
- (c) perform any other relevant function as may be assigned.

PART XI - PLANT HEALTH PROTECTION FUND

The National
Plant Health
Protection fund.

66. (1) There is established a fund to be known as the Kenya Plant Health Protection Fund.

(2) The objects of the fund under subsection (1) shall be to promote, protect and support innovations and best practices in plant health and plant protection.

(3) The fund under subsection (1) shall consist—

- (a) monies appropriated by Parliament for purposes of the Fund;

- (b) monies paid to the Service as license fees, commission, export or import fees and fees that may accrue to or vest in the Service in the course of exercise of its functions;
- (c) such sums of money or other assets as may be specifically designated from the funds of the Service
- (d) grants, gifts and donations made for purposes of the fund; and

No. 18 of 2012. (4) The Fund shall be administered in accordance with the Public Finance Management Act.

Establishment of
County Plant
Health Protection
fund.

67. (1) A County Government may establish a County Plant Health Protection Fund within the county.

(3) A fund established under this section shall be applied to—

- (a) expenditures in mitigating phytosanitary emergencies in the county;
- (b) expenditure on surveillance and early warning systems;
- (c) expenditure on training and capacity building; and
- (d) expenditure of the activities related to the county's emergency response .

No. 18 of 2012. (4) The Fund shall be administered by such persons and in such manner as may be determined by the county government in accordance with the Public Finance Management Act.

PART XII - MISCELLANEOUS PROVISIONS

- Fees and charges. **68.** (1) The Cabinet Secretary may, on the advice of the Service and by a notice in the *Kenya Gazette*, prescribe a fee or charges for any service offered by the Service.
- General penalty. **69.** A person convicted of an offence under this Act for which no penalty is provided shall, be liable, on conviction to a fine not exceeding two hundred and fifty thousand Kenya shillings or to a term not exceeding six months, or both.
- Dispute resolution. **70.** (1) Where a dispute arising during implementation of this Act the dispute shall at first instance be resolved internally through a committee within the Service.
- (2) Where amicable resolution fails in subsection (1), the dispute shall be referred to arbitration.
- Personal liability. **71.** (1) No inspector, officer or agent of the Service or county government shall be personally liable for the official decisions made in good faith in executing the provisions of this Act.
- (2) No suit, prosecution or other legal proceeding shall lie against any inspector or his assistant for anything done in good faith and without negligence under this Act.
- Phytosanitary investigation. **72.** The Service or County Governments may in the course of implementing the provisions in this Act undertake phytosanitary investigations for scientific-based phytosanitary regulatory decisions.
- Use of registered pest control products.
Cap 346 **73.** Where pest control products are prescribed for use for management of phytosanitary risks in this Act, the pest control products shall be used in accordance to the the Pest Control Products Act.
- Regulations. **74.** (1) The Cabinet Secretary may, in consultation with the Service and County Governments, make

regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to subsection (1), the regulations made under this Act shall provide for—

- (a) the prevention of introduction of plant pests;
- (b) pest risk analysis and import requirements;
- (c) the form, validity, conditions for issuance and the cancellation of plant import permits and phytosanitary certificates;
- (d) the post entry quarantine processes and approval and certification of post entry quarantine facilities;
- (e) eradication and containment, restriction of movement, cultivation and harvesting in areas infested with regulated pests;
- (f) prevention and management of noxious weeds;
- (g) regulation of Wood packaging materials;
- (h) organic certification;
- (i) monitoring of pesticide residues and heavy metals;
- (j) pest eradication;
- (k) the power to detain, destroy, intercept due to non-compliance;
- (l) the appointment of inspectors, analyst and other officers;
- (m) decontamination of used vehicles, machinery and equipment;

(n) the dispute resolution mechanisms; and

Repeals and
transitional
provisions

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

(2) Any regulations which were existing under the repealed Act in subsection (1) shall remain in force until the regulations under this Act come into force.

Dated the, 2022.

PETER MUNYA

*Cabinet Secretary for Agriculture,
Livestock Fisheries, Cooperatives
and Blue Economy*