

	<b>PLANT PROTECTION BILL 2021</b>	
	An Act of Parliament to provide for the prevention and control of introduction, establishment and spread of plant pests and facilitation of safe trade in plants and plant products.	
	<b>PART I – PRELIMINARY</b>	
	1. This Bill may be cited as the Plant Protection Bill 2021	Short Title
	<p>2. In this Act, unless the context so requires: –</p> <p>“Authorization” means the delegation by The Service of specified functions under the Act to a competent private or public person for execution on its behalf;</p> <p>“Cabinet Secretary” means the member of Cabinet responsible for matters relating to Agriculture;</p> <p>“Consignment” means any quantity of plants, plant part, plant products or other regulated articles being moved from one country to another and covered, when required, by a single phytosanitary certificate; or any quantity of plants, plant products or other regulated articles being moved from one area to another within the country.</p> <p>“Conveyance” means any of the following:</p> <ol style="list-style-type: none"> <li>a. A train (including coaches, wagons and railway rolling stock);</li> <li>b. A vehicle;</li> <li>c. A vessel;</li> <li>d. An aircraft;</li> <li>e. Any other means of transport not prescribed by this Act;</li> </ol> <p>“County Executive Committee Member” means County Executive Committee Member for the time being responsible for Agriculture as provided for in article 179 (2b) of the Constitution of Kenya 2010;</p> <p>“Disinfection” means the process of freeing a plant, plant part, plant</p>	Interpretation

product or other regulated articles of pathogens;

“Disinfestation” means freeing a plant, plant part, plant product or other regulated articles from arthropod pests;

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

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

“Infestation” means - presence of an arthropod pest in an area, commodity, conveyance packaging or container;

“Infested area” means any area or place in which an arthropod pest exists;

“Inspection” means official visual examination of plants, plant part, plant products or other regulated articles to determine if pests are present or to determine compliance with phytosanitary regulations;

“Inspector” means person authorized by The Service to discharge its functions under this Act or authorized by the County Government to perform its functions under this Act;

“Intercept” means to refuse, control entry or movement of an imported or domestic consignment due to failure to comply with Phytosanitary regulations;

“Noxious weed” means any weed considered to be harmful to the environment or animals, and is under official regulation;

“Other regulated articles” means any storage place, packaging, conveyance, used vehicles, machinery, equipment, container, soil, and any other organism, object or material capable of harbouring, or

spreading pest deemed to require phytosanitary measures;

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

“Person” means an individual or a registered entity with legal rights and obligations;

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

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

“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 or its official electronic equivalent consistent with the model certificates of the International Plant Protection Convention attesting that a consignment meets phytosanitary import requirements;

“Phytosanitary measure” means any legislation, regulation or official procedure having the purpose to prevent the introduction and spread of regulated pests;

“Plant products” means plant parts, unmanufactured materials of plant origin including grain and those 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;

	<p>“Quarantine” means official confinement of plant, plant products, regulated articles, pests or beneficial organism for official inspection, testing, treatment, observation or research;</p> <p>“Regulated Pest” means a pest of potential economic importance to the whole country or part of the country and absent or if present, not widely distributed and is officially being controlled by The Service.</p> <p>“The Service” means the Kenya Plant Health Inspectorate Service established by the Kenya Plant Health Inspectorate Service Act No. 54 of 2012;</p> <p>Any term not specifically defined shall have its normally accepted meaning, except that any term which also appears in the International Plant Protection Convention shall be defined by reference to that Convention and its associated documentation.</p>	
	<p>3. This Act shall apply to the following:</p> <ul style="list-style-type: none"> <li>a) Prevention of the introduction, establishment and spread of pests through plants, plant products and other regulated articles being stored, moved, propagated, researched, cultivated or growing in the wild whether for commercial, imports, exports, or other purposes;</li> <li>b) Pest surveillance and management;</li> <li>c) Certification of organic plants and plant products and</li> <li>d) Monitoring of plant protection product residues and heavy metals in agricultural produce.</li> </ul>	Scope
	<p>4. The object and purpose of the Act is to:</p> <ul style="list-style-type: none"> <li>a) Designate The Service as Kenya’s National Plant Protection</li> </ul>	Object and purpose of the Act

	<p>Organization;</p> <p>b) Protect domestic agricultural production and environment from introduction and spread of foreign and emerging plant pests;</p> <p>c) Provide for prevention of introduction and suppression of noxious and invasive weeds;</p> <p>d) Provide for risk assessment and monitoring of biological articles and control agents;</p> <p>e) Provide for the detection, identification, assessment, emergency response and management of risks to plant health and the environment;</p> <p>f) Facilitate safe transboundary movement and trade in plants, plant products and other regulated articles;</p> <p>g) Support sanitary and phytosanitary compliance of agricultural product to national and international market requirements;</p> <p>h) Provide for pest management including transboundary and migratory pests;</p> <p>i) Provide for domestication and implementation of international obligations related to plant health.</p>	
	<p><b>PART II – DESIGNATION OF A NATIONAL PLANT PROTECTION ORGANIZATION</b></p>	
	<p>5. (1) Kenya Plant Health Inspectorate Service is the designated National Plant Protection Organization of Kenya mandated to discharge the functions related to plant health according to the International Plant Protection Convention for the purposes of this Act.</p> <p>(2) The Service shall be the International Plant Protection Convention contact point.</p> <p>(3) The Service shall serve as the World Trade Organization National Enquiry Point for Kenya on plant health issues.</p>	<p>Designation of the National Plant Protection Organization</p>

<p>6. (1) The functions of The Service in discharging its mandate as the National Plant Protection Organization in this Act shall be:</p> <ul style="list-style-type: none"> <li>a) Issuance of phytosanitary certificates for exports and Import permits for plants, plant products and other regulated articles;</li> <li>b) The surveillance of growing plants, including both areas under cultivation and wild flora, and of plants and plant products in storage or in transportation, particularly with the object of establishing and reporting the occurrence, outbreak and spread of pests, and prescribing the phytosanitary measures for prevention of establishment and spread of those pests;</li> <li>c) The inspection of consignments of plants, plant products and other regulated articles moving in international traffic particularly with the object of preventing the introduction and/or spread of pests;</li> <li>d) Provide for disinfestation or disinfection of plants, plant products and other regulated articles to meet phytosanitary requirements;</li> <li>e) Provide for the designation, maintenance and surveillance of pest free areas and areas of low pest prevalence;</li> <li>f) Conduct pest risk analysis to establish import conditions and market access;</li> <li>g) Any other functions related to the functions of the National Plant Protection Organization.</li> </ul> <p>(2) Without prejudice to the provisions of sub section (1) above The Service shall be responsible for:-</p> <ul style="list-style-type: none"> <li>a) Advising the Cabinet Secretary on matters relating to plant protection in the country;</li> </ul>	<p>Functions of the National Plant Protection Organization</p>
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	<ul style="list-style-type: none"> <li>b) Advising the County Governments on matters relating to plant health in the County;</li> <li>c) Providing mechanism for early warning systems and rapid response on matters relating to plant health;</li> <li>d) Prescribing and enforcing phytosanitary measures for the prevention of establishment, spread and control of plant pests;</li> <li>e) Monitoring of plant protection product residues and heavy metals in agricultural produce to support compliance to sanitary requirements and</li> <li>f) Carry out capacity building of County Governments on matters phytosanitary.</li> </ul>	
	<b>PART III - PREVENTION OF INTRODUCTION OF PLANT PESTS</b>	
	<p>7. (1) Introduction of pests into the Kenyan territory is prohibited under this Act.</p> <p>(2) Without prejudice to subsection (1) above, introduction of noxious and invasive weeds is prohibited by this Act.</p> <p>(3) A person shall not import a plant, plant product or other regulated article except in the manner provided for under this Act.</p> <p>(4) The Service may prohibit, restrict or regulate the importation of any plants, plant products and other regulated articles likely to harbor any pest.</p>	<p>Control importation of articles likely to spread pests</p>
	<p>8. (1) The Service shall periodically conduct pest risk analysis to determine requirements for the importation of plants, plant products and other regulated articles.</p> <p>(2) Without prejudice to subsection (1) above, The Service shall periodically conduct weed risk assessment to determine invasiveness of plants.</p> <p>(3) The Service shall maintain and periodically update a list of</p>	<p>Pest risk analysis and import requirements</p>

	<p>regulated pests, noxious weeds and invasive species that are prohibited or restricted from entering Kenya.</p> <p>(4) The Service shall conduct risk assessment of biological articles and control agents to determine safety and import conditions.</p> <p>(5) The requirements for the importation of plants, plant products and other regulated articles shall be maintained by The Service in the Plant Import Requirements Register.</p>	
	<p>9. (1) Kenya Plant Health Inspectorate Service Plant Quarantine and Biosecurity Station is the designated plant quarantine station of Kenya.</p> <p>(2) Without prejudice of subsection (1) above, The Service may by gazette notice, designate any of its other substations as plant quarantine stations.</p>	Designation of quarantine Stations
	<p>10.(1) The Service may upon inspection approve post entry quarantine facilities or impose quarantine status on a facility for purposes of holding quarantine materials upon importation.</p> <p>(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.</p> <p>(3) The Service shall define the nature and composition of the post entry quarantine facilities.</p>	Approval of post entry quarantine facilities
	<p>11. There is established a committee to be known as the Kenya Plant Health Technical Committee on Imports and Exports to facilitate risk assessment of biological articles and control agents.</p>	Establishment of the Kenya Plant Health Technical Committee on Imports and Exports
	<p>12.(1) The functions of the Kenya Plant Health Technical Committee on Imports and Exports are: -</p> <p>a) To assess and evaluate through risk assessment, bio-</p>	Functions of the Kenya Plant Health Technical Committee

	<p>fertilizers, biopesticides, biological control agents, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers and any related products and articles;</p> <p>b) To consider applications for registration of bio-fertilizers, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers and any related products and articles except biopesticides, whose registration is carried out by Pest Control Products Board as provided for in the Pest Control Products Act, and to make recommendations thereof to The Service.</p> <p>(2) The Cabinet Secretary may, in consultation with The Service, by regulations make further provisions for the better carrying into effect of the provision of this section.</p>	<p>on Imports and Exports</p>
	<p>13.(1) The membership of the Kenya Plant Health Technical Committee on Imports and Exports shall consist of:</p> <ul style="list-style-type: none"> <li>a The Director responsible for Crop Development or related directorate in the Ministry of Agriculture who shall be the chair;</li> <li>b Managing Director, Kenya Plant Health Inspectorate Service or their representative;</li> <li>c Director General, Kenya Agricultural and Livestock Research Organization or their representative;</li> <li>d Chief Executive Officer, Pest Control Products Board or their representative;</li> <li>e Director, Directorate of Veterinary Services or their representative;</li> <li>f Director General, National Environment Management Authority or their representative;</li> <li>g Director General, National Museums of Kenya or their representative;</li> <li>h Director, Directorate of Public Health and Sanitation or their representative;</li> <li>i Managing Director, Kenya Bureau of Standards or their representative;</li> </ul>	<p>Membership of the Kenya Plant Health Technical Committee on Imports and Exports</p>

	<p>j One representative from institutions of higher learning;  k Two representatives of relevant private sector;  l Two representatives from the County Governments.</p> <p>(2) The chairperson appointed under subsection (1) (a) above shall have relevant competence in agriculture or related field.</p> <p>(3) Member(s) under subsection (1) (b) to (i) shall be appointed by their respective institutions or departments taking into consideration the technical nature of the committee.</p> <p>(4) Member(s) under sub section (1) (k) shall be nominated by the relevant private sector associations or umbrella body or institution taking into consideration the technical nature of the committee.</p> <p>(5) Member(s) under sub section (1) (l) shall be nominated by the Council of Governors, one of whom shall be a County Executive Committee Member taking into consideration the technical nature of the committee.</p> <p>(6) No person shall be appointed under sub section (1) (b) to (l) unless the person is a holder of a degree in agriculture or any other related discipline with not less than five years professional experience.</p> <p>(7) The Committee may co-opt any person with expert knowledge to act in an advisory capacity in any case where it appears to the Committee that such knowledge is required for determination of an application before it.</p> <p>(8) The Committee may create as necessary subcommittees for execution of specialized tasks.</p> <p>(9) KEPHIS shall be the Secretariat to the committee.</p> <p>(10) The Cabinet Secretary may by regulations provide for procedures of the operations of the committee.</p>	
	<p>14.(1) The Committee shall hold a minimum of four (4) meetings in a year, being once every three (3) months, or at the request of at least six (6) members.</p> <p>(2) The Service in consultation with the Chairperson shall convene the Committee meetings.</p> <p>(3) The Service in consultation with the Committee shall establish</p>	<p>Conduct of business of the Kenya Plant Health Technical Committee on Imports and Exports</p>

	<p>appropriate procedures to carry out the activities provided in these regulations.</p> <p>(4) The Committee shall treat the application information provided as confidential business information appropriately except when ordered to release such information by a court of law.</p> <p>(5) Notwithstanding the provisions of sub section 4 above, the Committee shall release information so ordered by the court after notifying the applicant.</p>	
	<p>15. (1) The Service shall maintain an updated register and keep records of all persons who import plants, plant products and other regulated articles for traceability and risk management.</p> <p>(2) Registration by other competent authorities related to plants, plant products and other regulated articles may be a prerequisite for registration by The Service.</p>	<p>Nominal roll of importers</p>
	<p>16.(1) Any person who intends to import plants, plant product and other regulated articles shall obtain a Plant Import Permit from The Service.</p> <p>(2) Any person who intends to import bio-fertilizers, biological control agents, beneficial organisms, soil conditioners, bio-stimulants, organic fertilizers, biopesticides and any related products and articles shall obtain a Biological Import Permit from The Service.</p> <p>(3) Any person who imports or facilitates importation of plants, plant products and other regulated articles without a Plant Import Permit and Biological Import Permit as required under this act commits an offence, and if convicted be liable to a fine not exceeding five million Kenya shillings or 20% of the value of the imported consignment whichever is higher or to a term of imprisonment not exceeding two years or both.</p>	<p>Plant Import permit and Biological Import permit</p>

	<p>(4) The Cabinet Secretary shall in consultation with The Service, by regulations, provide for the form, validity, conditions for issuance and the cancellation of Plant Import Permits and Biological Import Permit.</p>	
	<p>17. (1) All imports of plants, plant products and other regulated articles shall be imported through designated points of entry.</p> <p>(2) All persons including courier service operators shall be required to declare any plants, plant products and other regulated articles at designated points of entry to an inspector.</p> <p>(3) A person in charge of a border point shall notify The Service of the arrival of a consignment of a plant, plant product or other regulated article.</p> <p>(4) Where a person has failed to comply with subsection (1) and (2) above, The Service shall intercept the plants, plant products and other regulated articles.</p> <p>(5) Plants, plant products and other regulated articles intercepted in subsection (4) shall be handled in accordance with regulations under this Act.</p> <p>(6) Any person who contravenes subsection (1) and (2) above commits an offence, and if convicted, be liable to a fine not exceeding two million Kenya shillings or to a term of imprisonment not exceeding one year or both.</p> <p>(7) The Service shall periodically conduct border surveillances to monitor and curtail unauthorized and illegal movement of plants and plant products and other regulated articles.</p>	<p>Importation through designated points of Entry and declaration of arrival of a consignment</p>
	<p>18.(1) An inspector shall have access to all conveyances for the purpose of carrying out phytosanitary inspection.</p> <p>(2) A person in charge of a point of entry shall facilitate the inspector's access to aircraft, ships, vehicles, rail, pleasure craft</p>	<p>Access to conveyance</p>

	<p>and other vessels arriving in Kenya for phytosanitary inspection including inspection of associated waste.</p> <p>(3) Without prejudice to subsection (2) above, a person in charge of a point of entry shall assist the inspector in the performance of their function and exercise of their powers under this Act by providing such facilities and access to facilities such as scanners and any other assistance as The Service may require to implement this Act.</p>	
	<p>19.(1) All plants, plant products and other regulated articles shall be inspected by The Service upon importation at designated points of entry at a prescribed fee.</p> <p>(2) All plants, plant products and other regulated articles, presented for inspection in subsection (1) shall be accompanied by a phytosanitary certificate from the country of origin, Plant import permit from The Service and other relevant documents.</p> <p>(3) Where necessary samples may be drawn by The Service for testing, to ascertain compliance with import requirements or infestation or infection with a regulated pest, at the cost of the importer.</p> <p>(4) Where the consignment of plants, plant products and other regulated articles complies with the import requirements and are not infested or infected with a regulated pest, The Service shall release the consignment to the importer.</p> <p>(5) Without prejudice to subsection (4) above, consignments imported under quarantine that comply with the import requirements shall be released to the designated quarantine station or an approved post entry quarantine facility for monitoring as shall be provided for in regulations.</p> <p>(6) Where the consignment of plants, plant products and other</p>	<p>Inspection and testing of imported consignments</p>

	<p>regulated articles inspected under subsection (4) fails to comply with the import requirements or are infested or infected with a regulated pest, The Service at the importer’s cost may order:</p> <ul style="list-style-type: none"> <li>a) For the treatment and release; or</li> <li>b) For the destruction; or</li> <li>c) That the consignment be shipped back to the exporting country.</li> </ul> <p>(7) The Service may hold a consignment at designated points, pending investigation and decision making, for a period not exceeding six months, at the importer’s cost.</p> <p>(8) The Service may notify the exporting country of the non-compliance in subsection (6) above.</p> <p>(9) Any person who tampers or removes a consignment held by The Service under subsection (6) above commits an offence, and if convicted, be liable to a fine not exceeding five million Kenya shillings or to a term of imprisonment not exceeding two years or both.</p>	
	<p>20.(1) All persons who import plants, plant products and other regulated articles shall ensure they are inspected by The Service prior to release.</p> <p>(2) A person who contravenes the provisions of subsection (1) above commits an offence.</p>	<p>Release of consignments</p>
	<p>21.(1) The Service may adopt and implement emergency actions, including emergency measures, when a new or unexpected phytosanitary risk is identified.</p> <p>(2) The Service shall inform all affected parties of the emergency measures adopted.</p> <p>(3) The Service shall review the basis of the emergency measures adopted and implemented through pest risk analysis.</p>	<p>Emergency measures to prevent introduction of pests</p>

	<p>(4) Where the emergency measure is maintained after the review because the reason of its adoption remains The Service shall periodically evaluate the risk.</p>	
	<p>22.(1) Any person who introduces pest into the territory of Kenya commits an offence.</p> <p>(2) Without prejudice to subsection (1) above, any person who imports organisms for research without approval by The Service commits an offence.</p> <p>(3) Any person who contravenes subsection (1) and (2) above, commits an offence and liable upon conviction to a fine not exceeding ten million Kenya shillings or to imprisonment for a term not exceeding five years or both.</p>	<p>Prohibition of introduction of pests</p>
	<p><b>PART IV - PREVENTION OF ESTABLISHMENT, SPREAD AND MANAGEMENT OF PESTS</b></p>	
	<p>23.(1) National Government shall be responsible for: -</p> <ul style="list-style-type: none"> <li>a) Providing policy direction and capacity building of counties and other stakeholders to prevent the establishment and spread of plant pests;</li> <li>b) Establish mechanisms for and coordinate management of transboundary and migratory pest.</li> </ul> <p>(2) County Governments shall be responsible for: -</p> <ul style="list-style-type: none"> <li>a) Receiving, verifying and analyzing pest reports from land occupiers or land owners at County level;</li> <li>b) Advising land occupiers or land owners on pest management practices at County level;</li> <li>c) Notifying National Government of the pest management status at the County;</li> <li>d) Pest surveillance at the County level;</li> <li>e) Pest management at County level;</li> <li>f) Enforcing pest management measures prescribed by The</li> </ul>	<p>Role of National and County Governments in plant protection.</p>

	<p>Service;</p> <p>g) Establish and operate plant clinics;</p> <p>h) Capacity building of the producers and other County stakeholders on pest management.</p>	
	<p>24.(1) There is established a National Plant Health Emergency Response Unit (NPHERU) which shall be comprised of relevant institutions and shall be chaired by the Principal Secretary in the Ministry of Agriculture and The Service shall be the secretariat.</p> <p>(2) The County Government in collaboration with The Service may establish a County Plant Health Emergency Response Unit which shall be comprised of relevant institutions and shall be chaired by County Executive Committee Member responsible for Agriculture.</p>	<p>Establishment of a National and County Plant Health Emergency Response Unit</p>
	<p>25. (1) The National Plant Health Emergency Response Unit shall: -</p> <p>a) Develop a national plant health emergency response plan;</p> <p>b) Coordinate implementation of the national plant health emergency response plan;</p> <p>c) Mobilize resource for addressing emergencies;</p> <p>d) Coordinate post emergency recovery process; and</p> <p>e) Advise the Cabinet Secretary on measures for the eradication and prevention of spread of pests including containment measures.</p> <p>(2) The County Plant Health Emergency Response Unit shall: -</p> <p>a) Determine pests of concern to the County and develop County plant health response plans;</p> <p>b) Implement the national plant health emergency Response strategies outlined by the National Plant Health Emergency Response Unit at the County level;</p> <p>c) Implement early warning and rapid response strategies for pest incursions and outbreaks as provided for under the Act;</p>	<p>Functions of the National and County Plant Health Emergency Response Unit</p>

	<p>d) Mobilize resources for addressing emergencies and</p> <p>e) Provide periodic reports on the status of implementation on emergency measures to the National Government.</p> <p>(3) The Cabinet Secretary may in consultation with The Service and County Governments by regulations provide for membership and procedures of the conduct of its business and operations.</p>	
	<p>26.(1) The Service shall conduct regular surveillances so as to determine pest status, delimiting pest population, pest listing and for early detection of new pests to an area.</p> <p>(2) The Service shall develop and regularly update a list of regulated pests and may by gazette notice publish the pest list.</p> <p>(3) The County Government may carry out surveillance in their respective Counties to determine pest status.</p> <p>(4) Without prejudice to subsection (1) and (3), other relevant stakeholders may carry out surveillance in accordance with their respective mandates.</p> <p>(5) The findings of surveillance conducted under subsections (1), (3) and (4) may be shared between The Service, stakeholders and the Counties.</p>	Surveillance
	<p>27.(1) Every occupier or owner of land or, in the absence of the occupier, every owner of land and if necessary owners or occupiers of nearby lands, researchers and any other persons handling plants, plant materials and other regulated articles shall be required to take any pest management measures the County Director of Agriculture or inspector of The Service considers necessary for the reduction or prevention of the spread of any pest which the County Director of Agriculture or inspector of The Service may by notice in writing order him to take, including treatment or the destruction of plants, whether the same are infected with pests or not.</p>	Requirement for prevention and spread of pests

	<p>(2) In the case of two or more joint occupiers or joint owners, each of them shall be deemed an occupier or owner for the purpose of this Act.</p> <p>(3) The Cabinet Secretary may in consultation with The Service develop guidelines or protocols to prevent the spread of pests including for counties along common international borders.</p> <p>4) Any person who fails to comply with subsection (1) and (2) commits an offence.</p>	
	<p>28. (1) Without prejudice to the provisions of Section 27, every occupier or, in the absence of the occupier, every owner of land who knows or has reason to suspect that their plants or land is infected or infested with an unknown pest must:</p> <ul style="list-style-type: none"> <li>a) Notify County Director of Agriculture or an inspector of The Service on the pest presence or possible occurrence of the pest at the earliest time possible for identification and confirmation of its status;</li> <li>b) Contain the plants, plant products and other regulated articles or pest where applicable;</li> <li>c) Take all reasonable steps to prevent the spread of the pest;</li> </ul> <p>(2) Any person who fails to comply with subsection (1) above, commits an offence and shall upon conviction be liable to pay a fine not exceeding fifty thousand Kenya shillings or to serve imprisonment of a period not exceeding three months or both.</p>	<p>Duty of an occupier of land to report and manage an unknown pest</p>
	<p>29. (1) The County Director of Agriculture or an inspector shall identify and prescribe pest management measures for eradication, containment and management of the pest.</p> <p>(2) The Cabinet Secretary may by regulations make further provisions for the better carrying into effect of the provision of this section.</p>	<p>Identification and management of unknown pest</p>

	<p>30.(1) The Service shall be the only authorized entity to declare a pest previously not occurring in Kenya as a new pest and determine the classification of pests as regulated for the purposes of this Act.</p> <p>(2) The County Executive Committee Member in consultation with the County Plant Health Emergency Response Unit may declare a pest to be of concern to the County for the purposes of this Act.</p>	<p>Declaration of a new pest or pest of concern</p>
	<p>31.(1) The Service shall, from time to time report and disseminate information regarding the occurrence and outbreak of pests, regulation of pests and the means for their prevention and control.</p> <p>(2) No person shall publish information on new pest occurrence without notifying The Service in writing.</p> <p>(3) The Service shall make official reports of the occurrence of new pests concurrently with the publishing by any entity.</p> <p>(4) Any person who publishes the occurrence of new pest without approval by The Service commits an offence.</p>	<p>Publication of information on a new pest</p>
	<p>32.(1) The Service in consultation with the County Government and relevant stakeholders shall provide measures for the establishment and maintenance of pest free areas.</p> <p>(2) These measures may include: -</p> <ul style="list-style-type: none"> <li>(a) Pest surveillance;</li> <li>(b) Delineation of an area;</li> <li>(c) Pest management and</li> <li>(d) Monitoring of pests of concern.</li> </ul> <p>(3) The Service may notify/publish/declare an area as a pest free area.</p> <p>(4) Where the measures provided in subsection (2) above are not complied with The Service may revoke the pest free status of an area.</p>	<p>Establishment of pest free areas</p>
	<p>33.(1) The County Executive Committee Member may impose</p>	<p>Containment measures</p>

	<p>containment measures to prevent spread pests of concern in a County.</p> <p>(2) The Service in Consultation with County Executive Committee Members of affected counties may impose containment measures in cases of pests of concern in more than one County to prevent spread.</p> <p>(3) The Service may impose measures for containment of regulated pests in any part of the country.</p> <p>(4) The Cabinet Secretary in consultation with The Service and affected County Governments County Executive Committee Members may impose containment measures in cases of pest emergencies.</p> <p>(5) The Cabinet Secretary may by regulations make further provisions for the better carrying into effect of the provisions of this section.</p>	<p>for pests of concern, regulated pests and pest emergencies</p>
	<p><b>PART V - SUPPRESSION OF NOXIOUS AND INVASIVE WEEDS AND PLANTS</b></p>	
	<p>34. The Cabinet Secretary may by notice in the Gazette declare a plant to be a noxious or invasive weed.</p>	<p>Power to declare plant a noxious weed</p>
	<p>35. (1) for the purpose of this Part a "person responsible", in relation to land in which a noxious or invasive weed is subject, means—</p> <p>(a) The occupier of land, or, in the case of unoccupied land, the registered owner thereof;</p> <p>(b) In the case of a mining location, the holder of that location;</p> <p>(c) In the case of Government or community lands over which grazing or other rights have been granted the holder of those rights;</p> <p>(d) In the case of land under the control of, or vested in, a County Government, the County Government concerned.</p>	<p>Duty of persons responsible to report declared noxious and invasive weeds and plants</p>

	<p>(2) Every person responsible, who knows or has reason to suspect that a declared noxious or invasive weed occurs in their land shall: -</p> <p>(a) Report forthwith to the County Director or an inspector of The Service the presence of any noxious or invasive weed thereon and</p> <p>(b) Clear the noxious or invasive weed, or cause it to be cleared from that land.</p> <p>(3) A person who fails to comply with the provisions of this section commits an offence.</p>	
	<p>36. (1) If the County Director or an inspector of The Service finds upon land any plant which has been declared to be a noxious or invasive weed, he may, by notice in writing to the person responsible for the land, require that person to clear the land of the noxious or invasive weed within a time to be specified in the notice.</p> <p>(2) The notice shall state the particular noxious or invasive weed which has been found upon the land, and, as far as practicable, the portion or portions of the land on which the noxious or invasive weed and plant has been found.</p> <p>(3) A notice under this Part shall be in writing and may be served—</p> <p>(a) Personally upon the person responsible or</p> <p>(b) By leaving it addressed to the person responsible at his usual or last known place of abode or</p> <p>(c) By registered post.</p> <p>(4) A person who fails to comply with the provisions of a notice within the time specified therein shall be guilty of an offence.</p> <p>(5) The County Director or an inspector of The Service shall in writing notify County Plant Health Emergency Response Unit and The Service concurrently on the particular noxious or invasive weed</p>	<p>Power to order persons to clear land</p>

	and the extent of the infestation that has been found.	
	<p>37.(1) If the person responsible fails to clear the land within the time specified in a notice given in section 36, the County Director or an inspector of The Service may enter, with or without assistance, upon the land and eradicate or cause to be eradicated any noxious or invasive weed found thereon.</p> <p>(2) Any expenses incurred in eradication shall be a civil debt recoverable summarily from the person responsible for the land.</p> <p>(3) Nothing in this section shall relieve the person responsible of any penalty incurred under this Act in consequence of his or her failure to comply with the provisions of a notice under this Part.</p> <p>(4) Where the noxious or invasive weed is of such a nature or proportion that it cannot be cleared by an individual or community, the County Plant Health Emergency Response Unit shall advise the County Government to clear the noxious or invasive weed.</p> <p>(5) The Service shall provide technical advice for the eradication of noxious and invasive weeds under this section.</p>	Responsibility of Counties in suppression of noxious or invasive weeds and plants
	38. A person who is guilty of an offence under this Part shall be liable to a fine not exceeding one million shillings, or to imprisonment for a period not exceeding six months, or to both.	Penalties
	39. The Cabinet Secretary may by regulations prescribe for requirements and procedures for securing the eradication of any noxious or invasive weeds from affected land and for compelling persons responsible to cause any such weed to be eradicated from their land.	Regulation on noxious or invasive weeds and plants
	<b>PART VI- EXPORT CERTIFICATION OF PLANTS, PLANT PRODUCTS AND OTHER REGULATED ARTICLES</b>	
	40.(1) The Service shall maintain a register and keep records of all persons who export plants, plant products and other regulated	Nominal roll of exporters

	<p>articles for traceability and compliance.</p> <p>(2) Registration by other competent authorities related to plants, plant products and other regulated articles may be a prerequisite for registration by The Service.</p>	
	<p>41. (1) All plant, plant products and other regulated articles intended for export shall be subject to inspection and testing by The Service to ensure compliance with the plant health and other requirements set by the importing country.</p> <p>(2) Any person who intends to export plants, plant product and other regulated articles shall apply for a Phytosanitary Certificate from The Service.</p> <p>(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.</p> <p>(4) The Service shall issue a Phytosanitary Certificate for Re-export where a consignment of plants, plant products and other regulated articles imported into the country and are repackaged or split but the integrity therein is not lost, and the consignment is thereafter exported.</p> <p>(5) The Cabinet Secretary shall in consultation with The Service, by regulations, provide for the form, validity, conditions for issuance and the cancellation of Phytosanitary Certificates.</p> <p>(6) Any person who forges, alters, falsifies, any certificate under this Act, or any writing or signature required by or provided in this Section, commits an offence.</p> <p>(7) Any person who obtains a Phytosanitary Certificate, through false pretense from The Service or falsely represents the Phytosanitary Certificate commits an offence.</p>	<p>Phytosanitary Certification and Phytosanitary Certificates</p>

	<p>42. Where the plants, plant product and other regulated articles intended for export fail to meet the plant health requirements or requirements with respect to plant protection product residues and heavy metal contaminants of the importing country, The Service shall restrict from export and may detain and require destruction of the plant, plant product and other regulated articles intended for export at the exporters cost.</p>	<p>Non compliance</p>
	<p><b>PART VII – PLANT HEALTH AND SAFETY ASSURANCE OF PLANTS, PLANT PRODUCTS AND OTHER REGULATED ARTICLES</b></p>	
	<p>43.(1) The Service shall establish laboratories for the undertaking of its functions under this Act.</p> <p>(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.</p> <p>(3) Official confirmation of the presence of regulated pests shall be based on diagnosis performed by the designated plant health laboratories.</p> <p>(4) The County Governments shall establish laboratories for the performance of its functions under this Act.</p> <p>(5) For the purposes of this Act, The Service may authorize public and private persons to undertake diagnostic and analytical services on behalf of The Service.</p> <p>(6) The person authorized in subsection (5) above shall provide upon request all relevant information related to authorized diagnostic activities.</p> <p>(7) The Cabinet Secretary may in consultation with The Service, by regulations provide for the qualification and procedure for authorization of persons.</p>	<p>Establishment, Designation and Authorization of laboratories and of persons to undertake plant health diagnostics and analytical services</p>
	<p>44.(1) The Service may for the purposes of this Act carry out or</p>	<p>Phytosanitary</p>

	<p>authorize the carrying out of the following at the cost of owners:</p> <ul style="list-style-type: none"> <li>a) Phytosanitary treatment;</li> <li>b) Phytosanitary decontamination;</li> <li>c) Destruction of non-compliant consignments;</li> </ul> <p>(2) The Service may accredit persons to carry out phytosanitary treatment and supervise their activities for the purposes of this Act.</p> <p>(3) The Cabinet Secretary may in consultation with The Service by regulation make further provisions for the better carrying into effect of the provisions of this section.</p>	treatment
	<p>45.(1) The Service shall regulate research on regulated pests to prevent the spread of harmful organisms in plants, plant products and the environment.</p> <p>(2) All persons who intend to carry out research on regulated pests shall apply to The Service for approval of the containment facility.</p> <p>(3) Without prejudice to subsection (2) above, the application must be accompanied by clearance from other relevant Government bodies.</p> <p>(4) The Service shall maintain a database of approved facilities handling regulated pests under research.</p> <p>(5) Any person who contravenes the provisions of subsection (2) above commits an offence, and if convicted, be liable to a fine not exceeding five million Kenya shillings or to a term of imprisonment not exceeding two years or both.</p> <p>(6) The Cabinet Secretary in consultation with The Service may by regulations make further provisions for the better carrying out of the provisions of this section.</p>	Control of regulated pests under research
	<p>46.(1) No person shall sell, offer or expose for sale any propagation material which has not undergone plant health certification.</p> <p>(2) All persons offering for sale any propagation material shall</p>	Certification of propagation materials

	<p>obtain plant health certificate from The Service upon inspection and approval.</p> <p>(3) Any person who contravenes subsection (1) and (2) above commits an offence, and if convicted, be liable to a fine not exceeding one million Kenya shillings or to a term of imprisonment not exceeding six months or both.</p>	
	<p>47.(1) The Service shall be the designated competent authority for Kenya on matters of organic certification for plants and plant products and shall carry out the following functions:</p> <ul style="list-style-type: none"> <li>a) Authorization of persons to be organic certification bodies and</li> <li>b) Monitoring of organically produced plants, plant products and other regulated articles for compliance to national and international organic certification requirements.</li> </ul> <p>2) The Cabinet Secretary shall in consultation with The Service, by regulations make provisions for the better carrying into effect the provisions of this section.</p>	<p>Certification of plants and plant products as organically produced</p>
	<p>48.(1) All persons who intend to locally produce, import or offer for sale formulated products of biological articles for commercialization shall have their products registered by The Service.</p> <p>(2) All persons who intend to produce locally biological articles for commercialization shall apply to The Service for approval of the production facility.</p> <p>(3) No person shall distribute, stock, repackage or store for sale formulated products of biological articles unless the product and their premises has been registered by The Service.</p> <p>(4) Without prejudice to subsection (1) and (3) above, all commercial biopesticides cleared by the Kenya Plant Health Technical Committee on Imports and Exports shall be processed</p>	<p>Registration and production of formulated products of biological articles</p>

	<p>for registration purposes at the Pest Control Products Board as provided for in the Pest Control Products Act.</p> <p>(5) The Service shall maintain a database of approved products and facilities.</p> <p>(6) Any person who contravenes the provisions of subsections (1), (2) and (3) above, commits an offence, and if convicted, be liable to a fine not exceeding one million Kenya shillings or to a term of imprisonment not exceeding six months or both.</p> <p>(7) The Cabinet Secretary shall in consultation with The Service, by regulations make provisions for the better carrying into effect the provisions of this section.</p>	
	<p>49.(1) The Service and other regulatory agencies shall carry out continuous monitoring of production, distribution, storage or sale of plants and plant products, whether locally produced, imported or destined for export for compliance with national and international requirements, as appropriate, for plant protection products residues and heavy metal contaminants for the purposes of:</p> <ul style="list-style-type: none"> <li>a) Getting 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;</li> <li>b) Advising the Government on the status of compliance of plants and plant products in relation to pesticide residues and heavy metals for policy intervention;</li> <li>c) Identifying 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</li> <li>d) Notifying importers and exporting countries of the non-compliance with requirements of pesticide residues and heavy</li> </ul>	<p>Monitoring of plants, plant products and other regulated articles for pesticide residues and heavy metal contaminants</p>

	<p>metals.</p> <p>(2) The Cabinet Secretary shall in consultation with The Service, by regulations make provisions for the better carrying into effect the provisions of this section.</p>	
	<b>PART VIII- INSPECTORS</b>	
	<p>50.(1) The Service shall appoint qualified persons to be Service inspectors for the purposes of this Act.</p> <p>(2) The Service may authorize competent private or public persons to perform specified functions under this Act on its behalf.</p> <p>(3) The County Executive Committee Member shall appoint and gazette County Plant Health Inspectors for the purposes of this Act.</p> <p>(4) The Service shall gazette inspectors appointed or authorized under subsection (1) and (2) above.</p> <p>(5) The Cabinet Secretary shall by Regulation provide for</p> <p>(a) qualification of Service inspectors and County plant health inspectors.</p> <p>(b) instruments of authorization.</p> <p>(c) procedures for inspection.</p> <p>(d) Training and development of inspectors.</p>	<p>Appointment and Authorization of Service inspectors and County Plant health inspectors</p>
	<p>51. A Service inspector may for the purposes of enforcing any provision of this Act, at all reasonable times and upon producing his identification: -</p> <p>a) Carry out phytosanitary field inspection of plants destined for export during active growth;</p> <p>b) Conduct Pest surveillance in any County in Kenya;</p> <p>c) Enter any place or premises at which there is, or is suspected to be a plant, plant products or other regulated articles to which this Act applies;</p> <p>d) Enter any land for the purpose of ascertaining whether any</p>	<p>Powers and functions of a Service inspector</p>

noxious weed or invasive weed exists thereon.

- e) Inspect and take samples of any plants, plant products or other regulated articles to which this Act applies;
- f) Inspect any process or other operation which is or appears likely to be carried out in those premises in connection with the manufacture, production, processing or treatment of plant products and other regulated articles to which this Act applies;
- g) Open any package found in any place or premises that the inspector has reason to believe contains plants, plant products and other regulated articles;
- h) Require any person to produce for inspection, examination or for the purpose of obtaining copies, documentation concerning any matter relevant to the administration of this Act;
- i) Stop and search any person, baggage, packaging, conveyance upon entry into, movement within or exit from the country;
- j) Stop the distribution, sale or use of any plants, plant products or other regulated articles which The Service inspector has reason to believe is harbouring a regulated pest;
- k) Seize, destroy, detain, treat or otherwise dispose of any plants, plant products or other regulated articles, or order that such action be taken which The Service inspector has reason to believe is harboring a regulated pest;
- l) Seal off any place, premises or conveyance which the plants, plant products or other regulated articles are found or manufactured, which the inspector reasonably believes

	<p>are infested / infected with pests;</p> <p>m) Inspect any consignments of plants, plant products and other regulated articles moving in international traffic particularly with the objective of preventing the introduction and or spread of pests in Kenya;</p> <p>n) Confine, seal and order immediate treatment of consignments of plants, plant products and other regulated articles with the objective of preventing the introduction and or spread of pests and</p> <p>o) Take any other reasonable and necessary measures in the exercise of the powers outlined above.</p>	
	<p>52. (1) A County plant health inspector may for the purposes of enforcing provision of this Act, at all reasonable times and upon producing his identification: -</p> <p>a) Receive and evaluate pest, noxious or invasive and migratory pest reports from farmers within the County of their jurisdiction;</p> <p>a) Enter any farm for evaluation of pest status and and take samples of any plants, plant products or other regulated articles to which this Act applies;</p> <p>b) Enter any land situated in an area in respect of which he is authorized to be an inspector for the purpose of ascertaining whether any noxious weed or invasive weed exists thereon.</p> <p>c) Prescribe pest management measures to farmers in the County of jurisdiction;</p> <p>d) Conduct pest monitoring in the County of operation;</p> <p>e) Conduct awareness creation and capacity building of farmers in pest management;</p> <p>f) Conduct pest surveillance in the County;</p>	<p>Powers and Functions of County Plant Health Inspectors</p>

	<p>g) Prescribe and implement measures for establishment of pest free areas in collaboration with The Service;</p> <p>h) Enter nursery facilities for inspection and registration;</p> <p>i) Prescribe and implement pest containment and eradication measures within the County;</p> <p>j) Stop and search any packages or conveyance entering or leaving the County where eradication and containment measures have been imposed;</p> <p>k) Order immediate treatment of consignments of plants, plant products and other regulated articles with the objective of preventing the spread of pests in the County where there are eradication and containment measures imposed; and</p> <p>l) Take any other reasonable and necessary measures in the exercise of the powers outlined above.</p> <p>(2) Without prejudice to subsection (1) above, the County Plant Health Inspector shall not exercise powers of an inspector that relate to:</p> <p>a) Import and export of plants and plant products;</p> <p>b) Materials under research;</p> <p>c) Activities under this Act that are outside the jurisdiction of their Counties or at designated points of entry;</p>	
	<p>53. Any person who:-</p> <p>(a) Gives false information to an inspector; or</p> <p>(b) Obstructs, hinders, interferes with, refuses to furnish information, fails to produce any document or fails to comply with any lawful order given by any inspector in execution of his powers or duties under this Act; or</p> <p>(c) Otherwise contravenes any other provisions in this Act shall be guilty of an offence, and upon conviction, shall be liable to</p>	<p>Obstruction of inspectors</p>

	a fine not exceeding one million Kenya shillings or to imprisonment for a term not exceeding six months, or both.	
	<b>PART IX- KENYA PLANT HEALTH PROTECTION FUND</b>	
	<p>54.(1) There is established a Fund to be known as the Kenya Plant Health protection fund.</p> <p>(2) There shall be paid into the fund</p> <ul style="list-style-type: none"> <li>(a) Allocation by the National Treasury to mitigate phytosanitary emergencies;</li> <li>(b) Percentage of 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 under the Act;</li> <li>(c) Funds from national and international donors and</li> <li>(d) Funds from any other lawful source approved by the Trustees.</li> </ul> <p>(3) There shall be paid out of the Fund—</p> <ul style="list-style-type: none"> <li>a) Expenditures in mitigating phytosanitary emergencies in the country;</li> <li>b) Expenditure on surveillance and early warning systems for emergency situations;</li> <li>c) Expenditure on training and capacity building;</li> <li>d) Expenditure of the National Plant Health Emergency Response Unit and Kenya Plant Health Technical Committee on Imports and Exports; and</li> <li>e) Expenditure for phytosanitary investigation.</li> </ul> <p>(4) The Fund shall be administered by board of trustees constituted by The Service.</p>	Establishment of National Plant Health Protection fund
	55. (1) There is established a Fund to be known as the County Plant Health protection fund.	Establishment of County Plant Health

	<p>(2) There shall be paid into the fund</p> <ul style="list-style-type: none"> <li>(a) Allocation by the County Government to mitigate phytosanitary emergencies at County level;</li> <li>(b) Percentage of monies paid to the County Governments as license and fees that may accrue to or vest in the County Department of Agriculture in the course of exercise of its functions under the Act;</li> <li>(c) Funds from donors and</li> <li>(d) Funds from any other lawful sources.</li> </ul> <p>(3) There shall be paid out of the Fund—</p> <ul style="list-style-type: none"> <li>f) Expenditures in mitigating phytosanitary emergencies in the County;</li> <li>g) Expenditure on surveillance and early warning systems;</li> <li>h) Expenditure on training and capacity building and</li> <li>i) Expenditure of the activities of the County Plant Health Emergency Response Unit.</li> </ul>	Protection fund
<b>PART X- MISCELLANEOUS PROVISIONS</b>		
	<p>56. (1) The Cabinet Secretary may, by a notice in the Gazette, impose a fee to be charged on any services offered by The Service.</p> <p>(2) The Cabinet Secretary may, upon the advice of The Service, at any time by notice, alter the rate of the fees charged under subsection (1) above and such altered rate shall come into force on such date, not being less than two months from the date of the notice, as may be specified in the notice.</p> <p>(3) Different rates of fees may be imposed for different services.</p> <p>(4) Any fees chargeable under this section shall be collected in the manner prescribed.</p>	General power to charge fees
	<p>57. Any person convicted of an offence under the Act for which no penalty is provided shall, be liable, upon conviction to a fine not</p>	General penalties

	<p>exceeding two million Kenya shillings or to a term not exceeding one year, or both.</p>	
	<p>58. (1) In case of a dispute arising during implementation of this Act the dispute will at first instance be resolved internally through a Committee in The Service.</p> <p>(2) Where amicable resolution fails in subsection (1) above, the dispute may be referred to arbitration.</p>	Dispute resolution
	<p>59.(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.</p> <p>(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 done under this Act.</p>	Personal Liability
	<p>60.The Service or County Governments may in the course of implementing the provisions in this Act undertake phytosanitary investigations for the purpose of making scientific-based phytosanitary regulatory decisions.</p>	Phytosanitary Investigation
	<p>61. (1) The Cabinet Secretary may in consultation with The Service and County Governments make regulations for the better carrying into effect the provisions and for prescribing anything which needs to be prescribed under this Act.</p> <p>(2) Without prejudice to the generality of the foregoing, the regulations made under this Act may provide for:</p> <ul style="list-style-type: none"> <li>a) The prevention of introduction of plant pests;</li> <li>b) Pest Risk Analysis and import requirements;</li> <li>c) The form, validity, conditions for issuance and the cancellation of Plant Import Permits and Phytosanitary Certificates;</li> <li>d) The Post entry quarantine processes and approval and</li> </ul>	Regulations

	<p>certification of Post entry quarantine facilities;</p> <p>e) The procedures and operations of the Kenya Plant Health Technical Committee on Imports and Exports;</p> <p>f) Eradication and containment, restriction of movement, cultivation and harvesting in areas infested with regulated pests;</p> <p>g) Prevention and management of noxious weeds;</p> <p>h) Regulation of Wood packaging materials;</p> <p>i) Organic certification;</p> <p>j) Pesticide residues and heavy metals;</p> <p>k) Pest eradication;</p> <p>l) The membership of a National Plant Health Emergency Response Unit and County Plant Health Emergency Response Units and procedures of the conduct of its business and operations;</p> <p>m) The power to detain, destroy, intercept due to non-compliance;</p> <p>n) The designation of laboratories and authorization of persons;</p> <p>o) The powers, obligations and duties of inspectors;</p> <p>p) Set the qualifications of inspector;</p> <p>q) Management of migratory pests;</p> <p>r) Decontamination of used vehicles, machinery and equipment</p> <p>s) The dispute resolution mechanisms and</p> <p>t) Provide for membership and administration of Kenya Plant Protection Fund.</p>	
	<p>62. (1) The Plant Protection Act (CAP 324) is hereby repealed.</p> <p>(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.</p>	<p>Repeal and savings</p>

