
GENERAL NOTICE

NOTICE 890 OF 2012

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

DRAFT PLANT HEALTH (PHYTOSANITARY) BILL

INVITATION FOR PUBLIC COMMENTS

I, Tina Joemat-Pettersson, Minister of Agriculture, Forestry and Fisheries hereby invite all interested institutions, organisations and individuals to submit written comments on the draft Plant Health (Phytosanitary) Bill.

Comments must be submitted in writing within 30 days from date of publication of this notice. They must be sent to:

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Department of Agriculture, Forestry and Fisheries
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0031

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Tina Joemat-Pettersson

Minister of Agriculture, Forestry and Fisheries

REPUBLIC OF SOUTH AFRICA

DRAFT PLANT HEALTH (PHYTOSANITARY) BILL, 2012

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*(As introduced in the National Assembly (proposed section **);
explanatory summary of the Bill published in Government Gazette*

No. of)

(The English text is the official text of the Bill)

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

DRAFT BILL

To provide for phytosanitary measures to prevent the introduction, establishment and spread of regulated pests in the Republic; for the control of regulated pests; for regulation of the movement of plants, plant products and other regulated articles into, within and out of the Republic; as well as to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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SCHEDULE

Definitions

1. (1) In this Act, unless the context indicates otherwise –

“area of low pest prevalence” means an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

“assignee” means a person or juristic person to whom a power has been delegated or a duty has been assigned by the Minister under section 20(1);

“authorised person” means a person to whom a power or duty has been assigned or delegated under section 7(1);

“authority” means an authority granted by the Minister under sections 3(2) and/or the Department responsible for Agriculture, Forestry and Fisheries in the national, provincial and local sphere of government;

“commodity” means a type of plant, plant product or other regulated article being moved for trade or other purpose;

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

“consignment in transit” means a consignment that passes through a country without being imported and that may be subject to phytosanitary measures;

“control” means the suppression, containment or eradication of a pest population;

“control measure” means a control measure prescribed by the Minister under section 5;

“conveyance” means any aircraft, ship, train, motor car, van, truck, cart or other vehicle, plant or any other regulated article that can act as a pathway for pests;

“day” means any calendar day excluding Saturdays, Sundays and public holidays within the Republic;

“delegate” means an officer to whom a power has been delegated by the Minister under section 20;

“Department” means the Department responsible for Agriculture, Forestry and Fisheries;

“detain” means keeping a consignment in official custody or confinement as a phytosanitary measure;

“Director-General” means the Director-General responsible for Agriculture, Forestry and Fisheries;

“emergency measure” means a phytosanitary measure established as a matter of urgency in a new or unexpected phytosanitary situation, and which may or may not be a provisional measure;

“eradication” means the application of phytosanitary measures to eliminate a pest from an area;

“establishment” means the perpetuation, for the foreseeable future, of a pest within an area after entry;

“executive officer” means an officer designated in terms of section 5(1);

“export and exportation” mean to move, or the transboundary movement of, regulated articles from the Republic to any place outside the Republic;

“exporter” means any person who, whether as owner, consignor, agent or broker, is in possession of or in any way entitled to the custody or control of any plant, plant product or regulated article to be exported from the Republic;

“import and importation” mean to move, or the transboundary movement of, regulated articles into the Republic ;

“importer” means any person who, whether as owner, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any plant, plant product or regulated article to be imported into the Republic ;

“infestation” means the presence in a commodity of a living pest of the plant or plant product concerned, and includes infection;

“inspection” means the official visual examination of plants, plant products or other regulated articles to determine if pests are present and/or to determine compliance with phytosanitary measures;

“integrity (of a consignment)” means the composition of a consignment as described by its phytosanitary certificate or other officially acceptable document, maintained without loss, addition or substitution;

“introduction” means the entry of a pest which may result in its establishment;

“IPPC” means the International Plant Protection Convention, as deposited in 1951 with FAO in Rome and as subsequently amended;

“juristic person” means any organisation, partnership, corporation, association, joint venture, or other legal entity;

“Minister” means the Minister responsible for Agriculture, Forestry and Fisheries;

“national pest of concern” means a non-regulated pest with a significant economic impact whose biological and epidemiological characteristics determine that its control in the Republic must be performed at more than one local level, requiring intervention for its management, technical coordination or enforcement;

“National Plant Protection Organisation (NPPO)” means an official service established by a government to discharge the functions specified by the IPPC;

“National Plant Protection Organisation of South Africa (NPPOZA)” means the organization designated under section 9 to discharge the functions specified under section 9;

“officer” means an officer or employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“order” means an order given by the executive officer in terms of sections 5(4) and 6;

“organism” means any biotic entity capable of reproduction or replication in its naturally occurring state;

“pathway” means any means that allows the entry or spread of a pest;

“permit” means any authorisation, issued under this Act, to move plants, plant products or other regulated articles in accordance with phytosanitary measures prescribed by this Act; includes “phytosanitary certificate” and “import permit”;

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

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

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

“pest free production site” means a defined portion of a place of production in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a defined period and that is managed as a separate unit in the same way as a pest free place of production;

“pest risk analysis” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

“phytosanitary action” means an official operation, such as inspection, testing, surveillance or treatment, undertaken to implement phytosanitary measures;

“phytosanitary certificate” means an official document that attests to the phytosanitary status of any consignment affected by phytosanitary regulations, patterned after the model certificates of the IPPC;

“phytosanitary import requirements” means specific phytosanitary measures established by an importing country concerning consignments moving into that country;

“phytosanitary measures” means those measures, regulations or procedures as provided for by this Act having the purpose to prevent the introduction or spread of quarantine pests or to limit the economic impact of regulated non-quarantine pests;

“phytosanitary security (of a consignment)” means the maintenance of integrity and prevention of re-infestation after phytosanitary certification and prior to export;

“plant” means any living plant and parts of it, including seeds and germplasm;

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

“point of entry” means an airport, seaport or land border point officially designated and/or prescribed for the importation of consignments, and/or entrance of passengers;

“point of exit” means an airport, seaport or land border point or a point designated and/or prescribed for the exportation of consignments, and/or exit of passengers;

“prescribed” means prescribed by this Act or by any accompanying regulations or control measures;

“provisional measure” means a phytosanitary regulation or procedure established without full technical justification owing to current lack of adequate information;

“quarantine” means official confinement of regulated articles for observation and research or for further inspection, testing and/ or treatment;

“quarantine area” means an area determined by order under section 17(1) within which a quarantine pest is present and is being officially controlled;

“quarantine facility” means an official facility for holding plants or plant products in quarantine;

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

“re-exported consignment” means a consignment that has been imported into the Republic from which it is then exported. The consignment may be stored, split up, combined with other consignments or have its packaging changed;

“regulated area” means an area into which, within which or from which plants, plant products and other regulated articles are subjected to phytosanitary measures or procedures in order to prevent the introduction and/or spread of quarantine pests or to limit the economic impact of regulated non-quarantine pests;

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

“regulated non-quarantine pest” means a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party;

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

“regulation” means regulations made under section 25;

“Republic” means any territory of the Republic of South Africa;

“spread” means the expansion of the geographical distribution of a pest within an area;

“surveillance” means an official process of surveying, monitoring or other procedures in order to collect and record data on the occurrence or absence of pests;

“technically justified” means justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information;

“test” means an official examination, other than visual, to determine if pests are present or to identify pests;

“treatment” means an official procedure for the killing, inactivation or removal of pests, or for rendering pests infertile or for devitalisation;

“user of land” means an owner of land, and includes-

- (a) a person who has a personal or real right in respect of land in his or her capacity of fiduciary, fidei-commissary, holder of a servitude,

possessor, lessee or occupier, irrespective of whether he or she resides on it;

- (b) a person who has the right to cut trees or wood on land or to remove trees, wood or other organic material from land;
- (c) a person who has the right to remove sand, soil, clay, stone or gravel from land; and
- (d) a person who carries on prospecting or mining activities on land;

“visual examination” means the physical examination of plants, plant products or other regulated articles using the unaided eye, lens, stereoscope or microscope to detect pests without testing or processing.

- (2) Where a provision of this Act is in conflict with any other law on plant health, the provision of this Act prevails.

PART II: ADMINISTRATION

Responsibility for the administration of this Act

- 2. (1) The primary responsibility for the administration of this Act lies with the Minister.

Powers of the Minister

- 3. (1) The Minister may, out of funds appropriated by Parliament for that purpose, perform any act on or with respect to land that is necessary to-

- (a) carry out the provisions of a control measure or an order where the user of land concerned refuses or neglects to do so;
 - (b) release on, or remove or eradicate from, land an organism imported in terms of section 11(5);
 - (c) control regulated pests; and
 - (d) further the objectives of this Act.
- (2) The Minister may, on application, authorise a person or juristic person to perform at the expense of that person or juristic person and subject to the control and instruction of the Minister, the acts referred to in subsection (1) (a), and such a person or juristic person has no recourse against the State for expenses so incurred.
- (3) The Minister may, by notice in the *Gazette*, prescribe control measure which must be complied with or carried out by a user of land in terms of section 5 of this Act;
- (4) The Minister may make regulations in terms of section 25 of this Act;

Prescribing of control measures by the Minister

4. (1) The Minister may, by notice in the *Gazette*, prescribe control measures which must be complied with or carried out by a user of land.
- (2) Control measures may relate to -
- (a) the control of regulated pests;
 - (b) the keeping, planting or cultivation of plants;

- (c) the keeping of regulated articles;
 - (d) the removal of regulated articles from land within a specified area to
 - (i) other land within the same area; or
 - (ii) other land within any other specified area.
 - (e) the notification of the occurrence of regulated pests; or
 - (f) any other matter which may be necessary or expedient to prescribe in order to further the objectives of this Act, and the generality of the power conferred by this paragraph may not be limited by the preceding paragraphs.
- (2) Control measures must –
- (a) contain a prohibition or obligation with regard to any matter referred to in subsection (2);
 - (b) provide that the executive officer may exempt a person from the prohibition or obligation by means of a permit; and
 - (c) prescribe fees payable by a person applying for a permit referred to in subsection (3)(b);
- (3) Different control measures may be prescribed in respect of different regulated pests, different areas or different circumstances or in such other respect as may be necessary.

Designation and powers of the executive officer

5. (1) The Minister must designate the Director of Plant Health of the Department as the executive officer of this Act.
- (2) The executive officer is the authority- to whom the provision of phytosanitary measures is entrusted and must exercise the powers and perform the duties conferred or imposed upon the executive officer under this Act.
- (3) (a) The executive officer may delegate to any officer of the Department, or with the approval of the Minister to any juristic person, any power conferred upon him or her by or under this Act;
- (b) Any decision made or order given by any such officer or any such juristic person must be regarded as having been made by the executive officer;
- (c) Any decision or order of such an officer may at any time be withdrawn or amended by the executive officer in writing.
- (4) If the executive officer has ascertained, or suspects on reasonable grounds, that regulated articles have been or will be imported into the Republic contrary to this Act, or have been or will be exported out of the country, or that regulated articles are infested, or have been moved or will be moved from a declared infested area to a non-infested area within the Republic, the executive officer may -
- (a) order the person in charge of the conveyance by which the regulated articles have been or will be imported or conveyed, that such articles or part of them as he or she may determine -

- (i) not to be off-loaded;
 - (ii) not to be conveyed any further; or
 - (iii) to be off-loaded at any place determined by the executive officer.
- (b) order the person in control of the regulated articles, or the person by whom or on whose behalf the regulated articles have been or will be imported or conveyed, or the person in possession or in charge of the regulated articles or part of such article, to remove from the Republic, destroy, treat, detain, or deal with, the regulated articles in the manner, at the place and within the period determined by the executive officer;
- (c) destroy or cause to destroy the regulated articles or part of them as he or she may determine after notifying, in writing, the person in control or in charge of the regulated articles, or by whom or on whose behalf the regulated articles have been imported. Where the destruction of the regulated articles is urgently required or the giving of notice is impractical, notice need not be given;
- (d) search any person, personal luggage or conveyance;
- (e) where a person does not comply with the provisions in paragraphs (a) or (b), destroy or cause to destroy the regulated articles; or
- (f) order the owner or person in possession or in charge of the regulated articles, including any articles produced through, or acquired through, from or by means of the regulated articles, to deal with those articles as provided in paragraph (b) irrespective of the degree of descent or

relationship concerned, or the connection between the regulated articles.

- (5) The executive officer may institute an inquiry and request information and documentation from any person, to exercise his or her powers or perform his or her duties.
- (6) The executive officer may inspect, sample, test or investigate regulated articles and conduct surveillances.
- (7) The executive officer may audit delegates or assignees.
- (8) The executive officer may issue or grant any order or relevant permit, including a phytosanitary certificate.
- (9) When the executive officer issues or grants an order or relevant permit subject to technically justifiable conditions, he or she may at any time -
 - (a) amend the provisions or conditions concerned; or
 - (b) withdraw it in writing;
- (10) in a case where the executive officer issues or grants an order or relevant permit, he or she may at any time, on application -
 - (a) determine points of entry or exit other than the prescribed points of entry or exit in terms of the this Act;
- (11) if the executive officer deems fit, he or she may issue on-spot-fine to anyone who contravenes the provisions of this Act.

Orders with regard to land

6. (1) The executive officer may, by written order, which must be served in the prescribed manner, instruct a user of land to observe or carry out the provisions of a particular control measure on or with respect to any quarantine area or regulated area determined in that order.
- (2) Such an order may provide that anything required in terms of it, must be done or omitted in the manner or within or during the period mentioned in it.
- (3) The executive officer may, upon application by the user of land concerned and against payment of the prescribed fees, if any, withdraw or amend an order, and for that purpose carry out the necessary inspection of the quarantine area or regulated area.
- (4) (a) Despite a prohibition in an order referred to in subsection (1), the executive officer may, in writing, authorise a user of land to remove a regulated article from the quarantine area or regulated area concerned in order to treat, eradicate or destroy it or dispose of it; and
- (b) An application for an authorisation must be submitted in a prescribed manner to the executive officer.

Powers of entry, search, inspection and seizure with regard to land

7. (1) A person authorised by the Minister to perform an act under section 4(2) may on the authority of a warrant at any reasonable time enter upon or proceed over land to perform that act on or in connection with that land or other land;
- (2) Such an authorised person may -

- (a) after having notified the user of land concerned of his or her intention to do so, take with him or her when he or she enters upon or proceeds over that land such persons, vehicles, goods and material as he or she may require for the performance of the relevant act, but notice need not be given if the user of the land concerned does not reside on that land and cannot readily be traced; and
 - (b) require the user of land concerned or his or her manager, agent or employee on that land to render him or her such reasonable assistance as may be necessary in the circumstances to enable him or her to perform the act concerned.
- (3) The executive officer may at any reasonable time, after having obtained a warrant -
- (a) proceed over land to reach the land where he or she wants to exercise his or her powers or perform his or her duties;
 - (b) enter and search any land, building or conveyance if he or she suspects on reasonable grounds that there may be a regulated article on or in it or with a person, and for that purpose he or she may inspect anything on or in that land, building or conveyance or on or with that person and remove it or a sample of it for further investigation;
 - (c) require access to a book, document or electronic equipment at or on that land, building or conveyance which he or she suspects on reasonable grounds may relate to a regulated article, and make copies of or extracts from that book, document or electronic information;

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- (d) demand an explanation in connection with a relevant entry in such a book, document or electronic information or anything observed by him or her during his or her inspection, from a person who may have knowledge of the entry concerned or of something observed by him or her;
 - (e) seize an article which may serve as evidence of the commission of an offence in terms of this Act, and for that purpose remove it or a sample of it or any other article from the land, building or conveyance in question, and affix an identification mark or seal to it;
 - (f) enter and inspect any land to demarcate a quarantine area or regulated area and for that purpose effect or erect a marker, peg, label or other mark on or in connection with the land;
 - (g) enter and search any land to determine if the user of land concerned is complying with or carrying out, or has complied with or carried out, the provisions of a control measure or order;
 - (h) enter any land, building or conveyance to carry out any surveillance of pests; and
 - (i) enter any land, building or conveyance to carry out any other investigation in connection with any matter mentioned in this Act.
- (4) A warrant referred to in subsection (3) must be issued by a magistrate who has jurisdiction in the area where the land or premises in question are situated, and must only be issued if it appears to the magistrate from the information on oath or affirmation that there are reasonable grounds for believing that an article mentioned in subsection (3)(b) and (e) is upon or in such land or premises and must specify which of the

acts mentioned in subsection (3) may be performed there under by the person to whom it is issued.

- (5) A warrant issued in terms of this section must be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which must be reasonable, and entry upon and search of any land, premises or specified in such warrant must be conducted with strict regard to decency and order, including –
 - (a) a person's right to respect and the protection of his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (6) The executive officer, employee or juristic person executing a warrant in terms of this section must immediately before commencing with the execution –
 - (a) identify himself or herself to the person in control of the land or premises if such a person is present, and hand to such a person a copy of the warrant, or if such a person is not present, affix such copy to a prominent place on the land, premises or conveyance; and
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (7) The executive officer, employee or juristic person may without a warrant enter any land, premises or conveyance and search for, seize and remove any article referred to in subsection (3) if the person consents to such entry, search, seizure and removal.

- (8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the land, premises or conveyance in question contains privileged information and refuses the inspection, seizure or removal of such article, the person executing the warrant or conducting the search must, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request a magistrate who has jurisdiction to seize or remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.
- (9) A warrant issued in terms of this section may be issued on any day and remains in force until, whichever occurs first –
- (a) it is executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
 - (c) the expiry of one month from the day of its issue; or
 - (d) the purpose for which the warrant was issued no longer exists.
- (10) When the executive officer exercises a power referred to in subsection (3) on or in connection with any land, premises or conveyance, he or she may require the user of land, owner or person in charge, or his or her manager, agent or employee, to render him or her such reasonable assistance as may be necessary.
- (11) When the executive officer exercises a power referred to in subsection (3) on or in connection with any land, building or conveyance, he or

she may make use of any person or equipment to assist him or her in the exercise of his or her power.

- (12) A person authorized under this section to enter upon, search or proceed over any land, building or conveyance must show to the user of the land, owner or person in charge, or his or her manager, agent or employee, proof of his or her identity.

Designation of the National Plant Protection Organisation of South Africa (NPPOZA)

8. The competent phytosanitary policy and operational directorates of the Department shall serve as the NPPOZA in order to prevent the introduction, establishment and spread of pests of plants and plant products as well as promote appropriate measures for their control.

Functions of the NPPOZA

9. The NPPOZA shall perform the following functions –
- (a) providing a national plant protection contact point in terms of the IPPC in the Republic;
 - (b) issuing phytosanitary certificates;
 - (c) conducting pest risk analyses;
 - (d) issuing phytosanitary measures;
 - (e) proposing, reviewing, and enforcing phytosanitary measures;

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- (f) inspection of consignments of plants, plant products and other regulated articles;
- (g) notifying trading partners regarding non-compliance with phytosanitary import requirements;
- (h) notifying other countries about the Republic's phytosanitary measures, regulations, requirements and legislation;
- (i) conducting surveillance for regulated pests and/or national pests of concern in the Republic;
- (j) conducting phytosanitary audits to ensure that pest management is in compliance with official phytosanitary measures and standards;
- (k) rendering plant health services that include phytosanitary diagnostic services and quarantine services;
- (l) distribute plant health information regarding regulated pests and any other phytosanitary matters that are of public interest;
- (m) conducting training and development of staff;
- (n) representing the Republic in bilateral, regional and other international phytosanitary forums;
- (o) negotiating and maintaining export work programmes, bilateral protocols for importing and exporting plants and plant products and other regulated articles; as well as any other related phytosanitary measures; and
- (p) any other functions as may be required by the provisions of this Act and relevant international agreements.

PART III: IMPORTS

Regulation of imports

10. (1) In order to prevent the introduction, establishment and spread of regulated pests, the executive officer may -
- (a) conduct pest risk analysis and prescribe specific phytosanitary measures as conditions for the import of plants, plant products and other regulated articles;
 - (b) exempt and/or prohibit the import of specified plants, plant products and other regulated articles;
 - (c) implement emergency and provisional measures in relation to imports; and
 - (d) take phytosanitary action in relation to imports.
- (2) Phytosanitary measures under subsection (1)(a) and the exemptions and/or prohibitions under subsection (1)(b) shall be based on existing international standards or be technically justified based on pest risk analysis.
- (3) The executive officer may negotiate bilateral and multilateral agreements for the evaluation and possible acceptance of alternative phytosanitary measures proposed by an exporting country's NPPO as being equivalent to the phytosanitary measures required under subsection (1)(a).

Importation of regulated articles

11. (1) Subject to subsections (2), (5) and (6), a person may not, except on authority of an import permit that may on application be issued by the executive officer on such conditions as he or she may determine, import into the Republic -
- (a) regulated articles; or
 - (b) articles determined by the Minister by notice in the *Gazette*.
- (2) The Minister may, by notice in the *Gazette*, determine that specific regulated articles may be imported into the Republic without an import permit, subject to conditions set out in that notice.
- (3) A person importing regulated articles into the Republic on the authority of a permit or a notice in the *Gazette* as contemplated in subsection (2) -
- (a) must do so through a prescribed point of entry, except where an executive officer has determined an alternative point of entry;
 - (b) must present the regulated articles and prescribed documents at the point of entry or any other place determined by the executive officer for inspection, tests or other activities;
 - (c) must not remove the regulated articles from the point of entry or any other place before the executive officer has authorised such removal in writing;
 - (d) must apply for inspection on a form obtainable from the executive officer; and

- (e) is liable for the payment of the prescribed fees.
- (4) (a) The executive officer may review, modify or revoke an import permit in the case where import conditions have been amended or modified or where the permit holder has contravened the conditions of the import permit; and
- (b) If the executive officer reviews, modifies or revokes an import permit in terms of subsection (4)(a) he or she must advise the permit holder in writing of the review, modification or revocation and the reasons for the review, modification or revocation within 10 days.
- (5) The Minister may allow the importation of any organism of a kind not indigenous to the Republic, if the presence of it in the Republic is desirable to -
- (a) control the occurrence of pests in the Republic; or
 - (b) further the objectives of this Act;
- (6) The Minister may consult widely with, and take into account the advice of, members of the agricultural and scientific communities before taking action under subsection (5).
- (7) The Minister may, by notice in the *Gazette*, determine regulated articles in respect of which a permit for importation into the Republic may not be issued.

PART IV: EXPORT, RE-EXPORT AND TRANSIT

Exportation of regulated articles

- 12.(1)** A person intending to export plants, plant products or other regulated articles from the Republic -
- (a) must comply with the phytosanitary import requirements of the importing country;
 - (b) must apply to the executive officer for the prescribed phytosanitary certificate, where applicable, in the prescribed manner;
 - (c) must do so through a prescribed point of exit, except where the executive officer has determined an alternative point of exit;
 - (d) is liable for the prescribed fees;
 - (e) must avail the consignment for inspection where applicable; and
 - (f) must comply with the prescribed export phytosanitary protocols and related requirements.
- (2) The executive officer shall, upon application by an exporter under subsection (1)(b), inspect the consignment without undue delay.
- (3) Upon inspection under subsection (2) the executive officer shall –
- (a) where the consignment meets the importing country's phytosanitary measures, issue a phytosanitary certificate and any other required declaration; and

- (b) deny certification where requirements under subsection (1) have not been met.

- (4) After the issuance of a phytosanitary certificate, the exporter shall export the consignment in compliance with the conditions of the NPPOZA concerning maintenance of the phytosanitary security of a consignment after certification.

Re-exported consignment

13. (1) When a consignment is imported into the Republic for further export to another country, the exporter –
- (a) must apply to the executive officer for a prescribed phytosanitary certificate for re-export;
 - (b) must provide all required documentation to the relevant executive officer;
 - (c) must avail the consignment for inspection; and
 - (d) is liable for the prescribed fees
- (2) The executive officer shall, upon application by an exporter under subsection (1)(a), inspect the consignment without undue delay.
- (3) Upon inspection under subsection (2), the executive officer shall issue a re-export phytosanitary certificate where he or she has reasonable grounds that the consignment –
- (a) complies with the phytosanitary measures of the importing country; and

- (b) the accompanying documents comply with the phytosanitary import requirements of the importing country.
- (4) Upon issuance of a re-export phytosanitary certificate, the exporter shall re-export the consignment in compliance with the conditions of the NPPOZA concerning consignment integrity and phytosanitary security.
- (5) In cases where any of the requirements of subsection (3) are not met, the executive officer shall issue a phytosanitary certificate in accordance with section (13)(3)(a).
- (6) Any phytosanitary certificate issued under subsection (6) shall indicate the country of origin of the consignment.

Consignments in transit

- 14.** (1) Transit of consignments carrying certain regulated articles through the Republic shall be permitted only upon written permission by the executive officer, which shall be granted after application by an importer in the prescribed form and the payment of any prescribed fee.
- (2) Phytosanitary measures shall not apply to a consignment in transit through the Republic provided that the consignment –
- (a) has been packed in such a manner as not to permit any risk of the introduction and spread of regulated pests that might be present in the consignment;

- (b) where applicable, is accompanied by the phytosanitary certificate and accompanying documents of the country of origin.

PART V: PEST STATUS AND PHYTOSANITARY PROCEDURES

Declaration of regulated pests

- 15. (1) The executive officer must declare a pest as a –
 - (a) quarantine pest or regulated non-quarantine pest, based on a pest risk analysis; or
 - (b) national pest of concern, based on surveillance and the potential local economic impact of the pest.
- (2) The executive officer must publish the lists of regulated pests and national pests of concern.

Compulsory notification of presence of pests

- 16. (1) A user of land who knows or suspects the presence of regulated pests or national pests of concern have appeared on the land concerned must –
 - (a) immediately notify the executive officer by the quickest practicable means;
 - (b) provide the executive officer with such further information as the executive officer may reasonably require; and
 - (c) take all reasonable measures to prevent the spread of the regulated pests or national pests of concern.

- (2) Any person that has for the first time identified or recorded a pest to be present in the Republic must immediately report it to the executive officer and/or authority.

Declaration of quarantine areas

17. (1) Where the executive officer determines or suspects that an area or premises is infested with any quarantine pest, it may declare that area a quarantine area.
 - (2) The executive officer shall regularly review the situation in respect of any quarantine area and as soon as either –
 - (a) the relevant quarantine pest is considered as no longer present; or
 - (b) it is no longer viable for the quarantine to be maintained in respect of part or all of the area; it shall revoke the quarantine status of such area.
 - (3) The executive officer may declare a place to be a quarantine facility in which regulated articles may, subject to this Act, be kept, examined, disinfested, treated, destroyed or otherwise disposed thereof.

Declaration of pest free areas, places and sites of production

18. A pest free area, place and site of production may be established and declared when the executive officer –
 - (a) is satisfied through surveillance that a specific pest is not present in the area;

- (b) adopts phytosanitary measures to establish and maintain a pest free area; and
- (c) institutes a monitoring programme to verify that the pest free status is maintained.

Declaration of areas of low pest prevalence

19. An area of low pest prevalence may be declared when the executive officer-

- (a) is satisfied that a regulated pest occurs at low levels in an area;
- (b) adopts phytosanitary measures to establish and maintain an area of low pest prevalence; and
- (c) institutes a surveillance programme to verify that the pest levels remain low.

PART VI: GENERAL PROVISIONS

Delegation and assignment of powers

20. (1) If the Minister deems it fit, he or she may delegate, in writing, any power conferred upon him or her, or assign any duty imposed upon him or her by this Act, to a juristic person except the power -
- (a) conferred upon him or her by section 11(1)(b), (2) and (5);
 - (b) to prescribe control measures under section 4;
 - (c) to decide an appeal under section 21;

- (d) to make regulations under section 25; and
 - (e) to perform the functions of the executive officer under section 5.
- (2) When the Minister delegates or assigns a power or duty referred to in subsection (1), he or she may determine that the assignee concerned must exercise his or her powers and perform his or her duties subject to the instructions of the Minister.
- (3) (a) A juristic person established under any law and to whom a power or duty has been delegated or assigned under subsection (1) is, despite the absence of any express provision to that effect in the law under which it was established, deemed competent to exercise the power or perform the duty.
- (b) Subject to the approval of the Minister, such juristic person may in writing authorise a person in its employment to exercise the power or to perform the duty concerned. A decision or order of the authorised person may at any time be withdrawn or amended by the Minister.

Appeals

21. (1) Any person aggrieved by a decision or action of the executive officer under this Act, may appeal in the prescribed manner to the Minister against the decision or action in question.
- (2) (a) The Minister must –
- i. refer the appeal referred to in subsection (1) for investigation and decision to a board to be established by the Minister;
 - ii. appoint as members of the board –

- (aa) one person on account of his or her knowledge of the law who must be designated as chairperson; and
 - (bb) two other persons who have expert knowledge of the subject of the appeal;
- (b) The remuneration of a member of the board must be prescribed;
- (c) Any person appointed in terms of paragraph (a)(ii) must recuse himself or herself as a member of the board if he or she has any direct or indirect personal interest in the outcome of the appeal.
- (3) (a) An appeal in terms of subsection (1) must be heard on the date and at the time and place determined by the chairperson and he or she must inform the person appealing and any other party that has an interest in the appeal in writing of the date, time and place of the hearing;
- (b) The chairperson may, for the purposes of the hearing of an appeal-
 - (i) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the board at a date, time and place specified in the summons, to be interrogated or to produce that document, and the chairperson may retain for examination any document so produced;
 - (ii) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

- (iii) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control;
 - (c) The person appealing and the executive officer may be represented.
- (4) If a person appointed in terms of subsection (2)(a)(ii) –
- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
 - (b) is unable to act and another person cannot be appointed in time; or
 - (c) is, after the investigation has commenced, unable to continue therewith;
the parties may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the chairperson of the board, the Minister must designate one of the remaining members to act as chairperson.
- (5) (a) If the parties do not agree in the manner contemplated in subsection (4), the investigation must be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2)(a)(ii), in the place of the member that has dies or has become incapacitated;
- (b) Where an appointment has been made in terms of paragraph (a)

the investigation must, if the parties so agree, be continued as from the stage at which the investigation was interrupted by the death or incapacitation of a member or must, if the parties do not so agree, be commenced afresh.

- (6) The board may, after investigation of the appeal –
- (a) confirm, set aside or vary the relevant decision or action of the Registrar; and
 - (b) order the executive officer to execute the decision of the board in connection therewith.
- (7) The decision of the board must be in writing and a copy thereof must be furnished to the executive officer, the appellant and any other party.
- (8) If the board sets aside any decision or action by the executive officer, the prescribed fees paid by the appellant in respect of the appeal in question must be refunded to him or her or, if the board varies any such decision or action, the board may direct that the whole or any part of such fees be refunded to the appellant.

Preservation of confidentiality

22. Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may, except for the purposes of exercising his or her powers or performing his or her duties in terms of this Act, or for the purposes of legal proceedings under this Act, or when required to do so by a court or under a law, or at the request of the Minister, the Director-General or any other person entitled to the information, disclose to any other person information acquired by him or her in the exercise of

those powers or the performance of those duties and relating to the business or affairs of any person.

Offences and penalties

23. (1) A person is guilty of an offence, who -
- (a) contravenes, refuses or fails to comply with a provision of section 11(1) or (3), including a condition imposed in connection with an import permit, or a condition in a notice referred to in section 11(2);
 - (b) is found in possession of regulated articles in respect of which there is a reasonable suspicion that they were moved from an infested area to a non-infested area as provided in the relevant regulation, imported without an import permit referred to in section 11(1), or contrary to a condition of a permit or a condition set out in a notice issued under section 11(2), and who is not able to give a satisfactory account of such possession;
 - (c) contravenes, refuses or fails to comply with a provision of section 12;
 - (d) refuses or neglects to notify the executive officer as required by section 16 or to give him or her the requested further information;
 - (e) refuses or neglects to comply with or carry out a provision of a control measure, order or authority, including a condition imposed in connection with it;
 - (f) obstructs or hinders an executive officer, an officer or a delegate or assignee in the exercise of his or her powers or the performance of his or her duties;

- (g) effects an unauthorized entry or deletion on a document issued or required under this Act;
 - (h) refuses or neglects to supply information, produce a document or give an explanation to a person who is authorised in terms of this Act to ask for it, or who supplies information or gives an explanation knowing it to be false;
 - (i) refuses or neglects to render the assistance contemplated in section 7(2)(b) or 7(5);
 - (j) damages, destroys, removes, shifts, alters or otherwise tampers with a marker, peg, label or other mark effected or erected for the purpose of demarcating a quarantine area or regulated area;
 - (k) damages, destroys, removes, shifts, alters or otherwise tampers with surveillance equipment; or
 - (l) discloses information contrary to section 22.
- (2) A person found guilty of an offence mentioned in subsection (1) is liable, on -
- (a) a first conviction of an offence in terms of subsection (1)(a), (b) or (c), to a fine or imprisonment for a period not exceeding five years;
 - (b) a first conviction of an offence in terms of subsection (1)(d), (e), (f) or (g), to a fine or imprisonment for a period not exceeding 18 months;
 - (c) a second or subsequent conviction of an offence mentioned in subsection (2)(a), whether the same or some other offence mentioned in that subsection, in the case of a person, to

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imprisonment for a period not exceeding 10 years, and in the case of a juristic person, to a fine as determined;

- (d) a second or subsequent conviction of an offence mentioned in subsection (2)(b), whether the same or some other offence mentioned in that subsection, to a fine or to imprisonment for a period not exceeding three years; and
 - (e) conviction of an offence in terms of subsection (1)(h), (i), (j), (k) or (l), to a fine or imprisonment for a period not exceeding two months.
- (3) A magistrate's court may impose any punishment provided for in this section.

Liability of employer

24. (1) For the purposes of this Act, an act or omission of a manager, agent or officer constituting an offence under this Act is regarded to be the act or omission of his or her employer and the employer may be convicted and sentenced in respect of it, unless he or she adduces evidence that
- (a) he or she did not permit or conspire in the act or omission;
 - (b) he or she took all reasonable steps to prevent the act or omission; and
 - (c) the act or omission did not under any condition or circumstances fall within the course of the employment or the scope of the authority of the manager, agent or officer.

- (2) The fact that an employer has forbidden an act or omission, may not by itself be regarded as sufficient proof that he or she has taken all reasonable steps as required by subsection (1)(b).
- (3) The provisions of subsection (1) do not affect the criminal liability of the manager, agent or officer concerned.

Regulations

- 25.** (1) The Minister may make regulations regarding-
- (a) the manner in which application must be made for an import permit, other permit, authorization, phytosanitary certificate or inspection;
 - (b) the points of entry or exit through which regulated articles must be imported in terms of section 11 or exported in terms of section 13;
 - (c) fees payable in terms of this Act;
 - (d) the manner in which a notice, authorization, order or other document mentioned in this Act may be served;
 - (e) the manner in which and the period within which an appeal may be noted in terms of section 21, the officer by whom and the manner in which the refusal or conduct concerned must be investigated, the manner in which an appellant may submit information or evidence or make representations, whether personally or through a legal representative, and the preparation and submission of a report and recommendation to the Minister;
 - (f) the manner in which regulated articles must be presented for inspection;

- (g) the listing of regulated pests;
 - (h) the declaration of pest free areas and areas of low pest prevalence;
 - (i) the declaration of pest free places of production;
 - (j) the declaration of pest free production sites;
 - (k) the declaration of quarantine areas;
 - (l) the listing of regulated articles;
 - (m) the manner in which the executive officer must deal with regulated articles for export found to be infested;
 - (n) any matter required or permitted to be prescribed under this Act; and
 - (o) any matter which may be necessary or expedient to prescribe in order to further the objectives of this Act, and the generality of the power conferred by this paragraph may not be limited by the preceding paragraphs.
- (2) Different regulations may be made in terms of this section in respect of different areas in the Republic or in such other aspects as may be deemed necessary.
- (3) A regulation prescribing fees may be made only after consultation with the Minister of Finance.

Compensation

- 26.** (1) If a regulated article has been destroyed by virtue of an order contemplated in section 6(1)-
- (a) the Minister may, , out of funds appropriated by Parliament for that purpose, pay such compensation as he or she may consider reasonable;
 - (b) an application for the payment of compensation under subsection (1)(a) may only be considered if-
 - (i) it is submitted in writing to the executive officer concerned within 90 days after the date on which the regulated articles in question have been destroyed; and
 - (ii) it is done in a prescribed manner.
- (2) No compensation is payable to a person in respect of the rendering of assistance in terms of subsection 7(2)(b) and (5).

Assistance and Cooperation

- 27.** (1) Subject to the provisions of the Constitution of South Africa, 1996 (Act No.108 of 1996) under chapter 3 which provides for co-operative governance, the executive officer may request the assistance and/or cooperation from other national, provincial and local authorities, including traditional councils, police, customs, research institutes, associations, organizations, assignees, in the performance of his or her functions and in the exercise of his or her powers under this Act.

- (2) Any party or authority to which a request has been made under subsection (1) shall provide such facilities and assistance as are necessary for the NPPOZA to perform its functions.

Limitation of liability

- 28.** No person, including the State, is liable in respect of anything done in good faith and without negligence in the exercise of a power or the performance of a duty conferred or imposed upon him or her under this Act.

Provisions that bind the State

- 29.** (1) The provisions of this Act bind the State;
- (2) No fees payable under this Act are payable by the State.

Application of international agreements

- 30.** This Act gives effect to ratified international agreements affecting phytosanitary matters to which South Africa is a party and which bind the Republic.

Repeal of laws and transitional provisions

- 31.** (1) Subject to subsection (2) and (3) the Acts mentioned in the Schedule are repealed to the extent set in the third column of the Schedule.
- (2) A permit issued in terms of section 3 of the Agricultural Pests Act, 1983 (Act No. 36 of 1983), and which is in force at the commencement of this Act, is regarded to be a permit contemplated in section 12(1) of this Act.

- (3) A notice issued under section 3(1)(b), (4) or (6) of the Agricultural Pests Act, 1983, and still in force at the commencement of this Act is regarded to be a notice issued under section 11(1)(b), (2) or (5) of this Act, respectively.

- (4) A written notice issued in terms of section 7(1) of the Agricultural Pests Act, 1983, or an Act repealed by that Act, which is in force at the commencement of this Act, is regarded to be an order issued under section 6 of this Act.

- (4) A regulation made under section 16 of the Agricultural Pests Act, 1983, and still in force at the commencement of this Act, is regarded to be a regulation made under section 25 of this Act.

Short title and commencement

- 32.** (1) This Act may be cited as the National Plant Health Act, 2012

- (2) This Act shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

Acts repealed by section 32

Act No.	Short title of Act	Extent of Repeal
36 of 1983	Agricultural Pests Act, 1983	Sections that regulate phytosanitary matters
17 of 1985	Agricultural Pests Amendment Act, 1985	
47 of 1986	Agricultural Pests Amendment Act, 1986	
18 of 1989	Agricultural Pests Amendment Act, 1989	
9 of 1992	Agricultural Pests Amendment Act, 1992	

MEMORANDUM ON THE OBJECTS OF THE NATIONAL PLANT HEALTH BILL, 2012

1. Existing position

At present the Agricultural Pests Act, 1983 (Act No. 36 of 1983) provides for measures by which agricultural pests may be prevented and combated.

2. Problems with existing position

Unfortunately this Act is not aligned with the relevant international agreements that bind the Republic, such as the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (WTO-SPS Agreement) and the International Plant Protection Convention (IPPC). It also contains certain provisions that are unconstitutional e.g. the presumptions in section 14, and does not provide for the exportation as well as re-exportation of regulated articles, and the establishment of a NPPOZA as well as its functions.

3. Proposed solution to the existing problems

To solve these problems a new Bill is proposed which shall be aligned with the international agreements. Provisions that may be unconstitutional will be eliminated and provisions made for the exportation and re-exportation of regulated articles, as well as the establishment of the NPPOZA and its functions.

4. Clause by clause analysis

The Bill consists of 32 clauses and a Schedule.

In clause 1 certain terms and expressions are defined so that the contents of the Bill may be more understandable.

In terms of clause 2, the Minister is responsible for the administration of the Bill.

Clause 3 gives certain powers to the Minister to further the objectives of the Bill.

Under clause 4 the Minister may prescribe control measures which must be complied with by users of land in order to achieve the objectives of the Bill.

Clause 5 provides the designation and functions of an executive officer.

Clause 6 empowers an executive officer to instruct a user of land by written order to comply with a control measure in respect of a quarantine area or regulated area determined in that order.

Under clause 7 an authorised person may on the authority of a warrant enter, search and inspect any land to combat pests or to carry out a control measure.

Clause 8 provides for the designation of the NPPOZA.

Clause 9 provides for the functions of the NPPOZA.

Clause 10 sets out imports regulations in order to prevent the introduction and spread of regulated pests.

Clause 11 provides that regulated articles may only be imported on the authority of a permit and under certain conditions. The Minister may by notice in the *Gazette* make provision for certain exceptions.

Clause 12 sets out the conditions for exporting regulated articles.

Clause 13 provides provisions for the re-export of consignments imported into the Republic for further export to another country.

Clause 14 sets out the requirements and/or conditions that should be adhered to by importers when importing through the Republic to another country.

Clause 15 provides for conditions under which the executive officer may declare regulated pests.

In clause 16 provisions are made for the compulsory notification of the presence of certain pests by a user of land.

Clause 17 sets out conditions under which the executive officer may declare quarantine areas.

Under clause 18, the executive officer may declare certain areas as pest free areas, place and sites of production.

Under clause 19 the executive officer may declare areas of low pest prevalence.

Clause 20 gives the Minister the power to delegate certain powers conferred upon him or her, or to assign any duty imposed upon him or her by this Bill, to a juristic person.

Clause 21 authorises an aggrieved person to appeal against a decision of an executive officer to the Minister.

Clause 22 regulates the preservation of secrecy.

Clause 23 prescribes penalties for certain offences.

In terms of clause 24, the employer may be convicted for an offence committed by his or her manager, agent or employee.

Under clause 25, the Minister may make regulations regarding certain matters.

Clause 26 provides for compensation by Minister regarding certain matters in this Bill.

Clause 27 provides for assistance and cooperation to the executive officer by different authorities and/or parties in order for the executive officer to perform his her functions.

In terms of clause 28, no person, including the State, is liable for anything done legally under the Bill.

Clause 29 provides that the State is bound by the Bill, excluding clauses 22, 24 and 25.

According to clause 30 the Bill gives effect to international agreements that bind the Republic.

Clause 31 repeals the Agricultural Pests Act, 1983, and its amendments, but retains certain permits, notices and regulations as a transitional arrangement.

According to clause 32 the Bill, when passed, shall be called the National Plant Health Act, 2012, and will come into operation on a date fixed by the President by proclamation in the *Gazette*.

In the Schedule the laws that are repealed by clause 32 are set out.

5. Persons and instances consulted

The following persons and instances have been consulted:

- a) NPPOZA

- b) Directorates Legal Services, Plant Production, Genetic Resources as well
Climate Change and Disaster Management
- c) State Law Advisors

6. Parliamentary procedure

The Department and the State Law Advisors are of the opinion that the Bill must be dealt with in accordance with the procedure set out in section 76 of the Constitution, since it deals with agricultural matters that affect the provinces.
