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2008, No. 14

An Act to prevent the entry of animal and plant pests and diseases into the Cook Islands, to control their establishment and spread in to the Cook Island, to regulate the movement of animal and plant pests and diseases and of animals and plants and their products; to facilitate international cooperation in respect of animal and plant diseases; and to make ancillary and related provisions.

(24 September 2008

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by authority of the same as follows:

PART 1
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Biosecurity Act 2008.

(2) This Act shall come into force on the date appointed by the Queen's Representative, by Order in Executive Council.

2. Interpretation - In this Act, unless the context otherwise requires –

"aircraft" means any conveyance that may be used in navigation by air;

"animal" means any mammal (other than a human or fish), bird, insect, amphibian, reptile, mollusc or other member of the animal kingdom, whether alive or dead, and includes the egg, embryo, ova or semen and any organic animal tissue from which another animal could be produced, and the hide, skin, hair, feathers, shell, horns, hoof, viscera, beneficial microorganisms or any other part or portion of the body of an animal;

"animal product" means any article or substance derived from an animal, whether or not in combination with any other article or substance, and includes –

(a) meat, fat, milk, whey, cream, butter, cheese, eggs and other foodstuffs derived from an animal;

(b) the dung, urine, faeces, saliva, bone or blood of an animal, or any article or substance derived from the dung, urine, faeces, saliva, bone or blood of an animal;

(c) the secretions of any animal;

(d) any product or biological preparation derived from any animal tissue or animal secretion;

"animal carcase" means the carcase of an animal and includes the whole or any part of the flesh of the wool, skin, hide, bones, hooves, horns, feathers, or other portion of the carcase;

"article" means a single unit of any goods;

"authorised" means duly authorised by the Minister, the Secretary or a public officer for the purposes of this Act;

"baggage" means any goods which accompany a passenger or crew member on a conveyance, including clothing and any article attached or otherwise connected to the body or clothing of any passenger or crew member;

"ballast water" means water (including sediment that is or has been contained in water) used as ballast in a vessel;

"bee appliance" means any hive bee-comb, extractor or other appliances used with bees;

"bee product" means honey, honey dew, beeswax, bee venom, proprolis, pollen or royal jelly and include any other products collected by bees or derived from bees or bee products;

"biological control agent" means any beneficial insects, nematode, microorganisms or pathogen, that the Secretary declare by notice published in the Cook Islands gazette as biological agent;

"biosecurity" means the control by legal and administrative means of pests and diseases affecting animals, plants and their products, in order to avoid adverse effects from such pests and diseases on the economy and health of the Cook Islands;

"biosecurity access arrangements" means arrangements under section 27(1) for specifications in respect of new imports;

"biosecurity advisory committee" means a committee appointed under section 82;

"biosecurity approved premises" means premises approved for the inspection, testing and treatment of regulated articles under section 88;

"biosecurity authority" of a receiving country means the authority in that country which administers its biosecurity laws;

"biosecurity certification requirement", in relation to an article, means a requirement by a receiving country for a sanitary or phytosanitary certificate or a certificate of origin in respect of the article;

"biosecurity clearance", in respect of a regulated article or consignment, means biosecurity import clearance or biosecurity export clearance;

"biosecurity clearance agent" means a person in the Cook Islands appointed by an importer or exporter under section 13 for the purposes of this Act as the agent of the importer or exporter to supervise the biosecurity clearance of a conveyance, container, animal, plant, animal or plant product or any other goods;

"biosecurity control" of a regulated article means submission of the article for inspection under this Act, and thereafter taking such biosecurity measures, or permitting such measures to be taken, as are directed pursuant to this Act, until biosecurity clearance is granted in respect of the article;

"biosecurity controlled area" means an infested biosecurity controlled area declared under section 62 or a pest-free biosecurity controlled area declared under section 64;

"biosecurity declaration" in relation to an article or consignment means a written statement of the nature, quantity and origin of the article or consignment, and of other details relating to it required by or under this Act;

"biosecurity emergency" means the incursion or suspected incursion of a regulated pest or disease into any area of the Cook Islands, or the existence of some other biosecurity threat, which requires urgent action, whether by eradication, containment or other response, and for which the powers under this Act are not otherwise adequate;

"biosecurity emergency area" means an area declared in response to a biosecurity emergency under section 69;

"biosecurity entry inspection" of an incoming article means inspection of it pursuant to section 23;

"biosecurity export clearance" of an article means permission under section 38 for the article or consignment to be exported;

"biosecurity export inspection" of an outgoing article means inspection of it pursuant to section 33;

"biosecurity goods holding area" means an area of land at or adjacent to a port or airport designated under section 11(3) for the biosecurity inspection of incoming or outgoing articles and consignments;

"biosecurity holding area" means a biosecurity port holding area, a biosecurity goods holding area or a biosecurity postal holding area;

"biosecurity import clearance" of an article means permission under section 25 for the article or consignment to be removed from a biosecurity holding area;

"biosecurity import clearance of regulated articles" of an incoming article means inspection of it pursuant to section 24;

"biosecurity import permit" means a biosecurity import permit issued under section 29;

"biosecurity import requirements" in relation to an article or consignment mean -

(a) the conditions of a biosecurity import permit, if one is required;

(b) the requirements of any sanitary or phytosanitary certificate relating to the article or consignment;

(c) any other biosecurity measures specified under section 26(1)(c);

"biosecurity inspection" of an incoming or outgoing conveyance, article or consignment means an inspection to ascertain whether the conveyance, article or consignment presents a biosecurity risk to the Cook Islands or a receiving country and whether in other respects it conforms to the requirements of this Act;

"biosecurity landing clearance" means clearance for a vessel or aircraft to land cargo and/or passengers under section 15;

"biosecurity measure" means the inspection, detention, quarantining, testing, treatment, reconsignment or destruction of a regulated article to eliminate or reduce the biosecurity threat presented by the article;

"biosecurity officer" means –

(a) the Director and his or her deputy, if any;

(b) any person appointed as a biosecurity officer under section 75;

(c) in respect of any particular function, a biosecurity officer to whom the function has been assigned or delegated under section 75 or 76;

"biosecurity point of departure" means a port, airport or post office designated under section 10(4) for the exportation of regulated articles;

"biosecurity point of entry" means a port, airport or post office designated under section 10(1) for the importation of regulated articles;

"biosecurity port holding area" means an area designated under section 11(1) for the biosecurity inspection of incoming vessels or aircraft;

"biosecurity port quarantine" means quarantine of a vessel or aircraft in a biosecurity port quarantine area under section 16;

"biosecurity port quarantine area" means an area designated under section 16(1) for the quarantine of vessels and aircraft;

"biosecurity port quarantine clearance" means permission under section 19 for a vessel or aircraft to unload passengers and cargo after being in biosecurity port quarantine;

"biosecurity postal holding area" means an area of a post office designated under section 11(5) for the biosecurity inspection of incoming or outgoing mail and postal items;

"biosecurity quarantine" means confinement in isolation of a regulated article and any conveyance, container or packaging in which the article is carried, for inspection, testing and/or treatment; in order to prevent or limit the entry, introduction, establishment or spread of a regulated pest or disease;

"biosecurity quarantine station" means a facility under the control of the Secretary and designated under section 40 for the performance of biosecurity quarantine, and includes a temporary biosecurity quarantine station;

"biosecurity register" means a register kept by the Secretary under section 77(2);

"biosecurity risk" means the likelihood of the introduction, establishment or spread of a pest or disease which would adversely affect animals, plants, human beings, the environment or economic activities, and the likely extent of such harm;

"biosecurity risk assessment" in relation to a regulated article means evaluation of the biosecurity risk posed by the article;

"Biosecurity Service" means the Cook Islands Biosecurity Service constituted by section 73;

"biosecurity specifications" means biosecurity import specifications made under section 26 or biosecurity export specifications made under section 36;

"biosecurity threat" means the threat of harm being caused or adverse effects resulting to animals, plants, human beings, the environment or economic activities as a result of the introduction, establishment or spread of a regulated pest or disease;

"captain", in relation to an aircraft, means the person for the time being in command of the aircraft;

"Codex Alimentarius Commission" means the international body established by the World Health Organization and Food and Agriculture Organization to carry out Food Standards Programmes for the purpose of protecting the health of consumers and facilitating international trade;

"compliance agreement" means an agreement between the Secretary and another person as provided for in section 87;

"consignment" means a quantity of goods which arrive in the same vessel or aircraft and which in accordance with this Act can be covered by a single import permit or sanitary or phytosanitary certificate;

"container" means anything in which or by which goods are encased, covered, enclosed or packed, including any material in contact with the goods, an article of transport equipment, such as a lift van moveable tank, sea freight, flat top, roll-on/roll-off container, ISO container, or similar structure, either rigid;

"contamination" means the presence in any item of a pest, not constituting an infestation;

"conveyance" means a ship, aircraft, vehicle or other means of transporting people, goods or animals from one location to another, while it is being used or prepared for such transport;

"country of origin" includes a re-exporting country;

"custodian", in respect of an item, means the occupier of a place or the person in possession and charge of an article, whether lawfully or not, but does not include a person who has possession or control of the item only for the purpose of taking biosecurity measures in respect of it;

"Director" means the Director of Biosecurity designated under section 74, who shall be the person for the time being performing the functions of Secretary to the Ministry of Agriculture and, in respect of any particular function, a person to whom the function has been delegated under section 76;

"disease" means any unhealthy condition in an animal or plant which is known or suspected to be caused by an organism, and includes a disease transmissible from animals to humans and a disease capable of harming the environment;

"document" means any mode of communicating information in a retrievable form, including electronically;

"environment" includes -

(a) the ecosystem and its constituent parts, including people and communities;
(b) all natural and physical resources;
(c) the qualities and characteristics of locations, places and areas.

"eradication" means the application of measures to eliminate a pest or disease from an area;

"establishment", in relation to a pest or disease, means the perpetuation in an area of the pest or disease for the foreseeable future after its entry into the area;

"export" means to take or send goods out of the Cook Islands;

"exporter" means a person who exports or seeks to export goods, other than as the master of the vessel or captain of the aircraft in which the goods are carried; and includes a biosecurity clearance agent;

"Fish" means the same as referred to in Section 2 of the Marine Resources Act 2005;

"fittings" means any stall, box, cage, enclosure, pen, net or other material used for penning, yarding, confining or containing any animal and includes any harness, saddlery, rope, bucket, trough, bedding, utensil or implement used in the handling or keeping of animals or animal products;

"fodder" means any water, meat, vegetables, grain or material used for the food or litter of animals, or the storage of animal products;

"garbage" means waste material derived in whole or in part from plants, fruit, vegetables, meat or other plant material or animal products, or other refuse of any kind that has been associated with any plants, fruits, vegetables, meat or other plant or animal products;

"genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity;

"goods" means any kind of moveable property or thing;

"host material" means any packing material, container, fittings, litter, manure, fodder or similar goods that might have had contact with animals or plants or their products;

"import" means to bring goods, or cause goods to be brought, into the Cook Islands;

"importer" means a person who imports or seeks to import goods, other than as the master of a vessel or captain of the aircraft in which the goods are carried; and includes a biosecurity clearance agent;

"in transit", in relation to goods, means the goods are not imported into an area but pass through it to another area, whether by the same or another conveyance, during which time they remain enclosed, are not split up, are not combined with other goods, and do not have their packaging changed;

"infected", in relation to an animal or plant, means that the animal or plant is diseased or may have been exposed to the risk of infection during the preceding six months;

"infested", in relation to an item or area, means that there is present in the item or area a living pest or disease;

"inspection", in relation to an item, means an official examination of the item to determine if any pest or disease is present in the item and whether in other respects the item conforms to the requirements of this Act;

"IPPC" means the International Plant Protection Convention of the Food and Agriculture Organization of the United Nations;

"introduction", in relation to a pest or disease, means the entry of the pest or disease into an area, resulting in its establishment in the area;

"item" means any kind of moveable or immoveable property or thing, including premises;

"label", includes any tag, brand, mark, pictorial or other descriptive matter written, printed, stenciled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any regulated article;

"living organism" means any organism capable of transferring or replicating genetic material, including sterile organisms, viruses, viroids, plasmids, bacteriophages and prions;

"master", in relation to a vessel, means the person for the time being in charge of the vessel, not being the pilot;

"microbe" means any organism or biotic entity of microscopic proportions, whether unicellular, multicellular or sub-cellular in common form;

"Minister" means the Minister of Agriculture;

"Ministry" means the Ministry of Agriculture;

"notifiable pest or disease" means a pest or disease which is declared under section 67(1) to be notifiable;

"OIE" means the Organisation Internationale Epizoötique;

"organism" means a biotic entity capable of reproduction or replication [other than a human];

"packing material" means any fabric, paper, cardboard, plastic, wood, straw, grass or leaves used in packing any goods, and any other type of material in which goods are covered, enclosed, contained or wrapped;

"pest" means any species, strain or biotype of a plant, animal, microbe or pathogenic agent, or any organism, which -

(a) causes disease; or

(b) is detrimental to or capable of harming or adversely affecting animals or animal products, plants or plant products, human beings or the environment;

"phytosanitary certificate" means a certificate relating to a plant or plant product which -

(a) is issued by the biosecurity authority of the country of origin or re-exporting country;

(b) certifies that the plant or plant product is substantially free from plant pests and diseases and in other respects meets the plant health import requirements of the receiving country; and
(c) is patterned after the model certificates of the IPPC;

"plant" includes seeds, germplasm, any other part of a plant and a dead or preserved plant;

"plant material" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, tissue culture, or other vegetation, and also includes any fruit, seed, spore, and portion or product of any plant unless, by any manufacturing process, it has been rendered no longer viable, and has been freed from all diseases and pests, and has been made incapable of carrying any disease or pest;

"plant product" means –
(a) plant material;
(b) timber; and
(c) any product manufactured wholly or partly from one or more plants;

"PPPO" means the Pacific Plant Protection Organisation;

"precautionary principle" means the principle that it is not unreasonable to refuse permission for an activity that has great potential negative impact, even if there is not sufficient scientific data to support a refusal, as incorporated in Article 5.7 of the SPS Agreement;

"Premises" means any immoveable property, other than land;

"Prescribed" means prescribed by this Act or by regulations made under it;

"prohibited import" means a regulated article or the importation or ownership of which is prohibited under section 9;

"re-exporting country", in relation to any goods, means a country which is not the country of origin of the goods, but where a container or consignment of goods is opened and re-packed for export;

"receiving country" means a country which is the intended destination of an article being or proposed to be exported;

"reconsign", in relation to a regulated article or consignment which has been refused biosecurity import clearance, means to send the article or consignment out of the Cook Islands, either by the vessel or aircraft on which it was imported or by another vessel or aircraft;

"regulated article" means –

(a) any animal or fish product;
(b) any plant or plant product;
(c) any living organism, whether modified or not;
(d) soil, sand, gravel and aggregate;
(e) any genetic material;
(f) human remains;
(g) any host material;
(h) a regulated pest or disease;
(i) any clothing, machinery or other article that contains or has adhering to it anything mentioned in paragraph (a), (b), (c) or (d);
(j) garbage;
(k) Any other article, substance, goods or thing declared by the Secretary in writing under subsection (2) to be a regulated article for the purposes of this Act;

"Regulated consignment" means a consignment of regulated articles;

"regulated pest or disease" means a pest or disease or the importation of which into the Cook Islands is prohibited or restricted under section 8;

"regulations" means regulations, orders and any other subsidiary legislation made under this Act;

"sanitary certificate" means an international health certificate relating to an animal or animal product which -

(a) is issued by the biosecurity or agricultural authority of the country of origin or re-exporting country;
(b) certifies that the animal or fish product is substantially free from animal pests and diseases and in other respects meets the animal health import requirements of the receiving country; and
(c) complies with relevant requirements of the importing country;

"Secretary" means the Secretary to the Ministry of Agriculture;

"Service" means the Cook Islands Biosecurity Service constituted by section 73;

"ship's stores" means any food or other regulated articles carried on a vessel or aircraft for consumption or use on the vessel or aircraft;

"specified", in relation to a requirement, document, procedure or any other matter, means specified by the Secretary under section 105;

"spread", in relation to a pest or disease, means the expansion of the geographical distribution of the pest or disease within an area;

"SPS Agreement" means the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures;

"status", in relation to a pest or disease, means its presence, absence, prevalence, incidence, distribution and occurrence in an area;

"technical advisory committee" means the head of the department or section of government responsible for animal health, plant health, fisheries, environment and health quarantine matters respectively, not being the Secretary;

"test" means an examination which goes beyond a visual inspection, to determine if a pest or disease is, or is likely to be, present or to identify a pest or disease, and includes chemical tests of plant material and diagnostic tests in respect of an animal;

"this Act" includes regulations and orders made under it;

"timber" includes round wood, sawn wood, wood chips and dunnage, with or without bark;

"treatment" means an authorised procedure for the killing, removal, modification or rendering infertile or non-viable of a pest or disease by way of cleansing, fumigation, inoculation, disinfection, disinfestation, decontamination or otherwise;

"uncleared", in relation to a regulated article, means that the article has not received biosecurity clearance;

"under official control", in relation to a pest or disease, means that its presence is known, its distribution is limited and its further spread is controlled by the exercise of powers under this Act;

"vehicle" includes a car, truck, bicycle (whether motorized or not), a cart and any other wheeled conveyance;

"vessel" includes a ship, hovercraft, boat, ferry, raft, yacht, canoe or pontoon that is used as a conveyance in or on water, whether or not it is self-propelled;

"written" and "in writing" mean any mode of communicating information in a retrievable form, including electronically (as to which see section 104(2)); and

"X-Ray machine" means a device to detect regulated articles.

3. Application of the Act - (1) This Act applies to every person in the Cook Islands, irrespective of the person's nationality or citizenship.

(2) This Act applies to all conveyances, containers and goods while they are in the Cook Islands, including vessels and aircraft owned or operated by the government of a foreign state.

(3) This Act applies to persons, conveyances, containers and goods outside the Cook Islands to the extent needed for its effective enforcement.

4. Act binds the State - This Act binds the State, including every Government department, statutory authority and statutory corporation, and every person in the employment of the Government.

5. Responsibility for the Act - (1) The Minister is responsible to the Parliament for the implementation of this Act.

(2) The Secretary is responsible to the Minister for the performance of the functions of the Cook Islands Biosecurity Service set out in section 73(2).

6. Powers of the Minister - The Minister may –

(a) give directions in writing to the Secretary concerning administrative action needed to implement this Act and to achieve the functions of the Service;

(b) call for reports from the Secretary on any matter pertaining to this Act or the functions of the Service;

(c) by order declare any article, substance, goods or thing to be a regulated article for the purposes of this Act; and

(d) in writing delegate any of the Minister's functions, powers and duties under this Act to the Director a named biosecurity officer, other than any legislative or appellate function or this power to delegate.

7. Relationship with other Acts - (1) This Act is in addition to and does not derogate from any other Act. In particular, but without limiting this rule -

(a) the requirements relating to imports and exports in Parts 4 and 5 do not displace any other statutory requirements relating to imports and exports, trade in endangered species, biosafety, biodiversity or environmental, marine laws generally;

(b) the notification requirements in section 14 relating to human health do not displace any other statutory requirement relating to such notification;

(c) the provisions of Part 3 relating to biosecurity port quarantine of vessels and aircraft do not displace any other provisions relating to quarantine of vessels and aircraft.

(2) To the extent of any inconsistency between this and any other Act, every other Act shall so far as possible be construed so as to fulfill the purpose of this Act.

PART 2
BIOSECURITY BORDER CONTROL

8. Regulated pests and diseases - (1) The Director may by written notice declare the pests or diseases –

(a) the importation of which is prohibited for all purposes;

(b) the importation of which is permitted subject to conditions specified by the Secretary under section 26.

(2) A person who imports or attempts to import a pest or disease which is prohibited under subsection (1)(a) commits an offence.

(3) A person who imports or attempts to import a pest or disease which is regulated under subsection (1)(b) in breach of the conditions of import commits an offence.

(4) When making an order under this section, the Director shall apply pest risk analysis, that is to say, the process of evaluating biological or other scientific and economic evidence to determine whether a pest or disease should be regulated and the nature of any biosecurity measures to be taken against it.

(5) Before making an order under this section, the Director shall obtain the advice of the Secretary and of relevant divisional heads.

9. Prohibited imports - (1) The Director may by order prohibit the importation of –

(a) particular regulated articles from all countries; or

(b) particular regulated articles from one or more particular countries of origin,

(in this Act referred to as "import prohibited articles") if the importation would present an unacceptable biosecurity risk to the Cook Islands.

(2) An order under this section in respect of an article –

(a) may be made at any time before biosecurity import clearance is granted in respect of the article;

(b) continues in force until the prohibition is revoked or varied, but shall be reviewed every twelve months.

(3) In making a decision under this section, the Director –

(a) shall make a biosecurity risk assessment;

(b) shall have regard to the international obligations of the Cook Islands in respect of biosecurity;

(c) may apply the precautionary principle.

(4) Before making an order under this section, the Director shall obtain the advice of relevant technical section heads.

(5) If a person imports or attempts to import a prohibited article –

(a) the person commits an offence;

(b) biosecurity import clearance under section 25 will be refused for the article.

(6) A person who without lawful excuse owns or is in possession of any prohibited article commits an offence.

10. Biosecurity points of entry and departure - (1) The Director may by notice in writing designate as biosecurity points of entry the ports, airports and post offices at which regulated articles may enter the Cook Islands.

(2) Subject to subsection (9), a master or captain who causes or permits an incoming vessel or aircraft to berth or land except at a port or airport that is a biosecurity point of entry commits an offence.

(3) A person who imports or attempts to import, a regulated article or consignment except at a biosecurity point of entry commits an offence.

(4) The Director may in writing designate as biosecurity points of departure the ports, airports and post offices at which regulated articles can be exported and may facilitate a treatment station for the disposal of waste or regulated articles at such points.

(5) A master or captain who causes or permits a vessel or aircraft to leave the Cook Islands from a port or airport that is not a biosecurity point of departure commits an offence.

(6) A person who exports or attempts to export, a regulated article or consignment except at a biosecurity point of departure commits an offence.

(7) A designation of a biosecurity point of entry or departure may be limited to particular types of vessels, aircraft or articles or to arrivals from or exports to particular countries.

(8) A post office may only be designated as a biosecurity point of entry or departure in respect of regulated articles that at the time of entry or departure are in a mail bag or other container that conforms to the requirements of the postal legislation of the Cook Islands.

(9) A vessel or aircraft may berth or land elsewhere than at a biosecurity point of entry –

(a) if constrained by adverse weather, mechanical failure or superior force; or

(b) if so directed or permitted by the Director or authorized biosecurity officer.

(10) In the circumstances mentioned in subsection (9), the place where the vessel has berthed or the aircraft has landed is deemed to be a biosecurity point of entry for the purposes of this Act, once the Director has been notified of the berthing or landing.

11. Designation of biosecurity holding areas - (1) The Director may by notice in writing designate –

(a) any territorial waters or any part of a port as a biosecurity port holding area for vessels;

(b) any part of an airport as a biosecurity port holding area for aircraft.

(2) A biosecurity port holding area is one where incoming conveyances may be held for biosecurity inspection pending biosecurity landing clearance or other disposition under this Act.

(3) The Director may by notice in writing designate any area of land at or adjacent to a port or airport as a biosecurity goods holding area for incoming or outgoing containers and goods.

(4) A biosecurity goods holding area is one where incoming or outgoing containers or goods may be held for biosecurity inspection pending biosecurity clearance or other disposition under this Act.

(5) The Director may designate any part of a post office that has been designated as a biosecurity point of entry or departure as a biosecurity postal holding area for incoming or outgoing postal items.

(6) A biosecurity postal holding area is one where incoming or outgoing postal items may be held for biosecurity inspection pending biosecurity clearance or other disposition under this Act.

12. Management of biosecurity holding areas - (1) Section 40(2) and (3) applies to biosecurity holding areas as they apply to biosecurity quarantine stations.

(2) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity holding area without the written permission of the Director or the permission of the person in charge of the area or of a biosecurity officer acting in the course of duty.

(3) A duly authorised biosecurity officer may, in order to reduce a biosecurity threat, lock, and seal or otherwise prevent entry to and exit from a biosecurity holding area or any building in it.

(4) A person who –

(a) enters a biosecurity holding area without permission pursuant to subsection (2); or

(b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity holding area, or any regulated article or other item in the area,

commits an offence.

(5) The Director may issue written directions to the person in charge of a biosecurity holding area as to the management of the area.

(6) A person who removes or attempts to remove from a biosecurity holding area any regulated article without obtaining biosecurity clearance in respect of it, unless for the purpose of biosecurity measures being applied to the article in accordance with this Act, commits an offence.

13. Biosecurity clearance agents - (1) A person who proposes to import or export regulated articles through a port or airport and who will not be present at the designated port or airport when biosecurity inspection is to take place shall –

(a) in writing appoint a person resident in the Cook Islands as biosecurity clearance agent for the purposes of this Act; and

(b) notify the Director in writing of the appointment before the agent performs any agency functions.

(2) A biosecurity clearance agent appointed under subsection (1) ceases to be an agent for the purposes of this Act if the Director notifies the importer or exporter in writing that, in the opinion of the Director, the agent's conduct in the performance of functions under this Act renders the agent unacceptable for purposes of this Act.

(3) Notice under subsection (2) shall be given in sufficient time to allow the importer or exporter to appoint another agent.

(4) A biosecurity clearance agent who performs or purports to perform any functions of an importer or exporter under this Act is liable to the same extent as the importer or exporter for any act or omission which amounts to an offence or which creates any legal obligation under this Act.

(5) If a person referred to in subsection (1) fails to comply with that subsection, biosecurity clearance will not be granted for any regulated article or consignment which the person seeks to import or export.

PART 3
VESSELS AND AIRCRAFT

14. Biosecurity arrival declaration - (1) The master or captain of every vessel or aircraft destined for the Cook Islands shall make to the Director or a biosecurity officer a biosecurity arrival declaration stating –

(a) the destination port or airport in the Cook Islands and the estimated time of arrival of the vessel or aircraft;

(b) its immediately preceding port or place of call;

(c) the proposed itinerary of the vessel or aircraft until it leaves the Cook Islands;

(d) the nature and country of origin of its cargo;

(e) the number of passengers and crew;

(f) the presence of any live animal or live plant aboard the vessel or aircraft;

(g) the nature of any illness or malady affecting any live animal, plant, crew member, passenger or other individual aboard the vessel or aircraft; and

(h) any other matter relevant to facilitating biosecurity landing clearance of the vessel or aircraft that is specified by the Director.

(2) The declaration required by subsection (1) –

(a) shall be made not less than twenty four hours in the case of a vessel, or an hour in the case of an aircraft, before the estimated time of arrival;

(b) may be made by electronic means, in accordance with directions of the Director issued from time to time;

(c) may be made through a biosecurity clearance agent.

(3) A master or captain who contravenes a provision of subsection (1) commits an offence.

15. Biosecurity landing clearance - (1) The master or captain of every incoming vessel or aircraft shall –

(a) take the vessel or aircraft directly to a biosecurity port holding area as directed by a biosecurity officer;

(b) permit a biosecurity officer to board and search the vessel or aircraft in accordance with section 47(1);

(c) provide to the officer the log, cargo manifest, bill of landing, stores list, passenger list, crew list and any other document that is on or in and relates to the vessel or aircraft and that the officer reasonably requests for the purposes of this Act;

(d) complete an incoming conveyance biosecurity certificate, in the form specified by the Director, certifying that all garbage, live animals, meat or animal products and plants or plant material on board the vessel or aircraft *will* be lawfully disposed of.

(2) After inspecting relevant documents and conducting any necessary search of an incoming vessel or aircraft, and if satisfied –

(a) that the vessel or aircraft does not have on board any regulated article that might pose a biosecurity threat to the Cook Islands; and

(b) that the prescribed fee, if any, has been paid,

a biosecurity officer may grant biosecurity landing clearance to the vessel or aircraft.

(3) Biosecurity landing clearance means that a vessel or aircraft may land crew members and any cargo or passengers on board, but the crew and any cargo or passengers remain subject to biosecurity control under this Act.

(4) Biosecurity landing clearance shall be refused if a biosecurity officer orders the vessel or aircraft into port quarantine pursuant to section 16(2).

(5) A master or captain who contravenes a provision of subsection (1) commits an offence.

(6) A master or captain who lands any crew, cargo or passengers from a vessel or aircraft without biosecurity landing clearance, except with the permission of a biosecurity officer, commits an offence.

(7) A crew member or passenger who lands from a vessel or aircraft before it has received biosecurity landing clearance, except with the permission of a biosecurity officer, commits an offence.

(8) Biosecurity landing clearance of a vessel or aircraft may be granted unconditionally, or conditioned on entry into a bond to the Government, in the form specified by the Director, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Act in respect of the vessel or aircraft or cargo.

16. Biosecurity port quarantine of vessels and aircraft - (1) The Director may by notice in writing designate –

(a) any territorial waters or any part of a port as a biosecurity port quarantine area for vessels;

(b) any part of an airport as a biosecurity port quarantine area for aircraft.

(2) If a biosecurity officer reasonably suspects that an incoming vessel or aircraft is –

(a) infected or infested with a regulated pest or disease; or

(b) carrying any regulated article which might pose a biosecurity threat to the Cook Islands,

the officer may order the vessel or aircraft into biosecurity port quarantine.

(3) If a vessel or aircraft is ordered into biosecurity port quarantine under subsection (2), a biosecurity officer may –

(a) order the master or captain to remove the vessel or aircraft to quarantine in a biosecurity port quarantine area; or

(b) if necessary (because the master or captain refuses to obey the order, or because of the nature of the biosecurity threat) arrange for the vessel or aircraft to be removed to the biosecurity port quarantine area.

(4) The cost of removal of a vessel or aircraft to biosecurity port quarantine is to be borne by the owner or charterer, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

(5) The owner or charterer and master or captain shall each be given written notice stating the reasons for an order under this section in respect of the vessel or aircraft and, if it was removed under subsection (3), the whereabouts of the vessel or aircraft.

(6) If the Director reasonably believes that a vessel or aircraft poses a serious biosecurity threat to the Cook Islands which cannot adequately be dealt with by appropriate biosecurity measures, the Director may, order the vessel or aircraft to leave the waters or airspace of the Cook Islands.

(7) Before issuing an order under this section, the Director shall consult, as the case may be -

(a) the harbourmaster or other officer in charge of the movement of vessels in the Cook Islands; or
(b) the Secretary of Civil Aviation or other officer responsible for the movement of aircraft in the Cook Islands.

17. Management of biosecurity port quarantine areas - (1) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity port quarantine area without the written permission of the Director or of the person in charge of the area.

(2) A person who –

(a) enters a biosecurity port quarantine area without permission; or
(b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity port quarantine area, or any regulated article or other item in the area,

commits an offence.

(3) The Director may issue written instructions to the person in charge of a biosecurity port quarantine area as to the management of the area.

(4) A biosecurity officer may affix a notice at any biosecurity port quarantine area, and on any vessel or aircraft held in the area, stating the conditions and duration of quarantine and other information relating to the area or the item as specified by the Director.

(5) A person who removes a notice affixed under subsection (4) without lawful authority commits an offence.

18. Conduct of vessels and aircraft in biosecurity port quarantine - (1) The Director may give written directions to the master of a vessel or captain of an aircraft in biosecurity port quarantine –

(a) as to the movement of the vessel or aircraft while it is in quarantine;
(b) as to the movement of passengers, crew and cargo while the vessel or aircraft is in quarantine;
(c) as to any treatment or other biosecurity measure that shall be applied to the vessel or aircraft.

(2) The cost of keeping a vessel or aircraft in biosecurity port quarantine is to be borne by the owner or charterer, and no compensation is payable for any loss or destruction or consequential loss caused by a vessel or aircraft being detained in quarantine, unless negligence or malice is proved.

(3) A master or captain who fails to take all reasonable steps to ensure that the vessel or aircraft and its cargo, crew and passengers conform to directions given under subsection (1) commits an offence.

19. Biosecurity port quarantine clearance of vessels and aircraft - (1) If satisfied –

(a) that a vessel or aircraft in biosecurity port quarantine is substantially free from regulated pests and diseases;

(b) that any potential biosecurity risk from ships' stores and other regulated articles on the vessel or aircraft is suitably contained; and

(c) that the prescribed fee, if any, has been paid,

a biosecurity officer may grant biosecurity port quarantine clearance for the vessel or aircraft to unload passengers and cargo.

(2) Biosecurity port quarantine clearance of a vessel or aircraft may be granted unconditionally, or conditioned on entry into a bond to the Government, in the form specified by the Director, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Act in respect of the vessel or aircraft or cargo.

(3) Biosecurity port quarantine clearance of a vessel or aircraft has the same effect as biosecurity landing clearance granted under section 15.

20. Outgoing vessels and aircraft - (1) If a biosecurity officer has reason to believe that there is on board an outgoing vessel or aircraft any regulated article that requires biosecurity export clearance and that has not been cleared, the officer may –

(a) board and search the vessel or aircraft in accordance with section 47(1);

(b) request the master or captain to produce for inspection the cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is on or in and relates to the vessel or aircraft and that the officer reasonably requires for the purposes of this Act;

(c) direct the master or captain not to move the vessel or aircraft unless permitted by the officer, and then only as directed by the officer;

(d) direct the vessel or aircraft to be subjected to any treatment or other biosecurity measure that is prescribed or specified;

(e) give to the master or captain any other lawful direction that is reasonably required to protect the destination country from a biosecurity threat posed by the vessel or aircraft.

(2) A master or captain who –

(a) refuses to permit a search pursuant to subsection (1) (a); or

(b) fails to comply with a request or direction given under subsection (1) (b) to (e),

commits an offence.

21. Environmental obligations of masters and captains - (1) The master of every incoming vessel shall, while the vessel is in the Cook Islands –

(a) take all necessary steps to prevent any animal on board the vessel coming on shore or from making contact with any animal on shore unless permitted by a biosecurity officer, and then only as directed by the officer;

(b) seal all hatches and holds and cargo areas during the hours of darkness, except as needed for the working of the vessel or its cargo.

(2) The master of every incoming vessel shall take all reasonable steps to ensure that –

(a) no garbage containing any animal, plant, animal product or plant product; and

(b) no bilge water or ballast water is discharged from the vessel into the sea while the vessel is in the Cook Islands.

(3) The master of every incoming vessel and captain of every incoming aircraft shall, while the vessel or aircraft is in the Cook Islands, take all reasonable steps to ensure that –

(a) all garbage generated on the vessel or aircraft is placed in a suitable leak-proof container, with a lid, and the container is securely fastened at all times and kept within the vessel or aircraft;

(b) garbage is not disposed of in the sea, and is only removed from the vessel or aircraft under and in accordance with the directions of a biosecurity officer; and

(c) rodent guards are secured on mooring lines prior to a vessel entering and while in port.

(4) The master of every incoming vessel and captain of every incoming aircraft shall take all reasonable steps to ensure that no ships' stores are removed from the vessel or aircraft while it is in the Cook Islands, except under and in accordance with the directions of a biosecurity officer.

(5) A biosecurity officer may lock or seal the stores of any incoming vessel or aircraft while it is in the Cook Islands.

(6) The cost of disposal of garbage under this section is to be borne by the owner or chatterer of the vessel or aircraft.

(7) A master who contravenes subsection (1), (2), (3) or (4) or a captain who contravenes subsection (3) or (4) commits an offence.

(8) An incoming vessel shall comply with any de-ratting requirements prescribed by regulations.

22. Passengers and crew members - (1) Subject to subsections (2) and (3), every passenger or crew member who arrives in the Cook Islands on board a vessel or aircraft shall make a passenger arrival biosecurity declaration containing the specified particulars relating to the person and any baggage that accompanies the person.

(2) A passenger or crew member does not need to declare –

(a) articles of clothing worn on the body;

(b) articles visibly attached or otherwise connected to the body or clothing; or

(c) suitcases and other visible containers of personal baggage,

unless a biosecurity officer so requests because of the biosecurity risk posed by the item, and in the absence of any such request, the article or container is deemed to have biosecurity entry clearance.

(3) A single declaration under subsection (1) may be made by a person in respect of the person and the person's spouse and any member of the family aged 16 years or less travelling on the same vessel or aircraft.

(4) When a declaration is tendered under this section, a biosecurity officer may –

(a) question the passenger or crew member;

(b) inspect the baggage to which it relates.

(c) if necessary, question a spouse or family member included on the declaration.

(5) After taking the steps in subsection (4), a biosecurity officer may either grant biosecurity entry clearance of the persons and baggage to which the declaration relates, or –

(a) detain the passenger or crew member for further questioning and search; and

(b) detain the baggage and other articles in the possession of the passenger or crew member for further inspection and application of other biosecurity measures as the officer considers appropriate.

(6) An arriving passenger or crew member who fails –

(a) to make a declaration as required by subsection (1);

(b) to submit baggage for inspection when so directed under subsection (4),

commits an offence.

(7) Every passenger or crew member departing from the Cook Islands shall –

(a) submit for inspection on request by a biosecurity officer any regulated article on the person or in the person's baggage;

(b) permit the officer to search the person's baggage.

(8) A departing passenger or crew member who fails to comply with subsection (7) commits an offence.

(9) Section 57 applies to the questioning, detention and searching of persons and baggage under this section.

PART 4
BIOSECURITY IMPORT PROCEDURES

23. Biosecurity entry inspection of incoming articles - (1) Every incoming article or consignment of articles is liable to biosecurity entry inspection by a biosecurity officer at the biosecurity point of entry to ascertain whether it is or includes a regulated article.

(2) If an importer of goods fails to make the goods available for biosecurity entry inspection at the biosecurity point of entry at the request of a biosecurity officer –

(a) the importer commits an offence; and
(b) the goods may be reconsigned or destroyed as if they were a regulated article for which biosecurity entry clearance had been refused.

(3) If, after inspecting an incoming article or consignment, a biosecurity officer is satisfied –

(a) that it is or includes a regulated article - the provisions of this Part apply to it;
(b) that it is not or does not include a regulated article – the article or consignment may be released from the biosecurity point of entry upon payment of the prescribed fee, if any.

(4) If an incoming article or consignment is not inspected under this section, a biosecurity officer is deemed to be satisfied that it is not or does not include a regulated article, and subsection (3)(b) applies to it.

(5) Section 49 applies to an inspection under this section.

(6) Subject to section 102 (Appeals), the actual or deemed opinion of a biosecurity officer under this section as to whether an article or consignment is or includes a regulated article is conclusive for the purposes of this Act.

(7) This section does not apply in respect of baggage accompanying passengers or crew members, but section 22 applies to such baggage.

24. Biosecurity import clearance of regulated articles - (1) Every incoming article or consignment of regulated articles –

(a) is liable to biosecurity import clearance inspection by a biosecurity officer;
(b) for that purpose shall be taken to or retained in a biosecurity holding area for inspection.

(2) An application for biosecurity import clearance of an article or consignment shall –

(a) be made to a biosecurity officer in the specified manner;
(b) be accompanied by the prescribed fee, if any.
(c) specify the country of origin of the article or consignment;
(d) specify the nature and quantity of the article or consignment;
(e) attach any sanitary or phytosanitary certificate issued by the country of origin in relation to the article or consignment;

(f) attach any biosecurity import permit relating to the document;

(g) attach documentation relating to any other biosecurity measures specified under section 26(1) in relation to the article or consignment.

(3) The importer of a regulated article or consignment shall on the request of a biosecurity officer –

(a) if the article or consignment is in a container - open the container or enable the officer to do so;

(b) allow the officer to inspect the article or consignment in accordance with section 49;

(c) allow the officer to take samples and conduct tests in accordance with Part 7 to enable the officer to determine whether biosecurity import clearance should be granted;

(d) if the article or consignment requires biosecurity measures to be applied to it - submit the article or consignment to such measures.

(4) The cost of taking an article to a biosecurity holding area, and of keeping it there, is to be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of the taking or keeping, unless negligence or malice is proved.

(5) If the importer of a regulated article or consignment fails to comply with any of the requirements of subsection (3) –

(a) the person commits an offence; and

(b) a biosecurity officer may refuse to grant import clearance for the article or consignment, and may order the article or consignment to be reconsigned or destroyed.

(6) This section does not apply to passengers or crew members, but section 22 applies to such persons.

25. Grant and refusal of biosecurity import clearance - (1) Before granting biosecurity import clearance of an article or consignment, a biosecurity officer shall be satisfied that the article meets the biosecurity import requirements in relation to it, that is to say –

(a) if a biosecurity import permit is required - it has been obtained in respect of the article or consignment and the conditions of the permit have been complied with;

(b) if a sanitary or phytosanitary certificate is required for an article - the relevant certificate has been issued by the country of origin, and any requirement in it complied with;

(c) if any other biosecurity measures are specified under section 26(1) (c) - they have been applied to in respect of the article or consignment.

(2) If satisfied in respect of an article or consignment –

(a) of the matters mentioned in subsection (1); and

(b) that all prescribed fees and charges relating to the article or consignment have been paid,

a biosecurity officer shall grant biosecurity import clearance for the article or consignment.

(3) If the biosecurity risk presented by an incoming regulated article or consignment so requires, a biosecurity officer may refuse to grant biosecurity import clearance for the article or consignment, or may require additional biosecurity measures to be applied to it, even if the article or consignment meets the biosecurity import specifications in relation to it.

(4) Biosecurity import clearance may be made conditional on the article performing biosecurity quarantine if –

(a) quarantine is a biosecurity import requirement for the article; or

(b) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.

(5) Biosecurity import clearance shall be refused for an incoming article which is a prohibited import.

(6) A biosecurity officer may cause any incoming article or consignment in respect of which biosecurity import clearance is refused to be reconsigned or destroyed, but the importer shall be given reasonable time to make arrangements for reconsignment of the article or consignment before it is destroyed.

(7) No compensation is payable in respect of a refusal in good faith to grant biosecurity import clearance under this section.

26. Biosecurity import specifications - (1) The Director may specify in respect of incoming regulated articles –

(a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country of origin is required for an article and if so the matters that shall be certified;

(b) whether a biosecurity import permit shall be obtained for the article and if so the conditions to be attached to the permit;

(c) what biosecurity measures, if any, shall be applied to the article on arrival in the Cook Islands before biosecurity import clearance can be granted.

(2) Specifications under subsection (1) –

(a) may be different for different types and quantities of regulated article;

(b) may be by reference to the country or area of origin of the article;

(c) shall only be those reasonably necessary to reduce or eliminate the biosecurity risk to the Cook Islands presented by the article.

(3) In determining specifications under subsection (1), the Director –

(a) shall make a biosecurity risk assessment, at the importer's expense;

(b) shall have regard to the requirements of the SPS Agreement and other international standards relating to biosecurity matters;

(c) shall have regard to the resources available for biosecurity control;

(d) may apply the precautionary principle.

(4) Specifications made under subsection (1) in respect of an article may be changed at any time before biosecurity import clearance is obtained in respect of the article if the biosecurity risk presented by the article or consignment changes.

(5) Notice of a change in an import specification in respect of an article should be given to intending importers as soon as practicable but no liability arises from a failure to do so.

(6) Before making or changing a specification under this section, the Director shall obtain the advice of relevant technical section heads.

(7) Specifications made under this section shall be published in the biosecurity register.

27. Biosecurity access arrangements - (1) A person proposing to import a regulated article –

(a) that is not the subject of a biosecurity import specification; or

(b) from a country that is not the subject of a biosecurity import specification,

shall apply in writing to the Director for a specification under section 26 in respect of the article.

(2) An application under subsection (1) in respect of an article shall –

(a) be made in sufficient time before the intended importation; and

(b) give adequate information about the biosecurity procedures of the country of origin, the nature of the article and the proposed importation,

to enable the Director to make a biosecurity risk assessment in relation to the article.

(3) Upon receipt of an application under subsection (1), and on payment of the prescribed fee, if any, the Director shall as soon as practicable, unless the article is or becomes a prohibited import under section 9, make a specification in respect of it in accordance with section 26.

(4) The biosecurity risk assessment needed for the Director to make a specification under this section –

(a) shall, if the Director so requires in writing, be performed by the importer;

(b) in any event, is at the importer's expense.

28. Application for a biosecurity import permit - (1) If a biosecurity import permit is required under section 26(1) in respect of a regulated article or consignment, an application for a permit shall –

(a) be made before the article or consignment leaves the country of origin or, in the case of re-exported goods, the re-exporting country.

(b) be made to the Director in the form provided; and

(c) be accompanied by the prescribed fee, if any.

(2) An application for a biosecurity import permit shall –

(a) include evidence of the country of origin of the regulated article or consignment;

(b) state the nature and amount of the article or consignment;

(c) state the expected date of arrival in the Cook Islands; and

(d) give any other information the Director reasonably requires to enable the Director to make an import risk analysis.

(3) A decision on an application for a biosecurity import permit shall be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.

(4) If the decision is to refuse the permit, the applicant shall be notified in writing, with brief reasons.

29. Issue of a biosecurity import permit - (1) If satisfied of the matters set out in section 28(1) and (2), and on payment of the prescribed fee, if any the Director, or a duly authorised biosecurity officer, shall as soon as practicable issue a biosecurity import permit.

(2) The form of a biosecurity import permit is as prescribed or as specified by the Director.

(3) A biosecurity import permit may –

(a) be general or specific;

(b) relate to a single article or to a consignment of articles;

(c) be different for different types of regulated article and relate to different countries of origin.

(4) A general permit may relate to all imports of a type specified in the permit, or from an area specified in the permit, and may relate to continuing imports over a period specified in the permit. A specific permit will relate to a single article or consignment and may specify an expiry date.

30. Revocation of a biosecurity import permit - (1) The Director may at any time, on written notice to the holder of a biosecurity import permit, revoke the permit, or vary the conditions of the permit, if a change in the biosecurity risk to the Cook Islands presented by the article or consignment to which the permit relates so requires.

(2) Biosecurity import clearance shall be refused for an article or consignment in respect of which a biosecurity import permit is revoked, but section 26(5) applies to a revocation as it does to the change of a biosecurity specification.

(3) When a biosecurity import permit is revoked, the holder of the permit shall surrender it to a biosecurity officer as soon as practicable.

(4) A person who contravenes subsection (3) commits an offence.

(5) No compensation is payable in respect of the revocation in good faith of a permit under this section.

31. Exemption from biosecurity import requirements - (1) The Director, after consultation with divisional heads, may in writing exempt any regulated article, class of regulated articles or consignment of regulated articles –

(a) from any or all of the biosecurity import specifications that would otherwise apply to the article or class of articles;

(b) from a requirement for a biosecurity import permit that would otherwise apply to the article or consignment.

(2) An exemption under subsection (1) applies only to a single importation.

(3) An exemption under subsection (1) may specify the conditions on which the article, class of articles or consignment is exempt. If the conditions are not met the exemption ceases to apply.

(4) The Director may only grant an exemption under subsection (1) upon receipt of advice from relevant technical section heads, and if satisfied that the biosecurity risk to the Cook Islands is not increased as a result.

(5) A request for exemption under this section shall be –

(a) made in writing to the Director;

(b) accompanied by the prescribed fee, if any, and the specified documents;

(c) made in sufficient time to allow the Director to give due consideration to the request.

(6) Articles exempted from biosecurity import specifications or the requirements for an import permit under this section are not exempt from the requirement for biosecurity import clearance.

32. Articles and passengers in transit - (1) Regulated articles in transit are liable to biosecurity import control, and require biosecurity import clearance at a biosecurity holding area.

(2) The Director or a duly authorized biosecurity officer may in writing waive any requirement for a sanitary or phytosanitary certificate of biosecurity import permit that would otherwise apply to articles in transit.

(3) If a waiver is granted under subsection (2), the Director or officer may attach conditions to the waiver.

(4) A person who –

(a) deals with articles to which this section applies other than by way of transit; or

(b) contravenes a condition specified under subsection (3) in relation to them,

commits an offence.

(5) A request for a waiver under this section shall be –

(a) made in writing to the Director;
(b) accompanied by the prescribed fee, if any, and the specified documents;
(c) made in sufficient time to allow the Director or a biosecurity officer to give due consideration to the request.

(6) In the case of regulated articles which accompany a crew member or passenger in transit –

(a) subsection (5) is deemed to have been complied with if the passenger or crew member complies with other requirements for regulated articles in transit;
(b) the requirement in subsection (2) for a waiver to be in writing does not apply.

(7) A biosecurity officer may at any time inspect an article in transit if the officer reasonably suspects the article might pose a biosecurity threat to the Cook Islands or a receiving country.

(8) A person in charge of an article in transit who refuses to comply with a request for inspection under subsection (8) commits an offence.

PART 5
BIOSECURITY EXPORT PROCEDURES

33. Biosecurity export inspection of outgoing articles - (1) Every outgoing regulated article or consignment of regulated articles is liable to biosecurity export inspection at the biosecurity point of departure to enable a biosecurity officer –

(a) to ascertain whether it is or includes an article that requires biosecurity export clearance pursuant to section 34;
(b) if so – to decide whether to grant export clearance under section 38.

(2) An exporter of goods who fails to make the goods available for biosecurity export inspection at the biosecurity point of departure at the request of a biosecurity officer commits an offence.

(3) A biosecurity officer may only request to inspect an outgoing article or consignment if the officer has reasonable cause to suspect that it is or includes a regulated article that requires biosecurity export clearance pursuant to section 34.

(4) If, after inspecting an outgoing article or consignment under this section, a biosecurity officer is satisfied –

(a) that it is or includes an article that requires biosecurity export clearance – the provisions of this Part apply to it;
(b) that it is not or does not include such an article – the article or consignment may be released from the biosecurity point of departure upon payment of the prescribed fee, if any.

(5) Section 49 applies to an inspection under this section.

(6) This section does not apply in respect of baggage accompanying passengers or crew members.

34. Requirement for biosecurity export clearance – (1) An article intended for export to a receiving country that requires –

(a) a sanitary or phytosanitary certificate for importation into that country; or

(b) any biosecurity measures to be applied to it under section 36(2) before being exported to that country,

shall have biosecurity export clearance for export to that country.

(2) A person who exports or attempts to export an article or consignment that requires biosecurity export clearance without such clearance commits an offence.

35. Issue of sanitary and phytosanitary certificates - (1) A person who wishes to obtain a sanitary or phytosanitary certificate or a certificate of origin in respect of an article in order to comply with the biosecurity certification requirements of the receiving country shall –

(a) apply to the Director in writing;

(b) pay the prescribed fee, if any;

(c) submit the article for inspection or other biosecurity measures as required by the receiving country.

(2) Upon receipt of an application under subsection (1), the Director, or a biosecurity officer to whom the function is delegated, shall –

(a) ascertain the biosecurity certification requirements of the receiving country;

(b) perform appropriate inspection and apply appropriate biosecurity measures to the articles as required by the receiving country;

(c) if satisfied that the biosecurity certification requirements of the receiving country have been met, issue the appropriate certificate upon payment of the prescribed fee.

(3) A biosecurity certification requirement entered in the biosecurity register –

(a) if certified by or on behalf of the Director, is conclusive evidence of the requirement for purposes of this Act; but

(b) does not create any liability on the Director if relied on by an exporter to the exporter's detriment.

36. Biosecurity export specifications - (1) he Director may specify in respect of outgoing animals or plants, or their products, any biosecurity measures, in addition to biosecurity certification requirements of the receiving country, that shall be applied to the animal, plant or product before export.

(2) Specifications under subsection (1) may only be made if required by an international agreement to which the Cook Islands and the receiving country are party in respect of the movement of animals, plants or animal or plant products, and shall conform to any such agreement.

(3) Specifications under subsection (1) in respect of an animal or animal product may be changed at any time before biosecurity export clearance is granted, if there is a change in the relevant international obligations relating to the animal or animal product, and section 26(5) applies to such a change.

(4) Before making or changing a specification under this section, the Director shall obtain the advice of relevant technical divisional heads.

(5) Specifications made under this section shall be published in the biosecurity register.

37. Application for biosecurity export clearance - (1) An application for biosecurity export clearance of an article or consignment shall be made to a biosecurity officer in the specified manner and be accompanied by the prescribed fee, if any.

(2) An application for biosecurity export clearance for a regulated article or consignment shall –

(a) be made before the regulated article or consignment arrives at a biosecurity point of departure; and

(b) allow sufficient time for processing of the application.

(3) An application for biosecurity export clearance for an article or consignment shall –

(a) specify the receiving country;

(b) specify the nature and quantity of the article or consignment;

(c) attach any sanitary or phytosanitary certificate issued under section 35(2) in relation to the article or consignment;

(d) attach documentation relating to any other biosecurity measures required under section 36(1) in relation to animals or plants or animal or plant products.

(4) If the article or consignment requires biosecurity measures to be applied to it, the person seeking to export it shall submit the article or consignment to such measures, failing which biosecurity export clearance will not be granted.

(5) If a person seeking to export an article or consignment fails to comply with any of the requirements of this section, a biosecurity officer may refuse to grant biosecurity export clearance for the article or consignment.

(6) This section does not apply to passengers or crew members, but section 22 applies to such persons.

38. Grant of biosecurity export clearance - (1) Before granting biosecurity export clearance in respect of an article or consignment, a biosecurity officer shall be satisfied –

(a) that the biosecurity certification requirements of the receiving country have been complied with;

(b) that any biosecurity measures specified under section 36(1) in respect of an animal or animal product have been applied.

(c) that the prescribed fee, if any, has been paid.

(2) If an outgoing article that requires biosecurity export clearance is found to be infected, infested or contaminated by a regulated pest or disease, biosecurity clearance will be refused in respect of it.

(3) A decision on an application for biosecurity export clearance shall be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.

(4) If the decision is to refuse clearance, the applicant shall be notified in writing, with brief reasons.

(5) If a biosecurity officer considers it necessary to inspect any outgoing article or consignment for the purposes of this section, section 49 applies.

PART 6
BIOSECURITY QUARANTINE

39. Biosecurity quarantine of regulated articles – (1) A biosecurity officer may, by notice in writing to the importer, order into biosecurity quarantine any incoming regulated article if –

(a) the article is a prohibited import and shall therefore be reconsigned or destroyed;

(b) quarantine is a biosecurity import requirement for the article; or

(c) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.

(2) If an article is ordered into biosecurity quarantine under this section, a biosecurity officer may –

(a) in writing direct the importer to remove the article to a specified biosecurity quarantine station;

(b) if necessary (because the importer, exporter, owner or custodian refuses to obey the direction, or because of the nature of the biosecurity threat) arrange for the article to be removed to a biosecurity quarantine station.

(3) An importer who refuses to remove an article to biosecurity quarantine as directed under this section commits an offence.

(4) The cost of removal of an article to biosecurity quarantine is to be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

(5) If an article is quarantined under this section, the importer shall be given written notice stating the reasons for the quarantine and, if it was removed under subsection (2) (b), the location of the article.

40. Biosecurity quarantine stations - (1) The Director may by notice in writing designate any public or private land as a biosecurity quarantine station for animals, animal products, plants, plant products, conveyances, containers or other goods for the purposes of this Act.

(2) Before designating any private land as a biosecurity quarantine station, the Director shall consult the owner, and shall pay compensation as agreed or as determined by a court for use of the land as a quarantine station.

(3) The Director shall ensure that a biosecurity quarantine station is provided with such buildings and facilities as are needed –

(a) to hold regulated articles in biosecurity quarantine;

(b) to prevent unauthorized persons from entering the station or removing items from the station;

(c) to enable the Service to perform tests, provide treatment and apply other biosecurity measures as required by or under this Act.

41. Conditions of biosecurity quarantine – (1) The Director may issue specifications as to –

(a) the examination, treatment, disposal or destruction of articles while in a biosecurity quarantine station or in transit to or from a quarantine station;

(b) the period for which different types of regulated articles shall remain in a biosecurity quarantine station.

(2) The fees or charges payable for keeping items in biosecurity quarantine are as prescribed.

(3) The cost of keeping an article in biosecurity quarantine is to be borne by the importer of the article.

(4) No compensation is payable for any loss or destruction or consequential loss caused by an item being detained in biosecurity quarantine, unless negligence or malice is proved.

42. Management of biosecurity quarantine stations - (1) No person, other than the person in charge of the station or a biosecurity officer acting in the course of duty, may enter a biosecurity quarantine station without the written permission of the Director or of the person in charge of the station.

(2) A duly authorised biosecurity officer may, in order to reduce a biosecurity threat, lock, seal or otherwise prevent entry to and exit from a biosecurity quarantine station or any building in it, regardless of the ownership of the station.

(3) A person who –

(a) enters a biosecurity quarantine station without permission pursuant to subsection (1); or

(b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity quarantine station, or any regulated article or other item in the station,

commits an offence.

(4) The Director may issue written instructions to the person in charge of a biosecurity quarantine station as to the management of the station.

43. Release from biosecurity quarantine - (1) A conveyance, container or article shall not be released from biosecurity quarantine except upon the authority of a biosecurity quarantine release certificate issued by a biosecurity officer.

(2) Before an article can be released from biosecurity quarantine –

(a) any treatment required as a condition of importation of the article shall have been applied; and

(b) all quarantine fees shall have been paid.

(3) Once subsection (2) has been complied with, the conveyance, container or article shall be released from biosecurity quarantine as soon as practicable and a biosecurity release certificate issued.

(4) A person who releases an article from a biosecurity quarantine station contrary to subsection (1) commits an offence.

44. Biosecurity quarantine notices - (1) A biosecurity officer may affix a notice on any biosecurity quarantine station, and on any conveyance, container or article held in biosecurity quarantine, stating the conditions and duration of quarantine and other information relating to the station or the item as specified by the Director.

(2) A person who removes a notice affixed under subsection (1) without lawful authority commits an offence.

45. No plant or animal to be at large - (1) No person may liberate or cause to be liberated from a biosecurity quarantine station, biosecurity port quarantine area, biosecurity emergency area or biosecurity holding area or let go at large in the Cook Islands any animal, fish, plant or organism which is subject to biosecurity control under this Act.

(2) A person who contravenes subsection (1) is not entitled to any compensation for loss of or damage to the animal, fish, plant or organism occasioned by its being recaptured and confined or if necessary destroyed.

(3) A person who contravenes subsection (1) commits an offence and, in addition to the prescribed maximum penalty, is liable to pay the cost of recapturing and confining or if necessary destroying the animal, fish, plant or organism.

PART 7
POWERS OF BIOSECURITY OFFICERS

46. General rules as to exercise of powers - (1) The powers conferred by this Act on biosecurity officers may be exercised only for the purpose of ascertaining whether there is a biosecurity risk presented by a conveyance, container or item and eliminating or reducing the risk to an acceptable extent.

(2) A biosecurity officer may use only such force as is reasonably necessary when exercising a power under this Act. If necessary, the officer should obtain the assistance of a police officer to effect an arrest or enter premises.

(3) Before exercising a power to enter and search premises, to search a conveyance or container or to inspect or test any article, a biosecurity officer shall, if practical, request the assistance of the person in control of the premises, conveyance, container or article.

(4) Except as otherwise provided in this Act, a biosecurity officer may exercise a power under this Act without a warrant or other order of the Court, provided the action is taken in good faith for the purposes of this Act.

(5) A biosecurity officer exercising powers under this Part shall produce for inspection his or her identification as an officer, upon request by the person in charge of the conveyance, premises or area or the importer, exporter, owner or custodian of the item in respect of which the power is being exercised.

(6) Before exercising a power in a situation that involves shipping, civil aviation, human health, the environment or any other activity governed by another Act, a biosecurity officer shall if practicable consult a marine officer, civil aviation officer, health officer, environment officer or other public officer as appropriate.

(7) The powers conferred on biosecurity officers by or under this Act shall be exercised subject to –

(a) any regulations made by the Secretary under this Act in respect of those powers;

(b) any biosecurity specifications made in respect of regulated articles;

(c) any written directions of the Secretary given under section 76.

(i) the provisions of –

(A) the Vienna Convention on Diplomatic Relations relating to the premises of a diplomatic mission, diplomatic bags and the personal baggage of diplomatic agents;

(B) the Vienna Convention on Consular Relations relating to consular premises, archives and documents.

47. Entry, search and seizure - (1) A biosecurity officer may -

(a) search an incoming vessel or aircraft at a biosecurity port holding area to ascertain whether the vessel or aircraft has on board any regulated article that might pose a biosecurity threat to the Cook Islands;

(b) search an outgoing vessel or aircraft if the officer has reason to believe there are on board any uncleared articles that require export clearance;

(c) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a dwelling house, but not a dwelling house, in order to ascertain the presence of uncleared regulated articles that have not received biosecurity import clearance;

(d) at any time with the consent of the owner, enter and search a dwelling house for purposes of this Act;

(e) at any time, on a warrant issued under subsection (2), enter and search a dwelling house for uncleared regulated articles that the officer reasonably suspects to be in it.

(2) If a justice of the peace is satisfied on affidavit evidence by a biosecurity officer that –

(a) there may be in a dwelling house uncleared regulated articles; and

(b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the justice of the peace may issue a warrant authorising the officer to enter and search the dwelling house for uncleared regulated articles.

(3) A biosecurity officer may at any time enter and search any store, warehouse, silo, pen or similar premises, or any conveyance, in which regulated articles intended for importation to or exportation from the Cook Islands are kept.

(4) A person who keeps regulated articles in or on any premises, or in a conveyance, prior to importation or exportation of them shall make the premises or conveyance available for inspection by a biosecurity officer upon request at any reasonable time.

(5) Subsections (1), (3) and (4) apply to premises and conveyances outside the Cook Islands in respect of articles intended for importation to the Cook Islands.

(6) A person who contravenes subsection (4) commits an offence.

(7) During a search of premises or a conveyance under this section a biosecurity officer may seize anything which -

(a) is an uncleared regulated article; or

(b) may be used as evidence of the commission of an offence under this Act.

(8) A biosecurity officer who seizes anything from a person under subsection (7) shall -

(a) inform the person of the reason for the seizure;

(b) give the person a receipt for the thing seized; and

(c) remove the thing to a place of safekeeping and deal with it in accordance with this Act.

(9) A biosecurity officer may, at the expense of the importer, submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

48. Inspection of documents - (1) A biosecurity officer may –

(a) call for and inspect documents on or in incoming or outgoing vessels and aircraft as provided in sections 15 and 20 respectively;

(b) open and inspect at a biosecurity point of entry any incoming document, including mail, in order to ascertain whether the document contains or relates to a regulated article;

(c) open and inspect at a biosecurity point of departure any outgoing document, including mail, if the officer reasonably suspects that the document contains or relates to -

(i) an uncleared regulated article that requires biosecurity export clearance; or

(ii) a regulated article that could pose a serious biosecurity threat to the country of destination of the document.

(2) The powers relating to mail in subsection (1) (b) [and (c)] shall only be exercised in respect of personal letters if the officer reasonably suspects that a letter contains or relates to a biosecurity threat.

49. Inspection of articles - (1) A biosecurity officer may at a biosecurity holding area inspect any incoming regulated article, and any conveyance, container or baggage in which the article is carried, in order to assess the biosecurity risk presented by the article, conveyance, container or baggage.

(2) A biosecurity officer may at a biosecurity point of departure inspect any article which requires biosecurity export clearance, in order to facilitate such clearance.

(3) The powers of inspection in subsection (1) and (2) are in addition to the powers of inspection in sections 23 and 33 and any other powers of inspection in or under this Act.

(4) For the purpose of exercising the powers of inspection under this Act, a biosecurity officer may request an importer or exporter to unpack and/or break up a consignment, or to open a container, at the person's risk and expense.

(5) If an importer or exporter refuses to comply with a request under subsection (4) –

(a) the person commits an offence;

(b) the biosecurity officer may break up the consignment or open the container or cause it to be broken or opened;

(c) the cost of action under paragraph (b) is a debt owing to the Government by the importer or exporter, as the case may be;

(d) no liability lies on the Director or any biosecurity officer and no compensation is payable, for the action of breaking up or opening, unless negligence or malice is proved.

(6) When conducting an inspection under this Act, a biosecurity officer may seek access to, and take photographic, electronic or other copies of any evidence, information, records and things related to the regulated article or consignment that the officer reasonably requires in order to ensure compliance with this Act or to investigate a possible offence under it.

(7) Inspection of articles in transit is governed by section 32(7).

50. Detention of articles - (1) If an incoming regulated article requires biosecurity measures to be taken in respect of it before biosecurity import clearance can be granted, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, for biosecurity measures to be taken.

(2) If an outgoing regulated article that requires biosecurity export clearance has not been cleared, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, until clearance or other disposition of the article under this Act.

(3) An article detained under this section shall be detained in a place specified by the officer, being a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises.

(4) If an article is to be detained under this section, a biosecurity officer may –

(a) direct the importer or exporter of the item to remove it to the specified place;

(b) if necessary (because the importer or exporter refuses to obey the direction, or because of the nature of the biosecurity threat,) arrange for the item to be removed to the specified place.

(5) If an article is detained under this section, a biosecurity officer shall give to the importer or exporter a notice in writing stating the reasons for the detention and, if it was removed under subsection (4) (b), the specified place.

(6) The cost of removal of an article to and its detention in a specified place is to be borne by the importer or exporter, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal or detention, unless negligence or malice is proved.

(7) The fees and charges for detention of an article under this section are as prescribed by regulation.

51. Taking of samples - (1) A biosecurity officer may, with the consent of the importer, owner or custodian, take samples from -

(a) any part of an incoming vessel or aircraft that has on board regulated articles;

(b) any warehouse containing regulated articles intended for importation;

(c) any consignment of incoming regulated articles, wherever located;

(d) any incoming container, baggage or thing that the officer reasonably suspects to be or include a regulated article.

(2) If an importer refuses consent under subsection (1), the biosecurity officer may require the person to provide appropriate samples.

(3) An importer who refuses either to allow samples to be taken or to provide samples, when required to do so under this section, commits an offence.

(4) A biosecurity officer may, with the consent of the person in charge of the article, take samples of any outgoing regulated article if the taking of a sample is necessary for the issue of a sanitary or phytosanitary certificate.

(5) If the person in charge of a regulated article refuses consent under subsection (4), the biosecurity officer may require the person to provide a sample, failing which the sanitary or phytosanitary certificate will not be issued.

(6) A biosecurity officer may request the importer or exporter of a consignment to unpack it or break it up to facilitate sampling, at the risk and expense of the importer or exercising powers under subsection (1) or (2), a biosecurity officer shall give the importer or exporter a written notice, identifying the quantity of the sample and the place where the sample is to be analysed.

(7) In other respects, the procedure for taking and analysing samples, recording the results and disposing of the samples is as prescribed or specified.

(8) If, in the course of sampling, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or exporter of the goods.

(9) The importer or exporter of a regulated article from which samples are taken under subsection (1) shall be notified in writing of the findings in respect of the samples as soon as reasonably practicable.

(10) The fees and charges for taking and analysis of samples under this section are as prescribed by regulation.

52. Testing of articles - (1) A biosecurity officer may test, or cause tests to be conducted on, any incoming regulated article, in order to ascertain whether the article meets the biosecurity import requirements in respect of it

(2) Following a test of an incoming article, and on payment of the prescribed fee, if any, the article shall be either released to the importer, and biosecurity import clearance granted in respect of it, or it shall be treated in accordance with section 53 or reconsigned or destroyed.

(3) A biosecurity officer may test, or cause tests to be conducted on, any outgoing regulated article that requires biosecurity export clearance if such tests are a condition for importation into the receiving country.

(4) Following tests on an outgoing article, biosecurity export clearance shall either be granted or refused in respect of the article.

(5) Sections 50(3) to (6) apply to articles detained for testing under this section.

(6) The importer or exporter of a regulated article which is tested under subsection (1) or (3) shall be notified in writing of the results of the test before the article is released or otherwise disposed of.

(7) If a test conducted under subsection (1) or (3) without negligence or malice destroys or damages an animal or other article being tested, no compensation is payable to the importer of the animal or other article.

(8) The fees and charges for testing of an article under this section are as prescribed by regulation.

53. Treatment of articles - (1) If an incoming regulated article requires treatment in order to meet the biosecurity import requirements in respect of it, the article shall be treated before biosecurity import clearance is granted in respect of it.

(2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease, the article may be treated to reduce the biosecurity risk to an acceptable level, whether or not treatment is a specified requirement or a condition of an import permit.

(3) Sections 50(3) to (6) apply to articles detained for treatment under this section.

(4) Once treatment has been administered to the satisfaction of the biosecurity officer, and on payment of the prescribed fee, if any, the article shall, subject to subsection (4), be released to the importer and biosecurity import clearance granted in respect of it.

(5) The cost of treatment is to be borne by the importer of the item, but the importer may instead opt to have the article reconsigned or destroyed.

(6) If an importer fails to have an article which requires treatment under this section treated within a reasonable time, the biosecurity officer may require the article to be destroyed.

(7) If –

(a) appropriate treatment is not available in the Cook Islands;

(b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or

(c) the importer chooses not to have the article treated,

the article shall be reconsigned or, if the importer chooses, or if section 54(3) applies, destroyed.

(8) Notice of action to be taken under subsection (6) or (7) shall be given to the importer in writing before the action is taken, except for articles in passenger baggage which are detained for destruction in the presence of the owner or custodian.

(9) If an outgoing regulated article requires treatment as a condition of importation into the receiving country, the article shall be treated at the expense of the exporter before biosecurity export clearance is granted in respect of it.

(10) If, in the course of treatment, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or exporter of the goods.

(11) Treatment of an article –

(a) should be the minimum required to remove or adequately reduce the biosecurity risk posed by the article;

(b) may be administered by an appropriately qualified biosecurity officer, or by any other suitably qualified person at the request of the officer or the importer.

(12) The charges for treatment of an article under this section are as prescribed.

54. Reconsignment of articles - (1) If an incoming regulated article which requires an import permit or a sanitary or phytosanitary certificate does not have the permit or certificate attached to it, a biosecurity officer may, after informing the importer, detain the article for reconsignment or destruction.

(2) An incoming article that is a prohibited import shall be reconsigned or destroyed.

(3) Reconsignment is at the option and cost of the importer, but –

(a) reconsignment shall be effected within a time specified by the officer, which shall be reasonable in the circumstances;

(b) if the biosecurity officer considers that the biosecurity risk of reconsignment is unacceptable, the option is not available.

(4) The power to order reconsignment of an article under this section applies also to any container, crate, baggage, package or mail which carries it.

(5) If reconsignment is not effected within the time specified under subsection (3)(a), or is not acceptable, the article or consignment shall be destroyed.

(6) No compensation is payable to the importer for the cost of reconsignment under this section.

55. Destruction of articles - (1) If this Act requires or authorizes an article to be destroyed, the destruction of the article shall be in accordance with this section.

(2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease, and –

(a) appropriate treatment is not available in the Cook Islands;

(b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or

(c) the importer chooses not to have the article treated,

the article shall be reconsigned or, if the importer chooses, or if section 54(3) applies, destroyed.

(3) The power of destruction of articles in subsection (2) is in addition to any other power of destruction in or under this Act.

(4) Destruction of an article under this Act may include any container, crate, baggage, package or mail which carries it.

(5) Packaging of an article may be considered as not part of a consignment and may be destroyed, if considered to pose a biosecurity risk, whether or not the article is destroyed.

(6) If the article to be destroyed appears to be of or above the value as specified by regulation, a biosecurity officer shall obtain the written approval of the Secretary, before arranging for its destruction.

(7) The manner of destruction of articles under this section is as prescribed or as specified by the Director and the importer or owner of the article, if known, shall be invited to witness the destruction.

(8) Notice of an intention to destroy any article shall be given to the importer or owner in writing before the action is taken, if the importer or owner is known.

(9) No compensation is payable to the importer for destruction of an article under this section.

(10) The fees and charges for destruction of an article under this section are as prescribed by regulation.

56. Post mortem examination of an animal - (1) If a biosecurity officer examining an animal pursuant to this Act suspects that the animal is diseased and considers a post mortem examination to be necessary to establish a diagnosis, the officer may, on the written authority of the Secretary, with consultations from divisional heads and without the consent of the owner –

(a) take or cause to be taken the life of the animal;

(b) cause a post mortem examination to be conducted to decide whether the animal is diseased; and

(c) obtain specimens from the animal for laboratory examination and diagnosis.

(2) If an examination is conducted pursuant to subsection (1), the results of the examination and of any laboratory reports resulting from the examination shall be provided in writing to the Secretary and to the owner of the animal, if the owner can be identified and located.

57. Powers in relation to people - (1) If a biosecurity officer is of the opinion that any person –

(a) seeking to enter or leave the Cook Islands;

(b) employed at a biosecurity point of entry or departure, in a designated area or quarantine station, or at approved premises; or

(c) engaged in importing or exporting regulated articles,

is in possession or control of an article that poses a biosecurity threat to the Cook Islands, the officer may detain and question the person.

(2) If a biosecurity officer suspects that there may be upon a person seeking to enter the Cook Islands an article that would, if imported, constitute an offence under this Act, the officer may cause the person and the person's baggage to be searched.

(3) If a biosecurity officer suspects that there may be upon a person seeking to leave the Cook Islands an article that would, if exported, constitute an offence under this Act, the officer may cause the person and the person's baggage to be searched.

(4) A search of a person under this section shall be carried out by officers of the same sex as the person searched.

(5) A person may be detained under this section only for as long as is required to question and search the person and the person's baggage and to arrange for biosecurity measures to be taken in respect of it.

(6) A person who refuses –

(a) to answer to the best of his or her knowledge and ability questions reasonably put by a biosecurity officer; or

(b) to submit to a search reasonably required under this section,

commits an offence.

(7) In this section, "person" means an individual.

PART 8
BIOSECURITY INTERNAL CONTROL

58. Pest and disease surveys - (1) The Secretary may notice in writing a survey of any area of the Cook Islands to be conducted to ascertain the status of pests and diseases in the area and the biosecurity risk of moving animals, plants, humans or organisms into, out of, or through the area.

(2) For the purposes of a survey under this section, a duly authorised biosecurity officer may, in the area of the survey –

(a) inspect premises and equipment;
(b) inspect animals and plants and their products;
(c) question persons;
(d) collect specimens and perform tests relating to animals, plants, animal and plant products, land, water and the environment.

(3) For the purposes of a survey under this section, the Director may direct the owners of animals or plants in the area of the survey, or persons who have custody or control of them, to make them available for inspection at places designated by the Director.

(4) A person who refuses, in the course of a survey under this section –

(a) to permit an officer to enter property, collect specimens or perform tests as reasonably required;
(b) to answer to the best of his or her knowledge and ability oral or written questions reasonably put to the person by a biosecurity officer; or
(c) to make animals or plants in the ownership, custody or control of the person available as required under subsection (4),

commits an offence.

(5) The Secretary may provide for the publication and transmission of survey results to other interested governments and organisations in compliance with international agreements.

59. Entry, search and seizure - (1) If a biosecurity officer reasonably suspects the presence of a regulated pest or disease that is not under official control, the officer may -

(a) at any time, stop, board and search any conveyance;
(b) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a dwelling house, but not a dwelling house;
(c) at any time with the consent of the owner, enter and search a dwelling house for animals, plants and their products;

(d) at any time, on a warrant issued under subsection (2), enter and search a dwelling-house for any regulated article that the officer reasonably suspects to be in it and to pose a biosecurity threat to the Cook islands.

(2) If a justice of the peace is satisfied on affidavit evidence by a biosecurity officer that-

(a) there may be in a dwelling house a regulated article that poses a biosecurity threat to the Cook islands; and

(b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the justice of the peace may issue a warrant authorising the officer to enter and search the dwelling house for the article.

(3) During a search of premises or a conveyance under this section a biosecurity officer may seize anything which -

(a) is a regulated article which the officer reasonably suspects poses a biosecurity threat to the Cook islands; or

(b) may be used as evidence of the commission of an offence under this Act.

(4) A biosecurity officer who seizes anything from a person under subsection (3) shall -

(a) inform the person of the reason for the seizure;

(b) give the person a receipt for the thing seized; and

(c) at the expense of the owner, remove the thing to a place of safekeeping and deal with it in accordance with this Act.

(5) A biosecurity officer may submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

60. Detention and testing of animals and plants and their products - (1) If an animal or plant or animal or plant product in the Cook Islands is suspected of being infected or infested by a regulated pest or disease, a biosecurity officer may direction the animal, plant or product to be detained and confined in a place specified by the Director for tests to be conducted.

(2) Following detention under subsection (1), a biosecurity officer may test, or cause to be tested, any animal or plant or animal or plant product. Such tests may include –

(a) the taking of samples in accordance with section 51 (replacing references to the importer of an article by references to the owner or custodian of it);

(b) conducting a post mortem examination in accordance with section 56.

(3) If after testing as in subsection (2) the animal, plant or product is considered to pose a biosecurity threat to the Cook Islands, the officer may further detain it in the specified place for biosecurity measures to be taken in respect of it, but an animal, plant or product may be detained only for so long as is required for biosecurity measures to be taken in respect of it.

(4) If an animal or plant or animal or plant product is to be detained under this section, a biosecurity officer may –

(a) direct the owner or custodian to remove it to the place specified under subsection (1);

(b) if necessary (because the owner or custodian refuses to obey the direction, or because of the nature of the biosecurity threat) arrange for the animal, plant or product to be removed to the specified place.

(5) If an animal or plant or animal or plant product is detained under this section, the owner or custodian shall be given a written notice stating the reasons for the detention and, if it was removed under subsection (4) (b), the specified place.

(6) The cost of removal of an article to and its detention in a specified place under this section is to be borne by the Service which may be reimbursed by the owner of the detained animals or items.

(7) Section 12 (Management of biosecurity holding areas) applies to places specified under this section as it applies to biosecurity holding areas, except that section 40(2) and (3) do not apply.

61. Treatment or destruction of animals and plants and their products - (1) If treatment is available to eliminate or reduce to an acceptable level the biosecurity threat posed by an animal or plant or animal or plant product that has been detained under section 60, a biosecurity officer may –

(a) with the consent of the owner or custodian of the animal, plant or product, administer such treatment, or cause it to be administered;

(b) after treatment, release the animal, plant or product to the owner or custodian.

(2) If –

(a) in the opinion of a biosecurity officer, appropriate treatment is not available in the Cook Islands;

(b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or

(c) the owner or custodian does not consent to the treatment being administered,

a biosecurity officer may order the animal or plant or product to be destroyed.

(3) Notice of action to be taken under subsection (2) shall be given to the owner or custodian in writing before the action is taken.

(4) Subject to subsection (5), section 55 applies to the destruction of animals and plants and their products under this section, replacing references to the importer of an article by references to the owner or custodian of it.

(5) The cost of treatment or destruction under this section is to be borne by the Government, and the owner is entitled to compensation [but not consequential loss for destruction of an article under this section

62. Infested biosecurity controlled areas - (1) If –

(a) an animal or plant on land or premises in any area of the Cook Islands is found to be infested by a pest or disease; and

(b) the powers in sections 59 to 61 are inadequate to control the outbreak,

the Secretary may by notice in writing declare the land or premises, to be an infested biosecurity controlled area in respect of that pest or disease.

(2) A notice under this section –

(a) may include an area of adjacent land if necessary to effectively contain the infestation;

(b) shall be made as soon as practicable after the finding of the infestation.

(3) In an infested biosecurity controlled area, the Secretary or any biosecurity officer may enter upon any land at any time in order to ascertain the status of a regulated pest or disease.

(4) In an infested biosecurity controlled area, pending the making of an notice in writing under section 63, no animal or animal product, or plant or plant product, fodder, fitting or other thing as specified in the declaration, may be moved out of, into or within the area except with the permission of a biosecurity officer and in accordance with any conditions reasonably imposed by the officer.

(5) A person who contravenes subsection (4) commits an offence.

63. Regulation of infested biosecurity controlled areas - (1) In an infested biosecurity controlled area, the Director may in writing direct –

(a) the treatment or disposal of diseased animals and plants;

(b) the destocking, cleaning, disinfecting or other treatment of land, premises and conveyances;

(c) the inspection and treatment of regulated articles in or entering or leaving the area;

(d) the movement of animals or plants or their products into, out of or within the area;

(e) any other biosecurity measures the Director considers necessary to control the infestation.

(2) In respect of an infested biosecurity controlled area, the Director may by notice in writing control –

(a) the movement of regulated articles, humans and conveyances into, out of, and within the area;

(b) any other matter the Director considers necessary to prevent the movement of host material into and out of the area.

(3) An notice in writing under subsection (1) or (2) may create offences for breaches of it and prescribe maximum penalties not exceeding the amounts as specified by regulation.

(4) Section 62(4) ceases to have effect upon the coming into force of an order under this section.

(5) The cost of treatment or destruction under this section is to be borne by Government, and the owner is entitled to compensation but not consequential loss] for destruction of an article under this section.

64. Pest-free biosecurity controlled areas - (1) Following a survey conducted under section 58, and after receiving appropriate technical advice, the Secretary may by notice in writing declare any area of the Cook Islands to be a pest-free biosecurity controlled area in respect of a specified pest or disease.

(2) A pest-free biosecurity controlled area is one where the specified pest or disease does not occur, so far as is known, and where incursions of that pest or disease should be prevented.

(3) Following a further survey conducted under section 58, and after receiving appropriate scientific advice, the Secretary may amend or revoke a notice in writing made under subsection (1).

65. Regulation of pest-free biosecurity controlled areas - (1) In respect of a pest-free biosecurity controlled area the Secretary may by notice in writing –

(a) control the movement of regulated articles, humans and conveyances into, out of, and within the area;

(b) direct the inspection and treatment of regulated articles in or entering or leaving the area;

(c) establish surveillance procedures for the specified pest or disease in the area.

(2) A notice in writing under subsection (1) –

(a) shall only be made for the purposes of preventing incursions of the specified pest or disease into the biosecurity controlled area;

(b) may create offences and for breaches of the notice prescribe maximum penalties not exceeding the amounts as specified in the regulations.

(3) The Director may by administrative means institute other measures to keep the biosecurity control area free of the specified pest or disease.

66. Destruction of wild animals - (1) If the Director has reason to suspect that a wild or feral animal is carrying a regulated pest or disease, the Director may, in order to prevent the pest or disease from being established or spreading in the Cook Islands, after consultation with relevant divisional heads, with the approval of the Secretary, cause the animal to be destroyed.

(2) The carcass of an animal destroyed under subsection (1) shall be disposed of in a manner that will not create the risk of the spread of any regulated pest or disease.

67. Notifiable pests and diseases - (1) The Secretary may in writing declare -

(a) the pests and diseases that are notifiable for purposes of this section;

(b) the manner of notifying such pests and diseases to the Secretary.

(2) A person who knows of or suspects the occurrence of a notifiable pest or disease in the Cook Islands shall as soon as reasonably practicable notify the Secretary in the manner declared under subsection (1), unless the person reasonably believes that the Director has already been notified of the occurrence.

(3) A person who fails to comply with subsection (3) commits an offence.

(4) The master of a vessel or captain of an aircraft in the Cook Islands who knows of or suspects the occurrence of a notifiable pest or disease on board the vessel or aircraft shall –

(a) as soon as reasonably practicable notify the Secretary in the manner declared under subsection (1); and

(b) take such action in relation to the vessel or aircraft as is directed by the Director or a biosecurity officer.

(5) A master or captain who fails to comply with subsection (5) (a) or (b) commits an offence.

(6) The Director shall record all occurrences of notifiable diseases which are notified under this section or which otherwise come to the notice of the Director in a biosecurity register.

68. Beneficial organisms and biocontrol agents - (1) The Secretary may in writing approve the release of beneficial organisms or biocontrol agents that he considers necessary or appropriate for the control or eradication of a particular pest or disease in the Cook islands.

(2) An approval under subsection (1) shall identify –

(a) the organism or agent;

(b) the pest or disease which it is intended to control;

(c) the area where it may be released;

(d) the period during which it may be released;

(e) the person or persons who may release it; and

(f) any conditions subject to which the approval is granted.

(3) No liability attaches to the Secretary, Director or any public officer in respect of the release of organisms or biocontrol agents in accordance with this section, except on proof of negligence or malice.

(4) The Director shall keep a biosecurity register of -

(a) the names of any beneficial organisms or biological agents released under this section; and

(b) the place of and extent of release of such organisms and agents.

(5) In this section, "beneficial organism" and "biocontrol agent" mean a natural enemy, antagonist or competitor of a pest or disease, and any other self-replicating biotic entity used for pest and disease control.

PART 9
BIOSECURITY EMERGENCIES

69. Declaration of a biosecurity emergency area - (1) On receiving evidence that a biosecurity emergency has arisen in the whole or any part of the Cook Islands, the Secretary may declare a biosecurity emergency in respect of the whole of or that part of the Cook Islands.

(2) A biosecurity emergency area may include an area where an animal or plant is found to be infested or infected, and adjacent areas to the extent reasonably necessary.

(3) Notice of a declaration under this section shall be in writing signed by the Secretary and be –

(a) published as required by section 104(1);

(b) displayed on notice boards or similar throughout the biosecurity emergency area.

(4) A declaration under subsection (1) –

(a) does not take effect until it has been published or notified;;

(b) shall be revoked as soon as the biosecurity threat is removed or reduced to an acceptable degree.

(5) A declaration under subsection (1) expires on the date as specified in writing by the Secretary.

70. Response to a biosecurity emergency - (1) When a biosecurity emergency area is declared, the Secretary shall require the Director to undertake a detailed survey to ascertain the precise extent and severity of the incursion or other threat and the most appropriate measures to take in response.

(2) In deciding on an appropriate response to a biosecurity emergency, the Secretary should –

(a) be guided by any Biosecurity Emergency Response Plan that has been devised by the Service in consultation with other Ministries; and

(b) as appropriate, consult and liaise with the Emergency Management Cook Islands Office.

71. Action in a biosecurity emergency area - (1) In respect of a biosecurity emergency area -

(a) the Secretary where required may request the Government to use its powers and resources to assist in the control or eradication of any pest or disease in the area;

(b) the Director or any biosecurity officer may enter upon any land at any time in order to ascertain the status of a pest or disease;

(c) the Secretary may appoint temporary additional personnel, whether or not having the powers of biosecurity officers, to effectively respond to the biosecurity emergency.

(2) In a biosecurity emergency area, the Director may do or cause to be done any of the following –

(a) mark the boundaries of the emergency area;

(b) set up roadblocks at all exits from the area;

(c) set up facilities for the cleansing and disinfection of all persons and conveyances entering or leaving the area and any other thing likely to spread any pest or disease;

(d) disinfect all conveyances, crates, packing, animals, plants and other things which are likely to carry pests or diseases and which are being sent out of the area;

(e) inspect and disinfect all persons and their possessions leaving the area so as to prevent any host material that may be infected from leaving the area;

(f) for the purposes of paragraphs (d) and (e), detain persons, animals, plants, animal and plant products, goods and vehicles for as long as is necessary to minimise or eliminate the biosecurity risk presented by them.

(3) A person who –

(a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of the Director, a biosecurity officer or any police officer or other person performing duties under this section;

(b) knowingly enters or leaves a biosecurity emergency area except with and in accordance with the permission of the Director or a biosecurity officer;

(c) knowingly moves any article out of or into a biosecurity emergency area, or from one place within the area to another place within that area, except with and in accordance with the written permission of the Director or a biosecurity officer, commits an offence.

(4) Articles moved in contravention of subsection (3) (c) may be seized by a biosecurity officer and–

(a) held pending criminal proceedings for the contravention; or

(b) if necessary to remove a biosecurity threat, destroyed as the Director directs, without a court order.

(5) In respect of action taken under this section –

(a) the cost of treatment or destruction of any article is to be borne by Government;

(b) compensation, but not for consequential loss, is payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

72. Biosecurity Emergency Regulations - (1) The Secretary may request the Queen's Representative to make biosecurity emergency regulations to –

(a) grant further powers to the Secretary and Director by section 71; and

(b) take effect upon the declaration of a biosecurity emergency area under section 70.

(2) The Biosecurity emergency regulations may, in respect of a biosecurity emergency area –

(a) create one or more exclusion zones within the area and control the movement of conveyances, humans, animals and plants and host material into, out of and within such a zone;

(b) prohibit specified activities in the area;

(c) provide for the destruction or treatment of specified goods and the treatment of land in the area;

(d) regulate the use of the area for a specified period after the lifting of emergency restrictions;

(e) generally, specify the conditions which apply to the area to control the biosecurity emergency.

(3) Regulations made under subsection (1) may –

(a) confer on the Director and on biosecurity officers powers additional to those conferred by this Act and reasonably needed to deal with the emergency;

(b) prescribe the disposal, destruction, treatment or other measures to be adopted in respect of any item which is infected, infested or contaminated;

(c) require the cleansing or disinfecting of soil, conveyances, machinery, tools, equipment, clothing, footwear or other things which may have come into contact with those items;

(d) prescribe measures to be taken to prevent pests and diseases from spreading, including but not limited to cleansing of homes and utensils, removal of stagnant water and disposal of garbage;

(e) prohibit or restrict the use of any port or airport, or of any facilities at any port or airport, to the extent specified;

(4) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding the amounts as specified by regulation;

(5) Biosecurity Emergency Regulations come into force on the day on which a biosecurity emergency declaration takes effect under section 69 and lapse upon the expiry of the declaration under that section.

(6) In respect of action taken under the Biosecurity Emergency Regulations –

(a) the cost of treatment or destruction is to be borne by Government;

(b) compensation (but not consequential loss) may be payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

PART 10
THE COOK ISLANDS BIOSECURITY SERVICE

73. Status and functions of the Biosecurity Service - (1) The Director of Biosecurity, any deputy to the Director and all biosecurity officers designated under this Act, together with ancillary staff, constitute the Biosecurity Service (the "Service").

(2) The functions of the Service are, to the extent of the available resources and consistently with this Act –

(a) to protect the Cook Islands against the entry of regulated pests and diseases affecting animals, plants, human beings and the environment;

(b) to carry out surveillance and monitoring of pests and diseases in the Cook Islands and assess the status of regulated pests and diseases;

(c) to prevent the establishment and spread of regulated pests and diseases and the release of organisms that might adversely affect animals, plants, human beings and the environment in the Cook Islands;

(d) to eradicate, contain or control the movement of regulated pests and diseases that are already present in the Cook Islands;

(e) to prevent the introduction and spread of regulated pests and diseases not already present in the Cook Islands;

(f) to facilitate the safe importation of animals and plants and their products, and related equipment and technology;

(g) to facilitate the export of animals and plants and their products in accordance with the biosecurity requirements of the receiving countries;

(h) to facilitate international cooperation to prevent the spread of pests and diseases affecting plants, animals, human beings and the environment.

(3) To effectively perform its functions under subsection (2), the Service should –

(a) in consultation with other Ministries and the Emergency Management Cook Islands Office devise a Biosecurity Emergency Response Plan to deal with an incursion of a regulated pest or disease in the Cook Islands and keep the plan under review;

(b) produce an operations manual for the guidance of biosecurity officers in electronic or hard format or both;

(c) publicise the requirements of this Act and increase public awareness of the importance of biosecurity.

74. Director of Biosecurity - (1) The Secretary shall in writing designate a public officer in the Ministry as the Director of Biosecurity for the purposes of this Act.

(2) The Secretary may in writing designate a public officer in the Ministry to be the Deputy Director of Biosecurity, who shall perform the functions of the Director whenever the Director is unable to do so.

(3) The Director of Biosecurity is responsible to the Secretary for the efficient running of the Service and the administration of this Act, within the resources available to the Secretary.

(4) The Director shall –

(a) perform the functions assigned to the Director by or under this Act;

(b) supervise and administer the operations of the Service;

(c) report to the Secretary as required by the Secretary from time to time;

(d) perform any other functions relating to this Act that the Minister by directions in writing may confer on the Secretary from time to time.

(5) Before performing technical functions under this Act, the Director shall as appropriate obtain advice from technical section heads.

(6) The Director and Deputy Director (if any) are by virtue of their office biosecurity officers for all purposes of this Act.

75. Appointment of biosecurity officers - (1) The Secretary shall in writing designate one or more public officers as biosecurity officers for the purposes of this Act.

(2) The Secretary may in writing designate any public officer or employee of a statutory authority to be a biosecurity officer for a particular purpose or at a particular location.

(3) The Secretary may in writing appoint a qualified person to be a temporary biosecurity officer for a period as specified by him in the appointment.

(4) Before appointing a public officer from another Ministry or agency, the Secretary should consult the relevant Ministry or agencies' Secretary, but failure to do so does not invalidate the appointment.

(5)

(a) A biosecurity officer shall perform such duties, not inconsistent with this Act, as are assigned to the officer by the Secretary;

(b) The Secretary may limit the functions to be performed by a biosecurity officer to those within the officer's technical sphere of competence;

(c) The functions assigned to an officer shall be consistent with the designation under subsection (2).

(6) The Director shall provide every person appointed as a biosecurity officer with a suitable form of identification as such officer.

(7) A person who upon the termination of his or her appointment as an officer fails to surrender up any identification issued under subsection (5) within a specified period commits an offence.

(8) A person who copies forges or alters a form of identification issued under subsection (4) without the written authority of the Secretary, commits an offence.

(9) Appointments under this section and section 74 shall be in writing signed by the Secretary.

(10) A person appointed or designated as a biosecurity officer under this section shall be given adequate training in biosecurity control measures and in the provisions of this Act before embarking on his or her duties.

76. Delegations and directions - (1) Subject to subsection (2), the Director may in writing delegate any of the Director's functions under this Act or the regulations to the Deputy Director or to a suitably qualified named biosecurity officer.

(2) The Director may not delegate any legislative function, any appellate function, the power of giving directions under subsection (3), or this power of delegation.

(3) The Director may issue written directions to biosecurity officers as to the manner in which their functions are to be performed, consistent with this Act and the regulations.

77. Biosecurity registers and records - (1) The Director shall maintain all registers and records needed for the administration of this Act and the performance of the functions of the Service.

(2) The public biosecurity registers to be maintained include, but are not limited to, registers of –

(a) regulated pests and diseases;
(b) prohibited imports;
(c) biosecurity points of entry and departure;
(d) biosecurity holding areas;
(e) biosecurity clearance agents;
(f) biosecurity port quarantine areas;
(g) biosecurity quarantine stations;
(h) biosecurity approved premises;
(i) biosecurity import permits issued, refused and revoked under Part 4;
(j) exemptions granted under section 31;
(k) transit waivers issued under section 32, other than in-transit passenger waivers;
(l) biosecurity controlled areas declared under section 62 or 64;
(m) occurrences of notifiable pests and diseases notified under section 67;
(n) beneficial organisms and biocontrol agents released under section 68;

(o) agreements or memoranda of understanding with other departments of the Government or overseas agencies under section 83(3);

(p) compliance agreements entered into by the Secretary under section 87;

(q) bilateral agreements entered into with potential receiving countries under section 89;

(r) any other public biosecurity register required by or under this Act or considered by the Secretary to be necessary or appropriate.

(3) The Director shall keep a register of –

(a) specifications for regulated articles made under sections 26 and 36, including the biosecurity measures appropriate to each type of regulated article;

(b) any other form or matter specified by the Director or the Secretary under this Act.

(4) In respect of the biosecurity requirements of receiving countries, the Director shall keep –

(a) a register of the requirements of those countries for which biosecurity export clearance has been granted in the past 12 months;

(b) a register of source material for ascertaining the biosecurity requirements of all potential receiving countries.

(5) The biosecurity records to be maintained include, but are not limited to –

(a) comprehensive and accessible financial and resource management records, including budgets and records of expenditure and revenue;

(b) adequate personnel records including the identities, duty statements;

(c) operational statistics relating to the work of the Service.

78. Status of biosecurity registers and records - (1) The registers kept pursuant to section 77(2) shall be made available for inspection and copying by members of the public during office hours at the main office of the Service on payment of the prescribed fee.

(2) Copies of relevant extracts from the registers kept under section 77 shall be made available for inspection and copying by members of the public on payment of the relevant costs and fee.

(3) Subject to any other Act, registers and other records kept under this section shall only be used for the purposes of this Act.

(4) A copy of an entry in a register maintained under section 77(2) which is certified by the Director to be an accurate copy may be produced in court as *prima facie* evidence of the entry.

(5) Registers maintained under section 77 may be in electronic format, provided the information is readily retrievable and is protected against unintended loss.

(6) The Secretary may by notice in writing determine the period for which registers shall be maintained under section 77, consistent with any other law relating to public records.

PART 11
ADMINISTRATION

79. Financial provisions - (1) The Minister may request the Parliament to provide finance for the implementation of this Act in addition to an annual appropriation.

(2) If -

(a) there is an incursion of a regulated pest, disease or organism into the Cook Islands which may threaten the livelihood and environment of the country or any part of it; and

(b) a response is immediately required, whether by way of the declaration of a biosecurity emergency area or otherwise,

the Parliament may approve the payment from public revenues of such sum as it may consider to be reasonably required to deal with the incursion, pending a supplementary appropriation by the Parliament.

80. Fines, fees and charges - (1) Fines, fees and charges payable under this Act are to be paid into Cook Islands Government Public Funds in accordance with the MFEM Act 1995-96.

(2) Where a fee or charge payable under this Act is not paid –

(a) if the service for which the fee or charge is payable has not been provided - it may be withheld until the fee is paid;

(b) if the service has been provided - the fee or charge may be recovered as a debt owing to the Government;

(c) if the fee or charge is in respect of an item in quarantine - the item may be sold once it has cleared quarantine, or otherwise be treated as abandoned goods.

81. Role of Island Councils, village districts or areas - (1) Representatives of every Island Council and village districts or areas may in relation to its area of jurisdiction with the advice of the biosecurity advisory committee -

(a) request the Secretary to take steps under this Act to prevent the movement of specified articles from or to the area;

(b) carry out, for the purposes of this Act, monitoring, surveillance and reporting of pests and diseases;

(c) propose pest and disease management strategies;

(d) if a pest management strategy proposed by the council has been approved by the Secretary –

(i) perform the functions of the management agency in respect of the strategy;

(ii) provide for the management or eradication of pests and diseases;

(iii) review, extend or revoke the strategy.

(2) Island Councils, village districts or areas may gather information, keep records, undertake research, and do any other similar thing that the council considers necessary or desirable to enable effective compliance under this Act.

82. Biosecurity advisory committee - (1) The Minister may appoint an advisory committee for the purposes of providing independent advice on biosecurity matters.

(2) Persons appointed to an advisory committee shall have recognized expertise and experience directly relevant to biosecurity matters and the operations of an efficient biosecurity service.

(3) The composition, functions and procedures of a committee appointed under subsection (1) are as prescribed by regulation.

83. Consultation and outsourcing - (1) Before making subsidiary legislation, issuing directions or exercising other powers under this Act, the Minister and Secretary should obtain appropriate technical advice and consult relevant Ministries, agencies and interested parties, but failure to do so does not invalidate the exercise of the relevant powers.

(2) Before exercising a power under this Act that will or might affect matters within the responsibility of another Ministry (including but not limited to human health, natural resources, environment, tourism, trade or transport) the Minister should consult the respective Minister, but failure to do so does not invalidate the exercise of the power.

(3) The Secretary may for the effective control of biosecurity and implementation of this Act –

(a) hire the services of consultants with specialist knowledge of biosecurity matters;

(b) enter into memoranda of understanding or other agreements with other Government departments, and with official agencies and private organizations in the Cook Islands or elsewhere.

(4) Without limiting subsection (3), the Secretary may, subject to public service rules relating to procurement, tenders and similar matters –

(a) hire the services of a laboratory for testing of samples;

(b) hire consultants to perform biosecurity risk assessments and to carry out surveys authorised under this Act;

(c) hire any treatment or other service deemed necessary for the effective implementation of this Act.

(5) Outsourcing of services under subsection (4) does not confer on any person the powers of a biosecurity officer.

84. Duty to coordinate - (1) Biosecurity officers and other persons administering this Act should so far as possible coordinate their functions with those of officers of other Ministries and Departments of the Government, in respect of border control, the movement of vessels and aircraft, human health, biosecurity internal control and compliance with the laws of the Cook Islands generally.

(2) Without limiting subsection (1) –

(a) biosecurity officers should notify officers of the customs and immigration services of any breach of the customs or immigration laws that comes to their notice;

(b) officers of the customs and immigration services and of the post office should –

(i) notify a biosecurity officer of the importation or proposed exportation of any regulated article that comes to their notice;

(ii) hand over to the biosecurity officer any such article which comes into their possession for inspection and treatment in accordance with this Act;

(c) police officers, customs officers, immigration officers, environmental officers, agriculture officers, livestock officers, forestry officers, fisheries officers, public health officers, and other relevant officers, shall co-operate with biosecurity officers in the performance of their functions under this Act and render such assistance as they can lawfully do when called upon by the Director or a biosecurity officer.

(3) The Minister should seek so far as possible to coordinate the functions of the Ministry under this Act with those of the Ministers responsible for the police, customs, immigration, marine, harbours, civil aviation, health, environment, fisheries, natural resources and other services of the Government.

85. Facilities at biosecurity points of entry or departure - (1) The operator of every biosecurity point of entry or departure in the Cook Islands shall, to the extent possible, provide on the premises, for the purposes of this Act and to the satisfaction of the Director –

(a) an area suitable for use as offices by biosecurity officers stationed at the point;

(b) adequate space for the display of notices regarding the biosecurity requirements of this Act;

(c) areas for interview and, if necessary, physical examination of incoming passengers and crew, if required;

(d) biosecurity holding areas as designated under section 11;

(e) facilities and suitable containers for garbage collection and incineration or other disposal;

(f) facilities for the incineration or other disposal of regulated articles without creating an unacceptable biosecurity risk;

(g) fencing of premises in which garbage holding and disposal equipment is situated;

(h) any other facilities the Director requests in writing as being needed for the performance of biosecurity functions at the point of entry or departure.

(2) The operator of a biosecurity entry or departure point, whether or not a public officer, shall keep the premises and facilities mentioned in subsection (1)(e), (f) and (g) free from weeds and vermin to the satisfaction of the Director. An operator who fails to do so commits an offence.

(3) No charge is payable by the Director for the facilities to be provided under this section. If an operator fails to provide facilities as required by this section they may be provided by the Director and the cost of such provision is a debt owing by the operator to the Government.

86. Safe carriage and safe working environment - (1) If it is necessary for the purposes of this Act for a biosecurity officer to be transported to a conveyance, premises or place, the Director and owner of the conveyance, premises or place, shall ensure that the mode of transport provides safe carriage having regard to the conditions of travel.

(2) If it is necessary for an officer to undertake inspection duties on a conveyance or premises, including a conveyance or premises owned by the Government, the person in charge of the conveyance or premises shall provide –

(a) a safe working environment for the officer;

(b) adequate refreshment every 4 hours.

(c) overnight accommodation, if required

(3) The Secretary may request the Queen's Representative to make regulations, consistent with the health and safety laws of the Cook Islands, to enforce the obligations stated in subsection (1) and (2).

(4) Regulations made under subsection (3) may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of $10,000 for an individual or $100,000 for a corporate body.

87. Compliance agreements - (1) The Secretary may enter into a written agreement with an importer, exporter, producer or any other person in connection with -

(a) the application of particular biosecurity measures in respect of any item;

(b) the way in which any requirement under this Act can be satisfied by the person; and

(c) the supervision, monitoring and testing of the person's compliance with those measures or that requirement.

(2) A compliance agreement may provide that, in circumstances stated in the agreement, the Secretary may, by written notice, cancel or vary the agreement or suspend its operation for a period. The circumstances may include, but are not limited to, the person's failure to comply with specified measures or meet specified requirements.

(3) A biosecurity officer may release an article to which a compliance agreement applies, and if it is a regulated article grant biosecurity clearance in respect of it, on the basis of a written certificate, given by a person authorised under the agreement to give such a certificate, that all the measures to which the agreement refers have been complied with in respect of the article.

88. Biosecurity approved premises - (1) The Secretary, on written application by the owner or occupier of any premises and on payment of the prescribed fee, may in writing –

(a) approve the premises as premises where the inspection, testing and treatment of regulated articles can take place; and

(b) approve specified action being taken under this Act in relation to all regulated articles, or specified articles, while they are in the approved premises.

(2) In deciding whether to give approval under subsection (1), the Secretary, after appropriate inspection of the premises by a biosecurity officer, shall take into account -

(a) whether the specified action can be taken in the premises without an unacceptable biosecurity risk and without contravening this Act or the conditions of any permit;

(b) whether the premises and facilities in them are adequate to enable such action to be taken efficiently and safely;

(c) whether the location of the premises is appropriate having regard to the nature of the articles, the specified action and the level of biosecurity risk;

(d) whether the premises are located in a place where biosecurity officers can conveniently check that this Act and the regulations are being complied with in the premises; and

(e) any other matter the Secretary considers relevant.

(3) An approval under this section may be expressed to be subject to conditions stated in the approval and is of no effect if the conditions are not met.

(4) An approval under this section has effect for a period not exceeding 12 months but may be renewed by following the procedure for a new approval.

(5) An approval under this section may be cancelled if the Secretary is satisfied –

(a) that the premises or facilities or action taken do not comply with this Act or the regulations; or

(b) that the premises are otherwise no longer suitable for approval.

(6) The provisions of this Act relating to biosecurity quarantine stations (other than section 40) apply to premises approved under this section.

89. International cooperation - (1) The Minister may, with the approval of the Cabinet, enter into bilateral or multilateral agreements with countries and international organisations for effective international control in biosecurity matters.

(2) The Secretary may pursuant to such agreements –

(a) exchange information with other countries and international organisations;

(b) contribute to the development of international sanitary and phytosanitary standards.

(3) Agreements under subsection (1) may include agreements on procedures for implementing this Act, but not so as to vary the effect of any of its provisions except as provided by this Act.

(4) The Secretary shall use his or her best endeavours to implement in the Cook Islands international standards and requirements relating to biosecurity and to that end should –

(a) designate one or more officers in the Ministry of Agriculture as the enquiry point and notification authority for purposes of the IPPC, Codex, OIE and PPPO;

(b) take steps to ensure that reporting requirements of the IPPC, Codex, OIE and PPPO and any other international agreement relating to biosecurity imposed on the Cook Islands are met in a timely manner.

90. Notifications - (1) The Secretary may at any time issue a notice -

(a) stating that a specified pest or disease is known to exist in the Cook Islands;

(b) stating that, to the best of the Secretary's knowledge, a specified pest or disease does not exist in the Cook Islands;

(c) specifying the classification, name or identity by which any animal, animal product, plant, plant product, pest or disease is known in the Cook Islands.

(2) A notice issued under this section is, for the purposes of this Act, conclusive until revoked or amended by the Secretary and is admissible in any court or other proceedings as evidence of the matters stated in it.

PART 12
OFFENCES AND PENALTIES

91. Dereliction of duty by officers - A biosecurity officer who -

(a) fails without reasonable excuse to perform any of his or her duties under this Act or the regulations;

(b) disposes of a regulated article or other item under the control of the officer other than in accordance with this Act;

(c) discloses information of a confidential or commercial nature which has come into the officer's possession while performing functions under this Act, except for purposes of this Act;

(d) in the course of performing his or her duties molests or intimidates unlawfully assaults any person;

(e) in connection with his or her duties solicits or accepts a bribe; or

(f) knowingly or recklessly makes a false or misleading statement, or issues a false or misleading certificate or other document, while purporting to perform his or her duties,

commits an offence.

92. Obstruction, false information etc - A person who –

(a) willfully fails to comply with a direction made by a biosecurity officer under this Act;

(b) knowingly obstructs a biosecurity officer in the performance of his or her functions under this Act;

(c) assaults, or threatens or attempts to assault a biosecurity officer performing functions under this Act;

(d) bribes [or attempts to bribe] a biosecurity officer in relation to the performance of functions under this Act;

(e) makes a false or incomplete statement, whether orally or in writing, in relation to any matter under this Act, intending to mislead a biosecurity officer in the performance of functions under this Act,

(f) for purposes of this Act knowingly or recklessly –

(i) makes a false or misleading biosecurity declaration; or

(ii) issues any false or misleading certificate;

(g) knowingly or recklessly gives false or misleading information to a biosecurity officer while the officer is performing functions under this Act,

commits an offence.

93. Fraudulent use of official documents - (1) A person to whom a permit or other document is issued under this Act who –

(a) forges or unlawfully alters the document;

(b) allows any other person to use or attempt to use the document for any purpose of this Act, commits an offence.

(2) A person who, for the purposes of this Act, produces a document, which is false or misleading, knowing it to be so and intending a person to rely on it, commits an offence.

(3) A person who uses or affixes an official stamp or seal required under this Act, without lawful authority and with intent to defraud or deceive, commits an offence.

94. Maximum penalties - (1) Every person who commits an offence against this Act (whether or not an offence against a provision of this Part of this Act) for which no other penalty is provided by this Act shall be liable -

(a) in the case of a body corporate to a fine not exceeding $100,000, and if the offence is a continuing one to a further fine of $10,000 for each day or part of a day that the offence shall continue;

(b) in the case of an individual to a fine not exceeding $10,000, and if the offence is a continuing one to a further fine of $250 for each day or part of a day that the offence shall continue, or to imprisonment for a term not exceeding one year or to both the fine and the imprisonment.

(2) In addition to or instead of such fine and imprisonment, the Court may order that individual or body corporate to do all or any of the following -

(a) under the supervision and to the satisfaction of a person nominated by the Court, to clear up and remedy any damage caused as a consequence of the offence within such period and upon such conditions as may be specified in the order with the intent that any area be restored as near as possible to a satisfactory state;

(b) to remove or destroy any object in the possession of a person which is in contravention of this Act;

(c) to pay such amount as the Court may assess in respect of the expenses and costs that have been or are likely to be incurred restoring the area to its former state (its state immediately before the offence).

95. Forfeiture - (1) A court convicting a person of an offence under this Act or the regulations may, in addition to any other penalty imposed, order that any article used in committing the offence, or, if the article has been sold, the proceeds of the sale, be confiscated.

(2) If an article or proceeds are confiscated under subsection (1) they are forfeited to the Crown. Proceeds of sale shall be paid into public revenue, but if an article poses a biosecurity threat it shall be destroyed as directed by the Director.

(3) For the purposes of subsection (1), "article used in committing the offence" includes equipment, a conveyance and any other movable thing owned by the offender which was used directly in the commission of the offence, but does not include land or buildings and fixtures on land.

(4) In deciding whether to order confiscation of any article or proceeds under this section, a court shall have regard to the principle of proportionality.

96. Fixed penalty (Instant fines) system - (1) The Director, if satisfied that a person has committed an offence under this Act, may as an alternative to initiating court proceedings against the person –

(a) order the person to pay a fixed penalty (instant fine) as described in subsection 2; and

(b) order any goods liable to confiscation in connection with the offence to be forfeited to the Government or, if they pose a biosecurity threat, to be destroyed.

(2) The fixed penalty referred to in subsection (1) shall be as set out in regulations.

(3) Before imposing a fixed penalty order on a person for an offence, the Director shall notify the person in writing, giving particulars of the offence, the maximum penalty that a court could impose, the fixed penalty that is proposed, and any item that will be confiscated and forfeited.

(4) If a person on whom a notice is served under subsection (3) -

(a) within the time specified in the notice, and in writing, admits the offence, requests the Director to deal with it under this section and consents to the confiscation of the item (if appropriate) then the Director may impose a fixed penalty order on the person;

(b) does not respond as notified in paragraph (a) within the time specified in the notice then the Director may initiate court proceedings against the person for the offence.

(5) A fixed penalty order shall –

(a) be in writing and specify the offence which the person has committed, the fixed penalty that is imposed, the place where it is to be paid and the date by which it is to be paid;

(b) specify any item that is to be confiscated and forfeited.

(6) If the fixed penalty is paid in full as required then the person against whom an order was made under this section is not liable to any further criminal proceedings in respect of the offence and if the person is in custody then he shall be discharged.

(7) If a fixed penalty payable under this section, or any part of it, is not paid by the date specified in the fixed penalty order, the Director shall initiate court proceedings against the person for the offence.

97. Offences by corporate bodies - (1) A corporate body cannot be imprisoned for an offence under this Act or the regulations, but the maximum fine for such an offence by a corporate body is as stated in section 94 (1) (a).

(2) If a corporate body commits an offence against this Act, every person who is a Board member or any other person concerned in the management of the body also commits the offence as an individual, unless the person proves –

(a) that the offence was committed without his or her consent or connivance; and

(b) that he or she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the corporate body and to all the circumstances.

PART 13
MISCELLANEOUS PROVISIONS

98. Jurisdiction - (1) Notwithstanding any limit on its jurisdiction in any other law, the High Court is competent to impose any penalty or to make any order provided for in or under this Act.

(2) The Secretary may institute and conduct proceedings for an offence under this Act subject to the right of the Attorney General to institute, take over or terminate proceedings under this Act at any time.

(3) The Director or a biosecurity officer may institute and conduct proceedings for the recovery of a debt owing to the Government under this Act.

99. Abandoned goods - (1) An article may be treated as abandoned and disposed of under this section if -

(a) any fee or charge payable by a person under this Act or the regulations in respect of the article is not paid within [3 months] of the notice of the fee or charge being served on the person;

(b) the article is in a biosecurity holding area and is not removed from the area within 14 days after biosecurity entry clearance has been granted in respect of it; or

(c) the article is in biosecurity quarantine and is not removed from a biosecurity quarantine station or biosecurity approved premises within a time specified in the notice after the end of the quarantine period in respect of it.

(2) An article that has been abandoned may be destroyed, sold or otherwise disposed of in the prescribed manner, or, in the absence of regulations, in any manner the Director thinks fit that does not present a biosecurity risk.

(3) The cost of disposal of an abandoned article is a debt to the Government by the person who was the owner of it, and proceeds of any sale or disposal of an abandoned article revert to the Government.

100. Compensation - Except as otherwise provided in or under this Act, no compensation is payable for loss of or damage to any item as a result of any search, inspection, examination, sampling, testing, detention, treatment, quarantine or other biosecurity measure taken under this Act or the regulations, unless negligence or malice on the part of the person taking the measure is proved.

101. Appeals from decisions - (1) A person who is aggrieved by a decision of a biosecurity officer under this Act made at a biosecurity point of entry or departure, in a biosecurity holding area or at a biosecurity quarantine station, may appeal to the Director.

(2) A person who is aggrieved by a decision of the Director, including a decision on an appeal under subsection (2), may within 21 days appeal in writing to the Secretary, whose decision is final.

(3) An appeal in respect of compensation is subject to section 100.

(4) The person deciding an appeal shall give the appellant and the respondent the opportunity to be heard, in writing or in person, and to produce evidence and call witnesses, and shall give reasons for the resulting decision made on the appeal.

(5) If an appeal involves a technical issue, the person hearing the appeal shall obtain the advice of the relevant technical section head not being the person appealed from, or any other person or entity.

102. Limitation of liability - (1) Neither the Secretary, the Director nor any biosecurity officer or other public officer is personally liable for action taken under this Act in good faith and without negligence.

(2) A breach of a duty imposed on the Secretary, Director, a biosecurity officer or any other public officer by or under this Act does not give rise to any civil liability except as provided in or under this Act.

103. Evidence - (1) In any proceedings under this Act -

(a) a document purporting to have been issued by the Director or a biosecurity officer or other public officer for the purposes of this Act shall be presumed, until the contrary is proved, to have been signed by that person;

(b) a copy of or extract from a document issued by the Director, a biosecurity officer or any other public officer, and certified by such person to be true and correct, shall, unless the contrary is proved -

(i) be presumed to be a true and correct copy or extract;

(ii) on its production in court be *prima facie* proof of any matter contained in it.

(2) In any proceedings under this Act –

(a) a certificate, in a form approved by the Secretary, of the results of any test conducted on an article by the person who conducted the test may be tendered in evidence and shall be *prima facie* evidence of the facts stated in it;

(b) a certificate of analysis of a sample of any article or thing may be tendered in evidence shall be *prima facie* evidence of the facts stated in it if the procedure prescribed in relation to the sample has been substantially followed.

(3) Section 78 governs the evidential status of registers kept under this Act.

104. Regulations - (1) The Secretary may request the Queen's Representative to make regulations not inconsistent with this Act for the effective implementation of this Act.

(2) Without limiting subsection (1) or affecting any other regulation-making power in this Act, the Queen's Representative may make regulations –

(a) prescribing fees and charges payable for the services provided by the Government or the Secretary under this Act;

(b) providing for the electronic filing of declarations and applications required by this Act and the electronic keeping of registers;

(c) prescribing the language of documents required by this Act;

(d) prescribing the manner and language of markings on containers of incoming and outgoing regulated articles;

(e) prescribing the methods of handling and sealing and disposal of containers of regulated articles;
(f) providing for the placing and use of amnesty bins or other containers for regulated articles at points of entry;
(g) regulating the disposal of garbage and waste and second-hand clothing and bedding so as to minimise any biosecurity risk;
(h) providing for the de-ratting of vessels, and the form of de-ratting certificate;
(i) subject to the approval of the civil aviation and maritime authorities, requiring a video film about biosecurity to be shown on all aircraft and vessels arriving in the Cook Islands and carrying passengers;
(j) requiring treatment to be applied in respect of a vessel or aircraft before it arrives in the Cook Islands;
(k) prescribing the method of taking and analyzing samples, recording the results and disposing of the samples;
(l) prescribing the composition, functions and procedure of a biosecurity advisory committee appointed under section 82;
(m) prescribing the manner of disposal of abandoned goods under section 99;
(n) prescribing the procedure for claiming compensation, and the rates payable, pursuant to section 100;
(o) regulating the procedure on appeals under section 101;
(p) prescribing additional measures, consistent with this Act, to implement in the Cook Islands the standards and requirements relating to biosecurity of the IPPC, Codex OIE and the PPPO;
(q) prescribing any other matter which this Act requires to be prescribed or which is necessary for carrying out or giving effect to this Act.

(3) Before requesting the Queen's Representative to make regulations under this section, the Secretary shall –

(a) obtain the advice of the Director and any advisory committee established under section 82; and
(b) consult any Island/District Council whose area of jurisdiction will be affected, and other Ministries as appropriate.

(4) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding fine of $10,000 for an individual or $100,000 for a corporate body.

105. Repeals and savings - (1) The Acts and the subsidiary legislation listed in attached Schedule are repealed.

(2) All proceedings, applications, notices, permits or other matter or action taken, made, or done under an Act repealed by subsection (1) shall be continued and shall have full force and effect as if taken, made, or done under this Act.

106. Transitional provisions - (1) Unless the context otherwise requires, every reference to the former Quarantine Service in any enactment, document, or agreement (whether in writing or not), in force immediately before the coming into force of this Act, is, on the coming into force of this Act, a reference to the Service.

(2) The assets and liabilities that the former Quarantine Service had immediately before the coming into force of this Act, shall, on the coming into force of this Act, become the assets and liabilities of the Service.

(3) Every person who is an officer (other than Director) or employee of the former Quarantine Service immediately before the coming into force of this Act, shall, on the coming into force of this Act, become an officer or employee of the Service subject to any contract of employment applying to the person concerned immediately before the coming into force of this Act.

(4) This section expires at the end of the 30th day following the day on which this Act comes into force.

This Act is administered by the Ministry of Agriculture.

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SCHEDULE

(Section 105 - Repealed Acts and Subsidiary legislation)

1. Plants Act 1973
2. Plant Quarantine Regulations 1993
3. Fruit and Vegetables Export Regulations 1993
4. Container Import Regulations 1993
5. Domestic Plant Quarantine Regulations 1993
6. Animals Act 1975
7. Animal Importation Regulations 1993
8. Animal Diseases Prevention Regulations 1982