

ANIMAL AND PLANT BIOSECURITY BILL, 2011

OBJECTS AND REASONS

Background

Biosecurity is a strategic and integrated approach that encompasses the policy and regulatory framework for analysing and managing relevant biological risks to human, animal and plant life and health and the associated risks to the environment, the economy and public health.

It involves the control of the movement of animals, plants and their products in order to prevent the establishment and spread of invasive alien species and animal and plant pests and diseases that can harm human health, the agricultural economy of a country and biodiversity. Consequently, biosecurity entails the control of agricultural and food imports and exports, the establishment of a quarantine regime for animals and plants and the control of the movement of animals and plants within the country.

In Seychelles matters related to biosecurity are provided for under a number of legislation and biosecurity functions are carried out by a number of agencies.

However, the legislation needs to be updated. The review of the plant and animal quarantine Acts is long overdue given the international trend towards freedom of trade and the movement of goods and people. Previous attempts to update the Plant Protection Act have not ventured beyond the Bill stage of the process for one reason or another. Moreover the law as it stands presently does not cover certain aspects of biosecurity. It is also desirable that the Seychelles Animal and Plant Biosecurity Act be compatible with other biosecurity related laws in the small island states.

This Bill has therefore been drafted with the assistance of the GOS-UNDP-GEF Biosecurity Project to consolidate and modernize the animal and plant related biosecurity laws in the Seychelles.

This Bill is intended to repeal and replace the existing Acts and subsidiary legislation governing animal and plant imports and quarantine. It will bring together Acts relating to both animals and plants and provide Seychelles with a legislative foundation for action to protect it from the introduction of invasive alien species and animal and plant pests and diseases. The Bill if enacted will allow all line agencies which are presently carrying out biosecurity functions to carry on

doing so within a legal framework. It will also enable the country to comply with its obligations to ensure that animal and plant pests or diseases are not exported from Seychelles into neighbouring countries. In addition, it will ensure that Seychelles meets its obligations under the WTO Sanitary and Phytosanitary Agreement as it relates to rules based on animal, animal products, plant and plant products.

The scope of the Bill is stated in the Long Title.

The Bill is divided into 12 Parts.

PART I (PRELIMINARY) deals with preliminary matters, including definitions in clause 2. Clause 3 makes it clear that the Act will apply to everyone in Seychelles, including the Government.

PART II (RESPONSIBILITIES, FUNCTIONS AND DUTIES) sets out the administrative framework for implementing the Act. It makes provision for the various persons and agencies on which the Act confers responsibilities and also sets out their responsibilities, functions and powers.

Clause 4 makes the **Minister** responsible for the administration of the Act. The functions of the Minister are set out in Clause 5.

The Minister has the responsibility of declaring regulated articles (clause 6), regulated pests and diseases (clause 7), notifiable pests and diseases (clause 8). These declarations are made by order and on the advice of the Director and in some instances of the National Biosecurity Committee. In the case of regulated pests and diseases and notifiable pests and diseases the process to be followed before a declaration or notification is made is set out. The Minister also has the responsibility of issuing notifications of pests and diseases which exist or do not exist in Seychelles (Clause 9).

Clause 10 makes provision for the designation of the **Agency responsible for Biosecurity** (“the Agency”) and gives it responsibility for implementation and enforcement of the Act. Clause 11 sets out the functions of this Agency and Clause 12 gives the Agency responsibility for formulating an Biosecurity Emergency Response Plan, producing an operations manual for the guidance of biosecurity officers and increasing public awareness of biosecurity matters. Clause 13 deals with financial provisions of the Agency, prescribing the source of their funds which is mainly from the consolidated fund and fees for services rendered by the agency but allows funding from other sources such as grants and donations.

Provision is also made for the establishment of a contingencies fund to deal with incursions of regulated pests and diseases. Fines payable under the Act are paid into the consolidated fund.

The **National Biosecurity Committee** is established under Clause 14 which also provides for its constitution and the appointment of its members. Members must be representative of key line agencies which deal with biosecurity matters and be technically competent to discharge the functions of the Committee. The function of the Committee is to advise and provide guidance to the Director on policy and technical matters (Clause 15). The Committee regulates its own proceedings.

The Act provides for the appointment of the **Director of Biosecurity** (Clause 17) and the **Deputy Director of Biosecurity** (Clause 20) who are both ex officio biosecurity officers (Clause 22).

The Director is the head of the Agency responsible for Biosecurity and is responsible to the Minister for the performance of his functions. Clause 18 sets out the functions of the Director which include advising the Minister on matters relating to animal and plant health and liaising with governmental and other agencies on such matters. Before performing any technical function, the Director must, as appropriate, obtain advice from the Deputy Director, the Chief Veterinary Officer or Chief Plant Protection Officer. Clause 19 empowers the Director to enter into agreements with administrators of islands and protected areas to, among other things, carry out surveillance of pests and diseases, propose and implement pest and disease management strategies and assist the Agency responsible for Biosecurity in the case of a biosecurity emergency.

The Deputy Director must be employed by the Agency responsible for Biosecurity and be technically competent in the field of plant or animal health. The Deputy Director is responsible to the Director for the performance of his or her functions (Clause 20). Clause 21 provides for the functions of the Deputy Director who must, among other things, perform the functions of a technical nature arising in the normal course of business of the agency and the functions of the Director when the Director cannot do so. Before performing any technical function, the Deputy Director must, as appropriate, obtain advice from the Chief Veterinary Officer or Chief Plant Protection Officer.

In the absence of both the Director and the Deputy Director, Clause 23 provides for the designation of a suitably qualified public officer to act in the place of the Director.

Clause 25 provides for the designation of suitably qualified public officers or employees of the agency responsible for biosecurity to be **Biosecurity Officers**. Biosecurity Officers may also be designated as temporary ones or for a particular purpose or at a particular location.

Clause 26 provides that the functions of biosecurity officers are assigned to them by the Director. The Director has the power to give directions to such officers as to the manner in which their functions are to be performed. The Act imposes certain duties on the Director vis-à-vis biosecurity officers – the Director must ensure that all biosecurity officers are provided with a suitable form of identification as such officer (Clause 27) and that they receive adequate training in biosecurity control measures and in the provisions of the Act (Clause 28).

Clauses 29 to 39 define the general powers of biosecurity officers under the Bill. Clause 29 sets out certain general rules as to the exercise of those powers. Clause 30 deals with the power of entry, search and seizure of premises and conveyances in relation to regulated articles. Clause 31 regulates the inspection of documents in relation to regulated articles, and clause 32 regulates the inspection of regulated articles. Under clause 33, biosecurity officers have power to detain regulated articles for testing and treatment. Taking of samples and testing are governed by clauses 34 and 35 respectively. An article may need to be treated to remove the biosecurity risk that it poses, or reconsign or destroyed because it poses an unacceptable biosecurity risk; clauses 36, 37 and 38 respectively, give the necessary powers to treat, consign or destroy such an article. Clause 39 defines the powers of biosecurity officers in relation to people.

PART III (ADMINISTRATIVE PROVISIONS) sets out some administrative provisions required for the Act to function effectively.

Clause 40 requires the Minister, the Agency responsible for Biosecurity and the Director to consult other relevant interested parties including governmental and other authorities before exercising powers under the Act. The agency responsible for biosecurity is empowered under that clause to enter in agreements for the effective implementation of the Act.

Clause 41 empowers the agency responsible for biosecurity to outsource aspects of biosecurity work if needed.

Clause 42 seeks to encourage coordination and cooperation between the different agencies carrying out biosecurity functions.

This Part provides mechanisms to facilitate the biosecurity inspection process. Under clause 43 the Director can enter into compliance agreements with persons who regularly import or export regulated articles, and under clause 44, private premises can be approved as places for the inspection and treatment of regulated articles.

This Part also provides for cooperation with the international community in international activities in the field of biosecurity. Under clause 45, the Minister can facilitate the conclusion of bilateral or multilateral agreements on biosecurity matters. Pursuant to such agreements, the Director can exchange information with other countries and international organizations and contribute to the development of international sanitary and phytosanitary standards.

Clause 46 enables various powers to be delegated and sets limits on the power of delegation.

Clause 47 requires the Director to keep extensive registers and records of all biosecurity decisions and activities. Under clause 48, entries in a register and records will be admissible as evidence in court.

PART IV (VESSELS AND AIRCRAFT) sets out the rules governing incoming and outgoing vessels and aircraft.

Clause 49 provides for the designation of biosecurity port quarantine areas for vessels and aircraft and clauses 50 and 51 regulate such areas.

Every arriving vessel and aircraft must make an arrival declaration before arrival (clause 52.)

Vessels and aircraft must obtain biosecurity landing clearance on arrival (clause 53.)

An aircraft or vessel which is ordered into port quarantine (because suspected of being infected or infested with a regulated pest or disease or carrying any regulated article which might pose a biosecurity threat to Seychelles) will be refused biosecurity landing clearance. If ordered into quarantine an incoming vessel or aircraft must proceed to port quarantine (clauses 54, 55 and 56). Clause 57 deals with costs and compensation related to quarantine of vessels and aircraft. An incoming vessel or aircraft ordered into quarantine must obtain quarantine clearance before landing passengers or cargo (clause 58.)

Clause 59 empowers the Director to direct a vessel or aircraft which poses a serious biosecurity threat to Seychelles which cannot adequately be dealt with by appropriate biosecurity measures to leave Seychelles.

Clause 60 imposes on masters and captains of all vessels and aircraft that come into the country obligations with regard to securing the vessel to prevent biosecurity risks. There are also limitations on the discharge of garbage, bilge water, sewage, wastewater and ballast water from vessels within Seychelles waters.

Clause 61 gives certain powers to biosecurity officers where they have reason to suspect that there might be on board outgoing vessels and aircraft uncleared regulated articles that require clearance and requires masters and captains of those vessels and aircraft to cooperate.

Clause 62 imposes an obligation on incoming passengers and crew members to make a passenger declaration and submit their baggage to inspection. Clause 63 sets out the procedure to be followed after a passenger arrival biosecurity declaration is made for the grant of biosecurity entry clearance to those passengers, crew members and their baggage. Regulated articles in the baggage of passengers and crew members will require biosecurity import clearance like any other cargo.

Clause 64 imposes an obligation on departing passengers and crew members to allow inspection of regulated articles and search of their baggage.

PART V (BIOSECURITY BORDER CONTROL) regulates biosecurity border control. The Minister is given the power to regulate the importation of regulated articles by prohibiting or restricting their importation. Importation of any regulated article considered an unacceptable risk to Seychelles will be prohibited (clause 65).

Biosecurity points of entry and departure, such as seaports and airports may be designated by the Minister and importation or exportation other than at these points are an offence (clause 66).

In terms of clause 67 incoming vessels and aircraft have to berth or land at a biosecurity point of entry and except in exceptional circumstances, failure to do so constitutes an offence.

Clause 68 requires operators of biosecurity points of entry and departure (i.e. ports, airports and post offices) to provide certain facilities including for biosecurity inspection of incoming and outgoing articles.

Clause 69, 70 and 71 respectively make provision for the designation of biosecurity port holding areas, biosecurity goods holding areas and biosecurity postal holding areas at ports, airports and post offices for biosecurity clearance inspection of incoming and outgoing regulated articles. Holding areas are to be strictly managed to prevent animals and plants leaving the area until they have been cleared (clause 73).

Importers and exporters of regulated articles must appoint a biosecurity clearance agent if they will not be present at the time of importation or exportation (clause 74.)

PART VI (BIOSECURITY IMPORT PROCEDURES) establishes the procedures for importing goods into Seychelles.

A person seeking to import animals, animal products, plants or plant products or other regulated articles is required to make an application for a biosecurity import permit (clause 75). The application will be granted if there are

existing biosecurity import conditions in respect of the article to which the application relates. It will be refused if it relates to an article the importation of which is prohibited (clause 76).

Biosecurity import conditions consist of requirements for importing regulated articles and are specified by the Director in accordance with clause 77. These requirements may consist of a biosecurity import permit and conditions of the permit, a sanitary or phytosanitary certificate and matters to be certified by the certificate or application of biosecurity measures to an article upon its arrival in Seychelles. It is an offence to import or attempt to import an article for which a biosecurity import permit is required without or in breach of the conditions of such a permit. Clause 78 makes provision for changing existing biosecurity import conditions and the procedure to be followed.

If there are no existing biosecurity import conditions relating to a proposed import, the Director must inform the intending importer who may make a request for those conditions to be developed in respect of the article it proposes to import. These will be developed in accordance with procedures under clause 79.

Clause 80 provides for application for access to the Seychelles market by exporting countries who wish to export regulated articles to Seychelles.

Clause 81 deals with exemptions of regulated articles, classes or consignments of regulated articles from biosecurity import requirements.

All incoming articles are liable to entry inspection at the point of entry to ascertain whether they are regulated. If they are not regulated articles, they may be released (clause 82). However incoming regulated articles require biosecurity import clearance for which an application must be made and are liable to biosecurity inspection at a holding area (clause 83). Clause 84 sets out the matters on which a biosecurity officer must be satisfied before biosecurity import clearance can be granted. The requirements may include the issue of a biosecurity import permit, a sanitary or phytosanitary certificate issued by the country of origin, or treatment of a regulated article on arrival. Biosecurity import clearance will only be granted if all the requirements for import are satisfied, but may be granted conditionally in order to allow the article to be sent for treatment or to quarantine.

Clause 85 deals with revocation of a biosecurity import permit.

Articles in transit are governed by clause 86.

PART VII (BIOSECURITY QUARANTINE) sets out the rules relating to animals, plants or other regulated articles in biosecurity quarantine.

Clause 87 provides for the designation of biosecurity quarantine stations. Clause 88 imposes an obligation on the Director to ensure that such stations are

provided with such buildings and facilities as are reasonably needed and clause 89 lays down conditions of biosecurity quarantine. Clause 90 contains provisions relating to the management of biosecurity quarantine stations where entry and exit, movement and other action in quarantine stations is controlled. Biosecurity quarantine notices must not be removed (clause 91).

Clause 92 empowers biosecurity officers to order regulated articles into biosecurity quarantine in certain circumstances. Provision is made for moving regulated articles ordered into quarantine to a biosecurity quarantine station by clause 93. Articles must not be released from biosecurity quarantine until issued with a biosecurity quarantine release certificate (clause 94).

Clause 95 prohibits the release of any animal, plant or organism which is subject to biosecurity control from a biosecurity quarantine station. A person who contravenes this provision commits an offence.

PART VIII (BIOSECURITY INTERNAL CONTROL) sets out the provisions for surveillance, control and management of pests and diseases within Seychelles and the powers of the Minister, Director and biosecurity officers in that regard.

The Minister has the power to direct a pest and disease survey to be conducted (clause 96), and biosecurity officers are given power to enter, search and inspect premises in the conduct of those surveys (clause 97). The results of a survey can be published or transmitted to other interested parties (clause 98).

Irrespective of whether a survey is carried out, a biosecurity officer who reasonably suspects the presence of a regulated pest or disease has powers of entry search and seizure under clause 99 and may direct that an animal, plant or its product suspected of being infected or infested by a regulated pest or disease, be detained and confined for tests to be conducted on it (clause 100). Clause 101 deals with the moving of such animal, plant or product to the place of detention. Management of places of detention is dealt with under clause 102.

Biosecurity officers are empowered to carry out post mortem examination of diseased animals to establish a diagnosis under clause 103.

Clause 104 provides for treatment of animals, plants and their products which are suspected of being infested or infected with a regulated pest or disease and have been detained for testing. Under clause 105, the animals and plants or their products may be destroyed if necessary. The costs of treatment or destruction are borne by Government and compensation is payable when such action is necessary (clause 106).

Clause 107 provides for areas to be declared infested biosecurity controlled areas. Biosecurity officers have the power to enter such areas (clause 108) but restrictions are imposed over the movement into, out of and within such areas.

The Director can control any activity in such areas and make orders including treatment and destruction of animals, plants and their products to control infestation in those areas (clause 109). The costs of treatment or destruction are borne by Government and compensation is payable when such action is necessary (clause 110).

The declaration of pest-free controlled areas and regulation of such areas are dealt with under clause 111 and 112 respectively.

Clause 113 enables wild, feral or stray animals to be destroyed if they pose a biosecurity threat.

Under clause 114, the Minister has the power to authorise the release of beneficial organisms or biocontrol agents in order to control pests and diseases.

PART IX (BIOSECURITY EMERGENCIES) contains provisions dealing with biosecurity emergencies in Seychelles.

A biosecurity emergency area may be declared under clause 115. Clause 116 provides for the display of notices of such declaration and clause 117 deals with the revocation and expiry of such declaration.

Clause 118 makes provision for matters which may be done or which may be taken into account to decide on the appropriate response to a biosecurity emergency.

The Director is given extensive powers to deal with biosecurity emergencies, if necessary with the assistance of the police and other Government personnel (clauses 119). The cost of treatment or destruction of an article in exercise of these powers is borne by the Government and compensation is payable where necessary (clause 120).

Biosecurity emergency regulations can be made in respect of a biosecurity emergency under clause 121 to give additional powers to the Minister, Director and other persons. These regulations would only remain in force for as long as the emergency lasts. Clause 122 set out the matters in respect of which the regulations may provide. The cost of treatment or destruction of an article under emergency regulations are to be borne by Government and compensation is payable for any land, premises, conveyance or article that is used, lost, destroyed or damaged in any action taken under such regulations (clause 123).

PART X (BIOSECURITY EXPORT PROCEDURES) sets out the procedures for facilitating exports.

Clause 124 sets out the requirement for biosecurity export clearance of outgoing regulated articles where the importing country requires a sanitary or

phytosanitary certificate before importation in that country or where biosecurity measures are required to be taken in respect of the article or consignment before being exported to that country. A person intending to export an article which requires biosecurity export clearance must make an application to the Director in accordance with clause 125. Clause 126 provides for inspection and application of biosecurity measures to articles in respect of which an application for biosecurity export clearance is made.

Clause 127 sets out the procedure for obtaining a sanitary or phytosanitary certificate. It also requires that a record of the sanitary or phytosanitary certification requirements of importing countries be entered in the biosecurity register.

The Director is empowered to specify biosecurity export requirements in respect of outgoing articles. These may include sanitary and phytosanitary certification requirements and biosecurity measures required by the importing country to be applied to the article before export. Biosecurity export requirements can only relate to animals or plants or their products and not to regulated articles generally. They must also be in line with any international obligations of Seychelles (clause 128).

Clause 129 deals with the grant or refusal of biosecurity export clearance.

Clause 130 provides for the Director to apply for market access on behalf of the Government.

PART XI (OFFENCES AND PENALTIES) is concerned with enforcement of the Act and specifies offences and penalties.

Clause 131 creates the offence of dereliction of duty by biosecurity officers. Clauses 132 and 133 create various ancillary offences that might be committed by importers and passengers relating to information, documents etc.

Clause 134 prescribes the maximum penalties for all the offences in the Act. These are listed in the Schedule 2. A body corporate will not be liable to imprisonment but will be liable to higher penalties.

Clause 135 provides for forfeiture of items connected with the commission of offences.

Clause 136 establishes a system of fixed penalties, to simplify the processing of offences at the seaport and airport and limit the number of matters ending up in court.

PART XII (MISCELLANEOUS PROVISIONS) contains a number of miscellaneous provisions for implementing the Act.

Clause 137 makes provision for the manner in which abandoned goods are to be dealt with.

Clause 138 deals with compensation, including how it will be calculated, if payable.

Appeals from decisions of biosecurity officers, the Chief Veterinary Officer and Chief Plant Protection Officer and appeals to the Supreme Court from decisions of the Director or a determination of the Minister on compensation are dealt with under clause 139 and 140 respectively.

Clause 141 provides that the Minister, Director, any biosecurity officer or other public officer taking action under the Act in good faith and without negligence are not personally liable.

Clause 142 provides for the evidential status of certificates and other documents created or used under the Act.

Clause 143 states the rules about publication of orders and notices made under the Act. They must be published in the Gazette in order to take effect unless otherwise provided.

Clause 144 deals with the mode of service of notices or other documents under the Act.

Clause 145 enables the Minister to make regulations to supplement the provisions of the Act. This clause also provides that column 4, 5 or 6 of Schedule 2 may be amended by regulations.

Clause 146 provides for the repeal of the Animals (Diseases and Imports) Act (Cap131) and the Plant Protection Act (Cap 171). It also provides for repeal of regulations made under those Acts and makes savings in respect of certain provisions.

Clause 147 makes transitional provisions for the smooth introduction of the Act, and clause 148 makes consequential amendments to other Acts as a result of the enactment of the Bill.

Clause 149 makes it clear that other obligations relating to quarantine of vessels and aircraft and imports and exports are not displaced.

THE 1ST SCHEDULE contains the form for an import permit.

THE 2nd SCHEDULE lists all the sections which create offences and sets out the respective maximum fines and terms of imprisonment that can be imposed for them. It also sets out the fixed penalty for those offences that can be dealt with by way of fixed penalty under clause 136.

Dated this day of, 2011